



ITA No.1242/Mum/2012  
Kavita Singh  
Assessment Year 2008-09

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI MAHAVIR SINGH, JM AND  
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 1242/Mum/2012  
(निर्धारण वर्ष / Assessment Year: 2008-09)

|   |                      |  |
|---|----------------------|--|
| <b>Kavita Singh</b><br>(Prop. Of Reflections)<br>1001, Dalamal House<br>10 <sup>th</sup> Floor<br>Nariman Point<br>Mumbai – 400 021 | <b>बनाम/<br/>Vs.</b> | <b>Deputy Commissioner of<br/>Income Tax<br/>Central Circle 42<br/>Aaykar Bhavan<br/>M.K.Road<br/>Mumbai-400 020</b> |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>ANDPS-0896-C</b>  |                      |  |
| (□ पीलार्थी / <b>Appellant</b> )  | :                    | (प्रत्यर्थी / <b>Respondent</b> )  |

|                    |   |                                      |
|--------------------|---|--------------------------------------|
| <b>Assessee by</b> | : | J.D.Mistry & Madhur Aggarwal,Ld. ARs |
| <b>Revenue by</b>  | : | Ram Tiwari, Ld. DR                   |

|  |   |             |
|--|---|-------------|
| सुनवाई की तारीख /<br><b>Date of Hearing</b>      | : | 06/10/2017  |
| घोषणा की तारीख /<br><b>Date of Pronouncement</b> | : | 08/12 /2017 |

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. The captioned appeal by assessee for Assessment Year [AY] 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-38 [CIT(A)], Mumbai, *Appeal No. CIT(A)-38/IT-499/2009-10*



dated 19/12/2011 *qua* confirmation of addition of Rs.208.95 Lacs on account of unexplained paintings and Rs.37.01 Lacs on account of unexplained jewellery. The assessment for impugned AY was framed by Ld. Deputy Commissioner of Income Tax, Central Circle-42, Mumbai [AO] on 30/12/2009 u/s 143(3) *read with Section 153B* of the Income Tax Act, 1961.

2.1 Briefly stated, the assessee being *resident individual* engaged in the business of *sale of Painting / Archives / Interior Designing* under proprietorship concern namely *M/s Reflections*, was assessed for impugned AY u/s 143(3) *read with section 153B* consequent to search action on 17/04/2007 on *ACG Art group*, the assessee being part of the said group.

2.2 To Ld. AO noted that *ACG art group* was one of the multi locational organizations belonging to a business group in Mumbai. The group dealt in manufacturing of *gelatin capsules* and also traded in *painting and sculptors* under its concerns namely *ACG Art & Properties Pvt. Ltd. & M/s Reflection*. The assessee is proprietress of *M/s Reflection* who deals in trading of *painting / sculptors*.

2.3 It was further noted that the group had manufacturing unit at *Kandivali* and carried on trading activity of artwork from its offices located at *Jogeshwari & Nepean Sea Road, Mumbai*. The various locations of the group and residence of its *directors / members* were subjected to search action on 17/04/2007 where it was found that the group indulged in procuring *bogus purchase bills* of *paintings*. Further, unaccounted painting totaling 288 in number valued at Rs.999.20 Lacs



were found / inventorized during search operations out of which 71 paintings were put under constructive seizure u/s 132(1)(iii).

2.4 The assessee filed her return of income for impugned AY on 29/09/2008 at Rs.22.66 Lacs which was finally assessed on 30/12/2009 at Rs.293.43 Lacs after addition of Rs.41.81 Lacs on account of unexplained jewellery and Rs.228.95 Lacs on account of unaccounted paintings. The addition of unexplained paintings has been further enhanced to Rs.244.95 Lacs vide rectification order u/s 154 dated 25/03/2010 since computational errors were noted in the quantum assessment. Both the additions are the subject matter of this appeal.

2.5 The unaccounted jewellery for Rs.41.81 Lacs consist of excess gold jewellery found during search weighing around 3566.30 grams valued at Rs.25.27 Lacs & excess diamond jewellery weighing around 106.90 grams, 15.510 carat valued at Rs.16.53 Lacs.

