

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1178/Del/2015
(Assessment Year: 2012-13)**

ACIT Central Circle- 4 New Delhi	Vs.	Subhash Chand Aggarwal R/o. 2/1425, White House Delhi Road Saharanpur
		PAN No: AAMPA4754D
APPELLANT		RESPONDENT

Revenue by : Sh. S.S. Rana, CIT(DR)

Assessee by : Sh. Shailesh Gupta, Adv.

ORDER

PER: ANADEE NATH MISSHRA, AM

This appeal by Revenue is filed against the order dated 18.12.2014 of Ld. Commissioner of Income Tax (Appeals) ['CIT(A)' for short] for Assessment year ('AY' for short) 2012-13. Search and seizure operations under Section ('U/s' for short) 132 of Income Tax Act, 1961 ('IT Act' for short) were carried out in the premises of various cases of SMC Group of cases on 04.08.2011, including in the premises of the Assessee. Cash amounting to Rs. 19,50,000/- was found from the premises of the

amounting to Rs. 19,50,000/- was found from the premises of the Assessee. Further, jewellery valued at Rs. 1,09,72,957/- was also found from the premises of the Assessee. In assessment Order dated 31.03.2014 U/s 143(3) of the IT Act, the AO made an addition of Rs. 9,75,000/- on account of cash found from the Assessee's premises at the time of search and seizure operations. The AO also made an addition of Rs. 1,09,72,957/- on account of jewellery found from the Assessee's premises. The relevant portion of the Assessment Order is reproduced as under:

"4. During the search operation, cash amounting to Rs.19,50,000/- was found from 2/1425, White House, Delhi Road, Saharanpur, U.P. which is residence of Sh. Subhash Chand Aggarwal and Sh. Sanjay Aggarwal. It was stated by Sh. Subhash Chand Aggarwal that this cash belong to him and his son Sh. Sanjay Aggarwal and Smt. Shubhra Aggarwal, w/o Sh. Sanjay Aggarwal. It means half cash of Rs.9,75,000/- belong to Sh. Subhash Chand Aggarwal.

4.1.1 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.66,32,319/-. 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".

4.1.2 I have gone through the above submissions and found no force in it as an amount of Rs.9,75,000/- is treated as unexplained amount on the date of search. The assessee failed to disclose this unexplained amount. Hence, an addition of Rs.9,75,000/- made on a/c of unexplained cash found/seized during the search and taxed accordingly.

(Addition: Rs.9,75,000/-)

4.2 In the facts & circumstances of case as discussed above I am satisfied that the assessee has concealed & furnished the inaccurate particulars of income to the tune of Rs.9,75,000/- within meaning of section 271(l)(c). Therefore, assessee is liable for the levy of penalty u/s 271(l)(c). The proceedings u/s 271(l)(c) are initiated separately.

5. Jewellery of Rs.1,09,72,957/- found and out of which Rs.43,72,167/- was seized during the course of search (last date of operation of locker 6.6.2011). 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. Therefore, an amount of Rs.1,09,72,957/- is treated as unexplained investment in the jewellery. Hence, an addition of Rs. 1,09,72,957/- made on a/c of unexplained investment in jewellery and taxed accordingly.

(Addition: Rs.1,09,72,957/-)

5.2 In the facts & circumstances of case as discussed above I am satisfied that the assessee has concealed & furnished the inaccurate particulars of undisclosed income to the tune of Rs.1,09,92,957/- within meaning of section 271(1)(c). Therefore, assessee is liable for the levy of penalty u/s 271(l)(c). The proceedings u/s 271(1)(c) are initiated separately."

2. Aggrieved, the Assessee filed appeal before the Ld. CIT(A) who, vide impugned Order dated 18.12.2014 deleted the aforesaid additions. The relevant portion of the impugned Order of the Ld. CIT(A) is reproduced as under:

"4. The only effective ground of appeal is the second ground numbered 1.2 wherein the appellant has challenged the additions of Rs.9,75,000/- being 50% of cash amounting to Rs. 19,50,000/- found in the course of search, and Rs. 1,09,72,957/- being jewelry found during the course of search out of which jewelry of the value of Rs.43,72,167/- was seized. We shall discuss these two additions separately.

5.1 During the course of search cash amounting to Rs. 19,50,000/- was found from the residence of the appellant at 2/1425, White House, Delhi Road, Saharanpur (UP) out of which Rs. 19,00,000/- was seized. At the said residence, the appellant resides with his wife Smt. Sushila Rani, his son Sh. Sanjay Aggarwal, and his daughter-in-law Smt. Subhra Aggarwal. As per the books of account regularly maintained by the appellant, his son and daughter-in-law, the cash balance as on 01.08.2011 was Rs.9,09,112/-, Rs. 10,97,189/- and Rs. 10,54,993/-, respectively, totaling Rs.30,61,295/-. 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. There is no evidence to conclude that the cash found represented undisclosed income of the appellant or other members of his family. The addition made cannot be legally sustained and is deleted.

