

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No. 2176/DEL/2015
Assessment Year: 2002-03

Shri Ashok Kumar Chauhan, Prop. M/s. Gurucharan Jewellers, 17/2, Tilak Nagar, New Delhi.	v.	ITO, Ward-26(2), New Delhi.
TAN/PAN: AAAPC 1005F		
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Singhvi & Shri Satyajeet Goel, CA		
Respondent by:	Shri Praveen Kumar, Sr.D.R.		
Date of hearing:	16	01	2019
Date of pronouncement:	12	04	2019

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against the impugned order dated 09.01.2015, passed by the Commissioner of Income Tax (Appeals)-XV, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2002-03. In the grounds of appeal, the assessee has challenged the addition of Rs.20 lacs in respect of alleged undisclosed investment in furniture and fixture.

2. The brief facts and background *qua* the addition of Rs.20 lacs are that, a survey u/s.133A was conducted on 31.01.2002 at the business premises of the assessee, during

the course of which the assessee has surrendered an amount of Rs.1 crore in his statement which also included sum of Rs.20 lacs on account of investment in furniture and equipments in showroom. Later on, the assessee retracted from the said surrender that no such investment was made and no material as such found. However, the Id. Assessing Officer vide his order dated 27.01.2004 has made the addition of Rs.20 lacs on the ground that this amount has not been declared in the return of income which was surrendered at the time of survey and assessee has not furnished any explanation about the said investment,. Accordingly, the same was added u/s.68. Such an addition was confirmed by the Id. CIT (A) vide his order dated 30.09.2004. In the second appeal, the Tribunal vide order dated 08.04.2008 had deleted the addition of Rs.20 lacs, holding that no material was found during the course of survey that the assessee has made any investment outside the books for finishing of the showroom. Further, there was no inquiry done by the Assessing Officer in this regard. Accordingly, after detailed discussion, the said addition was deleted. Thereafter, the matter had travelled up to the stage of the Hon'ble High Court wherein the Hon'ble High Court had remitted this issue to the file of the Assessing Officer after observing and holding as under:-

“The income Tax Appellate Tribunal has, after setting aside certain additions made by the Assessing Officer, remitted the case back to the AO for afresh adjudication. The grievance raised by the learned counsel for the Department is that the AO had also made addition in the sum of 20 lacs under Section 68 of the Income Tax Act on the ground that the assessee had made investments on showroom

*furnishing and equipment, etc, by spending that amount. Submission is that while referring other additions back to the AO, this item of addition should also have been referred, which is wrongly deleted by the ITAT. Mr. Sethi has no objection if this aspect is also referred to the AO. Based on the aforesaid statement of Mr. Sethi, **we modify the order of the Tribunal to the aforesaid extent and direct that the AO shall consider afresh aspect of the purported investment made on showroom furnishing and equipment with alleged expenditure of Rs.20 lacs incurred thereupon.***

*Needless to mention, **it would be open to the assessee to question the proposed addition and argue that there is no basis for making such an addition.***”

[Emphasis in bold is ours]

3. In the set-aside proceedings, the Id. Assessing Officer has again referred to the surrender offered by the assessee during the course of survey. The relevant question in this regard reads as under:

“Q. No.8. The showroom at 1/5, Tilak Nagar has been furnished and equipped during the F.Y.2001-02 and has been put to use from 19-10-01 onwards. What is total investment for this purpose?

A. The investments in furnishing and equipping the showroom is partly recorded in the books of accounts. However, the actual investment is more and is out of my income so far not recorded in the books of accounts required to be maintained by me far not recorded in the books of accounts required to be maintained by me under the provisions of law. The income is my income for ongoing F.Y. i.e 2001-02 and I am going to record the same in my books of

accounts and include this amount in my income over and above and in addition to the income having arisen/accrued to me till date i.e. 31.01.2002 and offer the same for taxation as per provisions of law. I offer unconditionally and irrevocably an amount of Rs. 20 lacs as my income invested in furnishing and equipping the showroom over and above in addition to the investment already recorded by me in the books of accounts. I shall pay tax on this amount of my income as per provisions of law in addition to tax payable by me under the provisions of law.”

Based on such statement, the Assessing Officer has again made the same addition of Rs.20 lac.

4. Before the Id. CIT (A), the assessee submitted that no material evidence on record has been found regarding investment in showroom with regard to the furniture and equipment, etc. However, the Id. CIT (A) rejected the assessee's contention. First of all, he agreed with the contention of the assessee that addition cannot be sustained solely on the basis of statement made by the assessee at the time of survey operation. He has also observed that Assessing Officer has not brought any material facts in the assessment order, which were collected during the course of original assessment proceedings. Here in this case, assessee had purchased property at 1/5, Tilak Nagar, New Delhi which were demolished and thereafter construction from basement to 2nd floor was made in the financial years 1998-99 to 2001-02. The Valuation Officer of the Department in his report dated 13.08.2003 had estimated the valuation of property at Rs.37,39,275/- as against the investment of Rs.24,05,000/-

shown by the assessee. Thus, there was a clear difference of Rs.13,34,275/-. He also referred the letter dated 30.12.2003 written by the assessee to the Assessing Officer wherein assessee had stated whatever addition would be made, same can be assessed in 2002-03 and he has no objection if Assessing Officer has made addition for the Assessment Year 1999-00 and 2002-03. Further, on the perusal of the balance-sheet as on 31.03.2002, Ld. CIT (A) noted that assessee in the schedule of assets had shown following items:-

<i>Colour TV & Refrigerator</i>	-	<i>Rs.15,000/-</i>
<i>Camera</i>	-	<i>Rs. 4,540/-</i>
<i>Water Filter</i>	-	<i>Rs. 7,590/-</i>
<i>Security System</i>	-	<i>Rs.12,420/-</i>
<i>Weighing Machine</i>	-	<i>Rs.51,315/-</i>
<i>Generator</i>	-	<i>Rs.16,500/-</i>

However, assessee has not shown any addition in respect of furniture and fixture, air conditioners and other showcases which are essentially required in jeweler's shop. Thus, based on this reasoning, he held that amount of Rs.20 lac towards investment in showroom furnishing/building is justified.

5. Before us, the learned counsel for the assessee submitted that in so far as the difference in the valuation of the property is concerned, there is no dispute. In the present appeal, the issue is with regard to certain unexplained investment made in the furniture and fixture, etc in the showroom made by the Assessing Officer simply on the basis of statement given by the assessee during the course of survey. Such a surrender made by the Assessee during the course of survey has been negated by the Tribunal in the first

round of proceedings after detail discussion. In the appeal filed by the department before Hon'ble High Court, the matter has been restored back solely to examine the issue on merits. He further pointed out that the assessee in its balance sheet as on 31.03.2002 has already reflected addition of assets of Rs.2,73,445/- which includes furniture and fixtures, camera, colour TV and refrigerator, water filter, security system, etc. Ld. CIT (A) solely based on presumption that there is no addition in respect of furniture and fixture, air conditioner etc., which is an essential requirement in jeweler's shop has confirmed the addition, without looking to the fact that neither any material was found nor there was any inquiry that assessee has installed any furniture and fixture in the shop which has not been disclosed in the books of account. Thus, the addition made by the Assessing Officer should be deleted.

6. On the other hand, ld. DR strongly relied upon the order of the ld. CIT(A) and submitted that, firstly, assessee himself has made the surrender during the course of survey and also before the Assessing Officer that any addition made in the assessment order shall be accepted. In this background alongwith the finding of ld. CIT (A) is taken into consideration, then it is quite clear that assessee did make certain investments in the shop outside the books of account, and therefore, addition made should be sustained.

7. After considering the rival submissions and on perusal of the impugned order, we find that first of all, the Assessing Officer in the impugned assessment order has simply made

the addition on the ground that assessee during the course of survey has offered sum of Rs.20 lacs towards investment in furnishing and in equipments in showroom over and above the investment already recorded in the books of account. However such a basis for making the addition at the outset was rejected by the Tribunal after detailed reasoning and it was held that no such addition can be made simply on the basis of statement without any material on record and also no inquiry was made by the Assessing Officer to justify such an addition. The Hon'ble High Court while remanding the issue back to the file of the Assessing Officer has categorically observed that counsel for the respondent-assessee has no objection if this issue is also referred to the Assessing Officer to be decided afresh and it would be open for the assessee to question the proposed addition and argue that there is no basis for making such an addition. Thus, when the assessee before the authorities below have stated that there is no basis for making such an addition, then again relying upon the same statement made during the course of survey cannot justify the addition. The Id. CIT (A) however has tried to modify the order of the Assessing Officer, firstly, by observing that there were certain differences in the valuation of the property constructed by the assessee and such a difference of Rs.13.34 lac goes to show that assessee has made certain investment outside the books. Apart from that, he has also referred to the letter written by the assessee to the Assessing Officer wherein assessee has stated that he has no objection if any addition is made in the assessment order. Such a letter of the assessee, first of all does has lost its relevance, because

the addition in the first round was deleted by the Tribunal and again matter has been restored back by the Hon'ble High Court to be decided afresh. Secondly, the difference in the Valuation was on cost of construction which was not in dispute. Ld. CIT(A) has noted that assessee had shown certain assets in his balance sheet in the form of certain equipments, but there is no addition in respect of furniture and fixture, air conditioner, etc., which is required in the jeweler's shop. However, such an observation is again based on certain surmises, because *de hors* any material coming on record that there was any investment outside the books of account or any spot enquiry no inference can be made on hypothetical manner, especially under the deeming provision of section 68 or 69. From the perusal of the audited balance-sheet, it is seen that assessee as on 01.04.2001 had shown furniture and fixture at Rs.24,848/- and other assets in the form of equipments. If assessee has not made any addition in this year in fixture and furniture, that does not mean that assessee must have made any investment outside the books, especially, when there is no material to support the same. There is no actual verification that assessee has installed any air conditioner during that period, and therefore, to presume that the assessee must have made certain investment in such equipments which is required in jeweler's shop cannot be the basis for addition. Once, the basis of surrender and letter written by the Assessing Officer stands negated by the Tribunal later on by the High Court in the sense that the Hon'ble High Court has directed the Assessing Officer to consider the issue of purported investment afresh and

assessee is open to challenge the said proposed addition on the ground that there is no basis for making such addition, then it was not open for the Assessing Officer to again make the addition on same reasoning. If the assessee has denied making any such investment and had shown certain investment in the books, then onus shifts upon the Assessing Officer to bring on record either by way of inquiry or any material which has been found during the course of survey that there was certain investment in fixture and furniture during the relevant Assessment Years. Even in the DVO's report the subject matter of valuation was not the investment in fixture and furniture but was only restricted to the investment made in the construction of building. Thus, even the DVO's report does not support the case of the Assessing Officer.

8. Under these facts and circumstances of the case, once there is no material to support such addition then addition cannot be made on certain estimate or presumption and accordingly same is directed to be deleted.

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

Order pronounced in the open Court on 12th April, 2019.

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 12th April, 2019

PKK: