

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA Nos. 527/JP/2019
निर्धारण वर्ष/Assessment Year :2014-15

Shri Vijay Kumar Maheshwari E-94, Shastri Nagar, Jaipur	बनाम Vs.	Dy. Commissioner of Income Tax, Central Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACCPM1828N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA Nos. 526/JP/2019
निर्धारण वर्ष/Assessment Year :2014-15

Shri Ashish Maheshwari, S-758-H, Road No. 9F-1, VKI Area Jaipur	बनाम Vs.	Dy. Commissioner of Income Tax, Central Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AETPM3622F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA Nos. 525/JP/2019
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Dhruv Maheshwari, E-94, Shastri Nagar, Jaipur	बनाम Vs.	Dy. Commissioner of Income Tax, Central Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGDPM1605N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri B. P. Mundra (CA)
राजस्व की ओर से/ Revenue by : Sh. B. K. Gupta (CIT)

सुनवाई की तारीख/ Date of Hearing : 02/09/2021
उदघोषणा की तारीख/Date of Pronouncement: 04/10/2021

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are three appeals filed by the aforesaid assessees against the respective orders of Id. CIT(A)-04, Jaipur dated 27.02.2019 for AY 2014-15. Since the common issues are involved, all these appeals were heard together and are being disposed off by this consolidated order.

2. With the consent of both the parties, the case of the assessee, Shri Vijay Kumar Maheshwari, in ITA No. 527/JP/2019 was taken as the lead case for the purposes of present discussion and adjudication wherein the assessee has challenged the action of Id. CIT(A) in confirming the addition of Rs. 13,69,096/- made by the Assessing officer on account of unexplained investment in Gold & Silver articles u/s 69B of the Act.

3. Briefly stated, the facts of the case are that a search and seizure action u/s 132 of the Act and/or survey action u/s 133A was carried out on the members of Bajrang Group and the assessee is one of the members of the said group. During the course of search at the residential premises of the assessee, jewellery amounting to Rs. 2,34,32,323/- pertaining to various family members was found and individual inventory was prepared for each of the family members wherein the inventory pertaining to the assessee and his wife were also inventorised and was valued at Rs. 95,46,282/-. The Assessing officer noted that the assessee, being the key person of the family, in his statement recorded u/s 132(4) of the I.T. Act, 1961 during the course of search proceedings offered Rs 1,50,00,000/- to tax on account of undisclosed investment in jewellery, whereas in the ROI filled for the relevant period, this surrendered amount was not shown by the assessee in his return of income. As the assessee has not shown it in his ROI, as per the Assessing officer, it has to be taxed individually in hands of the respective persons. The Assessing officer also noted that the assessee has furnished an affidavit stating that to avoid the multiple proceedings, he shall not make technical ground/plea that proposed

unexplained jewellery in the hands of his wife can't be made in his hands. Therefore, considering the affidavit filed by the assessee, the Assessing officer considered entire jewellery found in possession of the assessee and his wife in the hands of the assessee for tax purposes and the assessee was asked to explain the reasons for not complying with the surrender so made during the course of search and source of acquisition of above jewellery. In response, the assessee submitted that after surrender of jewellery, he has filed an affidavit before the DDIT Investigation stating that jewellery was purchased from time to time and was also received from his brother and wife and inherited from his parents and surrender of jewellery was subject to verification of various bills and other documents. The source of acquisition of jewellery was thereafter explained by the assessee in three parts i.e. jewellery purchased by cheque payment, jewellery received in gift from Shri Ajay Kumar Maheshwari and jewellery received from Late Shri Ramswaroop Maheshwari, father of the assessee as well as in his own possession. The reply of the assessee was considered by the Assessing officer and the jewellery equivalent to purchases made by cheque payment was found genuine as source of acquisition. Thereafter, a specific show cause notice dated 23.03.2016 was issued to the assessee to explain the source of remaining jewellery and after calling for the submission from the assessee, out of total jewellery valued at Rs. 95,46,282/-, jewellery amounting to Rs. 40,69,900/- was considered as explained and remaining jewellery valued at Rs. 54,76,382/- was treated as unexplained jewellery and the same was brought to tax u/s 69B of the Act. On appeal, the Id. CIT(A) has allowed part relief of Rs. 41,07,286/- to the assessee and remaining addition of Rs. 13,69,096/- was confirmed and against the said finding, the assessee is in appeal before us.