2.6 The assessee produced various evidences to demonstrate the date / cost acquisition of the paintings. However, not convinced, Ld. AO rejected the evidences submitted by the assessee with respect to certain paintings valued at Rs.244.95 Lacs, the details of which has been provided in the Annexure attached to quantum assessment order and added the same to the income of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 19/12/2011. The assessee re-submitted the various evidences to prove the year, cost and source of acquisition of the painting in the following manner:-



| No. | No. of Paintings | Value       | Remarks   |
|-----|------------------|-------------|---|
| 1.  | 1                | 20 Lacs     | Supported by Panchnama of earlier search conducted on 14/12/2001  |
| 2.  | 2                | 30 Lacs     | Received as Gift  |
| 3.  | 10               | 146.75 Lacs | Acquired prior to Block Period from 01/04/2001 to 31/03/2008 and duly supported by bills & cheque payment |
| 4.  | 7                | 33 Lacs     | Painting received on consignment basis  |
| 5.  | 7                | 10.60 Lacs  | Low value paintings   |
| 6.  | 3                | 0.60 Lacs   | Only prints and not actual paintings  |
| 7.  | 1                | 4.00 Lacs   | Supported by Letter dated 29/04/2008  |

The assessee contended that since source of acquisition of each item was fully explained, addition thereof u/s 69 was not justified. However, Ld. CIT(A) noted that no confirmatory letters confirming the gift could be produced by the assessee. The Ld. CIT(A) also noted discrepancies in the statement given by the assessee during search operations vis-à-vis documentary evidences available on record and granted partial relief against painting listed at serial number 1 of the above table which was valued at Rs.20 Lacs since the same was held by the assessee at the time of earlier search operations conducted upon assessee during January, 2002 and confirmed the balance additions. A partial relief to the extent of 676.60 grams of gold jewellery was also granted to the assessee which restricted the impugned additions against jewelry to Rs.37,01,558/-. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Counsel for Assessee [AR], drawing our attention to the documents placed in the *paper book* contended that the assessee produced certain evidences before lower authorities to demonstrate that the paintings in dispute were acquired by the assessee long time back and few paintings were received either in gifts or kept with the assessee by artist on *sale on approval basis* and therefore, additions thereof was



not justified. Per *Contra*, Ld. DR contended that the assessee could not discharge the onus of proving the source of paintings with cogent evidences and therefore, additions were justified.

5. We have carefully heard the rival contentions and perused relevant material on record. We find that the assessee has suffered aggregate addition of Rs.244.95 Lacs against 31 number of paintings which are listed in annexure attached with the quantum assessment order. The Ld. CIT(A) has already allowed relief with respect to one painting listed at Serial No. 1 in the above table and valued at Rs.20 Lacs. Hence, the dispute before us is with respect to 30 painting valued at Rs.224.95 Lacs, each of which we shall deal in subsequent paragraphs.

6. The painting listed at Serial No. 2 consists of two paintings valued at Rs. 5 Lacs & Rs. 25 Lacs respectively. These paintings were found at *Swapnalok* and crafted by an Artist namely *Anjoli Ela Menon*. The documentary evidences including photographs of the paintings have been placed at Page Numbers 44 to 49 of the *paper book*. These painting are stated to be received by the assessee as gift on various occasions from the artist. A perusal of the inscription on the reverse of these painting corroborate the stand of the assessee since the artist, *prima facie*, has gifted these painting to the assessee on the occasion of *New Year* and *marriage anniversary* and the same bears the signatures of the artist. The *factum* of the gift has been inscribed by the artist at the back of these paintings. In our considered opinion, the seized material, in itself, becomes evidence supporting the stand of the assessee. Hence, addition thereof was not justified and the same stand deleted.



