

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND**

Shri S.Rifaur Rahman, Accountant Member

ITA No.1287/Hyd/2015
(Assessment Year: 2012-13)

Shri Bikash Karar Vs Asstt. Commissioner of
Hyderabad Income Tax, Circle 7(1)
PAN:AEUPK2320R Hyderabad
(Appellant) (Respondent)

For Assessee : Shri A. Srinivas
For Revenue : Smt. N. Swapna, DR

Date of Hearing: 12.06.2018
Date of Pronouncement: 22.06.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2012-13 against the order of the CIT (A)-3, Hyderabad, dated 31.08.2015.

2. Brief facts of the case are that the assessee, an individual, and a goldsmith, was travelling from Hyderabad to Kolkata and he was intercepted at the Kolkata Airport on 10.1.2012 just after arrival of the flight at around 12.10pm and was found carrying gold bars in excess of 13 kg with him. His statement u/s 132 was recorded wherein he stated that he was carrying twenty pieces of gold bars of 24 carats, weighing 100g each, totaling to 2 kg (2000g) only. Due to the small tax effect, the case was not processed for centralization with Central charge but it was assigned to the jurisdictional AO who issued a notice u/s 142(1) of the Act to the assessee on 3.1.2014. In response to the

said notice, the assessee submitted that the return of income filed for the A.Y 2012-13 on 26.7.2012 be treated as a return filed in response to the notice u/s 142(1) of the Act.

3. Subsequently, the assessment was taken up for scrutiny u/s 143(3) of the Act and the AO observed that the assessee's statement was recorded u/s 131 of the Act at the Kolkata Airport and the assessee stated in his sworn statement that he was carrying 2 kg gold biscuits for making jewellery items and they belong to Mohd. Khan Jewellers (P) Ltd, Public Gardens, Abids, Hyderabad. When the assessee was asked whether he was carrying any supporting documents, he referred to two vouchers. On examination of the vouchers, some discrepancies were noticed and when they were pointed out, the assessee stated that part of the gold belongs to Mohd. Khan Jewellers (P) Ltd; while the excess gold belongs to him and his family, which is unaccounted and undisclosed to the Department. He admitted excess amount of gold of 778.43 g. He explained that the gold belonging to Mohd. Khan Jewellers was taken to Kolkata for manufacturing of gold ornaments and that he receives making charges @ Rs.25/- per g. This information from the assessee was passed on to the AIU Hyderabad and an inquiry was conducted at the business premises of Mohd. Khan Jewellers (P) Ltd, who denied having given any gold to the assessee.

4. Subsequently, nearly after 40 days of the seizure of the gold at the Kolkata Airport, the assessee, through his representative filed written submissions on 20.2.2012, stating that the said gold was given to him by Mr. Meer Ahmed Ali to make jewellery from Kolkata and enclosed certain documents in support of his contentions. The documents enclosed were;

- (i) invoice in the name of Mr. Meer Ahmed Ali for purchase of 2000g of gold;
- (ii) Photocopy of the bank statement of Mr. Meer Ahmed Ali;
- (iii) photo copy of the PAN of Mr. Meer Ahmed Ali; and
- (iv) certificate issued by Mr. Meer Ahmed Ali,

categorically stating that the said gold seized belongs to him. In his statement recorded under oath, he reiterated the submissions made by him in the written submissions. He stated that since he was scared on the day of search, he had given a false statement, but the gold belongs to Mr. Meer Ahmed Ali and also produced confirmation from him. He also produced a copy of the letter in which Mr. Meer Ahmed Ali certified that the gold was given to the assessee for making of gold ornaments for his sons' wedding.

5. The AO, was however, not convinced with the said evidence and observed that the assessee had given contradictory statements and therefore, the evidence produced by the assessee are not reliable and have been created in collusion with Mr. Meer Ahmed Ali, much after the date of the seizure of the gold, to cover up the transaction. The AO also examined the source of Mr. Meer Ahmed Ali for purchase of the gold. He observed that Mr. Meer Ahmed Ali had withdrawn some amounts in the month of Nov. 2011, whereas, the gold was allegedly purchased on 9.01.2012 and therefore, held that the long period of gestation of the withdrawal and the purchase is not a plausible explanation and that there is no direct nexus between the cash withdrawal and the gold purchased. He has also gone through the invoices produced by the assessee and found that Mr. Meer Ahmed Ali has claimed to have purchased the gold from M/s. Anushri Commodity Trade

