



IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.5830/Mum/2015

(Assessment Year :2006-07)

Smt. Anju Rajesh Poddar 42, Gautam Apartments, 31, Juhu Road, Santacruz (W), Mumbai – 400 054	Vs.	ACIT – CC 43, Room N.659, 6 th Floor Aayakar Bhawan Maharshi Karve Road Mumbai – 400 020
PAN/GIR No. AAHPP8890N		
Appellant)	..	Respondent)

Assessee by	Shri Devendra Jain
Revenue by	Shri R.P. Meena
Date of Hearing	05/09/2018
Date of Pronouncement	12/09/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-48, Mumbai dated 2006-07 for A.Y.2006-07 in the matter of order passed u/s.143(3) r.w.s. 153A of the IT Act.

2. In this appeal, assessee is aggrieved for addition of opening balance from Rajesh Poddar HUF account and on account of deemed income from house property.

3. At the outset, learned AR placed on record the order of the Tribunal in assessee's own case for the A.Y.2010-11 and 2012-13 dated

17/02/2017 wherein exactly similar issue was restored by the Tribunal to the file of AO.

4. We have heard the rival contentions and found that by consolidated order dated 30/10/2015, CIT(A) disposed the appeals for the A.Y.2006-07 to 2012-13. However, on further appeal, the matter was restored by the Tribunal to the file of the AO. The precise observation of the Tribunal dated 17/02/2017 was as under:-

3. During the assessment proceedings the assessee has received loan from three parties Rajesh Poddar Rs.3,50,000/-, Ganayaka Steels Pvt. Ltd. Rs.16,83,000/- and V.K. Shah Steel Pvt. Ltd. 34,50,000/-, when the assessee called to prove the genuineness of the unsecured loans the assessee was unable to produce the evidence. The Assessing Officer was of the view that the incriminating material was found during the search operation as well as the statement recorded at the time of search from persons including Sh.Rajesh Poddar (CMD of Loha Ispaat Ltd. and husband of the assessee) . The credit appearing in the balance sheet of the assessee are only provide accommodation entries of received cash from the company itself. The Assessing Officer observed that loan credits do not have credit worthiness advance of such loans. Therefore he has added these transactions as unsecured loan as unexplained cash got u/s 68 and added to the total income of the assessee. The CIT (A) has confirmed the same. Therefore assessee is in appeal.

4. During the course of the hearing the Ld. AR submitted that the issue in controversy is covered by the decision of ITA No.5831/MUM/2015 and ITA.NO.5833/MUM/2015 and ITA No.5832/MUM/2015 and ITA.NO.5835/Mum/2015. The similar matter was restored to the file of AO for fresh adjudication. The Ld.AR submitted that since that issue involved in the present appeal is identical the same may be sent back to AO for fresh adjudication in terms of the directions issued by the Tribunal in the same case. The Ld.DR has no objection if the file is restored to AO with the same case as per the order of the Tribunal

5. .We have perused the matter on record and find that the similar issue was in ITA.NO.5835/MUM/2015, ITA No.5831/MUM/2015 and ITA No.5833/MUM/2015 wherein the Tribunal has restored this file by observing as under.

6. We have perused the material placed on record in the light of the submissions made by the parties. We notice that vide order dated 30.09.2016, the coordinate Bench has restored the identical issue to the file of AO in assessee's own case aforesaid holding as under:-

7. We have considered the submissions of the parties and perused the material available on record. As could be seen, the only grievance of the assessee is, before treating the unsecured loans as unexplained cash credits under section 68 of the Act, the Departmental Authorities have not given adequate opportunity of being heard to the assessee. In this context, it is the submission of the learned Authorized Representative that certain tournaments have taken place after completion of assessment in assessee's case viz. assessment orders passed in case of Loha Ispat Ltd and some of the creditors which may have bearing on the genuineness of unsecured loans. To prove such fact, the assessee has also submitted before us the assessment orders passed in case of Loha Ispat Ltd, Shri Rajesh Poddar (HUF) and Dhani Devi P for the very Thatsame assessment year. On appeal of the aforesaid orders, we have noticed that these orders have been passed after completion of assessment in case of assessee. Moreover, prima facie, it appears that they have not been submitted before the learned Commissioner (Appeals) either. Thus these documents, in our view, have to be examined by the Departmental Authorities to find out whether they have bearing on the issue of genuineness of the unsecured loan. Further, the assessee should also get a fair opportunity to prove the genuineness of the loan transaction on the basis of aforesaid documentary evidence. Keeping this in view, we are inclined to restore the matter back to the file of Assessing Officer for deciding afresh. Needless to mention, the assessing Officer must afford adequate opportunity to the assessee to represent his case and the assessing officer should pass the order after considering the submissions of the assessee and the documentary evidence brought on record. At the same time, we direct the assessee to comply to the notice to be issued by the Assessing Officer and appeared before him on the date fixed with necessary evidence to establish her claim. In the event of any failure on the part of assessee to comply to the notices / queries raised by the Assessing Officer, the Assessing officer will be at liberty to complete the assessment on the basis of material on record in accordance with the. In view of the aforesaid decision, there is no need to adjudicate the merits of the addition made under section 68 of the act at this stage. 7. Respectfully following the decision of the coordinate Bench passed in assessee's own case for the assessment year 2007 – 08 in the identical matter, we restore the sole ground of this appeal to the file of AO to decide the issue afresh in accordance with the direction given by the coordinate Bench in ITA No. 5832/Mum/2015 (Supra)

6. In ITA.No.5836/MUM/2015 the similar issue is involved in AY. 2010 – 11 therefore we following the order of tribunal we restore this file to the AO as per the direction given in ITA.NO.5834/MUM/2015.

7. The second ground 2A is regarding towards unexplained jewellery under section 69A at 45,94,590/-. The short facts of the case are that the Assessing Officer observed that assessee family consists of herself, husband Rajesh Poddar, daughter Anushka, Son Ayush, Father-in-law Shri Gaurishankar Poddar and mother-in-law Smt. Lata Poddar who are staying together.. During the course of search at the residence of the assessee the locker belonging to the family have the gold jewellery, diamond jewellery and silver jewellery were found .

AO tabulated the details of premises wise break up for quantity and value of the found as under:-

Sr. No	Particulars	Value (Rs.)
1.	Shri Rajesh Poddar Residence 42, Gautam Apartments	87,56,474/-
2.	Smt Anju Poddar Residence 52, Gautam Apartments	27,93,080/-
3.	Locker No. 95, SBi Santacruz in the name of Smt Lata Podar & Shri Gaurishankar Poddar	2,78,725/-
Total		1,18,48,279/-

8. The Assessing Officer was of a view that no wealth tax return is filed and assessee's balance sheet does not show any jewellery, no purchase of jewellery was found, no documentary or circumstantial evidence to establish the acquisition of the jewellery. Therefore the Assessing Officer was of the view that no productive pay evidence in respect of the jewellery by other means non filing of the wealth tax the jewellery added while jewellery treated is unexplained of Rs.45,95,590/- matter carried to CIT(A) and CIT(A) has dismissed the appea..

9. During the course of hearing the Ld.AR submitted that the issue in controversy is covered by the assessee's one group case Lata Gaurishankar Poddar in ITA No.5408/Mum/2015 wherein the similar addition was made by the AO and the CIT(A) has confirmed the same and Tribunal has considered the CBDT circular and given direction to the AO that married lady is expected to own 500 Grams of ornaments. We find that the AO and CIT(A) has not followed the CBDT guidelines which was claimed before AO and the assessee has claimed that Rajesh G Poddar is entitled for 100 gms, Anju R. Poddar is entitled for 500 gms, Anushka Poddar is entitled for 250 gms, Aayush Poddar is entitled for 100 gms, Gaurishankar poddar is entitled for 100 gms and Lata poddar is entitled for 500 gms, therefore no addition is required. Ld.DR relied upon the order of the revenue.

10. We have heard the rival contention of both the parties looking to the facts and circumstances of the case. In assessee's one group case

Lata Gaurishankar Poddar in ITA No.5408/Mum/2015, the tribunal has decided and Tribunal has discussed the CBDT circular No.1916 dated 11.05.2014. Similarly considering this the CBDT circular Hon'ble Rajasthan High Court and Allahabad High Court has discussed the issue in total. Therefore we are of the view that issue in controversy is covered by the case group wherein it is held as under:-

3. We have heard the rival contentions and perused material on record. The facts are not in dispute. The only dispute is with respect to allowance that should be made against Gold Jewellery. We find that Vide CBDT Instruction no. 1916 dated 11/05/1994, it has been clarified that no seizure should be made by the Search Party of the Jewellery and Ornaments found during the course of search proceedings under Section 132, where the same have been duly declared in the Wealth-tax Returns filed by the taxpayer or where such ornaments are within the prescribed limits of 100, 250 or 500 grams as stated in the said instruction. We find that Rajasthan High Court in the case of CIT v. Satya Narain Patni [2014] 46 taxmann.com 440 has held that the CBDT had clearly provided that prescribed limit of jewellery will not be seized, it would mean that taxpayer, found with possession of such jewellery, will also not be questioned about its source and acquisition. Similarly, Allahabad High Court in the case of CIT v. Ghanshyam Das Johri [2014] 41 taxmann.com 295 has held that if one goes with CBDT's Instruction No. 1916, dated 11-5-1994 then a married lady of reputed family is expected to own 500 gms of ornaments. Therefore, jewellery found in possession to that extent could not be treated as undisclosed investment. Therefore, respectfully following the above, we are inclined to enhance the Gold Jewellery allowance of 300 gms as provided by AO to 500 gms and accordingly, direct the AO to recomputed the income of the assessee after providing for allowance to the extent of 500 Gms of Gold Jewellery.

11. We respectfully following the same we restore this issue to the file of the AO to decide as per the above decision.

12. In the result appeal of the assessee is allowed for statistical purpose.

5. We had carefully gone through the order of the Tribunal in assessee's own case for the other years wherein similar issue was restored back to the file of the AO for deciding afresh. As the facts and circumstances during the year under consideration are same, respectfully

following the order of the Tribunal in assessee's own case, we restore the matter back to the file of the AO for deciding afresh in terms of the direction given by the Tribunal in the above orders.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 12/09/2018

**Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER**

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 12/09/2018

Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai