

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JM AND SHRI N. K. PRADHAN, AM

ITA No. 4996/Mum/2018
(Assessment Year: 2013-14)

Jaysing Laxmanrao Deshmukh 185, Mahatma Co.op. Hsg. Soc., Kothrud, Pune – 411 029	Vs.	Dy. CIT, Central Circle – 8(3) 676-A, 6 th Floor, Aaykar Bhavan, Mumbai-400 020
PAN/GIR No. AANPD 1424 A		
(Appellant)	:	(Respondent)
Appellant by	:	Shri CA Makarand Lonkar
Respondent by	:	Smt. MJ Samatha
Date of Hearing	:	17.09.2020
Date of Pronouncement	:	22.09.2020

ORDER

Per Saktijit Dey, JM:

This is an appeal by the assessee against the order dated 06.06.2018 of the learned Commissioner of Income Tax (Appeals)-50, Mumbai ('ld.CIT(A) for short) pertaining to the assessment year (A.Y.) 2013-14.

2. As per the concise grounds of appeal, ground nos. 1 to 4 relate to the addition made of Rs.13,15,618/- on account of unexplained investment in gold and diamond jewellery and silver articles. Whereas, in ground no. 5, the assessee has challenged the levy of interest u/s. 234B of the Income Tax Act, 1961 (the 'Act' for short). Ofcourse, vide letter dated 03.09.2019, the assessee has raised an additional ground challenging the addition made on account of unexplained investment alleging that such addition is not based on any incriminating material found as a result of search and seizure operation.

3. At the outset, we proceed to deal with ground nos. 1 to 4, wherein the assessee has challenged the addition of Rs.13,15,618/- on merits.

4. Briefly the facts are that the assessee is an individual. For the assessment year under dispute, the assessee filed his return of income on 30.07.2013 declaring total income of Rs.1,06,64,728/-. A search and seizure operation u/s. 132 of the Act was carried out in case of M/s. Walchandnagar Industries Ltd. on 04.12.2012. The assessee being the erstwhile Managing Director and Chief Executive Officer (CEO) of the said concerned was also covered under the search and seizure operation. As stated by the Assessing Officer (A.O. for short), during the search and seizure operation, the following gold/diamond jewellery and silver articles were found in the residential premises and lockers of the assessee :

No.	Particulars	Gross Wt. (gm)	Net Wt. (gm)	Value (Rs.)
1	Gold Jewellery (including diamond studded gold jewellery)	1206.23 gms	1099.63 gms	31,29,625/-
2	Diamonds	18.18 cts		4,70,500/-
3	Silver Articles	8953.8 gms	8448.30 gms	4,13,106/-
				40,13,231/-

5. He, therefore, called upon the assessee to explain the nature and source of acquisition of gold/diamond jewellery and silver articles through supporting evidence. As observed by the A.O., in response, the assessee filed detailed submissions along with reconciliation of ownership of jewellery, purchase bills, as available, and affidavit of his wife, owning up her share of jewellery found during search. On verifying the submissions and the details submitted by the assessee, the A.O. found

that a part of the jewellery was purchased in the name of the assessee and his spouse and supported by bills and invoices. Further, the payments towards purchase of such jewellery have been made either through cheque or credit card. Therefore, out of the gold jewellery found during the search and seizure operation, the A.O. accepted 251.3 grams of jewellery to be explained, as they were purchased through payment in cheque/credit card. Out of the balance amount of jewellery, the A.O. granted allowance of 500 grams net weight of gold for assessee and his spouse, considering the Indian custom, status of the assessee and the income returned by him. Thus, out of net 1099.63 grams of gold jewellery, the A.O. accepted 751.3 grams as explained. Insofar as, the balance amount of jewellery, the A.O. observed that they were either purchased through cash, or, as per the explanation of the assessee, were received as gift at the time of marriage and other social occasions. Alleging that the assessee failed to explain the source of acquisition of such jewellery through proper evidence, the A.O. treated them as unexplained and added back the amount of Rs.9,50,855/- u/s. 69A as unexplained investment.

6. Similarly, in respect of diamond jewellery, the A.O. accepted 12.49 carats as explained, since the payment towards purchase of such jewellery was made through cheque. Alleging that the balance 5.69 carats were purchased through cash, the source of which could not be explained, the A.O. added back the amount of Rs.1,47,257/- as unexplained investment u/s. 69A of the Act.

Insofar as the silver articles are concerned, providing a similar reasoning, the A.O. added back Rs.2,17,506/- as unexplained investment u/s.69A of the Act. Thus, in total, the A.O. made an addition of Rs.13,15,618/-.

7. The assessee challenged the aforesaid addition before the first appellate authority. However, the Id. CIT(A) sustained the addition made by the A.O.

8. The Id. Authorized Representative (AR for short) submitted that the A.O. as well as Id. CIT(A) have failed to consider the facts and evidences brought on record by the assessee. He submitted, in the course of assessment proceeding, the assessee has explained the source of acquisition of each item of gold/diamond jewellery and silver articles found during search and seizure operation through supporting invoice, bills, etc. In this context, he drew our attention to the copy of the reconciliation statement placed at pages 155 and 156 of the paper book. He submitted, the assessee was previously holding high official position and retired as a Managing Director and CEO. He submitted, from the A.Y. 2009-10 onwards, the assessee has consistently declared income of more than Rs.1 crores. He had total investment of Rs.4.74 crores in addition to immovable property. He submitted, the complete bill wise and year wise purchase of jewellery which was reconciled with the punchanama prepared at the time of search and seizure operation and the reconciliation statement was also furnished before the A.O. and Id. CIT(A). He submitted, without properly examining the facts and evidences brought on record, the A.O. has arbitrarily treated a part of the jewellery and silver articles found as unexplained on a baseless allegation that they

were purchased through cash and unexplained gifts. Proceeding further, he submitted, the so called cash purchases as alleged by the A.O. were not cash purchases at all. He submitted, the assessee has participated in 'monthly bhisi scheme' of certain reputed jewellery brands including Tanishq under which the assessee makes monthly contribution through cheque and credit card and at the time of maturity of the scheme, the assessee received gold jewellery. He submitted, such purchase of gold and diamond jewellery have been treated as cash purchases, though, they are not so. Drawing our attention to the statement, a copy of which is placed at page 70 of the paper book, he submitted that by participating in 'monthly bhisi scheme', the assessee has made cash payment only to the extent of Rs.1,88,810/- and the balance amount was through cheque and credit card. In this context, he also drew our attention to the bills and invoices placed in the paper book. Further, he submitted, the assessee had also converted some old ornaments to new ornaments by paying only making charges. Drawing our attention to a statement at page 75 of the paper book, he submitted, the cash payment involved was only Rs.16,362/- representing the making charges. In this context, he also drew our attention to the connected bills and invoices. Thus, he submitted, the allegation of cash purchase is without any basis. As regards the gifts received, the Id. AR drew our attention to the affidavit furnished by the assessee's wife, a copy of which is at page no. 90 of the paper book. He submitted, in the said affidavit, the assessee's wife has very clearly and categorically stated the receipt of gold/diamond jewellery as gifts on different occasions. Therefore, without verifying the authenticity of the averments made in the affidavit, cannot be rejected. The Id. AR

submitted, assessee's family consists of two married ladies, i.e., wife and daughter-in-law and five male members, being the assessee, his two sons and two grandsons. He submitted, if the allowance is allowed in respect of his family members as per CBDT Instruction No. 1916 dated 11.05.1994, the total jewellery and silver articles found during the search would stand explained. Thus, he submitted, the addition has to be deleted.

9. The Id. Departmental Representative (Id. DR for short) strongly relied upon the observations of the A.O. and the Id. CIT(A).

10. We have considered the rival submissions and perused the materials on record. From the facts on record, it is very much clear that the A.O. has accepted a part of gold/diamond jewellery and silver articles to be explained, for which payments were either made through cheque or credit card. Whereas, the balance amount of the jewellery and silver articles have been treated as unexplained investments alleging that either they have been purchased in cash or the claim of receipt of gifts have not been proved. It is further observed, the A.O. has categorically stated in the assessment order that to explain the nature and source of acquisition of jewellery and silver articles, the assessee had furnished a statement reconciling the gold/diamond jewellery and silver articles as per Punchnama. Further, in supporting of such statement, the assessee has furnished the purchase bills/invoices and other documentary evidence. The A.O. has not found any defect/discrepancy in such

statement, bills and invoices. According to him, only because the payments for some items were made in cash, it is not believable.