(P) Ltd (ACTPL) on 9.1.2012. He also examined the Managing Director of the ACTPL, who it was confirmed that 2kg of gold was purchased by Mr. Meer Ahmed Ali on 9.1.2012. The AO examined the purchase invoice as well as the sales invoices and found them to be not matching with each other. He also observed that the ACTPL had issued same invoice No.1673 raised on M/s. Sri Krishna Jewellers with different sales particulars. Therefore, he was of the opinion, that the invoices produced by ACTPL are not genuine. Therefore, he disbelieved the contentions of the assessee and treated the sum of Rs.56,31,600 as unaccounted income of the assessee and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us, by raising the following grounds of appeal:

“i) The order of the AO is contrary to the law, facts and circumstances of the case.

ii) The AO ought not to have added an amount of Rs.56,31,600 as undisclosed income of the assessee u/s 69 of the I.T. Act,

iii) The Appellant Commissioner ought not to have confirmed the addition of Rs.56,31,600 made u/s 69 of the I.T. Act.

6. The learned Counsel for the assessee Shri A. Srinivas, reiterated the submissions made by the assessee before the authorities below and placed reliance upon the decision of the Tribunal at Delhi in ITA No.4060/Del/2011 dated 18th May, 2012, while the learned DR relied upon the orders of the authorities below.

7. Having regard to the rival contentions and the material on record, we find that undisputedly the assessee was intercepted with possession of extra gold of 2000g at Kolkata Airport and

initially the assessee had stated that part of it belongs to Mohd. Khan Jewellers (P) Ltd and part of it belongs to himself and his family members. It is only after the denial by Mohd. Khan Jewellers (P) Ltd that they have given any gold to the assessee for manufacturing of jewellery items at Kolkata, that the assessee came up with the new argument that the gold belongs to one Mr. Meer Ahmed Ali of Hyderabad and submitted certain documents in support of the said contention. The AO has made necessary inquiries and found that though Mr. Meer Ahmed Ali has shown the sources for purchase of the gold as the withdrawal of the money in the months of November, 2011 and January, 2012 and has produced the invoices from M/s. Anushri Commodities Trading Pvt. Ltd, the AO has verified the said vouchers and found that there is a difference between the buyer and sales bills. Further, he has also noticed that with the same voucher No., there was another bill given by ACPTL in favour of Shri Krishna Jewellers for the same quantity except for the description i.e. 2 bars of 1000g each. Therefore, the contention of the assessee was not being substantiated/supported by the documents produced by him. It is stated by the assessee that the ACTPL has also filed the VAT return for the sale of gold and therefore, the sale is proved. However, we find that VAT return only reflect a sale of gold, but does not show the purchase of the gold. Further, the VAT returns for the relevant month of 2012 is filed between 5th June, 2011 to 15th February, 2012, i.e. after the denial of Mohd. Khan Jewellers (P) Ltd of any transaction with the assessee. Therefore, the subsequent statement of the assessee that the gold belongs to Mr. Meer Ahmed Ali and the documents relied upon by him in support of such statements are not reliable. In the decision relied upon by the learned Counsel for the assessee, the Tribunal had held that the Revenue has failed to bring on record anything

which could show that it was assessee's own money which has been deposited in the Bank and therefore, the source of the gift received is to be treated as explained. In the case before us, though the Revenue has not brought on record any material to show that it was the assessee's own money with which the assessee has purchased the gold, we find that the contention of the assessee has always been that the entire gold does not belong to him and only part of the gold belongs to him and his family members. Even with regard to the gold which he stated to be belonging to Mohd. Khan Jewellers, he failed to prove the same and it is only thereafter, that he took a stand that it belonged to Mr. Meer Ahmed Ali. Therefore, the facts of the case are distinguishable and the said decision is not applicable to this case. Therefore, we are not inclined to interfere with the orders of the CIT (A) and the assessee's appeal is accordingly dismissed.

8. In the result, assessee's appeal is dismissed.

Order pronounced in the Open Court on 22nd June, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 22nd June 2018.

Vinodan/sps

Copy to:

- 1 Shri Bikash Karar, House No.11-5-579, Red Hills, Hyderabad
- 2 Astt. CIT, Circle 7(1), IT Towers, AC Guards, Hyderabad
- 3 CIT (A)-3, Hyderabad
- 4 Pr. CIT – 3, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order