4. During the course of hearing, the Id. AR taken us through findings of the Id. CIT(A) which are contained at para 5 to 6.5 of the appellate order and the contents thereof read as under:-

"5. The appellant has filed gift declaration certificate by Shri Ajay Maheshwari dated 02-03-2000 which remain undisputed by the AO. Even the affidavit in this regard filed by the Ld. A/R before the AO has not been controverted. Since Shri Ajay Maheshwari is close relative of the appellant and has creditworthiness there is no reason for the AO to dismiss the claim. At this juncture the evidentiary value of affidavit cannot be denied unless the affidavit is proved wrong/defective. It is also mandatory for the AO to summon the person giving affidavit for cross examination as is held in the decision of Hon'ble Supreme Court in the case of Mehta Parikh & Co. thus; it is settled law that when the contents of affidavits are not controverted the deposition should be accepted correct. Reliance is also placed on the following decisions

- (i) Mehta Parikh & Co. v. CIT [1956] 30 1TR 181 (SC)*
- (ii) Dilip Kumar Ray v. CIT [1974] 94 ITR 1 (Born.);*
- (iii) Malwa Knitting Works v. CIT [1977] 107 ITR 379 (MP) and*
- (iv) Sri Krishna v. CIT [1983] 142 ITR 618/13 Taxman 309 (All.).*

5.2 In view of the above the jewellery received from Ajay Maheshwari & considered as unexplained by the AO is not tenable. The addition of Rs.8,95,890 + Rs. 1,44,400 is directed to be deleted.

Jewellery claimed to have been received from (Late Sh. Ramswaroop Maheshwari- Father of Appellant)

6. *The balance jewellery was attributable to the jewellery belonging to father of appellant, Late Shri Ramswaroop Maheshwari. The appellant contended that there was sufficient jewellery in the hands of father and the same was reflected in the last return of income filed. The Ld. A/R also contended that the inquiry with respect to valuation report conducted by the AO are not proper as the notice issued u/s 133(6) of the Act was in respect of Sh. Vijay Maheshwari and NOT Late Sh. Ramswaroop Maheshwari. In this notice the AO specifically inquired about the veracity of valuation report. The Ld. A/R submitted that the same objection was filed before the AO also vide letter dated 11-03-2016, but this objection was overlooked by the AO and no further action taken thereafter. Copy of this letter is also filed before me. In the appellate proceedings the Ld. A/R submitted valuation report of Late Sh. Ramswaroop Maheshwari which was remanded to the AO. In the remand report AO objected for this admission of this valuation report citing following reasons.*

(i) No confirmatory letter issued by V K kankaria was furnished by the assessee in response to letter of AO dated 09/02/2016 and show cause notice dated 23.03.2016.

(ii) M/s Kankaria failed to furnish any documents by stating that record is not available.

(iii) It is beyond human probabilities that the person has reconciled the date of valuation which is more than 12 years without having any documents in his custody.

(iv) The confirmatory letter has been issued on simple paper.

(v) Valuation report dated 12.07.2005 is computer generated without having any serial no. and place of valuation.

6.2 I have considered the totality of circumstances and all the facts and evidence on record. I am in agreement with the Ld. A/R that the notice issued u/s 133(6) of the Act was not proper as it nowhere inquired about the valuation report in the name of Late Sh. Ramswaroop Maheshwari. Regarding the valuation report of Late Sh. Ramswaroop Maheshwari the AO has not been able to rebut the report with any sound reason as under the law any person is not mandated to maintain the books or records beyond 8 years, which is the case here. There is no specific defect or infirmity pointed out by the AO in the valuation report, the objection raised by the AO like valuation report on plain paper or the valuation report not having signature done are at best can be termed as technical objection.

6.3 Coming to the claim of evidence of jewellery in possession of Late Sh. Ramswaroop Maheshwari, the Ld. A/R submitted that the jewellery belong to Late Sh. Ramswaroop Maheshwari who was filing his return of income and substantial jewellery was shown in the return for the AY 2005-06 which was filed by the Legal Heir, Sh. Vijay Maheshwari. Copy of this return is available from page 34 to 46 of APB which was filed before the AO. In this return Late Sh. Ramswaroop Maheshwari has disclosed jewellery etc. under the heading which reads as under:-

"Gold and diamond jewellery & silver utensils since 1952" amounting to Rs. 2,32,080/-".

In simple terms this value of jewellery disclosed in the I.T return translates to substantial amount of gold etc since the value of gold was Rs.76 per 10 gms. However other than this balance sheet entry, there is no other detail which is filed with the return no other detail like break up of

gold &/or diamond which were possessed by ramswaroop maheshwari on 31.3.2005. However the fact of substantial jewellery cannot be denied especially as it is evident from the return of income filed with the department much before the date of search.

6.4 Considering the above, I am of the view that 75% of Rs. 54,76,382/- may be treated as explained. This explained jewellery also includes the following portion of jewellery treated as unexplained by the AO.

1) Jewellery purchased in cash of 226.16 gms the evidence of which are filed in the form of cash drawls and bank statement. Total amount Rs. 2,25,000/-.

2) Jewellery purchased by cheque but bills are not available. Entries in the books like in ledger are filed before me. Total amount Rs. 99,197/-.

6.5 Thus out of the total addition of Rs. 54,76,382/- appellant gets relief of Rs. 41,07,286/-. The addition of Rs. 13,69,096/- is confirmed. The ground is decided accordingly.”

5. It was submitted by the Id AR that firstly, as apparent from para 5.2 of the order of Id. CIT(A), he has accepted the explanation of the assessee as regards jewellery received in form of gift from Sh. Ajay Maheshwari valued at Rs. 10,40,290/-. However, towards the end of his order while summarizing his findings, he has only allowed 75% of the said jewellery as explained. It was submitted that since the explanation of the assessee has been duly accepted by the Id. CIT(A), the addition to the extent of Rs. 10,40,290/- should be deleted in totality instead of restricting it to 75% and the whole of the jewellery

so received as gift be treated as explained jewellery and necessary relief be provided to the assessee.

6. Regarding remaining jewellery in respect of which 25% has been treated as unexplained and part addition has been confirmed, it was submitted that the said finding is in turn based only on a single finding that there is no other details other than balance sheet entries which is filed with the return of income in terms of breakup of gold and/or diamond jewellery which were possessed by Late Shri Ramswaroop Maheshwari as on 31.03.2005. In this regard, it was submitted that the Id. CIT(A) has confirmed that the existence of substantial jewellery cannot be denied especially as it is evident from the return of income filed with the department much before the date of search. It was further submitted that the assessee submitted the valuation report showing detail break up of gold &/or diamond jewellery which were possessed by Late Ramswaroop Maheshwari on 31.3.2005. The said valuation report was obtained by Late Shri Ramswaroop Maheshwari from the registered valuer and handed over to the assessee along with jewellery and the same was submitted before the Assessing officer as well as before the Id CIT(A) and there was no adverse inference recorded by the Id CIT(A) on the verification of valuation report and inspite of that, the addition has been confirmed. It was further submitted that the assessee was having these jewellery recorded in the his books of accounts which was submitted before the AO and the Id CIT(A) and it is thus an undisputed fact that the detail break up of jewellery is very much available on record and was properly recorded in the books of accounts which was produced before both the lower authorities and there is no adverse inference recorded by Id CIT(A) and inspite of that, the additions have been confirmed.

7. It was further submitted that Late Shri Ramswaroop Maheshwari was having sufficient means of possessing the above gold and diamond jewellery. A

copy of his last ITR for A.Y 2005-06 and balance Sheet was furnished to the AO and is placed on record. As per Balance Sheet, the capital account of late Shri Ram Swaroop Maheshwari was of Rs. 93.21 Lacs and God & Diamond Jewellery & Silver Utensils since 1952 was Rs. 2,32,080/- at cost and applying gold price prevailing in 1952 of Rs. 76.81 per Tolla, it comes near about 3 kg. It was accordingly submitted that break up of gold &/or diamond jewellery which were possessed by late Shri Ramswaroop Maheshwari as on 31.3.2005 is very much available on record in terms of valuation report as well as financial statements and in light of the same, the addition so made and confirmed by the Id CIT(A) may kindly be deleted.

8. Per contra, the Id. PCIT/DR submitted that out of total jewellery found during the course of search and valued at Rs. 54,76,382/- which was treated as unexplained jewellery by the Assessing officer, the Id. CIT(A) has already allowed substantial relief of Rs. 41,07,286/- to the assessee and remaining addition of Rs. 13,69,096/- has only been confirmed. It was submitted that it was a case of surrender during the course of search wherein the statement of the assessee was also recorded u/s 132(4) and though the department is not in appeal against the order of the Id CIT(A), the addition to the extent confirmed by the Id CIT(A) should be affirmed. It was further submitted that the Id CIT(A) has rightly held that other than entries in the balance sheet, there is no evidence of possession of jewellery by the late Shri Ram Swaroop Maheshwari. Regarding the valuation report of M/s Kankariya Jewellers, it was submitted that the valuation report has neither been signed by donor of the jewellery nor by the receiver of that jewellery and has only been signed by the valuer. Therefore, genuineness of this valuation report is not proved, hence it can't be taken as valid evidence for source of jewellery as claimed by the assessee. It was submitted that during the course of assessment proceedings, information u/s 133(6) of the I.T. Act, 1961 was called from the valuer to produce/furnish

the copy of the register in which entry regarding the valuation has been made and the copy of bank statement for the relevant period to get verify the entry made in its register regarding the valuation of assessee's jewellery items as well as to verify the receipt of valuation charges by the valuer, but M/s Kankariya Jewellers failed to furnish any of the documents by stating that record is not available. It was accordingly submitted that no cognisance can be taken of the valuation report and the addition so confirmed by the Id CIT(A) be upheld.