7. The details of ten painting listed at Serial No. 3 valued at Rs.146.75 Lacs is as follows:

| No. | Location & Valuation Ref. No. | Artist Name                     | Titled                  | Medium               | Size         | Value                |
|-----|-------------------------------|---------------------------------|-------------------------|----------------------|--------------|----------------------|
| 1.  | Dalamal 8                     | Jehangir Jani                   | Playing Rangoli         | Oil on Canvas        | 60x70        | 6,00,000/-           |
| 2.  | Scitech 58                    | Shubham Kaw                     | Two Tree Trunks         |                      | 47.5x35      | 10,00,000/-          |
| 3.  | Reflections 60                | Unknown (Prof. Capt. G.Soloman) | Sybil                   | Oil on Canvas        | 20.5x15.5    | 10,00,000/-          |
| 4.  | Reflections 22                | Nandalal Bose                   | Man praying in Water    | Water Colour         | 8.5x18       | 1,75,000/-           |
| 5.  | Brighton 37                   | Shanti Dave                     | Untitled                | Mix. Media on Canvas | 31.5x16      | 5,00,000/-           |
| 6.  | Swapnalok 1                   | M.F.Hussain                     | Mother Teresa           | Oil on Canvas        | 36x30        | 40,00,000/-          |
| 7.  | Swapnalok 2                   | Jamini Roy                      | Untitled                | Silk Cloth           | 42x9.5       | 8,00,000/-           |
| 8.  | Swapnalok 5                   | K.H.Ara                         | Nude                    | Water Colour         | 27x20        | 6,00,000/-           |
| 9.  | Swapnalok 7                   | A.R.Chugta                      | Lady Holding Jug        | Water Colour         | 20x14        | 30,00,000/-          |
| 10. | Swapnalok 8                   | A.R.Chugta                      | Lady & Music Instrument | Water Colour         | 20x14        | 30,00,000/-          |
|     |                               |                                 |                         |                      | <b>Total</b> | <b>1,46,75,000/-</b> |

The assessee, in the *paper book*, has placed various documentary evidences to support the contentions that these painting were acquired by the assessee long time back in earlier assessment years in the following manner:-

| No. | Location & Valuation Ref. No. | Artist Name                     | Supporting Evidences  |
|-----|-------------------------------|---------------------------------|---|
| 1.  | Dalamal 8                     | Jehangir Jani                   | Receipt dated 21/02/1994 Cheque No. 831487 dated 21/02/1994                       |
| 2.  | Scitech 58                    | Shubham Kaw                     | Bill No. 11 dated 24/01/1993  |
| 3.  | Reflections 60                | Unknown (Prof. Capt. G.Soloman) | Bill No. 162 dated 15/10/1997 for Rs.3000/-                                       |
| 4.  | Reflections 22                | Nandalal Bose                   | Confirmation dated 02/01/1998, payment though DD No. 128906 dated 02/01/998       |
| 5.  | Brighton 37                   | Shanti Dave                     | Bill No. 38 dated 12/11/1992 for Rs.5000/-  |
| 6.  | Swapnalok 1                   | M.F.Hussain                     | Payment through Cheque dated 16/01/1988 & 08/02/1988 aggregating to Rs.18500/-    |
| 7.  | Swapnalok 2                   | Jamini Roy                      | Evidenced by photograph dated 16/08/1996 showing painting in the background       |
| 8.  | Swapnalok 5                   | K.H.Ara                         | Receipt dated 20/04/1977 for Rs.850/- supported by Internal Memo dated 27/04/1977 |



The perusal of these documentary evidences as placed in the *paper book* support the stand of the assessee that these paintings were acquired by the assessee much prior in earlier years and the revenue had no justification to add the same. The assessee, *prima facie* discharged the primary onus of proving the source of these painting and the onus was shifted on revenue to negate the same. There is nothing adverse on record to rebut the various contentions of the assessee and revenue has made the additions merely on the basis of suspicion which was not justified. Hence, we are inclined to delete the additions with respect to painting listed at Serial No. 1 to 8. Further, the paintings listed at Serial No. 9 & 10 belonging to an artist *A.R.Chugta* valued at Rs.60 Lacs are supported by the voucher dated 12/02/2001 and the payment thereof amounting to Rs.0.52 Lacs has been made by the assessee vide DD No.56463. A perusal of stock record of *M/s reflections* as on 31/03/2008 reveals that these painting forms part of the closing stock. Therefore, since the same have duly been accounted for in the books of accounts of the assessee and forms part of stock-in-trade, the addition thereof is not justified. Consequently, the same stands deleted.

