

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

I.T.A. No. 5835/Mum/2018 (Assessment Year 2012-13)

Anjana Srivastava 3B-904, N.G.Suncity Phage 3, Thakur Complex Kandivali East Mumbai-400 101. PAN : DETPS3902D	Vs.	ITO 33(1)(1) Room No. 705 7 th Floor Prastyakshkar Bhavan, C-12 Bandra Kurla Complex Mumbai-400 051.
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri Akhtar H. Ansari
Date of Hearing	25.11.2019
Date of Pronouncement	30.01.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against order of learned CIT(A) dated 4.6.2018 and pertains to assessment year 2013-14.

2. The grounds of appeal read as under :-

1. The Commissioner of Income Tax (Appeals) erred in confirming the order of I.T.O. to the extent of treating 50% of sale consideration of jewelry sold Rs. 10,02,725(50% of sale Rs.20,05,450/-) as income from undisclosed source as the said jewelry was not reflected in Balance Sheet of appellant. Under the facts & circumstances of the matter he ought not to have confirmed the said order of I.T.O.by treating Rs. 10,02.7257- as income from undisclosed Source.
2. The Commissioner of Income Tax (Appeals) erred in not following the decision of Shakuntala Somani Vs.1TO.decided by Indore Bench of 1TAT wherein it was held that even if the Jewellery which was received at the time of marriage, was not reflected in the Balance Sheet looking to Nil acquisition value, sale of jewelry has to be accepted.
3. The Commissioner of Income Tax (Appeals) erred in not treating the whole jewelry sold weighing 802.180 gms. as "stridhan". Under the facts and circumstances of the matter he ought to have treated the whole jewelry of 802.180 gms as "stridhan".

3. Brief facts of the case are as under :-

It came to the notice of the AO during the assessment proceedings that the assessee contributed certain amount for purchase of immovable property out of the sale proceeds of jewelry. AO also noticed from the return of income that the assessee sold jewelry for Rs.20,05,450 and claimed 54F of Rs.12,66,949 against the capital gains of Rs.12,66,949. In response to notice, the assessee filed valuation report of jewelry as on 29.07.2002 given by Mahavir Lodha, Government approved valuer. Net weight of the gold is 824.310 grams as per the valuation report. She also filed jewelry sale bill 01 Keshav Impex for purchase of old gold ornaments of 802,180 grams at the rate of Rs.2500 per gram for a total amount of Rs.20,05,450. AO did not accept the documents filed in support of the sale of gold, on the ground that no gold jewelry is reflected in the Balance Sheet of the assessee for AY 2012-13 on the record. It is opinion of the AO that when the jewelry was not appearing in the Balance Sheet of the assessee, the sale of the same cannot be accepted. He, therefore, held that Rs.20,05,450 used by the assessee for purchase of house was unexplained money/income of the assessee and added to the total income.

4. Upon assessee's appeal learned CIT(A) noted that the submissions of the assessee was the same as before the assessing officer. He held that assessee's reference to CBDT circular for a married lady being allowed 500 gm of jewelry in the case of search and seizure cannot come to the rescue of the assessee. He further held that it is not acceptable that the assessee would sell the entire stridhan received at the time of marriage. He further drew adverse inference for the nondisclosure of the same in the earlier balance sheet. However he did not refer to any infirmity in the jewelry valuation report or the sale bill submitted by the assessee. However referring to the ITAT decision in the case of Shakuntala Somani Vs. ITO. He granted 50% relief to the assessee.

5. Against the above order assessee is in appeal before the ITAT.
6. We have heard the learned departmental representative. None appeared on behalf of the assessee. Upon careful consideration we find that assessee has submitted all the necessary evidence for the sale of jewelry. The duly supported valuation report and the sale bill were duly furnished. No infirmity in the same has been found. It is also not the case that assessing officer has made any enquiry and found that the submissions were false or fabricated. In these circumstances when there is no doubt about the sale of jewelry, the rejection of the source of funds for the house property on surmise and conjecture is not sustainable. No case has been made out by the authorities below that the addition is being made for the unexplained sale of jewelry. Moreover assessee is also correct in submitting that learned CIT(A) has rejected the submissions without cogent reasoning even after referring to the ITAT decision he is not fully following the ratio. In our considered opinion when assessee has given detail evidence of the sale of jewelry and no infirmity has been found in the same and the same sale proceeds were claimed to have been used for the purchase of the house property, the case of the revenue that source for the acquisition of house property is unexplained miserably fails. Accordingly we set aside the orders of authorities below and delete the addition.
7. In the result this appeal by the assessee stands allowed.

Order has been pronounced in the Court on 30.1.2020.

SD/-
(PAWAN SINGH)
JUDICIAL MEMBER

SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 30/01/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai