

3. During the course of the search operation on the locker no. 1719 of the assessee company maintained at Shri Vardhan Safe Vaults Pvt. Ltd., Kolkata on 10.11.2008, Silver Utensils gross weight 25 kg was found. This was valued at Rs. 4,31,250/- by the Departmental valuer. The assessee was asked to explain these assets.

4. The assessee submitted that the locker belongs to the old management which had not handed over the keys to the assessee. It was further contended that the locker was not opened in the presence of the assessee and that proper procedure as laid down in law was not followed and that the company has no knowledge of the search of the locker and its contents. This was denied by the Id. AO. It was stated that this locker was opened in the presence of one Mr. Shiv Kishan Mohta who is one of the directors of the company.

5. Mr. Shiv Kishan Mohta is his statement before the AO, in reply to a question, stated that the items of silver in question, belong to him, his son and daughter-in-law. He stated that this locker is being used by him personally to store his family's personal effect. The Assessing Officer disbelieved the statement of Shiv Kishan Mohta and treated the assets in question as undisclosed income of the assessee and determined gross income at Rs. 4,28,180/-. Aggrieved the assessee carried the matter in appeal without success.

6. Further aggrieved the assessee is in appeal before us on the following grounds:

1. That on the facts and circumstances of the case Ld. CIT(A) is wrong in confirming the action of Assessing Officer without adjudicating the contention that the then Director of the appellant company made

confessional statement /s 132(4) in course of search on 10.11.2008 to the effect that all the silver items belonged to his family and duly disclosed in Wealth Tax Return of his daughter-in-law Smt. Seema Mohta.

2. That on the facts and circumstances of the case Ld. CIT(A) has erred in dismissing the appeal without considering the confessional statement u/s 132(4) available at paper book page 16 & 17.

3. That on the facts and circumstances of the case Ld. CIT(A) is wrong and unjustified in confirming the order of Assessing Officer who considered the value of Silver items found from Locker amounting to Rs. 4,31,250/- as undisclosed income of the appellant company.

4. That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal.

7. After hearing the rival submissions. We find that Mr. Shiv Kishan Mohta has in his sworn statement u/s 134 on 10.11.2008, has in response to question no. 3 admitted that the silver items in question belong to him and not to the assessee company. Further on 23.12.2010 he also filed a letter with the Assessing Officer confirming that this silver utensils belong to his family. In support of this contention he also filed a copy of wealth tax returns for the assessment year 2009-10 wherein these silver articles have been declared by his family members in their returns of wealth. In our view, on the face of these evidences filed by Mr. Shiv Kishan Mohta and the confessional statement, no addition can be made in the hands of the assessee company. The Assessing Officer in this case has merely rejected the contention of the assessee without any evidence to the contrary. The assessee has discharged the onus that lay on it, against the presumption in law. The AO should have examined the source of funds for acquisition of assets in the hands of Mr. Shiv Kishan Mohta and family members in case he doubted the evidences. In view of the above, we delete the addition and allow the appeal of the assessee.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 26.12.2017

Sd/-
[S.S.Viswanethra Ravi]
Judicial Member

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Dated : 26.12.2017
SB, Sr. PS

Copy of the order forwarded to:

1. Bagaria Properties & Investment Pvt. Ltd., 15B,Clive Row, Kolkata-700001.
2. I.T.O., Ward-3(1), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069
- 3..C.I.T.(A)- , Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches