

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 1815/Mum/2015 (Assessment Year 2011-12)

Blossom Remedius 2B, Shams Palace 98, Hill Road Bandra(W) Mumbai-400 050. PAN : AQIPR5863N (Appellant)	Vs.	ACIT 19(3) Mumbai (Respondent)
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Assessee by	Shri Rajesh Sanghvi
Department by	Shri Suman Kumar
Date of Hearing	31.01.2018
Date of Pronouncement	31.01.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 23.1.2015 passed by the learned CIT(A)-32, Mumbai and it relates to A.Y. 2011-12. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of ₹ 28.41 lakhs made by the Assessing Officer in respect of sale of jewellery.

2. The assessee herein is an individual and she filed her return of income for the year under consideration declaring total income of ₹ 22.70 lakhs consisting of long term capital gain earned by her. The Assessing Officer noticed that the bank account of the assessee was showing deposit of ₹ 28.41 lakhs on 18.2.2011. When questioned, the assessee explained the same as sale value of jewellery. The assessee also produced a bill for sale of jewellery for an amount of ₹ 28.41 lakhs to support her submissions. From the bill, the Assessing Officer noticed that the assessee has sold gold ornaments weighing 1614.750 grams for an amount of ₹ 28.41 lakhs. The Assessing Officer then asked the assessee to explain source of jewellery. The assessee explained that she purchased gold coins weighing 1288 grams from State Bank of India, Goa

on 16.5.2009 for a sum of ₹ 21.43 lakhs. It was further submitted that the gold coins were converted into gold ornaments and thereafter it was sold. However, the assessee could not furnish any evidence to support the claim of conversion of cold coins into gold ornaments. The assessee further submitted that she has also sold jewellery weighing 327 grams obtained by her as shridhan at the time of her marriage. Since the assessee could not prove the conversion of gold coins into gold ornaments and also could not produce any evidence for receipt of gold at the time of marriage as shridhan, the AO treated the amount of Rs.28.41 lakhs as unexplained cash credit and assessed the same as income of the assessee u/s 68 of the Act.

3. The Ld CIT(A) observed that the assessee has proved the sale of jewellery, but failed to prove that the jewellery sold is genuinely the same jewellery which were made out of gold purchased by her. The Ld CIT(A) observed that the gold coins purchase bill stand in the name of assessee's husband. He also observed that there is no evidence to show that the gold coins were gifted to the assessee by her husband. The Ld CIT(A) also observed that the assessee has also not offered any capital gain on sale of jewellery, which further proves that the assessee is not coming with clean hands. Accordingly the Ld CIT(A) rejected the contentions of the assessee. The Ld CIT(A) took the view that the addition should be made u/s 69A of the Act, since the assessee has not explained the source of jewellery. Accordingly he confirmed the addition of Rs.28.41 lakhs u/s 69A of the Act.

4. The Ld A.R submitted that the assessee was constrained to sell the jewellery, since she wanted to join her husband who had gone to Canada. He submitted that the assessee has proved the sources of jewellery as Shridan jewellery and also furnished the copies of bill for purchase of gold coins. He submitted that the assessee did not preserve the details of conversion charges paid to the jewelers, as the gold coins were converted into gold ornaments long time back. He submitted that the tax authorities have not accepted the explanations of the assessee for want of supporting documents. He submitted

that the jewellerys are personal items and the assessee has furnished all the available evidences to the AO. He submitted that none of the submissions of the assessee has been proved to be wrong by the tax authorities. He further submitted that the assessee has proved the claim of sale of jewellery by furnishing sale bill and also furnishing bank account copies, wherein the sale proceeds were received through account payee cheques. Accordingly he submitted that there is no reason to reject the claim of the assessee.

5. On the contrary, the Ld D.R strongly supported the order passed by Ld CIT(A).

6. We heard the rival contentions and perused the record. There is no dispute with regard to the fact that the assessee has furnished the details of sale of jewellery by furnishing copies of sale bill and bank account copies. The assessee has also received the sale proceeds by way of account payee cheque. We notice that the AO did not make any enquiry with the buyer of jewellery. The AO did not accept the explanations of the assessee only for the reason that the assessee could not furnish evidence for conversion of gold coins into gold ornaments and further there is no evidence to show that jewellery weighing 327 grams was received by her as shridan.

7. The Ld CIT(A) also endorsed the view taken by the AO, but held that the addition should have been made u/s 69A of the Act, since the issue under consideration was a case of unexplained jewellery, meaning thereby, the Ld CIT(A) has accepted the fact that the assessee has proved the sale of jewellery.

8. We notice that the assessee has explained the source of jewellery as the gold coin purchased from SBI, Goa on 16.05.2009 and also her Shridhan property. The assessee could produce evidences for purchase of gold coins, but could not produce evidences for its conversion into gold ornaments and also could not support the claim of shridhan property with evidences. The provisions of sec. 68 and 69A place initial burden of proof upon the assessee. If the assessee discharges the primary responsibility, then the burden would

shift to the shoulders of the assessing officer. These provisions also give an option to the tax authorities not to assess the unexplained cash credit and unexplained assets, since the provisions use the expression “may be deemed to be income of the assessee”. Hence the facts surrounding the case have to be weighed judicially and accordingly a view should be taken.

9. It cannot be denied that under the Indian traditions, giving of shridhan during marriage is quite prevalent practice. Hence the assessee has claimed that she has sold jewellery weighing 327 grams out of her shridhan property. In our view, the said claim should not have been rejected without bringing any material to disprove the same. Similarly, the assessee has proved purchase of gold coins to explain the sources of jewellery sold by her, but the said claim has been rejected only for the reason that there was no evidence to show that the gold coins were converted into gold ornaments. The Ld CIT(A) has made one more observation that the purchase bills were in the name of assessee’s husband and there is no evidence to show that the gold coins were gifted to the assessee. In our view, the assessee can be said to have discharged the initial burden placed upon her by furnishing evidences for purchase of gold coins. The tax authorities, on the contrary, have not disproved the claim of the assessee. There is no proof to show that the gold coins were still available with the assessee or with her husband. As mentioned earlier, the issue under consideration has to be adjudicated on the basis of available facts and surrounding circumstances. In our considered view, in the facts and circumstances of the present case, there is no reason to suspect the claim of sale of jewellery or the source of jewellery. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned addition of Rs.28.41 lakhs.

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

Order has been pronounced in the Court on 31.01.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 31/01/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

Senior Private Secretary
ITAT, Mumbai