5.2 The second addition made by the AO was entire jewelry of the value of Rs. 1,09,72,957/- found in the residence of the appellant, including on the person of the family members, out of which 2 items of the value of Rs.43,72,167/- were Seized. As per the Wealth Tax Records of these members, the value of jewelry disclosed amounted to Rs. 1,46,48,448/- as on 31.03.2011. From the documents filed, I find that even the two seized items described as "diamond necklace" weighing 116.900 gms and "71 ginnies" weighing 565.900 gms are also duly disclosed in the Wealth Tax Records of Sh. Sanjay Aggrawal & Sons (HUF) as per the 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 the 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:-

1. *The order of the CIT(A) is not correct in law and facts.*
2. *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.9,75,000/- made by AO on account of unexplained cash.*
3. *On the facts and circumstances of the case the-Ld. CIT(A) has erred in law in deleting the addition of Rs.1,09,72,957/- made by AO on account of unexplained investment in jewellery.*
4. *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 additions made by the AO, and for this purpose he relied on the order of the

assessment Order dated 31.03.2014. The Ld. CIT(DR) also relied on the following judicial precedents:

1. *R Mallika Vs CIT [2017] 79 taxmann.com 117 (SC)*
2. *CIT Vs R Mallika [2013] 36 taxmann.com 231 (Madras)/[2013] 219 Taxmann 244 (Madras)*
3. *Ashokbhai H Jariwala Vs ACIT [2017] 84 taxmann.com 196 (SC)/[2017] 250 Taxmann 14 (SC), 2017-TIOL-236-SC-IT*
4. *Sukh Ram Vs ACIT 159 Taxmann 385 (Delhi)/[2006] 285 ITR 256 (Delhi)/[2008] 204 CTR 336*
5. *Karun Dutt Singh Vs CIT [2017] 85 taxmann.com 177 (Kerala)*

5. The Ld. Counsel for Assessee supported the order of the Ld. CIT(A) for which purpose he relied on order dated 31.01.2019 of Coordinate Bench of ITAT, Delhi in the case of *ACIT Vs Mr. Moolchand Aggrawal In ITA no. 1175/Del/2015 for AY 2012-13* in which under similar facts and circumstances, the issues regarding cash and jewellery found from the Assessee's premises were decided in favour of the Assessee.

6. We have heard both sides patiently. We have perused all materials on our records carefully. We have considered the judicial precedents brought to our attention. We have also considered the judicial precedents referred to in the records. We are of the view that the reliance placed by the Ld. CIT(DR) on the various judicial precedents does not advance the case of the Revenue because these judicial precedents are on materially different and clearly distinguishable facts. In the case of *R Mallika Vs CIT*(supra) and *CIT Vs R Mallika*(supra), the Assessee had not discharged burden as regards source

from which investment had been made. However, in the case before us the Assessee had furnished explanation to the AO and had discharged the burden as regards the source of cash / jewellery found from the Assessee's premises. In the case of *Ashokbhai H Jariwala Vs ACIT*(supra), there was nothing on record to show that sister of Assessee was in exclusive possession of bedroom in Assessee's house from where cash was seized and further, there was contradiction in statement of Assessee and his sister with respect to ownership of actual amount in cash. There are no such facts in the case before us. In the case of *Sukh Ram Vs ACIT*(supra), huge sum of cash was found for which Assessee explained that said cash belonged to certain organization but did not bring any material on record to substantiate his explanation and, moreover, verification of books of account of said organization showed no connection with cash recovered from Assessee. However, in the case before us the cash and jewellery found from the Assessee's premises are fully explained by the cash balances as per books of accounts of different persons and jewellery disclosed in the Wealth Tax Records of different persons. In the case of *Karun Dutt Singh Vs CIT*(supra), addition on account of gold ornaments recovered from the Assessee was upheld after rejecting the Assessee's explanation that it belonged to his employer company, in view of fact that director of employer company in his statement recorded under sec. 131 denied to have given ornaments to

Assessee for sale or as samples. There are no such facts in the case before us.

6.1 We find that the cash found at the time of search and seizure operation U/s 132 of IT Act from the premises of the Assessee was less than the cash in hand amounting to Rs. 2,57,87,960/- as per books of account. We further find that the jewellery found from the Assessee's premises was less than jewellery valued at Rs 4,94,89,342/- as per Wealth Tax Records of various persons. In view of the foregoing facts, impugned Order of the Ld. CIT(A) wherein he deleted the aforesaid additions of Rs. 9,75,000/- and Rs. 1,09,72,957/-, needs no interference. The cash found, amounting to Rs. 9,75,000/-, being less than cash balance as per books of account; is fully explained by cash balance as per books of account. The AO erred in making addition of the aforesaid amount of Rs. 9,75,000/-, 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. 1,09,72,957/- without proper reasoning, and in the absence of any evidence to show that the jewellery found was unaccounted or unexplained or undisclosed. In the facts and circumstances of the case, the AO had no basis to make the additions, when the cash found was explained by cash balance as per books of account and when the jewellery

found was fully explained by jewellery disclosed in Wealth Tax Records of various persons. 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). In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 14th day of February, 2019.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 14.02.2019
Bidhan

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	13.02.2019
Date on which the typed draft is placed before the dictating Member	13.02.2019
Date on which the typed draft is placed before the Other Member	13.02.2019
Date on which the approved draft comes to the Sr. PS/PS	13.02.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	13.02.2019
Date on which the fair order comes back to the Sr. PS/PS	13.02.2019
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	