

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.5/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2015-16)

Mr. E.Anandan No.112, Gopal Layout, Ponniayarajapuram Coimbatore-641 002.	Vs	Assistant Commissioner of Income Tax, Central Circle-2 Coimbatore.
PAN: ACBPA 4940L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S. Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.V. Pradeep Kumar, CIT

सुनवाईकीतारीख/Date of hearing	:	07.03.2022
घोषणाकीतारीख /Date of Pronouncement	:	31. 03.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 23.11.2017 and pertains to assessment year 2015-16.

2. The assessee has raised following grounds of appeal:-

"1. The order of The Commissioner of Income Tax (Appeals) 18, Chennai dated 23.11.2017 in I.T.A.No.482/16-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the addition of Rs.20,51,600/- representing the value of 920 gms. of gold

jewellery as income of the Appellant in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the assessment of such sum in the computation of taxable total income was wrong, erroneous, unjustified, incorrect and not sustainable in law.

4. The CIT (Appeals) failed to appreciate that the contentions/stand taken while explaining the source for the jewellery found at the time of search were wrongly rejected in para 7.3 & para 7.4 of the impugned order, thereby vitiating the decision in sustaining the assessment of the value of such jewellery in the computation of taxable total income.

5. The CIT (Appeals) failed to appreciate that there was no proper appreciation of facts relating to the source of jewellery found at the time of search and ought to have appreciated that the tangential findings given in relation to was wholly unjustified.

6. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”

3. Brief facts of the case are that a search & seizure operation u/s.132 of the Income Tax Act, 1961, was carried out in the premises of the assessee on 17.03.2015. During the course of search, 920 gms of jewellery was found in bed room of the assessee which was inventoried on the date of search.

Similarly, the Department has found 473 gms of jewellery in the bank locker of Bank of India. The assessee was questioned about jewellery found during the course of search for which he had explained that out of 1393 gms of gold jewellery in the house, 360 gms jewellery belonged to his deceased mother, which he needs to be handed over to his sister. The assessee further claimed that balance 1033 gms (net 920 gms) of jewellery belongs to his wife Smt. A.Latha, which was received as Sridhan at the time of marriage. During the course of assessment, the Assessing Officer did not accept explanation furnished by the assessee and according to him, total inventory of jewellery was found at the time of search was 2313 gms, which includes 1393 gms of jewellery found in locker of Bank of India. Therefore, he had considered 2313 gms of jewellery and out of which allowed deduction of 360 gms jewellery belongs to his deceased mother and balance 1953 gms of jewellery has been treated as unexplained investment and brought to tax sum of Rs.43,55,190/-.

4. The assessee carried the matter in appeal before the first appellate authority. Before the learned CIT(A), the assessee has explained fundamental mistake committed by the

Assessing Officer in calculating total jewellery found at the time of search and argued that although, the Department has found 473 gms of jewellery in the bank locker of Bank of India, but the Assessing Officer has misread panchanama and took 1393 gms of jewellery to arrive at jewellery found at the time of search at 2313 gms of gold jewellery. The assessee further contended that in fact, total jewellery found and inventoried during the course of search was at 1393 gms and out of this, if you exclude 360 gms, belonged to his deceased mother and to be handed over to his sister, balance jewellery left with the assessee was at 1033 gms, which belongs to his wife Mrs.A.Latha and was given as Sridhan at the time of her marriage.

5. The learned CIT(A), after considering relevant facts and also submissions of the assessee, did not accept arguments of the assessee that total jewellery found at the time of search was only at 1393 gms. The learned CIT(A) further noted that the assessee in the grounds of appeal stated that the Assessing Officer erroneously added value of 1953 gms of jewellery, as against 1033 gms jewellery found in the house at the time of search, whereas in the written submissions filed at

the time of appellate proceedings, the assessee contended that on the date of search totally 1393 gms gold jewellery were found in the house, including 473 gms jewellery kept in the bank locker. Therefore, the learned CIT(A) opined that from contradictory statements of the assessee, it is difficult to accept arguments of the assessee that only 1393 gms of jewellery was found in the house, including 473 gms jewellery kept in bank locker and therefore, adopted 1953 gms of jewellery taken by the Assessing Officer and out of which, allowed relief to the assessee towards 1017 gms of gold mortgaged to bank for availing loan and the same was disclosed in the balance sheet of the assessee. Therefore, additions made by the Assessing Officer towards 1953 gms of gold, allowed relief to the extent of jewellery belongs to his wife Smt. A. Latha to the extent of 1033 gms of gold jewellery and balance of 920 gms of gold jewellery added by the Assessing Officer has been sustained on the ground that the assessee could not explain source for jewellery found at the time of search. Therefore, out of total additions made by the Assessing Officer at Rs.43,55,190/- sustained additions to the extent of Rs.20,51,600/-. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

6. The learned A.R for the assessee referring to panchanama drawn during the course of search on 17.03.2015 submitted that although, the department has found 1393 gms of gold jewellery, including 473 gms found in bank locker, but the Assessing Officer has mistakenly taken into account 920 gms found in the bed room of the assessee plus 1393 gms total inventory to arrive at figure of 2313 gms of gold jewellery. If you consider 1393 gms of jewellery found at the time of search in light of explanation of the assessee that 360 gms of jewellery belonged to his deceased mother and 1033 gms belonged to his wife, total jewellery found at the time of search was explained and thus, question of addition towards jewellery does not arise.

7. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee had failed to explain jewellery found during the course of search with necessary evidences and thus, there is no error in the reasons given by the learned CIT(A) to sustain additions made by the Assessing Officer on value of jewellery found during the course of search.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The fundamental mistake committed by the Assessing Officer while determining addition on account of gold jewellery found at the time of search was mistake in totaling jewellery found in the bed room of the assessee and jewellery found in locker of the Bank of India. Although, the department has found 1393 gms of jewellery, including 473 gms of jewellery found in locker of Bank of India, but the Assessing Officer has added 920 gms plus grand total of 1393 gms to arrive at 2313 gms of jewellery, which resulted in 920 gms excess jewellery considered by the Assessing Officer, even though, jewellery found at the time of search was only 1393 gms. The learned CIT(A), without considering explanation furnished by the assessee in light of panchanama drawn during the course of search, has proceeded to sustain additions towards value of jewellery to the extent of 920 gms, without there being any jewellery found at the time of search. If you take total jewellery found at the time of search of 1393 gms, in light of explanation of the assessee that 360 gms jewellery belonged to his deceased mother and to be handed over to his sister and 1033

gms belongs to his wife Smt. A.Latha, which was given as Sridhan at the time of marriage, then total jewellery found at the time of search tallies with explanation furnished by the assessee. Although, the learned CIT(A) has allowed relief to the extent of jewellery belongs to his deceased mother and jewellery belongs to his wife Smt.A.Latha, but confirmed value of jewellery to the extent of 920 gms, because of mistake in totaling jewellery recorded in panchanama drawn during the course of search, otherwise there is no difference between jewellery found at the time of search in the premises of the assessee and explanation furnished by the assessee and accepted by the learned CIT(A). Therefore, we are of the considered view that the learned CIT(A) has erred in sustaining value of 920 gms gold jewellery amounting to Rs.20,51,600/-. Hence, we direct the Assessing Officer to delete the additions made towards value of jewellery.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 31st March, 2022

Sd/-

(वी. दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

Sd/-

(जी. मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 31st March, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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