

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

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

Through Video Conferencing

I.T.A. No.3183/DEL/2011
Assessment Year: 2006-2007

Shri Ashwani Kumar, Legal heir of late Shri Satish Arora, L-9, Vijay Chowk, Laxmi Nagar, Delhi.	vs.	Asst. CIT, Central Circle-12, New Delhi.
TAN/PAN: AAJPA9425C		
(Appellant)		(Respondent)

Appellant by:	Shri Rajeev Saxena, Adv. & Ms. Sumangla Saxena, Adv.		
Respondent by:	Shri Sanjay Goel, CIT-DR		
Date of hearing:	20	07	2020
Date of pronouncement:	31	08	2020

ORDER

PER AMIT SHUKLA, JUDICIAL MEMBER:

The aforesaid appeal has been filed by the assessee against the impugned order dated 30.03.2011, passed by Ld. Commissioner of Income Tax (Appeals)-I, New Delhi for the quantum of assessment passed u/s.143(3)/153A for the Assessment Year 2006-07. In various grounds of appeal, the assessee has challenged estimation of sales at Rs.3,50,93,668/- on the basis of seized documents and

thereby making addition of Rs.12,75,683/- by taking 5% net profit on such alleged sales.

2. The facts in brief are that a search and seizure action was carried out u/s.132 on 09.12.2005 at the residence of the assessee, during the course of which certain documents were found and seized. The assessee is carrying out business of jewellery on wholesale basis. Initially the return of income was filed on 02.08.2006 declaring income of Rs.91,690/-, showing salary and interest income which was later on revised to Rs.5,70,690/- on 19.12.2007 which included undisclosed income of Rs.4,79,000/- from jewellery business. The main issue raised in the present appeal is that the Assessing Officer had made a mistake in construing the weight of the purchases as noted in the seized document to be alleged sales in value by taking figure of Rs.3,50,93,668/-. It was stated before the Assessing Officer and Ld. CIT (A) that the assessee is a Senior Director in M/s. Arora Jewellers Pvt. Ltd. which was engaged in manufacture and sale of gold and silver jewellery. The said company had shown GP rate of 20.45% from the manufacture and retail sales of gold jewellery. But in the final result, it had shown business loss of Rs.4,33,236/- on its sales for this year as against the net profit of Rs.4,79,000/-. The assessee was also carrying out wholesale business in his individual capacity which was said to be incomparable to the business of the said company, and therefore, Assessing Officer should not have applied the net profit rate of 20.48% as against the GP rate of 20.48% on the

basis of alleged unrecorded sales of Rs.3,50,93,668/- which was based on total interpretation made by the Assessing Officer from the seized document. This was based on certain calculation at page 4 of Annexure-I of the seized document. The assessee's submission in this regard before the Assessing Officer and Ld. CIT (A) were as under:-

"7.2 It has been submitted that as per page 4 of Annexure-I, the last balance of gold jewellery weighed 2040.530 gms. The appellant sold gold jewellery weighing 298.990 gms. Whereupon the appellant had been left with gold jewellery of weighing 1741.540 gms. The appellant had purchased gold jewellery weighing 994.470 gms. In this year whereupon the closing balance of the gold jewellery weighted 2736.010 gms. The Assessing Officer did not appreciate the true position but erred in assuming that the closing balance of gold Jewellery weighing 2736.010 represented alleged sales of the appellant of Rs. 27.36.010 without there being any material whatsoever in support of the alleged sales.

7.3 It has also been submitted that as per page 13 of Annexure A-I, the appellant had purchased gold Jewellery weighing 13 gms. besides the opening jewellery weighing 1.382.230 gms. Thus the appellant had closing balance of gold Jewellery weighing 1395.320 gms. The Assessing Officer had, however, erred in assuming that Jewellery weighing 1395.320 represented the alleged sales of gold Jewellery of the value of Rs. 13,95,320 without there being an iota of evidence in support of the alleged sales. Acting on

the basis of the said mistakes, the Assessing Officer estimated the sales of the appellant for this year at Rs. 3,50,93,668 as against the sales of Rs. 95,75,449 which had been shown by the appellant in respect of his business carried on wholesale basis from a part of his residence.”

