

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2951 & 2952/Chny/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of
Income Tax,
Central Circle – 3(3),
Chennai - 600 034.

v. Shri N. Palanisamy,
No.86, Cathedral Road,
Gopalapuram,
Chennai - 600 086.

(अपीलार्थी/Appellant)

PAN : ADOPP 9910 F
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. Ruby George, CIT

प्रत्यर्थी की ओर से/Respondent by : Shri G. Baskar, Advocate

Ms. Sushma Harini. A, Advocate

सुनवाई की तारीख/Date of Hearing : 03.07.2018

घोषणा की तारीख/Date of Pronouncement : 17.07.2018

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) - 19, Chennai, for the assessment year 2012-13. While I.T.A. No.2951/Chny/2016 is against the quantum addition made by the Assessing Officer, I.T.A. No.2952/Chny/2016 is directed against the

penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). We heard both the appeals together and disposing of the same by this common order.

2. Let's first take the appeal of the Revenue in I.T.A. No.2951/Chny/2016.

3. The first issue arises for consideration is condonation of delay of 172 days in filing the appeal before the CIT(Appeals).

4. We heard Smt. Ruby George, the Ld. Departmental Representative and Ms. Sushma Harini, the Ld.counsel for the assessee. The CIT(Appeals), after considering the case of the assessee, in exercise of his judicial discretion, condoned the delay of 172 days in filing the appeal before him. This Tribunal do not find any peculiar circumstances to interfere with the judicial discretion exercised by the CIT(Appeals). Therefore, the order of the CIT(Appeals) in condoning the delay of 172 days in filing the appeal before him is confirmed.

5. The next issue arises for consideration is disallowance of ₹3,40,662/- made under Section 69A of the Act.

6. Smt. Ruby George, the Ld. Departmental Representative, submitted that there was a search in the premises of the assessee's daughter Smt. Divya Lakshmi and in the business premises of M/s Eastco Exim Pvt. Ltd. on 06.12.2012. During the course of search operation, according to the Ld. D.R., the Revenue authorities found 28374.650 gms of gold jewellery. The assessee filed wealth-tax return before the date of search disclosing gold jewellery to the extent of 25,868.276 gms. According to the Ld. D.R., the assessee claimed that he has purchased gold jewellery from 01.04.2011 to 06.12.2012 to the extent of 2367.408 gms. The excess jewellery was 138.960 gms. According to the Ld. D.R., the unexplained investment in excess jewellery of 138.960 gms was added to the extent of ₹3,40,662/-.

7. The next ground was addition of ₹60,00,200/- made under Section 69A of the Act.

8. Smt. Ruby George, the Ld. Departmental Representative, submitted that the Assessing Officer found that the assessee filed wealth-tax return for the assessment year 2011-12 much before the date of search, disclosing 1217.279 cts of diamond. According to the Ld. D.R., the assessee has shown purchase during the year

under consideration. The Assessing Officer found the excess diamond to the extent of 144.611 cts. The same was valued at ₹60,00,200/- and addition was made under Section 69A of the Act. Moreover, according to the Ld. D.R., the Assessing Officer has also made an addition of ₹12,00,000/- on uncut diamonds of 150.000 cts. According to the Ld. D.R., the assessee claimed that the uncut diamonds were purchased after 31.03.2011. However, no bills and purchase invoices were produced. Therefore, according to the Ld. D.R., the value of uncut diamonds of 150.00 cts was added to the total income of the assessee. On a query from the Bench what is the total income returned by the assessee during the year under consideration? The Ld. D.R. very fairly submitted that the assessee has returned ₹10,54,33,100/-. It is also an admitted fact that a sum of ₹4 Crores was found during the course of search operation and the same was seized. According to the Ld. D.R., the assessee claimed before the Assessing Officer that out of cash withdrawal of ₹4.96 Crores, a sum of ₹72 lakhs and odd was used in the investment in the gold jewellery and diamonds. According to the Ld. D.R., in the absence of any material to substantiate the so-called investment from cash withdrawal, the CIT(Appeals) is not justified in deleting the addition.

9. We heard Ms. Sushma Harini, the Ld.counsel for the assessee also. Admittedly, the Assessing Officer made three additions with regard to unexplained investment in jewellery and diamonds. The first addition was ₹3,40,662/-, the second addition was ₹60,00,200/- and the third addition was ₹12,00,000/-. It is not in dispute that the assessee has returned a total income of ₹10,54,33,100/-. The Revenue authorities found ₹4 Crores as hot cash during the course of search operation. The assessee claimed that a sum of ₹4.96 Crores was withdrawn from bank from 12.01.2011 to 03.10.2011, out of which ₹4 Crores was remaining with the assessee's daughter and a part of amount was used in the investment in gold and diamonds. This Tribunal is of the considered opinion that when the assessee was having taxable income of ₹10,54,33,100/-, investment in gold jewellery to the extent of ₹3,40,662/- and in diamonds to the extent of ₹60,00,200/- and in uncut diamonds to the extent of ₹12,00,000/- might have been possible from the taxable income. It also cannot be ruled out that out of ₹4.96 Crores withdrawn from bank, the assessee could also invest in those funds. After considering the total income to the extent of ₹10,54,33,100/-, this Tribunal is of the considered opinion

that the CIT(Appeals) has rightly deleted the addition. Accordingly, the same is confirmed.

10. Now coming to penalty appeal in I.T.A. No.2952/Chny/2016, the penalty was levied under Section 271(1)(c) of the Act in respect of the above three additions made by the Assessing Officer in the gold jewellery, diamonds and uncut diamonds. Since the additions were deleted by the CIT(Appeals), which was confirmed by this Tribunal in the earlier part of this order, the CIT(Appeals) has rightly deleted the penalty. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced on 17th July, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 17th July, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-19, Chennai-34
4. Principal CIT, Central-1, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.