

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, न्यायिक सदस्य एवं**  
**श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.No.388/Vizag/2014**  
(निर्धारण वर्ष / Assessment Year: 2009-10)

Grandhi V.V.S.L.N. Subba Rao  
Secunderabad  
[PAN No.ABQPG1247G]  
(अपीलार्थी / Appellant)

ACIT, Central Circle  
Rajahmundry  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by  
प्रत्यार्थी की ओर से / Respondent by

: Shri G.V.N. Hari, AR  
: Shri Debakumar Sonowal,  
DR

सुनवाई की तारीख / Date of hearing

: 03.01.2018

घोषणा की तारीख / Date of Pronouncement

: 10.01.2018

**आदेश / ORDER**

**PER Bench:**

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals) {CIT(A)}, Guntur vide ITA No.457/CIT(A)/GNT/10-11 dated 18.2.2014 for the assessment year 2009-10.

2. The assessee filed return of income declaring total income of ₹ 6,97,010/- on 30.11.2009. A search u/s 132 of the Income Tax Act, 1961 (hereinafter called as 'the Act') was carried out in the group cases of the assessee on 3.2.2009. Consequently, the case of the assessee was converted into scrutiny and the assessment was completed on total income of ₹ 37,52,060/-. In the assessment order passed u/s 143(3) of the Act, the assessing officer made the following additions:

Income returned		697010
Add:		
1. Capital gains on sale of site as admitted during assessment proceedings	207410	
2. Unexplained investment in gold jewellery as in para 4	1758720	3055049
3. Unexplained investment in silver as in para 5	788919	
4. Unexplained cash as discussed in para 6	300000	
Income assessed	3752059	3752060

3. During the course of search in the residence of the assessee, gold jewellery weighing 2864 gms. was found and the assessee had admitted jewellery weighing 1210 gms. valued at ₹ 13,05,600/- as an unexplained investment in his hands. Further, silver articles weighing 59.754 kgs. was found and the assessee has also admitted 30kgs. of silver valued at ₹ 5,88,000/- as unexplained investment. However, in the return of income filed subsequent to the search the assessee did not admit the additional income and explained the sources as un-reflected profit amounts on which taxes were paid for the financial years 2004-05, 2005-06 & 2006-07 for acquiring the gold of 1133 grams as and with

regard to 354 gms. of gold, the assessee stated that the same was pertaining to children and the source of acquisition was not explained. For the balance jewellery of 77 gms the assessee admitted the additional income of Rs.83,006/-. Not being satisfied with the explanation of the assessee, the AO assessed the value of gold ornaments weighing 1564 gms and silver weighing 40.251 kgs as unexplained investment and brought to tax.

4. Aggrieved by the order of the A.O. the assessee went on appeal before the CIT(A) and the Ld. CIT(A) confirmed the addition made by the A.O. with regard to the gold jewellery and silver articles and dismissed the appeal of the assessee. During the appeal hearing, before the first appellate authority, the assessee reiterated the stand that the gold was stated to be acquired out of the income generated during the assessment year 2004-05 to 2006-07. The Ld.CIT(A) did not accept the contention of the assessee, since the income admitted by the assessee was not commensurating with the expenditure incurred by the assessee as well as acquisition of the gold.

5. Aggrieved by the order of the CIT(A), the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld. A.R. submitted that there was a search in the case of the assessee on 3.2.2010 and during the course of search, gold jewellery weighing 2864 gms. was

found at the residence of the assessee, out of which 1300 gms. was allowed as a deduction following order of the CIT(A), Rajahmundry in accordance with the provisions of instruction No.1916 dated 11.5.1994. The remaining gold jewellery weighing 1564 gms. was treated as unexplained and accordingly made the addition of ₹ 17,58,720/-. In addition to the above, silver articles weighing 59.754 kgs. was found at the residence of the assessee, out of which the A.O. treated 40.251 gms. valued at ₹ 7,88,919/- as unexplained investment. The assessee also made the disclosure at the time of search to the extent of ₹ 13,50,600/- in respect of gold jewellery weighing 1210 gms. and ₹ 5,88,000/- in respect of silver articles weighing 30 kgs of silver. However, the assessee has admitted additional income of ₹ 20 lakhs in M/s. Balaji Builders and ₹ 20 lakhs in M/s. Balaji Constructions aggregating to ₹ 40 lakhs for the assessment year 2009-10. Since the gold and jewellery was found during the course of search as on 3.2.2009, required to be assessed as undisclosed income for the assessment year 2009-10, the sources for acquisition of the gold and jewellery and silver articles required to be telescoped from the undisclosed income admitted in the hands of both the firms i.e. M/s. Balaji Builders and M/s. Balaji Constructions. The Ld. A.R. of the assessee referring to paper book page No.51, in the statement recorded