3. The Ld. CIT(A) has accepted that assessee has been carrying on business of purchase and sale of gold jewellery and silver ornaments from a part of his residence in his individual capacity for which assessee has shown net profit of 5% on sale of Rs.95,75,449/-. Such business has been accepted in the assessment order for Assessment Year 2001-02, wherein Net Profit rate of 2.8% on sale has been accepted. He has also accepted that business of M/s. Arora Jewellers Pvt. Ltd. for the manufacture and sale on gold jewellery and silver ornaments on retail basis from two showrooms was distinguishable from the business of the assessee which he was carrying on wholesale basis in his individual capacity. He held that in these facts and circumstances, Assessing Officer was not justified in applying the Net Profit rate of 20.48% on sales of Rs.3,50,93,668/- and he has not given any reason as to how he has to arrive at figure of such sales. Despite making such an observation, Ld. CIT(A) held that the assessee also could not substantiate the correctness of the figure of sales of Rs.95,75,449/- as declared by him in the revised return, and accordingly, he treated the unrecorded sales as per seized paper at Rs.3,50,93,668/- and applied 5% instead of 20.48% taken by the Assessing Officer on

unrecorded sales, which worked out to Rs.17,54,683/-. Since assessee had already disclosed Rs.4,79,000/- the net undisclosed profit was worked out at Rs.12,75,683/-.

4. Before us, ld. counsel for the assessee, Mr. Rajiv Saxena submitted that the entire basis of taking the alleged unrecorded sales is erroneous for the reason that; firstly, the Assessing Officer has taken quantity/weight of the jewellery as value; secondly, the assessee himself has given the working and the calculation of net profit including sale and purchase were worked out from the seized material itself. There is no dispute regarding quantity of purchase and sale. The observation of the Assessing Officer that the assessee has not furnished any explanation is absolutely wrong, because entire details of purchases and sales as recorded in the seized document were duly furnished before the Assessing Officer and were also furnished before the Ld. CIT (A). He pointed out from the letter written to the Assessing Officer, copy of which has been placed in the paper book, wherein the assessee has given specific reply and Annexure-wise details, in response to the query raised by the Assessing Officer. Similarly, he pointed out that similar detailed submissions were made before the Ld. CIT (A) also. As an example he explained that, from the perusal of the seized document which has been placed at page 82 of the paper book amount inferred by the Assessing Officer was Rs.27,36,010/- which in fact is 2736.010 gms. of gold and it has already been offered as a sale of gold ornaments in the income declared. Further at

page 81, the Assessing Officer has taken the figure of 3,42,444/- which in fact is 37.500 gms of gold jewellery. He has referred to various other seized documents placed in the paper book to point out that what was recorded were the quantity and weight-wise details of gold jewellery which has been inferred by the Assessing Officer as value in terms of rupees. Thus, the entire basis of the sales taken by the Assessing Officer is incorrect. He further submitted that in the earlier years similar mistake was done by the Assessing Officer which has been duly accepted by the Ld. CIT (A). Thus, the basis of alleged sales on estimating the net profit is based on mis-appreciation of facts and misinterpretation of the seized documents.

5. On the other hand, ld. DR strongly relied upon the findings of the Ld. CIT (A).

6. After considering the rival submissions and on perusal of the relevant findings and material referred to before us, at the time of hearing, we find that the only controversy is with regard to the estimation of sales of Rs.3,50,93,668/- on the basis of certain seized documents which according to assessee is Rs.95,75,449/- which has been declared by the assessee himself. The calculation made by the assessee is based on the seized material itself which has been declared in the return of income. First of all, we find that the assessee right from the stage of the assessment proceedings has been clarifying that the quantity of purchase and sale mentioned in

the seized documents has duly been disclosed in the working of purchase and sale of jewellery and the figures are not in terms of value. Prima facie the figures of weight/quantity has been wrongly inferred by the Assessing Officer. This explanation was also given before the Ld. CIT (A) also as incorporated above.

7. For instance, from the perusal of the seized documents annexed at page 82, reflects that there was a closing balance of gold jewellery 2763.010 gms which are in terms of quantities and the Assessing Officer has interpreted the same as alleged sales of Rs.27,63,010. It was specific clarified before the authorities below that the difference between the weight and the value was determined depending upon the purity of the gold as reflected in the working giving in the seized documents. A bare perusal of these documents read with explanation it is quite clear that the value of the quantity of the gold jewellery has been inferred as in terms of value and the sales has been estimated on the basis of values instead of working given by the assessee in terms of quantity of purchase and sale. The sales declared by the assessee at Rs. 95,75,449/- in fact tallies with the entire quantity recorded in the seized documents and the difference is only on account of inference drawn by the Assessing Officer that these quantities are in fact in rupees. Otherwise there is no difference in quantities mentioned in the seized records. Thus, we hold that this estimation of sale at Rs.3,50,93,668/-

is erroneous and addition of Rs.12,75,683/- is directed to be deleted.

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

Order pronounced in the open Court on 31st August, 2020

Sd/-
[G.S. PANNU]
[VICE PRESIDENT]

DATED: 31/08/2020

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER