

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1175/Del/2015
(Assessment Year: 2012-13)**

Asst. Commissioner of Income Tax, Central Circle-04, New Delhi. [erstwhile CC-25, New Delhi]	Vs.	Sh. Moolchand Aggarwal, R/o 2/1425, White House, Delhi Road, Saharanpur, U.P.
PAN No: AAMPA4753E		
APPELLANT		RESPONDENT

Revenue by : Ms. P. Biswas, CIT(DR)
Assessee by : Shri. Salil Aggarwal, Adv. and
Shri Shailesh Gupta, Adv.

ORDER

PER ANADEE NATH MISSHRA, AM

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-23, New Delhi, ["Ld. CIT(A)", for short] dated 18.12.2014 for Assessment Year 2012-13. Search and seizure operations U/s 132 of the Income Tax Act, 1961 ("I.T. Act", for short) were carried out in the premises of various cases of SMC Group on 04.08.2011, including in the premises of the assessee. The Assessee is

one of the family members of Shri Sewa Ram Aggarwal, related to M/s SMC Foods Ltd. and its subsidiary company. Cash amounting to Rs. 5,05,550/- and Jewellery valued at Rs. 69,92,195/- were found at the residence of the Assessee, during the course of search proceedings. Vide Assessment Order U/s 143(3) of I.T. Act, dated 29.03.2014, the Assessing Officer ("AO", for short) made additions of the aforesaid amounts of Rs. 5,05,550/- and Rs. 69,92,195/-. The relevant portions of the Assessment Order, is reproduced as under:

"4.1.1 During the search operation, cash amounting to Rs.5,05,550/- was found from premises of Sh. Moolchand Aggarwal. Vide order sheet entry dated 14.02.2014 the assessee was asked categorically to explain how this amount is declared in his return of income. In response to this query the assessee made following submissions vide reply dated 20.02.2014 :

"The cash found during the course of search we would like to draw your kind attention to the working sheet in respect of assessee wise cash found during the course of search and working sheet in respect of cash in hand as per the books of account of those assessee whose name is appearing on the working sheet of department on the date of search, as per which the cash in hand as per books of account was Rs. 2,57,87,960/- and cash found during the course of search is Rs.66,32,819/-. As such cash found during the course of search is less than the cash in hand as per books of account as such the same needs no intervention".

4.1 I have gone through the above submissions and found no force in it as an amount of Rs. 5,05,550/- is treated as unexplained amount on the date of search. The assessee failed to disclose this unexplained amount. Hence, an addition of Rs.5,05,550/- made on a/c of unexplained cash found/seized during the search and taxed accordingly.

5. Jewellery of Rs. 69,92,195/- found during the course of survey. Vide order sheet entry dated 14.02.2014 the assessee was asked categorically to explain

source of investment of jewellery. In response to this query the assessee made following submissions vide reply dated 20.02.2014 :

"With reference to query to explain the jewellery found during the course of search we would like to draw your kind attention to the working sheet in respect of jewellery found during the course of search and working sheet in respect of jewellery as per wealth tax return of immediate previous assessment year before the date of search, as per which the jewellery as per wealth tax return was Rs.4,94,89,342/- and jewellery found during the course of search is Rs.2,84,64,840/-. As such jewellery found during the course of search is less than the jewellery shown in the wealth tax return as such the same needs no intervention".

5.1 I have gone through the above submissions and found no force in it as an amount of Rs. 69,92,195/- is treated as unexplained investment in the jewellery. Hence, an addition of Rs.69,92,195/- made on a/c of unexplained investment in jewellery and taxed accordingly."

(2) Aggrieved, the Assessee filed an appeal before the Ld. CIT(A), who, vide impugned order dated 18.12.2014, deleted both the aforesaid additions of Rs. 5,05,550/- and Rs. 69,92,195/-. The relevant portions of the order of Ld. CIT(A) is reproduced as under:

"5.1 During the course of search cash amounting to Rs.5,05,550/- was found from the residence of the appellant but was not seized. As per the books of account regularly maintained by the appellant, the cash balance as on 01.08.2011 was Rs.5,74,762/-. The AO has disbelieved the claim of the appellant and made the addition without assigning any reason or citing any evidence. The books maintained by the appellant have also not been questioned or rejected. It is to be noted that in the search the authorized officer is to satisfy himself that the assets found are duly disclosed, and is to seize only such assets that are not disclosed for tax purposes. As the cash found was not seized, a presumption arose in favour of the appellant that it was duly disclosed in the books. This fact stands established from the availability of cash as per the books which have not been questioned. There is no basis for making the addition. The addition made is deleted.