u/s 131 stated that in response to question No.19 the assessee had admitted additional income of ₹ 20 lakhs in M/s. Balaji Builders and ₹ 20 lakhs in M/s. Balaji Construction for the financial year 2008-09 related to the assessment year 2009-10. Referring to page No.47 of the paper book, the Id.AR stated that the family members and relatives are only the partners in the firm and no outsider is involved in business. The Ld. A.R. further submitted that the partners of both the firms are members of the same family and during the search, no other unaccounted asset was found and the additional income admitted by the assessee amounting ₹ 40 lakhs in both the firms required to be considered for telescoping the acquisition of the gold and jewellery in the case of the assessee.

6. On the other hand, the Ld. D.R. argued that there was inconsistency in the explanation of the assessee. Before the CIT(A) and the A.O., the assessee tried to explain the source of acquisition of the gold jewellery as the income generated from A.Y.s 2004-05 to 2006-07. The income generated during the assessment years 2004-05 to 2006-07 was meager amount, and the same is not sufficient to meet the regular expenditure as well as sources for acquiring the gold jewellery as rightly observed by the Ld. CIT(A). The assessee took a different stand during the appeal hearing before the Tribunal requesting for telescoping the

benefit out of the additional income admitted by the assessee in the hands of the firms, which is not permissible. Hence, the Ld. D.R. argued that no telescoping benefit should be allowed with regard to the sources for acquiring the gold jewellery.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. A search u/s 132 of the Act was carried out in the group cases of the assessee on 3.2.2009. During the course of search, gold jewellery weighing 2864 gms. was found and out of which the assessee had admitted the value of gold jewellery weighing 1210 gms. as undisclosed income for the assessment year 2009-10. Similarly, in the case of the gold jewellery relating to the children weighing 354 gms, source could not be explained by the assessee. Thereafter the assessee did not offer the same as income in returns filed subsequent to the search. Therefore the assessing officer made the addition of ₹ 17,58,720/- in respect of unexplained investment in gold and jewelry and further sum of Rs. 7,88,919/- in respect of silver articles. During the appeal hearing, the Ld. A.R. of the assessee argued that the assessee had admitted additional income of ₹ 20 lakhs in M/s. Balaji Builders and ₹ 20 lakhs in M/s. Balaji Constructions for the assessment year 2009-10. Both the business concerns are family concerns and there is no dispute. No

other unaccounted asset was found during the course of search indicating the investments made by the assessee out of undisclosed income. Both the firms are run by the family members of the assessee. Both the commissioner of income tax(A) and the AO did not accept the assessee's contention that the gold jewellery was acquired in the earlier years and the same is assessed in the year under consideration. During the appeal hearing, the Ld. D.R. did not bring any material to show that the undisclosed income admitted by the assessee was used in the business of the firms. Therefore, automatic inference is unexplained investment is made out of unaccounted income and required to be allowed as telescopic benefit from the undisclosed income admitted by the assessee. Accordingly, we direct the A.O. to allow the telescopic benefit of the gold and jewellery and silver articles from the undisclosed income admitted by the assessee. Accordingly, the appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

The above order was pronounced in the open court on 10<sup>th</sup> Jan'18.

Sd/-  
(वी. दुर्गराव)  
**(V. DURGA RAO)**

Sd/-  
(डि.एस. सुन्दर सिंह)  
**(D.S. SUNDER SINGH)**

**न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 10.01.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Sri Grandhi V.V.S.L.N. Subba Rao, C/o M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad.
2. प्रत्यार्थी / The Respondent – The ACIT, Central Circle, Rajahmundry
3. आयकर आयुक्त / The CIT, Guntur
4. आयकर आयुक्त (अपील) / The CIT (A), Guntur
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /  
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary  
ITAT, VISAKHAPATNAM

