

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No. 649/Hyd/2020		
Assessment Year: 2015-16		
Smt. Kasuganti Subhashini, Secunderabad PAN:ADOPK7772Q (Appellant)	Vs.	Dy. C.I.T. Central Circle 2(3) Hyderabad (Respondent)
Assessee by:	Smt. S. Sandhya, Advocate	
Revenue by:	Shri K.P.R.R.Murty, DR	
Date of hearing:	30/06/2022	
Date of pronouncement:	14/07/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 24.9.2020 of the learned CIT (A)-12, Hyderabad relating to A.Y.2015-16.

2. Facts of the case, in brief, are that the assessee is an individual and derives income from salary, house property income and income from other sources. She filed her return of income u/s 139(4) for the A.Y 2015-16 on 3.2.2016 declaring total income at Rs6,99,080/-. A search and seizure action u/s 132 of the Act was conducted on the assessee as part of the search conducted on M/s. Kapil Consultancy Service P Ltd and others on 7.4.2017 by the DDIV(Inv.) Hyderabad. In response to the notice issued u/s

153A of the I.T. Act, 1961, the assessee filed her return of income on 11.10.2019 declaring total income of Rs.6,99,080/-.

2.1 The Assessing Officer noted that during the course of Search and Seizure & operation u/s.132 of the Income Tax Act, 1961 at the residential premises of Sri Kasuganti Vaman Rao at Villa No.38, Ektha Prime High Land Park, Survey No.338, Nanakramguda, Hyderabad, gold jewellery weighing 5543 gms (Net Weight) and 175.30 ct diamond jewellery was found and the same was valued by the registered valuer at Rs.2,17,95,600/-. He noted the assessee claimed that all the withdrawals were used to purchase jewellery but she could not produce any bills for the same. The assessee submitted the relevant copies of bank account statements reflecting above transactions. He obtained the wealth tax returns of Smt. K.Subhashini and found from the same that the aggregate value of gold/diamond jewellery shown in her wealth tax returns for the AY 2014-15 is Rs.1,05,00,000/-. Further, Smt.K.Subhashini has not filed wealth tax return for the AY 2015-16 as on date of search. He therefore, asked the assessee to explain the sources of excess jewellery worth Rs.1,12,95,600/-. From the submission filed by the assessee for explaining the source for purchase of gold jewellery, the Assessing Officer observed that the assessee herself has voluntarily filed the Wealth Tax Returns for AY 2015-16 declaring the jewellery at Rs.2,20,00,000/-(approximate value). He, therefore, inferred that the assessee has voluntarily confirmed by filing the Wealth Tax return for AY 2015-16 that the excess jewellery was added during the FY 2014-15.

2.2 So far as the submission of the assessee for considering the withdrawals from the bank accounts of herself and her spouse, as sources for the acquisition of the jewellery is concerned, he observed that the total cash withdrawals from the bank accounts of assessee and her spouse during FY 2014-15 is Rs.25,84,000/-. He, therefore, held that only cash withdrawals of Rs.25,84,000/- being the withdrawals in financial year 2014-15 can be considered for explanation of the sources of excess jewellery worth Rs.1,12,95,600/-. The Assessing Officer accordingly brought to tax the balance amount of Rs.87,11,600/-.

3. Before the learned CIT (A), the assessee made elaborate arguments. However, the learned CIT (A) was not fully satisfied with the arguments advanced by the assessee and gave partial relief of Rs.27,56,250/- and sustained an amount of Rs.59,55,350/- by observing as under:

“5.3 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. Briefly the facts are, during the course of search on 07/04/2017, Jewellery whose value is estimated at Rs.2,17,95,600/- was found with the appellant. During assessment proceedings, the assessee stated that she has filed the Wealth Tax return for AY 2014-15 declaring gold and silver totaling to Rs.1,08,75,000/-. During AY 2015-16 i.e., current year, the assessee voluntarily filed the Wealth Tax Return on 05/06/2017 by declaring Jewellery of Rs.1,16,25,000/-. The cumulative Jewellery as on 31-03-2015 amounted to Rs.2,25,00,000/- which the appellant contended that it explains the estimated Jewellery during search. The Assessing Officer reduced the value of the Net Wealth admitted for AY 2014-15 namely Rs.1,08,75,000/- and the cash withdrawal of Rs.25,84,000/- during AY 2015-16 from the estimated Jewellery found during search and brought to tax, the excess Jewellery of Rs.87,11,600/-. The appellant is now in appeal.

5.3.1 During appellate proceedings, the appellant stated that the value of the Net Wealth as on 31-03-2014, of Rs.1,08,75,000/- was taken at book value and not the market value on the date of search as the prices would have appreciated by about 15% in three years time. It was

also contended that the appellant admitted net wealth of Jewellery of Rs.1,08,75,000/- for AY 2014-15 and the gross amount would be 15% more than the net wealth as per the Rule 3 of Wealth tax Rules. Therefore it was contended that the benefit may be given to that extent to the appellant. The appellant has also stated that she and her husband withdrawn from banks of Rs.91,61,000/- for the FYs 2014-15, 2015-16 & 2016-17 which was utilized for acquisition of gold and the difference is fully explained on account of the withdrawals. The appellant also contended that she is an independent assessee paying taxes for several years and therefore pleaded that the addition may be deleted.

5.3.2 I have considered the submissions of the appellant and the findings of the Aa. It is true that while setting off the estimate value of Jewellery identified in the premises of the assessee on the date of Search i.e., 07-04-2017, the Aa has set off the book value in the wealth tax return for AY 2014-15 and has not calculated the market value of this Jewellery as on the date of search. The submissions of the appellant that at least 15% of appreciation should be given on the book value for AY 2014-15 for setting off the value at the time of search is reasonable and is accepted. Therefore the Net wealth admitted in the wealth tax return for AY 2014-15 of Rs.1,08,75,000/- is increased by 15% to arrive at the market value of the gold as on the date of Search. This would increase the set off value to Rs.1,25,06,250/- from Rs.1,08,75,000/-.

5.3.3 The second proposition of the appellant is that the Net wealth would be 85% of the gross wealth declared and hence the benefit of 15% should be granted while setting off the estimated value on the date of search. On perusal of the Wealth tax return it is seen that the appellant has declared wealth on account of Jewellery of Rs.1,08,75,000/- and there is no admission of net wealth by reducing 15% of the same as per Rule 3 of Wealth tax Rules. The appellant has reduced RS.30 lakhs from the returned wealth and paid wealth tax @1% on the net wealth. Therefore, the proposition of the appellant is not acceptable and is rejected.

5.3.4 The last proposition is that the appellant and her husband had withdrawn Rs.91.61lakhs during the financial years 2014-15,2015-16 & 2016-17 which would cover the unexplained Jewellery in the hands of the appellant as it was utilized for purchasing Jewellery. It is seen from the assessment order that the AO has already given the benefit of cash withdrawals of Rs.24,84,000/- in AY 2015-16 while computing the excess jewellery. The withdrawals in AY 2014-15 were already incorporated in the Wealth Tax return and a second benefit of the same cannot be given. Hence this proposition of the appellant is

not acceptable and is rejected. However, in AY 2015-16, withdrawals were short computed by Rs.7,50,000/- as one bank account was omitted while computing the withdrawals. Therefore, the benefit of Rs.7,50,000/- is given to the appellant. In view of the above the excess jewellery in the hands of appellant is worked out at Rs.59,55,350/- (Rs.2,17,95,600-Rs.1,25,06,250 (Rs.25,84,000 - Rs.7,50,000). The appellant gets relief of Rs.27,56,250/- (Rs.87,11,600 - Rs.59,55,350) and the balance amount of Rs.59,55,350/- is confirmed.

6.0 In the result, the appeal of the appellant for the AY 2015-16 is PARTLY ALLOWED."

4. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

1) The order of the learned Commissioner of Income Tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.

2) The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.59,55,350/- out of Rs.87,11,600/- made by the Assessing Officer on the plea that the said amount represents the undisclosed investment in jewellery.

3) The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that the entire jewellery found during search and seizure operations was properly explained and the learned CIT (A) ought to have held that no addition u/s 69 is required to be made.

4) Any other ground or grounds that may be urged at the time of hearing".

5. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in confirming the addition of Rs.59,55,350/- out of the total addition of Rs.87,11,600/- made by the Assessing Officer. She submitted that the learned CIT (A) has not properly appreciated the facts and without going through the Wealth Tax Returns filed for the A.Ys 2015-16 & 2016-17 and without considering the withdrawals available to the assessee for

explaining the source of purchase of jewellery sustained the addition which is not correct.

6. The learned DR, on the other hand, strongly relied on the order of the learned CIT (A). He submitted that the learned CIT (A) after considering the totality of the facts of the case has very reasonably deleted the addition to the extent of Rs.27,56,250/- and sustained the addition of Rs.59,55,350/- only which is fully justified under the facts and circumstances of the case.

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the Assessing Officer in the instant case made addition of Rs.87,11,600/- being unexplained jewellery found during the course of search. We find the learned CIT (A) sustained an addition of Rs.59,55,350/-, the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that during the course of search at the premises of the assessee gold jewellery weighing 5543grams (net.wt.) and 175.30 carat diamond jewellery were found which was valued by the Registered Valuer at Rs.2,17,95,600/-. The Assessing Officer after considering the gold and diamond jewellery shown in the Wealth Tax Returns for the A.Ys 2014-15 & 2015-16 made addition of the balance amount of Rs.87,11,600/- on the ground that the assessee could not explain the source of the same. It is her submission that after the Wealth Tax Returns filed for the A.Y 2014-15, the assessee had made certain purchases in the A.Y 2015-16 and the same has not been properly appreciated by the Assessing Officer who made the

addition of Rs.1,12,95,600/- and the learned CIT (A) without appreciating the facts properly, have sustained the addition to the extent of Rs. 59,55,350/-.

9. A perusal of the assessment order as well as the order of the learned CIT (A) and the submission filed by the assessee shows that the issue involved in the instant case has not been properly appreciated by either side. In the instant case, in our opinion, the quantity in weight of gold jewellery found on the date of search and the quantity of gold jewellery declared in the Wealth Tax Return on the valuation date should have been first considered. Thereafter, whatever withdrawals available to the assessee for purchase of such diamond/gold jewellery on the basis of the market value should have been considered and only the balance amount should have been added or if according to the Assessing Officer, the source stands explained, then no addition should have been made. However, in the instant case neither the Assessing Officer nor the learned CIT (A) have done this exercise, nor even the assessee has done this exercise and the addition has been made on the basis of lumpsum market value which in our opinion is a flawed exercise. In view of the above discussion, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to do this exercise of quantifying the weight of diamond and gold jewellery on the date of search and that has been declared in the Wealth Tax Return prior to the date of search. If the assessee in the wealth tax return has not quantified the weight of such diamond/gold jewellery and consolidated value has been given, then the same, in our opinion has to be brought down to the quantity of diamond and gold jewellery by adopting the market value as on the date of valuation. Thereafter due credit should be given for new purchases as per

availability of cash. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold it and direct accordingly. The grounds raised by the assessee on this issue are accordingly allowed for statistical purposes.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 14th July, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 14th July, 2022.

Vinodan/sps

Copy to:

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5	DR, ITAT Hyderabad Benches
6	Guard File

By Order