

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.4645/Del/2015  
Assessment Year : 2010-11

ACIT,  
Central Circle-13,  
Room No.355, 3<sup>rd</sup> Floor,  
Jhandewalan Extension,  
New Delhi.

Vs. Roshan Agrawal,  
A-54, Swasthya Vihar,  
Delhi.

PAN: ADOPA7054P

ITA No.4646/Del/2015  
Assessment Year : 2010-11

ACIT,  
Central Circle-13,  
Room No.355, 3<sup>rd</sup> Floor,  
Jhandewalan Extension,  
New Delhi.

Vs Shishir Agrawal,  
A-54, Swasthya Vihar,  
Delhi.

PAN: ADOPA7056P

(Appellant)

(Respondent)

Assessee By : Shri Adesh Kumar Jain, CA,  
Shri Rajat Jain, CA &  
Shri Akshat Jain, CA  
Department By : Ms Rachna Singh, CIT, DR

Date of Hearing : 03.07.2018  
Date of Pronouncement : 04.07.2018

ORDER

PER R.S. SYAL, VP:

These two appeals filed by the Department arise out of the orders passed by the CIT(A) on 27.04.2015 in relation to the two different, but, connected assesseees for the assessment year 2010-11. For the sake of convenience, we have clubbed these appeals and are disposing them off by this consolidated order.

2. Facts relevant to ITA No.4645/Del/2015 are that a search and seizure action was taken u/s 132(1) of the Income-tax Act, 1961 (hereinafter also called 'the Act') on 10.01.2012 at the business as well as the residential premises of Minda Group. The assessee is part of Minda Group holding interest in the group companies. During the course of search and seizure operations conducted at the residential premises of Shri Shishir Agrawal and Shri Roshan Agrawal (appeals of these two assesseees are under consideration) certain restraint orders were passed in respect of two lockers No.101 and 150 by HDFC Bank belonging to them. These lockers were later on searched. During the course of search, 100 gold bars weighing 1 kg. each were found out of which 38 gold bars were seized. During the

course of search of lockers, statement of Shri Shishir Agrawal was recorded on 07.03.2012, relevant parts of which have been reproduced in the assessment order. Shri Shishir Agrawal stated in the course of search of lockers that a search was earlier conducted on M/s Gopal Zarda in the year 2009. He stated to have declared undisclosed income during the course of such earlier search, out of which investment was made in gold, which was found from the locker. On being called upon to explain as to how the gold found from the locker was purchased and how the payment was made, the assessee stated that the gold was procured from grey market and through unaccounted cash generated through property dealings which was disclosed before the Settlement Commission pursuant to the first search in the year 2009. Unconvinced with the assessee's reply, the Assessing Officer made an addition of Rs.4.61 crore in the hands of the assessee by holding that the gold bars found from the lockers were physically different, which the assessee was claiming to have invested in gold bars out of undisclosed income disclosed before the Settlement Commission pursuant to the search made in 2009. Similar is the position regarding Shri Shishir Agrawal, in whose hands the Assessing Officer made an addition of Rs.1.99 crore under

similar circumstances. The Id. CIT(A) deleted both the additions, against which the Revenue has come up in appeal before the Tribunal.

3. We have heard both the sides and perused the relevant material on record. It is an undisputed fact that during the course of search conducted in 2012, 100 gold bars weighing 1 kg. each were found. 43 certificates of gold bars dated 22/23.09.2009 were seized. The assessee made out a case before the authorities that they declared income in respect of 114.5 kgs. of gold during the course of earlier search in 2009 before the Settlement Commission. A copy of order passed by the Settlement Commission was produced before us, from which it is evident that both the assessee under consideration declared income in the speculation of commodities etc. and also investment of such income in 114 (33 + 81) gold bars each weighing 1 kg. As against the availability of such 114 kgs. of gold with them, the total amount of gold bars found during the course of search is 100 bars of 1 kg. each. The assessee not only declared income before the Settlement Commission, but, the fact that the gold bars were purchased out of it has also been recorded in the Settlement Commission's order. It is not disputed that such order passed by the Settlement Commission has attained finality.

This, therefore, establishes that both the assessee declared income during the course of original search in 2009 in respect of 114 gold bars. That apart, Wealth Tax returns showing so much gold were also filed. Now, in the instant search, only 100 gold bars were found, which number is patently less than the gold bars declared by the assessee during the course of earlier search with the same weight. When the amount of income was offered for taxation in the search carried out in 2009, in our considered opinion, the AO could not have once again made a fresh addition in respect of 100 gold bars found at the time of later search carried out in January, 2012, simply on the ground that the gold bars found in the locker were physically different as these were purchased at a later date from those declared before the Settlement Commission. The assessee has specifically submitted that the gold bars earlier declared were exchanged later on with the new gold bars which were placed in the bank locker and found at the time of search. The AO simply dislodged the claim of the assessee on the premise that they could not place on record any evidence of such exchange. He has not pointed out anywhere in the orders that the investment in gold bars surrendered by the assessee during the course of the earlier search was

liquidated and the amount so realized was utilized elsewhere. Once the factum of the assessee having purchased the gold bars during the course of search in 2009 got established, for which income was also offered for taxation as well, in our considered opinion, no fault could be found with the ld. CIT(A) in accepting the assessee's explanation that 100 gold bars found from the locker pursuant to search in 2012 came out of the amount surrendered in the search carried out in 2009. We, therefore, countenance the view taken by the ld. CIT(A).

4. In the result, both the appeals stand dismissed.

The order pronounced in the open court on 04.07.2018.

Sd/-

[K. NARASIMHA CHARY]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
VICE PRESIDENT

Dated, 04<sup>th</sup> July, 2018.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.