9. In his rejoinder, the Id AR submitted that during the course of assessment proceedings, the assessee was asked to explain the reasons as to why the surrender so made in respect of jewellery was not complied with while filing the return of income and in response, it was submitted by the assessee that after surrender of jewellery, he has filed an affidavit before the DDIT Investigation stating that the assessee along with his family members have purchased jewellery from time to time, certain jewellery has been inherited from his parents and also received from his brother and wife and accordingly submitted that surrender of jewellery was subject to verification of various bills and other documents and accordingly, the surrender so made was retracted and not acted upon while filing the return of income. Thereafter, the assessee was asked to explain the source of acquisition and possession of jewellery and in response, the assessee furnished the source of acquisition of jewellery in three parts i.e. jewellery purchased by cheque payment, jewellery received in gift from Shri Ajay Kumar Maheshwari and jewellery received from Late Shri Ramswaroop Maheshwari, father of the assessee as well as in his own possession. The reply of the assessee was considered by the Assessing officer and the jewellery equivalent to purchases made by cheque payment was found genuine as source of acquisition and out of total jewellery of Rs. 95,46,282/-, jewellery of Rs. 40,69,900/- was considered as explained and remaining

jewellery valued at Rs. 54,76,382/- was treated as unexplained jewellery and the same was brought to tax u/s 69B of the Act. It was accordingly submitted that where the AO himself has accepted the fact not all jewellery so surrendered is unexplained and has taken into consideration the retraction in form of affidavit filed by the assessee and has only brought to tax a part of the jewellery which as per the Assessing officer still remain unexplained, there is no basis for accepting the contention advanced by the Id PCIT/DR at this stage that it is a case of surrender of jewellery and in absence of retraction, the addition so confirmed by the Id CIT(A) be upheld.

10. We have heard the rival contentions and perused the material available on record. Firstly, we find that where the Assessing officer himself has accepted the fact not all jewellery so surrendered is unexplained and has taken into consideration the retraction in form of affidavit filed by the assessee and supported by evidence in form of bills and cheque payment and other documentation and has thus accepted a part of the jewellery as explained and has only brought to tax a part of the jewellery which as per the Assessing officer still remained unexplained, there is no basis for accepting the contention advanced by the Id PCIT/DR at this stage that it is a case of surrender of jewellery and in absence of retraction, the addition so confirmed by the Id CIT(A) be upheld. Therefore, the contention so advanced by the Id PCIT/DR cannot be accepted. In any case, the Revenue is not in appeal against the order so passed by the Id CIT(A) and we therefore restrict ourselves to the findings of the Id CIT(A) which are under challenge by the assessee.

11. As regards jewellery received in form of gift from Sh. Ajay Maheshwari which was valued at Rs. 10,40,290/-, it is noted from para 5.2 of the order of Id. CIT(A) that he has accepted the explanation of the assessee and held that "jewellery received from Sh. Ajay Maheshwari and considered as unexplained

by the AO is not tenable and the addition of Rs 8,95,890/- and Rs 1,44,000/- has been directed to be deleted.” There is thus a clear and specific finding of the Id CIT(A) in respect of jewellery received from Sh. Ajay Maheshwari and the addition totaling to Rs. 10,40,290/- has been directed to be deleted. However, the Id CIT(A), in subsequent part of his order where he has discussed the matter in context of jewellery received from Late Shri Ramswaroop Maheshwari in para 6 onwards, while summarizing his findings in para 6.4 has taken the whole of the figure of jewellery amounting to Rs 54,76,382/- treated as unexplained including the jewellery received from Sh. Ajay Maheshwari amounting to Rs 10,40,290/- and has directed to treat 75% of the whole of jewellery of Rs 54,76,382/- as explained and remaining 25% has been treated as unexplained. We therefore find that there is an apparent mistake in form of considering the wrong figure which has occurred in the findings of the Id CIT(A) in para 6.4 of the order when the same is read along with his specific findings at para 6.2 of his order and the figure of Rs 44,36,092/- should have actually been taken instead of Rs 54,76,382/. We accordingly agree with the contention of the Id AR that where the explanation of the assessee has been duly accepted by the Id. CIT(A) in para 6.2 of his order, the addition to the extent of Rs. 10,40,290/- should be deleted in totality instead of restricting it to 75% and the whole of the jewellery so received as gift from Shri Ajay Maheshwari be treated as explained jewellery.

12. Now, coming to the matter relating to jewellery received from Late Shri Shri Ramswaroop Maheshwari, it is noted that the assessee has submitted before the Id CIT(A) as well as before the AO that Late Shri Ramswaroop Maheshwari during the period 2005-06 was not keeping well and wanted to handover the jewellery to the assessee and other family members and for the purposes, has got the valuation of the jewellery done by M/s Kankariya jewellers on 12.07.2005 and thereafter, he has handed over the jewellery as

well as valuation report to the assessee and other members of the family; and in support of the said explanation, the assessee has submitted the valuation report of registered valuer, M/s Kankariya jewellers, confirmation letter from the registered valuer, confirmation letters regarding receipt of the inherited jewellery by the family members, copy of balance sheet and ITR of Late Shri Ramswaroop Maheshwari for A.Y 2005-06 reflecting gold and diamond jewellery, and assessee's and his wife's own ledger and books of accounts where the said jewellery was recorded. During the appellate proceedings, the Id CIT(A) called for the remand report from the AO and after considering the explanation and documentation submitted by the assessee and the remand report of the AO, the Id CIT(A) accepted the factum of jewellery received by the assessee, his wife and other family members from Late Shri Ramswaroop Maheshwari and while doing so, has accepted the valuation report of the registered valuer as well as appreciated the fact of possession of substantial jewellery by Late Shri Ramswaroop Maheshwari as reflected in his tax return filed for A.Y 2005-06. At the same time, in terms of quantum of jewellery, the Id CIT(A) has accepted the jewellery only to the extent of 75% as explained and remaining 25% has been treated as unexplained. The reason for the same has been stated to be non-availability of details/break up of gold and diamond jewellery in the return of income so filed on behalf of Late Shri Ramswaroop Maheshwari for A.Y 2005-06. In this regard, the Id AR has submitted that the valuation report of the registered valuer shows detail break up of individual gold and diamond jewellery which were possessed by Late Ramswaroop Maheshwari and the details of jewellery have also been recorded in assessee's own books of accounts which were submitted for verification and no adverse inference has been drawn by either of the authorities. In our view, where the valuation report has been accepted by the Id CIT(A) which not just contains the total value rather it contains the valuation in respect of individual items of gold and diamond jewellery, the details of gold and diamond jewellery were very

much on record along with disclosure thereof in the tax return filed for A.Y 2005-06. Therefore, having accepted the valuation report and factum of possession of substantial jewellery and the fact that necessary details of individual jewellery items are available on record, the action of the Id CIT(A) in treating only 75% of jewellery as explained and remaining 25% as unexplained doesn't have a rational basis with the material available on record and as to how the Id CIT(A) has arrived at the figure of 75% has also not been spelt out in the order so passed by him and the said action of Id CIT(A) of restricting the explained jewellery to 75% and treating the remaining 25% as unexplained therefore cannot be upheld.

13. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the whole of jewellery so received by the assessee and his wife from Late Shri Ramswaroop Maheshwari are treated as explained and addition of 25% of jewellery so confirmed by the Id CIT(A) is hereby directed to be deleted.

14. In the result, the addition of Rs 13,69,096/- is hereby directed to be deleted and the appeal of the assessee is allowed.

ITA No. 525/JP/2019 and 526/JP/2019

15. In respect of these two matters, it was submitted by both the parties that the facts of the circumstances of these two cases are exactly identical as in case of Sh. Vijay Kumar Maheshwari in ITA No. 527/JP/2019 and contentions advanced in the said matter may be considered for the purposes of adjudication of these matters. Therefore, considering the identical set of facts and circumstances of the case as submitted by both the parties, our findings

and directions contained in ITA No. 527/JP/2019 shall apply *mutatis mutandis* to these two matters and appeals stand allowed.

In the result, the appeals filed by the respective assesseees are allowed.

Order pronounced in the Open Court on 04/10/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04/10/2021

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Vijay Kumar Maheshwari, Jaipur
Shri Ashish Maheshwari, Jaipur
Shri Dhruv Maheshwari, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-02, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 527, 526 & 525/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

