

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
(समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य)
[Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

I.T.A. No. 1914/Kol/2014
Assessment Years: 2010-11

Dr. M.C. Seal PAN: ALIPS 9335 B	Vs.	DCIT, Central Circle – VII, Kolkata
Appellant		Respondent

Date of Hearing	09.01.2019
Date of Pronouncement	03.04.2019
For the Appellant	Shri S.M. Surana, Advocate
For the Respondent	Shri Radhey Shyam, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal preferred by the Assessee against the order of CIT(A), Central – I dated 19.08.2014 for A.Y. 2010-11.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in confirming the addition of Rs. 14,05,979/- as made by the AO as a value of part of jewelry found in course of search.

3. The brief fact of the case is that the assessee is a specialist doctor by profession (Urologist). A search was conducted at assessee's premises on 02.12.2009 where jewelry embedded with diamonds was found. The AO during assessment proceedings segregated the jewelry's gold content and diamond content in some pieces of jewelry and considered their values separately. The AO found that the gold content in the jewelry was 2276.150 gms. And the assessee had disclosed jewelry which included gold as per weight was 2356.274 gms. The AO accepted the explanation with regard to the jewelry except the jewelry containing diamonds and precious stones. So he was pleased to make no addition in respect to the value of gold jewelry. However, the AO found that diamonds embedded in some of the jewelry as per the valuation report weighing 59.32 cts of Rs. 11,21,970/-. As per the AO, the said diamonds were embedded in the gold ornaments weighing 238 gms (gold) valued at Rs. 2,84,009/- and held that the value of the diamonds of Rs. 59.32 cts valuing Rs.

11,21,970/- was separately considered and the AO added back the value of the said jewelry at Rs. 14,05,979/- (Rs. 11,21,970/- + Rs. 2,84,009/- and treated the same as undisclosed investment of the assessee. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) and confirmed the same. Aggrieved the assessee is before us.

4. We have heard both the parties and perused the material available on record. We note that the assessee is a Urologist and is the director of M/s. Calcutta Urology Research Centre Pvt. Ltd. and runs a nursing home in the name and style of 'Remedy'. A search and seizure u/s 132 of the Act was carried out on 02.12.2009 and certain jewellerys were found during the search. From the assessee's premises jewelry items bearing identification mark MCS 1 to MCS/60 valued at Rs. 49,98,857/- (2276.150 gms. Jewelry) were found as per Annexure – J of the Panchanama dated 03.12.2009. In the explanation given to reconcile the jewelry found in his residence the assessee stated that he belongs to a family of gold traders community of Bengal. And it was brought to the notice of the AO that he had shown 1695.874 gms. of jewelry in his balance sheet and his wife has declared 660.400 gms. under the VDIS of 1997 i.e. total 2356.274 gms. of jewelry. The AO taking note of the number of family members:

<i>“Dr. Mohan Chand Seal (Male), Self</i>	<i>100 gms.</i>
<i>Sreemati Seal (Female Married), wife</i>	<i>500 gms.</i>
<i>Anindita Seal (Female Married), daughter</i>	<i>500 gms.</i>
<i>Jini Seal (Female Married), daughter</i>	<i>500 gms.</i>
<i>Jamie Shrilaw (Male), husband of Jini</i>	<i>100 gms.</i>
<i>Rini Seal (Female), daughter</i>	<i>250gms.</i>
<i>Anushka Seal (Female), grand daughter</i>	<i>250 gms.</i>
<i>Total 2200 gms”</i>	

5. The AO after taking note of the strength of the family members and taking note that the assessee's daughter Jini Seal got married in December, 2009 wherein ornaments were purchased and bills to substantiate the new jewelry were available, was of the opinion that assessee had reconciled 2276.150 gms., gold jewelry. However, according to the AO, 16

items of jewellery containing precious stones (diamond/pearl), the assessee failed to explain about the source of purchase and made an addition of it as both gold jewellery and the diamond embedded in it to the tune of Rs. 14,05,979/- on account of undisclosed investment and jewellery.

