

आयकर अपीलीय अधिकरण, 'डी/ एस एम सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D/SMC' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं के समक्ष ।
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.Nos.1370, 1371 & 1372/Chny/2019
निर्धारण वर्ष /Assessment years : 2003-04, 2004-05 & 2005-06

Shri A. Naresh Chand,
105, Car Street,
Tiruvannamalai.

Vs. The Asst. Commissioner of
Income-tax,
Central Circle-IV(2),
Chennai.

[PAN: AABPN 9135C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri B. Ramakrishnan, FCA
: Shri M. Srinivasa Rao, CIT

सुनवाई की तारीख/Date of Hearing

: 16-07-2019

घोषणा की तारीख /Date of Pronouncement

: 02-08-2019

आदेश / ORDER

PER N.R.S.GANESAN, JUDICIAL MEMBER

All the appeals of the assessee are directed against the common order of the Commissioner of Income-tax Chennai-18, Chennai (hereafter called as 'CIT(A)'), dated 22.02.2019 and pertains to assessment years 2003-04, 2004-05 & 2005-06. Since common issues arise for consideration, all the appeals are heard together and disposed off by this common order.

2. Shri B. Ramakrishnan, the Id. counsel for the assessee submitted that there was no material found during the course of search operation for assuming jurisdiction of the assessment made u/s. 153C of the Income Tax Act, 1961 (herein after called as 'the Act'). Therefore, the assessment order passed u/s. 153C of the Act is not justified.

3. On the contrary Shri M. Srinivasa Rao, Id. Departmental Representative (DR) submitted that the gold jewellery was found during the course of search operation which was seized. Therefore, it is obligatory on the part of the assessee to explain the source for investment in the jewellery. On the basis of the statement recorded during the course of search operation, the Assessing Officer (AO) came to the conclusion that the jewellery belongs to the assessee therefore, a notice u/s. 153C of the Act was issued for assessing the undisclosed income. Hence, it is not correct to say that there was no search material.

4. I have considered the rival submissions on either side and also perused the material available on record. Admittedly, there was a search operation in the premises of Shri Kamal Chand Jain, the brother of the assessee on 13.09.2005. During the course of search operation,

jewellery was found to the extent of 2890.5 grams apart from the personal jewellery. On examination the assessee explained that the gold jewellery to the extent of 3.5 KG was not recorded in the regular books of account. This jewellery according to the assessee was accumulation of gold in the manufacturing business, which was carried on the last three years. There was no reference about the seized material other than the gold jewellery. At para 5 of the impugned order of the assessment, the AO observed that the jewellery belongs to assessee's parents was found during the course of search operation. Admittedly, the assessee herein being the person other than the searched person, the AO was expected to record a satisfaction before initiating proceedings against the assessee. It is not known whether such satisfaction was recorded or not? The assessment records are not readily available before this Tribunal for verification therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined by the AO. Accordingly, the orders of both the lower authorities are set aside and the issue with regard to assumption of jurisdiction u/s. 153C of the Act is remitted back to the file of the AO. The AO shall re-examine the matter and bring on record the entire search material and the satisfaction, if any recorded before initiating proceedings u/s. 153C of the Act and thereafter, decide the issue

afresh in accordance with law after giving a reasonable opportunity to the assessee.

5. Now coming to the merit of the appeal, during the course of search operation, the Revenue authorities found 2890.5 grams of gold jewellery. The Id. CIT(A) after considering the case of the assessee found that the assessee explained the source for 1140 grams of gold jewellery. What is to be explained is balance of 1954 grams of jewellery. The findings recorded by the Id. CIT(A) for giving relief to the extent of 1140 grams jewellery is not challenged by the Revenue before this Tribunal. Therefore, the finding of the Id. CIT(A) with regard to the source to the extent of 1140 grams jewellery attains finality. Now coming to the balance of 1954 grams of the jewellery, this Tribunal is of the considered opinion that the matter needs to be re-examined by the AO on the basis of the material that may be available on record. Furthermore, since the very jurisdiction to pass assessment order u/s. 153C of the Act is remitted back to the file of AO, this Tribunal is of the considered opinion that the source for acquiring the balance jewellery of 1954 grams also needs to be re-examined. Accordingly, the orders of both the authorities below are set aside and the issue with regard to the source of 1954 grams of

jewellery alone is remitted back to the file of AO. The AO shall re-examine the matter afresh and decide the same in accordance with law after giving reasonable opportunity to the assessee.

6. With the above observations, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced on the day of 02nd August, 2019, in Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai, दिनांक/Dated: 02nd August, 2019.

EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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