

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM

ITA No. 7039/Del/2014 : Asstt. Year : 2011-12

Smt. Poonam Gupta, DA/5, 1 st Floor, Vikas Marg, Shakarpur, Delhi	Vs	DCIT, Central Circle-4, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AFTPG3130M		

ITA No. 7040/Del/2014 : Asstt. Year : 2011-12

Rajesh Kumar Gupta DA/5, 1 st Floor, Vikas Marg, Shakarpur, Delhi	Vs	DCIT, Central Circle-4, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAJPK4069L		

Assessee by : None

Revenue by : Smt. Paramita Tripathy, CIT DR

Date of Hearing : 26.09.2017	Date of Pronouncement : 29.09.2017
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ORDER

Per N. K. Saini, AM:

These appeals filed by the assesseees are directed against the separate orders each dated 08.08.2014 of Id. CIT(A)-XXXIII, New Delhi.

2. During the course of hearing nobody was present on behalf of the assesseees. We, therefore, proceeded *ex-parte* and the appeals are decided on merit after hearing the Id. DR.

3. At the first instance, we will deal with the appeal in ITA No. 7039/Del/2014 relating to Smt. Poonam Gupta. Following grounds have been raised in this appeal:

“1. That on the facts and circumstances of the case, the order of Ld. CIT(A) is bad in law and nature:

1.1 Because the Ld. CIT(A) has not given any opportunity while enhancing the jewellery to the extent of 461.046 grams which the Ld AO, at the time of assessment, held to be genuinely purchased and the enhancement has been made in contravention of section 251(2) of the Income Tax Act 1961. Thereby enhancing the assessment by Rs.9,26,702/- is illegal.

1.2 Because the Ld. CIT(A) has erred in law and facts by denying the purchase bills as genuine of the jewellery produced before the Ld. AO.

1.3 Because the submissions made by the assessee were not all considered and were rejected without giving a cogent reasons for the rejection.

2. That on the facts and circumstances of the case the Ld CIT(A) has erred upholding the addition of Rs. 1,40,000/- made on account of unaccounted cash though the same was duly explained by the assessee:

2.1 Because the accounts which were produced for the assessment and based on which the assessment was framed but not relied for withdrawals of the cash.

3. The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.”

4. Vide Ground Nos. 1 to 1.3, the grievance of the assessee relates to the enhancement of the income by Rs.9,26,702/- on account of jewellery weighing 461.046 grams.

5. Facts of the case in brief are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as the Act) was carried out on 21.01.2011 in M/s Dharampal Satyapal Group of cases to which the assessee belongs. The assessee filed the return of income on 28.09.2011 declaring total taxable income of Rs.4,35,350/- which was subsequently revised on 27.02.2013 at an income of Rs.11,10,640/-. During the course of search and seizure proceedings u/s 132(1) of the Act at the residence of the assessee, at locker no. D-60 maintained with Jammu & Kashmir Bank, Sector-18, Noida and at locker no. 1085 maintained with Axis Bank, Sector-16, Noida, jewellery valuing Rs.50,31,008/- was found out of which the jewellery worth Rs.29,68,072/- was seized. The details of jewellery found and seized were as under:

<i>Description</i>	<i>Residence A-16, Sector-26, Noida</i>	<i>Locker at J&K Bank, Sec. 18, Noida</i>	<i>Locker at Axis Bank, Sec. 16, Noida</i>	<i>Total</i>
<i>Jewellery found</i>	<i>Rs.13,33,748/- (363.400 gms)</i>	<i>Rs.30,31,789/- (20 items), 1140.900 gms</i>	<i>Rs.6,65,471/- (8 items), 329.100 gms</i>	<i>Rs.50,31,008/-</i>
<i>Jewellery seized</i>	<i>Nil</i>	<i>Rs.23,02,601/-</i>	<i>Rs.6,65,471/-</i>	<i>Rs.29,68,072/-</i>

6. The explanation of the assessee was that the jewellery was received on the occasion of marriage and other various occasions from

relatives, parent and purchases made by her from time to time and that the sons, namely, Mr. Chitresh and Mr. Ayush also got jewellery items such as gold chains, sovereigns, rings etc. on various occasions at the time of their birth and on festivals/family functions from paternal and maternal grandparents, uncles and other relatives. The assessee also explained that the jewellery purchased by the family from time to time came to 1287.660 grams weight wise and the remaining jewellery was received by the assessee/her sons at the time of marriage, births, on festivals and other family functions. The AO, however, did not find merit in the submissions of the assessee and made the addition of Rs.41,04,306/- by observing as under:

“6. In the submissions of the assessee, the only submission which could assist in the quantification of explained investment in jewellery is the jewellery purchase details submitted alongwith the explanation. Various bills of purchases made from time to time have been enclosed. However, in the present case, I am concerned with the source of the investment made by the assessee. Investment must flow from the disclosed sources of income of the assessee. The purchase bill not reflecting the payment details is of no consequence. It is seen that only three purchase bills of M/s Jagdhar Mall Dhannu Mall Jain dated 19.12.1991, Laxmi Narain Balkishan Dass Saraf dated 27.07.2004, and Radiant Jeweller (P) Ltd dated 2.07.2008 contain the payment details whereby total jewellery purchased weight wise was 461.046 grams. In the circumstances, Jewellery to the extent of 461.046 grams which by adopting the valuation rate on the date of search taken @ Rs. 2010/- per gram by the government approved valuer comes to Rs. 9,26,702/- -is considered as explained. Remaining jewellery valuing Rs. 41,04,306/- out of total jewellery of Rs, 50,31,008/- is treated as

unexplained investment u/s 69A of the Income Tax Act and is added to the total income of the assessee.

Addition of Rs. 41,04,306/-”

7. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

“(i) The jewellery found was received by the appellant, being a married lady at the time of marriage, birth of her two sons. The assessing officer has not given any credit as per Board is circular i.e. 500 gm to lady 250 gm for unmarried lady and 100 gm to each male member.

(ii) Jewellery was purchased from time to time, total purchase of jewellery for which purchase bills were submitted was weighing 1287.660 gm of gold.

(iii) The appellant has filed valuation report dt. 4.8.1988 of govt. Approved Jeweller, Sh. Sunil Kumar who had valued the jewellery for wealth tax purpose. However, the appellant did not file wealth tax return. The valuation report proves that the jewellery were owned by the appellant since 1988. Therefore, source of such jewellery if at all can be asked only in A.Y. 89-90 and no addition can be made in the impugned assessment year 2011-12. He has relied on the decision of Patoa Bros Vs. CIT 133 ITR 672 (Gau) where it has been held that crucial date for the application of sec 69A is when the assessee became the owner of the asset. He also relied on the decision of Harlal Maaulal Vs. CIT 147 ITR 11 (MP).

(iv) Ld. Assessing Officer did not accept the purchase as per the purchase bills except in respect of three purchase bill without verifying the facts from the jewelers by doing proper enquiry. He relied on the decision of Nathu Ram purchased 49 ITR 561 (All.)”

8. The ld. CIT(A) after considering the submissions of the assessee, although allowed the relief of Rs.16,08,000/- by considering the CBDT's Instruction No. 1916 which directed that the gold jewellery to the extent of 500 gm for married lady and 100 gm for male members should not be seized, but he considered jewellery purchased valuing Rs.9,26,702/- as part of the aforesaid amount of Rs.16,08,000/-. In other words, the ld. CIT(A) included the jewellery valuing Rs.9,26,702/- which was purchased by the assessee and the AO considered the same as explained.

9. Now the assessee is in appeal. The ld. DR supported the order passed by the AO and reiterated the observation made in the assessment order dated 18.03.2013. Nobody was present on behalf of the assessee.

10. We have considered the submissions of the ld. DR and carefully gone through the material available on the record. In the present case, it appears that the ld. CIT(A) added the jewellery valuing Rs.9,26,702/- which the AO considered as explained but no proper reason has been given by the ld. CIT(A) in support of his action. It is also noticed that the ld. CIT(A) had confirmed the addition of Rs.34,23,008/- without assigning any cogent reason. We, therefore, deem it appropriate to set aside this issue back to the file of the ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

11. Next issue vide Ground No. 2, relates to the sustenance of addition of Rs.1,40,000/- on account unaccounted cash.

12. The facts related to this issue in brief are that during the course of search at the locker of the assessee, cash amounting to Rs.1,40,000/- was found and seized. The AO added the said amount by observing that the availability of cash with the family of the assessee on the date of search had already been considered in full. He, therefore, considered the amount of Rs.1,40,000/- as unexplained and made the addition.

13. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that cash found from the locker of the assessee was out of the withdrawals made by the assessee, her husband and the sons. The Id. CIT(A), however, did not find merit in the submissions of the assessee and sustained the addition.

14. Now the assessee is in appeal.

15. We have considered the submissions of the Id. DR who mainly supported the orders of the authorities below, and also gone through the material available on the record. In our opinion, the Id. CIT(A) without appreciating the facts in right perspective, sustained the addition, particularly no findings have been given on this submission of the assessee that the cash found was out of the cash withdrawals. We,

therefore, deem it appropriate to set aside this issue back to the file of the Id. CIT(A).

16. Now we will deal with the appeal of Sh. Rajesh Kumar Gupta in ITA No. 7040/Del/2014, the only grievance of the assessee in this appeal relates to the sustenance of addition of Rs.7,00,000/- found during the course of search.

17. Facts of the case in brief are that during the course of search cash amounting to Rs.9,75,490/- was found. The AO observed that the assessee had not produced any credible evidence which could satisfactorily explain the availability of cash with the assessee on the date of search. The explanation of the assessee was that the cash of Rs.8,85,000/- was withdrawn by his wife Smt. Poonam Gupta and he had withdrawn Rs.11,00,000/- during the period April 2009 till the date of search. The AO did not find merit in the submission of the assessee, however, he had considered a sum of Rs.2,75,490/- as explained and balance amount of Rs.7,00,000/- was added to the income of the assessee.

18. Being aggrieved the assessee carried the matter to the Id. CIT(A) who sustained the addition by observing that the finding of the AO that Rs.7,00,000/- out of Rs.9,75,490/- was unexplained appears to be correct.

19. Now the assessee is in appeal. The ld. DR supported the orders of the authorities below and reiterated the observations made by the AO and the ld. CIT(A) in their respective orders.

20. We have considered the submissions of ld. DR and perused the material available on the record. In the present case, it appears that the explanation of the assessee was that the cash found during the course of search was out of the withdrawals made by him and his wife. In our opinion, the authorities below had not appreciated the facts in right perspective. We, therefore, deem it appropriate to set aside this issue back to the file of the ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

21. In the result, the appeals of the assessees are allowed for statistical purposes.

(Order Pronounced in the Court on 29/09/2017)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 29/09/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR