

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai**

**Before Shri G.S. Pannu, Accountant Member
and Shri Ravish Sood, Judicial Member**

ITA No. 6251/Mum/2016
(Assessment Year: 2012-13)

Shri Ashok Jain
1303, Vastu Shilp
Gamadia Colony
Tardeo, Mumbai 400007

ACIT, Central Circle-38
(Presently DCIT, CC-6(3))
Vs. Air India Building
Nariman Point
Mumbai 400021

PAN – AAOPJ2690M

Appellant

Respondent

Appellant by: Shri Shailesh N. Doshi
Respondent by: Shri Rajesh Kumar Yadav

Date of Hearing: 19.03.2018
Date of Pronouncement: 25.05.2018

ORDER

Per G.S. Pannu, AM

This appeal has been filed by the assessee against the order of the CIT(A)-54, Mumbai dated 13.06.2016 for A.Y. 2012-13.

2. In this appeal the only grievance of the assessee is with regard to the addition of ₹24,43,218/- made to the returned income on account of unexplained value of jewellery.

3. Before proceeding further it may be noted that the appeal has been filed belatedly by 20 days. The assessee has sought condonation of delay and it has been averred in the affidavit dated 02.02.2017, a copy of which is on record, that the delay was on account of unintended reasons beyond the control of the assessee. It is averred that the concerned professional who was to file the appeal lost sight of the date by inadvertence and work pressure and there was no wilful intention in not filing the appeal. The bonafides of the averments made in the affidavit has not been assailed before us and considering the ratio of the judgement of the Hon'ble

Supreme Court in the case of Collector, Land Acquisition vs. MST Katji & Others (167 ITR 471) the delay in filing the appeal was condoned. Accordingly rival counsels were heard on merits of the case.

4. The relevant facts are that the assessee is engaged in the activity of trading in shares, derivatives and securities and a search action under Section 132 of the Income Tax Act (hereinafter "the Act") took place on the assessee on 12.10.2011. The only fact relating to the search, which is relevant for our purpose, is that certain jewellery and valuable articles were found and inventorised during the course of search but no seizure was made. The value of such jewellery and valuables is stated to be ₹24,43,218/-. In the course of assessment when the assessee was show caused to explain the source of acquisition of such jewellery and other valuable articles, the AO records in the assessment order, that the assessee did not furnish any cogent reply. In para 10 of the assessment order the AO notes that the assessee has merely reflected the jewellery in the Balance Sheet attached to the return of income filed under Section 153A of the Act to show that the same are from explained sources. The AO notes that there is no wealth tax record nor is there any cogent reply to explain the source of investment.

5. Before the CIT(A) the assessee made detailed submissions and pointed out that in the course of search 580.900 gms of gold and diamond jewellery and 4 kgs of silver utensils were found. It was explained that the jewellery belonged mainly to two ladies, i.e. assessee's wife and assessee's daughter. The assessee also explained that he was married since 24 years and that his daughter was 21 years of age. The assessee referred to the CBDT Instruction No. 1916 dated 11.05.1994 to point out that in the case of a married lady existence of 500 gms of gold jewellery and 250 gms in the case of unmarried female member and 100 gms in the case of each male member is said to be acceptable and to that extent no addition is called for. The claim of the assessee was that the jewellery found at the time of search was within the permissible limits brought out in the CBDT circular dated 11.05.1994 (supra) and therefore the same ought to have

been relied upon by the AO and not treat the instant jewellery as unexplained. The CIT(A), however, did not accept the plea of the assessee primarily relying on the ratio of the decision of the Hon'ble Madras High Court in the case of V.G.P. Ravidas vs. CIT 51 taxmann.com 16 (Mad) and noted that there was no evidence/explanation furnished by the assessee to explain the source of unexplained jewellery and valuables found during the course of search. He, therefore, sustained the addition of ₹24,43,218/- against which assessee is in appeal before us.