6. We note that the assessee has shown during the VDIS in the year 1997, 1103.45 gms jewellery and his wife has declared 660.400 gms jewellery which has not been disputed by the AO i.e. jewellery to the tune of 1763.85 gms of jewellery has been declared by the assessee way back in the year 1997 which has been accepted by the department. We also note that the assessee has declared 37.30 cts of diamonds which we find was part of the jewellery declared during VDIS in 1997, which fact we find from the certificate under the VDIS of 1997 which is placed at page no 9 & 10 of the Paper Book. Thus we note the assessee had declared during VDIS of 1997, gold jewellery of 1763.85 gms of jewellery and 37.30 cts of diamonds. We note that the AO has accepted the total jewellery which was found during the search in 02.12.2009 of 2276.50 gms [which includes Gold net weight ie, other than diamonds as found from perusal of page 28 PB]. However AO has not accepted the gold jewellery embedded with the diamonds/precious stones and added gold of 238 gms. valued at Rs. 2,84,009/- and diamonds of 59.32 cts valued at Rs. 11,21,970/- totaling Rs. 14,05,979/-. We note that during search on 02.12.2009 total gold jewellery of 2276.50 gms was only found which means it includes the gold jewellery embedded with the diamonds. As stated earlier, the assessee had declared in VDIS 1997 itself 1763.85 gms. and that the assessee had declared and paid taxes for it. Further we note that the Id. CIT(A) at Para 3, has noted that assessee had shown 1695.874 gms, in the balance-sheet, which means the assessee had shown an increase of 592.424 gms. of jewellery from what he had declared in the VDIS 1997 (1695.874 – 1103.45). Thus the assessee had with him as declared jewellery 2356.274 gms (1695.874 + 660.400) before search was conducted on 02.12.2009. So when the total gold jewellery found during search was only 2276.150 gms., the assessee had 592.424 gms. excess gold declared earlier itself (VDIS of 1997 + remaining shown in the balance sheet) of 2356.274 gms, then the entire gold jewellery which included gold jewellery part where diamonds embedded in it stands explained and no separate addition of the gold jewellery embedded with the diamonds/precious stones of gold of 238 gms valued at Rs. 2,84,009/- was warranted and therefore is directed to be deleted.

7. Coming to diamonds, the AO calculated the value of 59.32 cts of diamonds valued at Rs. 11,21,970/- and added to the income of assessee. However, we note that 37.30 cts of diamond was declared in VDIS 1997 which ought to have been allowed to the assessee at the first place itself. Further we note that there was gift of diamond bangles vide paper book page 10 by the father of wife of M.C. Seal at the time of his marriage. And we also note that the diamond bangles are not the part of the M.C. Seal's Valuation report of VDIS of 1997 which is seen from perusal of paper book page 9, meaning this diamond bangles gifted by assessee's father-in-law vide paper book page 10 was not declared as an item during VDIS Of 1997 but was with the assessee from the time of his marriage, and therefore needs to be allowed. We note the Diamond Bangles in the valuation report at the time of search is given as 12 cts. (refer page 10 & 27 of PB), so 12 cts of diamond needs to be allowed. Further we note that there was gift of two ear tops gifted by the father-in-law vide paper book page 10 and the weight of diamond in ear tops is inferred/shown as 2 cts (4 cts total for 2 ear tops and two rings refer page 10 & 27) which also needs to be allowed.

8. Thus we note that 37.30 cts diamonds [VDIS of 1997] and diamond bangles of 12 cts and diamond ear tops of 2 cts [page 10 father-in-law gift during marriage] have been duly explained by assessee which was declared and in his possession before search as discussed supra. Thus total diamond of 51.30 cts stands explained in the hands of assessee before search itself. So the remaining diamond of 8.2 cts of diamond [59.32- 51.30] can be only taxed in the hands of the assessee. Accordingly the AO is directed to re-compute the value of diamond of 8.2 cts and add to the income of assessee and give relief to the assessee as discussed above.

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

Order is pronounced in the open court on 03.04.2019

Sd/-

(P.M. Jagtap)
Vice-President

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 3rd April, 2019

Biswajit (Sr. P.S.)

Copy of the order forwarded to:

1. Appellant – Dr. M.C. Seal, C/o. V.N. Purohit & Co, Chartered Accountants, Diamond Chambers, Unit III, 4th Floor, Suit No. 4G, 4, Chowringhee Lane, Kolkata – 700 016.
- 2 Respondent – DCIT, Central Circle – VII, Aayakar Bhawan Poorva, 4th Floor, 110, Shanti Palli, Kolkata – 700 107.
3. The CIT(A) -, Kolkata. (through e-mail)
4. CIT Kolkata
5. DR, ITAT, Kolkata. (through e-mail)
 /True Copy,

By order,

Assistant Registrar/H.O.O.
ITAT, Kolkata