5.2 *The second addition made by the AO was entire jewelry of the value of Rs.69,92,195/- found in the residence of the appellant at B-42, First Floor, GK-I, New Delhi including on the person of the family members. The appellant lives in the premises with his wife Smt. Mithilesh Rani, his two. sons Sh. Anurag Aggrawal and Sh. Amit Aggrawal, and his daughter-in-law Smt. Shally Aggrawal (w/o Sh. Anurag Aggrawal). As per the Wealth tax record of these members the value of jewelry disclosed amounted to Rs. 80,40,534/- as on 31.03.2011. In fact, out of the total jewelry of Rs. 69,92,195/- found, only one item valued at Rs. 10,10,275/- was seized. From the documents filed, I find that the said item described as "2 pcs tops with single diamond" weighting 6.100 gms is also duly disclosed in the wealth tax records of Sh. Anurag Aggrawal as per his valuation report dated 23.03.2011. Therefore, there is no basis to reach the conclusion that jewelry found in the residence of the appellant was undisclosed. The addition made is erroneous and is deleted."*

(3) Now, Revenue has filed this appeal in Income Tax Appellate Tribunal ("ITAT", for short), in which the following grounds of appeal have been raised:

"On the facts and in the circumstances of the case the Ld. CIT(A) has erred in:-

- I. The order of the CIT(A) is not correct in law and facts.*
- II. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of cash found & seized during the course of search & seizure operation amounting to Rs. 5,05,550/- made by AO on account of unexplained cash.*
- III. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 62,92,195/- made by AO on account of unexplained investment in jewellery.*
- IV. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."*

(4) At the time of hearing before us, the Ld. CIT(DR) supported the order of AO. She highlighted that cash found from the premises of the Assessee was less than cash in hand as per books of accounts. She also highlighted that Jewellery found during the course of search from the Assessee's premises was also less than the Jewellery as per Wealth Tax Returns of the Assessee and his family Member. Based on these facts, the

Ld. CIT(DR) supported the additions made by the AO. The Ld. Counsel for Assessee supported the order of the Ld. CIT(A).

(5) We find that Cash found from the premises of the Assessee was less than Cash balance of Rs. 5,74,762/- as on 01.08.2011. Further, the total Jewellery valued at Rs. 69,92,195/- found at the residence of the Assessee was less than the Jewellery disclosed by various persons as per Wealth Tax Records as on 31.03.2011, amounting to Rs. 80,40,534/-. We also find that the Jewellery seized, valued at Rs. 10,10,275/- was also duly disclosed in the Wealth Tax Records of Shri Anurag Aggrawal as per valuation report dated 23.03.2011. In view of the foregoing facts, impugned order of the Ld. CIT(A) wherein he deleted the aforesaid additions of Rs. 5,05,550/- and Rs. 69,92,195/, needs no interference. The cash found, amounting to Rs. 5,05,550/- is fully explained by cash balance, as on 01.08.2011. The AO erred in making addition of the aforesaid amount of Rs. 5,05,550/-, without any reasoning and in the absence of any evidence to show that the cash found was unaccounted or unexplained or undisclosed. Similarly, the Jewellery found from the premises of the Assessee is also fully explained by Wealth Tax Records of various persons. The AO erred in making the addition of the aforesaid amount of Rs. 69,92,195/- without proper reasoning, and in the absence of any evidence to show that the Jewellery found was unaccounted or unexplained or undisclosed. The AO had no basis to make the addition, when the Jewellery found is fully disclosed in Wealth Tax Records. In view of the foregoing, there is no material to warrant any interference by us with the impugned order of the Ld. CIT(A). We find

that in view of the facts and circumstances of this case, the order of the Ld. CIT(A) is sound in law. Therefore, we decline to interfere with the impugned order of the Ld. CIT(A) and uphold the order of the Ld. CIT(A).

(6) In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 31st day of January, 2019.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 31.01.2019
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	23 /01/19
Date on which the typed draft is placed before the dictating Member	29 /01/19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	