6. Before us the short point raised by the assessee is based on the CBDT circular dated 11.05.1994 (supra). As per the learned A.R. though the said circular was issued laying down the limits of jewellery found during the course of search but according to him the Hon'ble Gujarat High Court in the case of CIT vs. Ratanlal Vyaparilal Jain 339 ITR 351 has held that to the extent stated in the circular, jewellery can be treated as explained and no addition can be sustained on that basis. To the same effect, the judgement of the Hon'ble Rajasthan High Court in the case of CIT vs. Satya Narain Patni 366 ITR 325 was also referred to. Explaining the error on the part of the CIT(A) in relying upon the judgement of the Hon'ble Madras High Court in the case of V.G.P. Ravidas (supra) the learned A.R. has explained that the case before the Hon'ble High Court was of an assessee who was otherwise a wealth tax payee and filing wealth tax return whereas the present assessee was not filing wealth tax return and therefore para (ii) of the circular is attracted. It is pointed out that the case before the Hon'ble Madras High Court was governed by para (i) of the circular, which is in respect of a wealth tax assessee. Therefore, by relying upon the decision of the Hon'ble Gujarat High Court as well as the Hon'ble Rajasthan High Court the assessee has sought relief with regard to the jewellery found at the time of search.

7. On the other hand, the learned D.R. has reiterated the stand of AO by pointing out that the source of investment has not been bought out and therefore the claim of the assessee could not be entertained merely on the basis of the CBDT circular dated 11.05.1994 (supra).

8. We have considered the rival stands and find that so far as the factual aspect is concerned, the total jewellery found at the time of search was 580.900 gms, as noted by the CIT(A) in para 8.4.1 of the order. In so far as the addition of ₹24,43,218/- is concerned, same is the value of jewellery as well as other valuables including silver utensils, which have been found at the time of search, and is supported by the valuation report dated 12.10.2011 by the government approved valuer, copy of which has been furnished in the Paper Book filed by the assessee. Pertinently the plea of the assessee before us is confined to the treatment of 580.900 gms of gold jewellery as unexplained at the time of search. The assessee has sought to explain the same by pointing out that the same is within the permissible limits stipulated by the CBDT circular dated 11.05.1994 (supra). Factually speaking, the assertion of the assessee that the jewellery found was within the limits prescribed by the CBDT by its circular is quite justified. The only issue is as to whether the same would merit addition as unexplained in case, if assessee is not able to give concrete source of acquisition. Ostensibly, in the present case the assessee has not filed any wealth tax returns. The Hon'ble Rajasthan High Court in the case of Satya Narain Patni (supra) noted that the jewellery found during the search was within the limits prescribed by the CBDT circular and in the first instance, the jewellery were not seized, and it was held that no addition thereafter was justifiable. The facts in the instant case are squarely covered by the decision of the Hon'ble Rajasthan High Court in the case of Satya Narain Patni (supra). Therefore we find no reason to sustain the addition toward unexplained jewellery. In so far as the reliance placed by the CIT(A) on the decision of the Hon'ble Madras High Court in the case of V.G.P. Ravidas (supra) is concerned, ostensibly it was a case where the assessee was a wealth tax payee and therefore, it was required of him to specifically show the source of jewellery found in excess of what was declared in the respective wealth tax returns. In fact the CBDT circular dated 11.05.1994 (supra) specifically contains para (ii), which prescribes that in the case of wealth tax assessee's gold jewellery and ornaments found in excess of the gross weight declared in the wealth tax returns only need to be seized.

Therefore, the facts of the case before the Hon'ble High Court were completely different than the instant case. The instant is a case where the assessee has not been assessed to wealth tax and the gold jewellery found was within the permissible limits contained in the CBDT circular dated 11.05.1994 (supra) and therefore the ratio of the judgement of the Hon'ble Rajasthan High Court clearly covers the issue in favour of the assessee. We hold so. Therefore, we set aside the order of the CIT(A) and direct the AO to allow appropriate relief and recompute the income on this aspect afresh. Thus, the assessee succeeds in this appeal

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

Order pronounced in the open court on 25th May, 2018.

Sd/-
(Ravish Sood)
Judicial Member

Sd/-
(G.S. Pannu)
Accountant Member

Mumbai, Dated: 25th May, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -54, Mumbai*
4. *The Pr. CIT, Central-3, Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

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