

आयकर अपीलीय अधिकरण, 'ए' / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.426 & 427/Chny/2018

निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

Shri Kundalik Rao Sait Manoj
Kumar,
167, Bazaar Street,
Chidambaram – 608 001.

v. The Income Tax Officer,
Ward 3,
Cuddalore.

PAN : AEWPM 8087 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Quadir Hoseyn, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 18.07.2019

घोषणा की तारीख/Date of Pronouncement : 24.07.2019

आदेश / O R D E R

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals), Puducherry, for the assessment years 2012-13 and 2013-14. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Let us first take the assessee's appeal for assessment year 2013-14.

3. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the first issue arises for consideration is addition of ₹21,51,120/- towards unaccounted purchase of jewellery. The Ld.counsel submitted that the assessee is not pressing this ground of appeal. The Ld.counsel further submitted that except ground No.3 with regard to addition of ₹8,97,820/- towards unaccounted purchase of silver, all other grounds are not pressed. The Ld.counsel has also made an endorsement to that effect in the file. Accordingly, other than the ground, which relates to addition of ₹8,97,820/- towards unaccounted purchase of silver, all other grounds are dismissed as not pressed.

4. Now coming to ground No.3 with regard to addition of ₹8,97,820/- . Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that during the course of survey operation, the Revenue authorities found stock of 18559.53 grams of silver jewellery which were valued at ₹8,79,820/-. According to the Ld. counsel, the assessee explained before the Assessing Officer that the silver jewellery belongs to the assessee's wife, which was received at the time of marriage and the same was kept in safety in the lockers of the business premises. According to the Ld. counsel, the Assessing Officer disbelieved the claim of the assessee only on the ground that this was not stated during the

course of survey operation. According to the Ld. counsel, the personal jewellery of the assessee cannot be treated as stock-in-trade of business, therefore, the CIT(Appeals) is not justified in confirming the disallowance.

5. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that even though the assessee claimed before the Assessing Officer that the jewelleryes are personal jewelleryes of the assessee's wife and no such statement was made during the course of survey operation. Moreover, no evidence was filed before the Assessing Officer saying that the silver jewellery belongs to the assessee's wife. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

6. I have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that the silver jewellery belongs to his wife. The assessee is in the business of jewellery. Giving jewellery to the respective girl child by the parents is an usual practice in this part of country. Therefore, the Assessing Officer cannot deny the claim of the assessee merely because such a plea was not made during the course of survey operation. The quantum of silver jewellery may differ from person to person with regard to personal capability of each individual. The assessee being in the business of jewellery, this Tribunal is of the considered opinion that the assessee's wife might have received jewellery valued to the extent of

₹8,79,820/-. At the time of marriage, when the parents give Sridhan in the form of silver / gold jewellery, the girl child may not have any evidence other than the jewellery. In other words, expecting material evidence for the gift received by the assessee's wife at the time of marriage is tantamount to asking for impossible one to prove by the assessee. It is not a practice prevailing in this part of the country to give any evidence along with the gift to the girl child at the time of marriage with regard to jewellery. Therefore, expecting evidence may not be correct as far as the gift said to be received by the assessee's wife at the time of marriage. Therefore, this Tribunal is unable to uphold the orders of the authorities below. Accordingly, orders of both the authorities below are set aside and the addition of ₹8,79,820/- is deleted.

7. Now coming to the assessment year 2012-13, the first ground of appeal is with regard to addition of ₹19,05,225/- being the value of the opening stock of jewellery. The second ground of appeal is with regard to addition of ₹9,36,041/- towards unaccounted purchase of jewellery. The third ground is with regard to addition of ₹6,40,000/- towards investment in refinery business.

8. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee submitted that during the course of survey operation, the Assessing Officer found opening stock to the extent of ₹19,05,225/- and unaccounted jewellery to the extent of ₹9,36,041/- and investment in the

refinery business to the extent of ₹6,40,000/-. However, the same were not offered in the return of income even though it was unearthed during the course of survey operation. According to the Ld. counsel, the assessee has not produced any material before the Assessing Officer. The assessee was asked to explain the source for investment in respect of the above three additions. According to the Ld. counsel, the assessee claimed before the Assessing Officer that these are all the money received on redemption of gold jewellery by the respective persons in respect of the assessee's father's business. According to the Ld. counsel, details of redemption were found by the Revenue authorities during the course of survey operation. The Assessing Officer conveniently omitted the money received by the assessee which was available for investment, during the course of survey operation. In fact, the materials impounded during the course of survey operation are in the custody of the Department. According to the Ld. counsel, the copies of those documents were filed before this Tribunal. Referring to the paper-book and also impounded materials during the course of survey operation, the Ld.counsel submitted that the assessee had ₹37,92,473.50 in the form of cash as per the books, received on redemption of jewellery. According to the Ld. counsel, when the details were available with the Department in the form of impounded documents, this was not considered by the Assessing Officer as well as the CIT(Appeals).

9. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee submitted before the Assessing Officer that source for investment in jewellery business and refinery business was from the redemption of money received from his late father's pawn broking business. According to the Ld. D.R., the assessee has not filed the copies of return filed by the assessee's father to ascertain the actual availability of the funds. The assessee has not filed any wealth-tax return also. During the course of survey operation, the assessee claimed that the opening stock represents his own old jewellery. However, on examination, according to the Ld. D.R., the assessee made statement that the initial capital was out of the redemption amount made from his father's pawn broking business. Therefore, according to the Ld. D.R., the Assessing Officer found that the stand taken by the assessee is an afterthought.

10. I have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee's father was in pawn broking business. The assessee made a statement during the course of examination that the redemption amount received from his late father's pawn broking business was available for making investment in the jewellery and refinery business. The material found during the course of survey operation, which was impounded by the Revenue authorities, discloses the availability of funds

to the extent of ₹37,92,473.50. This fact is not in dispute. Therefore, the redemption amount was very much available with the assessee for making investment in the jewellery business and refinery business. Therefore, this Tribunal is of the considered opinion that the amount received by the assessee by way of redemption of jewellery from the assessee's father's pawn broking business was available for making investment to the extent of ₹19,05,225/- which was added as opening stock of jewellery and also unaccounted purchase to the extent of ₹9,36,041/- apart from investment to the extent of ₹6,40,000/- in the refinery business. In view of the availability of funds established by the assessee on the basis of material found during the course of survey operation, which was impounded by the Revenue authorities, this Tribunal is unable to uphold the orders of both the authorities below. Accordingly, orders of both the authorities below are set aside and the entire addition is deleted.

11. In the result, both the appeals filed by the assessee stand allowed.

Order pronounced in the court on 24th July, 2019 at Chennai.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 24th July, 2019

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Puducherry
4. Principal CIT, Puducherry
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.