11. As regards the aforesaid allegation of the A.O., we have noted from the material placed on record that such allegation is not on the basis of the facts on record. On the contrary, the facts on record clearly indicate that there is no such cash purchases as alleged by the A.O. We have noted, the assessee had participated in 'monthly bhisi scheme' by certain reputed jewellery makers including Tanishq under which the assessee makes monthly payment in cash or credit card and after some duration, it received gold ornaments representing the contribution made. Only a small amount of Rs.1,88,810/- was paid in cash. The bills/invoices and payment receipts furnished in the paper book clearly prove assessee's claim. Similarly, the assessee has converted old ornaments to new ornaments by paying making charges. In this regard, the assessee has furnished the requisite documentary evidences to prove his claim. Only an amount of Rs.16,363/- was paid in cash towards making charges. Thus, the allegation of the departmental authorities that the assessee has purchased the gold and silver articles by making cash payment is without any basis and contrary to evidences brought on record. As regards the allegation of the A.O. that the assessee has not proved the receipt of jewellery/gold and silver articles as gifts, it is noticed, during the assessment proceedings, the assessee had furnished an affidavit of his wife, wherein the receipt of gifts on specific events have been clearly mentioned. The averments made in the affidavit have not been dislodged or proved false by the A.O. by bringing any contrary evidence on record. Further, looking at the status/reputation of the

assessee and the amount of income he has declared annually in the return of income filed, it cannot be denied that the assessee is a man of means and had the capacity to make the investment in gold/diamond jewellery as well as silver articles. It also needs to be observed that the A.O. has allowed an allowance of 500 grams in respect of gold jewellery only in respect of assessee and his wife. Whereas, as per CBDT Instruction No. 1916 dated 11.05.1994, the allowance of 500 grams has to be granted in respect of each married lady and 250 grams for each unmarried girl and 100 grams for each male member of the family. Now, it has been well settled that the aforesaid CBDT Circular would also be applicable in respect of addition made u/s. 69A of the Act. If one goes by the aforesaid CBDT Instruction, then, there will be no unexplained jewellery to be treated as unexplained investment u/s. 69 A of the Act. Thus, looked at from any angle, the addition made by the A.O. on account of unexplained investment u/s.69A of the Act cannot survive. Accordingly, we delete the addition of Rs.13,15,618/-. The grounds are allowed.

12. In ground no. 5, the assessee has challenged the levy of interest u/s. 234B of the Act. It is the contention of the ld. AR that during the financial year relevant to A.Y. 2013-14, the assessee has crossed 60 years, hence, he is not only a Senior Citizen but the provision of section 207 would be applicable. He submitted, the assessee also did not have any income chargeable under the head profits and gains from business and profession. Therefore, interest levied u/s. 234B has to be deleted.

13. The ld. DR submitted, the A.O. may be directed to verify assessee's claim.

14. Having considered the rival submissions, we find that, though, this issue was specifically raised before Id. CIT(A) however, he has not recorded any substantive finding on the issue. It is the claim of the assessee that in the year under consideration, the assessee did not have any income chargeable under the head profits and gains of business and profession and further he is a Senior Citizen of more than 60 years old. On a reading of section 207 of the Act, it is seen that it speaks of liability to pay advance tax. As per sub section (1), advance tax has to be paid on the total income of the current year in accordance with the provisions of section 208 to 219 of the Act. However, sub section (2) of section 207 which has been inserted by Finance Act, 2012 w.e.f. 01.04.2012 carves out an exception by stating that sub section (1) would not be applicable to a resident individual assessee who does not have any income chargeable under the head profits and gains of business and profession and if he has attained the age of 60 years or more at any time during the relevant previous year. As per the copy of PAN card submitted before us, the date of birth of the assessee is 03.05.1949. Thus, during the previous year relevant to the assessment year under dispute, the assessee has crossed the age of 60 years. Further, it is the claim of the assessee that during the year under consideration, the assessee had no income which is chargeable under the head profits and gains of business and profession. In case, the aforesaid claim of the assessee is correct, no interest u/s. 234B of the Act can be levied in view of the provision contained under sub section (2) of section 207. The A.O. is directed to factually verify the aforesaid claim of the assessee and delete the interest charged u/s. 234B of the Act. This ground is allowed for statistical purposes.

15. Since, we have deleted the addition made towards unexplained investment while deciding ground nos. 1 to 4 raised by the assessee on merits, we do not feel it necessary

of deciding the additional ground. The additional ground having been rendered unfruitful is, therefore, dismissed.

16. In the result, this appeal is allowed as indicated above.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, by placing the details on the notice board on 22.09.2020

Sd/-
(N. K. Pradhan)
Accountant Member

Sd/-
(Saktijit Dey)
Judicial Member

Mumbai; Dated : 22.09.2020
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai