

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 3393/Del/2018
Assessment Year:1994-95

Mr. Anil Kumar Mittal 5190, Lahori Gate, New Delhi- 110006]	<u>Assessment</u> <u>Year: 1994-</u> <u>95</u>	ITO, Ward-28(1) New Delhi
TAN/PAN: AALPM8403A		
(Appellant)		(Respondent)

Appellant by:	Ms. Sweety Kothari, CA
Respondent by:	Sh. Surender Pal, Sr. DR
Date of hearing:	25 09 2018
Date of pronouncement:	21 12 2018

ORDER

AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 26.3.2018 passed by Ld. CIT(A)-16, New Delhi in relation to penalty proceedings under section 271(1)(c) for the assessment year 1994-95.

2. The assessee is mainly aggrieved by the levy of penalty of Rs. 3,02,400/- under section 271(1)(c) on account of Rs. 6,75,000/- as unexplained jewellery found during the course of search. Facts in brief are that the search and seizure action had taken place at the residential locker of the assessee on 20th-21st July, 1994. During the course of search, the assessee surrendered the unexplained jewellery in the

hands of the firm Khushi Ram Bihari Lal in the statement recorded under section 132(4). Accordingly, the firm had declared the undisclosed income and its return of income including the said jewellery amounting to Rs. 6,75,000/-. The copy of the balance-sheet and profit and loss account of the firm for the year ending March, 1994 and challan for tax deposited were also placed on record. However, this amount of jewellery amounting to Rs. 6,75,000/- was assessed as undisclosed income in the hands of the assessee which has been sustained and the quantum proceedings up to the stage of the tribunal.

3. In the course of penalty proceedings, the assessee had explained that this amount of jewellery already stands disclosed in the hands of the firm and therefore, no addition could have been made in the hands of the assessee. However, the AO noted that in the assessment proceedings, the assessee could not explained money and source of earning of income from which the impugned jewellery was acquired and declared in the hands of the firm. Accordingly, he has levied the penalty of Rs. 3,02,400/- being 100% of the tax ought to be evaded mainly on the ground that this addition stands confirmed from the list of the tribunal.

4. In the first round of proceedings, the issue of levy of penalty had reached to the stage of the tribunal whereby the Tribunal has set aside the order to the file of the CIT(A) to decide the same afresh. However, the CIT (A) too has

confirmed the penalty on the ground that assessee's explanation that jewellery belongs to the firm had not been accepted by the tribunal and thus this issue has become final and therefore, it is undisclosed investment income made by the assessee.

5. Before us, the learned counsel for the assessee submitted that, first of all, the Assessing Officer in his order had not specified the charge under which penalty is to be initiated nor has been specified in the show cause notice issued by the AO. In the penalty proceedings, the AO has levied the penalty on account of furnishing of inaccurate particulars and hence without giving any specific charge in the show cause notice. The AO cannot levy the penalty on different ground. In support, she also drew our attention to the show cause notice issued by the AO. In support, she relied upon the judgments of Karnataka High Court in the case of *CIT vs. SSA's Emerald Meadows* reported in ITA No. 380/2015. This judgment has now been confirmed by Hon'ble Supreme Court in SLP No. 11485/2016. Apart from that, she has also filed various decisions of the tribunal in this regard. On merits, she submitted that the firm had duly disclosed the jewellery and its balance-sheet of Rs. 8,85,000/- which included the impugned jewellery of Rs. 6,75,000/-. Thus, prima facie assessee had discharged its burden that this jewellery belongs to the firm and even if such a plea has not been accepted in the quantum proceedings but there is no other material on record to show that assessee's explanation is not bona fide or

the jewellery actually belongs to the assessee. Thus penalty proceedings of such an addition could not be made.

5. On the other hand, learned DR strongly relied upon the orders of the authorities below and submitted that the assessee could not substantiate that the jewellerys have been purchased by the firm and therefore, it has rightly been held to be belonging to the assessee.

6. We have heard the rival submissions and also perused the relevant material referred to before us. On the perusal of the impugned assessment order, it is seen that during the course of search, jewellery worth Rs. 7,48,776/- and Rs. 13,40,216/- was found from the residential premises of the locker of the assessee. In the statement recorded under section 132(4), the assessee surrendered the undisclosed investment in the jewellery in the firm named M/s Khushi Ram Biharilal in which he was a partner. The AO required the assessee to explain the earning of the income in the hands of the firm and also provide the details for acquisition of the jewellery by the firm. Since the assessee could not furnish those explanation it was presumed the jewellery belongs to the assessee and accordingly the addition of Rs. 6,75,000/- was made which stands confirmed from the stage of the tribunal. On the perusal of the balance-sheet as well as profit and loss account of the firm and the surrender made by the firm, it is seen that the firm had shown that additional income of Rs. 21,35,000/- and also shown acquisition of

jewellery of Rs. 8,85,000/-. On such disclosure, the firm has duly paid the taxes. Even in the statement, the assessee had given the following statement. In response to the question raised by the department.

“Undisclosed jewellery worth of Rs. 6,75,000/- found in the locker and premises of Mrs. Preeti Mittal and Jewellery worth of Rs. 2,10,000/- found in the locker and premises of Smt. Binita Gupta W/o. Sh. Anoop Gupta are hereby offered for disclosure in the hands of M/s Khushi Ram Bihari Lal for the assessment year 1994-95 amounting to Rs. 8,85,000/- (Eight Lakhs Eighty Five Thousand Only).

Jewellery undeclared worth of Rs. 10,00,000/- (Ten Lakhs Only) found in the locker and premises of Smt. Tara Devi W/o. Late Shri Bhagirath Lal (my Mother) in here hands as legal heir of Late Shri Bhagirath Lal is offered for disclosure for the assessment year 1993-94 as it was acquired out of funds generated in that year by late father (Sh. Bhagirath Lal) in cloves / cassla business under taken by him for which Rs. 15,00,000/- is offered for taxation including therein the above said jewellery of Rs. 10,00,000/- (Ten Lakhs Only).

7. Thus, the other portion of the jewellery was said to be belonging of other persons and in so far as jewellery worth Rs. 8,75,000/- is concerned, same has been offered and disclosed in the hands of the firm for the assessment year 1994-95 on which taxes were also been paid. Simply because the assessee could not explain the source of acquisition of jewellery by the firm it cannot be presumed that the jewellery belongs to the assessee because the firm itself has disclosed the jewellery as

undisclosed investment and therefore in such a facts and circumstances it cannot be held that penalty for furnishing of inaccurate particulars can be levied in the hands of the assessee. The assessee had not furnished any inaccurate particulars in his return of income for which penalty has been sought to be levied because it is an undisclosed investment offered by the firm in its hand in which assessee is only a partner. Thus, penalty levied by the AO and is confirmed by the CIT(A) is directed to be deleted.

8. Since we have deleted the penalty on merits, the other issue raised by the learned counsel that a charge has not been specified in the show cause notice has become purely academic and is left open. Assessee's appeal is allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21st December, 2018.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 21st Dec, 2018

SH

Copy forwarded to:

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

Assistant Registrar

		Date
1.	Draft dictated on	21.12.2018
2.	Draft placed before author	21.12.2018
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File comes back to PS/Sr. PS	
8.	Uploaded on	9.1.2019
9.	File sent to the Bench Clerk	
10.	Date on which file goes to the AR	
11.	Date on which file goes to the Head Clerk.	
12.	Date of dispatch of Order.	