8. The Seven painting aggregating to Rs.33 Lacs belonging to various artist listed at Serial No. 4 are stated to have been received by the assessee on consignment basis. The documentary evidences in support thereof have been placed at Page Numbers 88 to 96 of the *paper book*. One painting of *Sharmi Chowdhary* is supported by the request of the artist to the assessee vide letter dated 15/04/2007 to sell the same. The five painting of artist *Rajendra Patil* is confirmed by the letter of the artist and further, the artist subsequently, vide letter dated 07/05/2007, has



duly acknowledged the receipt back of these painting from the assessee. Similarly, the painting of *Jagan Chowdhuri* is supported with a letter dated 17/04/2007. In our considered opinion the assessee, by submitting these evidences, duly discharged the onus casted on him to substantiate the source of these painting. The onus was shifted on revenue to negate the evidences adduced by the assessee by making further investigations etc., which, *prima facie*, has not been done. It is settled law that additions could not be made merely on the basis of doubts, conjectures or surmises. Therefore, in the absence of any cogent material on record to contradict the claim of the assessee, the addition thereof was not justified and hence, the same stands deleted.

9. The paintings listed at Serial Number 5 comprised of seven paintings. Out of these paintings, two paintings of an artist namely *M.V.Dhurandhar* valued at Rs.3 Lacs each is supported by receipt dated 19/01/2000. From the perusal of stock record of *M/s reflections* as on 31/03/2008, it is seen that these painting forms part of the closing stock. Therefore, since the same have duly been accounted for in the books of accounts of the assessee and forms part of stock-in-trade, the addition thereof is not justified. No serious arguments have been adduced against other low value paintings aggregating to Rs.4.60 Lacs. Hence, the addition to that extent stands confirmed. Further, our attention is drawn to the fact that the paintings listed at Serial No.6 are mere prints / photocopies of the paintings. This fact could not be controverted by the revenue. Hence, the addition against Serial No. 6 amounting to Rs.0.60 Lacs is not justified and hence, the same stands deleted. The painting listed at Serial No.7 valued at Rs. 4 Lacs belongs to an artist namely



*Suhas Roy.* The acquisition of the same by assessee is supported by the letter of the seller dated 29/04/2008 which is placed on Page Number 102 of the *paper book*. The said document bears the payment details viz. cheque number, dated, amount etc. and the seller has duly acknowledged the receipt of payment thereof. The, *prima facie*, has been acquired by the assessee out of banking channels and hence, addition thereof is not justified and the assessee is able to substantiate the acquisition thereof in AY 2009-10. Thus, the addition thereof in the impugned AY was not warranted for. Resultantly, this addition of 4 Lacs stands deleted.

10. So far as the addition on account of unexplained jewellery is concerned, we are of the opinion that the same is a factual one requiring reconciliation of the jewellery quantity. The onus is on assessee to reconcile the excess jewellery found during search operations. The Ld. AR has contended that the jewellery was held by the assessee under common hotchpotch and other family members had sufficient taxable income to acquire the jewellery. Hence, without delving much deeper into the issue, we remit the matter back to the Ld. AO for re-adjudication with a direction to the assessee to reconcile the quantities of jewellery found during the search. Resultantly this ground of assessee's appeal stands allowed for statistical purposes.

11. Finally, the assessee's appeal stands partly allowed in terms of our above order.



ITA No.1242/Mum/2012  
Kavita Singh  
Assessment Year 2008-09

*Order pronounced in the open court on 08<sup>th</sup> December,2017*

Sd/-

Sd/-

**(Mahavir Singh)** **(Manoj Kumar Aggarwal)**  
न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08.12.2017  
Sr.PS:- Thirumalesh

**आदेश की प्रतिलिपि ञ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai