

IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1546/Mum/2021
(Assessment Year : 2018-19)**

Shri Prakash Shah 192, Room no. 3 Pushpakunj, Ground floor, Station Road, Wadala, Mumbai, Maharashtra-400031	Vs.	DCIT Central Circle-8(4) Mumbai 5 th floor, Aayakar Bhavan Mumbai, Maharashtra, 400020
PAN/GIR No.AAKPS5648G		
(Appellant)	..	(Respondent)

Assessee by	Shri Mohanlal Jain through filing of Written Submissions
Revenue by	Shri Ganesh Bare
Date of Hearing	20/09/2022
Date of Pronouncement	23/09/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No. 1546/Mum/2021 for A.Y. 2018-19 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-CIT (A) 50, Mumbai in appeal No.CIT (A) 50, Mumbai/10348/2019-20 dated 06/08/2021 (Id. CIT(A) in short) against the order of assessment passed 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/12/2019 by the Id. Dy. Commissioner of Income-Tax Central Circle-8(4), Mumbai.(hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the addition of Rs.7,39,440/- made by the Id. AO in respect of jewellery seized during the course of search, in the facts and circumstances of the instant case.

3. None appeared on behalf of the assessee. However, the Id. AR of the assessee had filed written submissions and had also filed a letter stating that the appeal may be decided based on the written submissions available on record. Hence, we proceeded to dispose of this appeal based on the written submissions of the Id. AR and on hearing the Id. DR after perusing the materials available on record. We find that assessee is an individual deriving income from business and profession. The original return of income for A.Y.2018-19 has been filed by the assessee electronically on 30/10/2018 declaring total income of Rs.31,08,000/-, which was duly processed u/s.143(1) of the Act. A search and seizure action u/s.132 of the Act was conducted on 22/03/2018 in the case of Aachman group and other related entities. The case of the assessee was also covered under this search action on 22/03/2018 and accordingly, his case was centralised vide order dated 27/07/2018 of CCIT, Central-1. The Id. AO observed that during the course of search, jewellery valued at Rs.1,95,03,439/- was found. Also jewellery amounting to Rs.1,47,12,701/- was found during the operation of locker No.384 held in the name of the assessee and Smt. Varsha Shah at United Bank of India. On being asked for the source of jewellery totalling to Rs.3,42,16,142/-, the assessee could not produce documentary evidences to the extent of Rs.48,02,352/-. However, the assessee stated in the statement

recorded on oath u/s.132(4) of the Act at the time of search that the said jewellery had already been declared by him in Voluntary Disclosure of Income Scheme (VDIS), 1997. However, the assessee could not produce supporting documents for the same and accordingly, jewellery worth Rs. 48,02,352/- was seized as per Annexure J annexed to panchanama dated 24/03/2018. During the course of post search proceedings, the assessee filed a letter in the office of DDIT (Investigation) Unit-6(1) Mumbai on 08/08/2018 along with VDIS certification and valuation report dated 23/12/1997 done for the purpose of VDIS 97 stating that all the gold / diamond jewellery found from residence / lockers and valued by the various Government approved valuer is fully explained and supported by necessary documents / evidences and requested for release of jewellery seized during the search action. The searched party obtained an independent valuation report from the Government approved registered valuer and obtained a reconciliation report dated 31/08/2018 with respect to the reconciliation of jewellery of Shri Prakash Shah and Smt. Varsha Shah that the diamond jewellery in the valuation report dated 23/12/2017 taken for the purpose of VDIS 97. In other words, list of diamond jewellery that were originally disclosed in VDIS 97 were sought to be reconciled with the diamond jewellery found at the time of search with the assistance of Government approved valuer deployed by search party. In the same fashion, reconciliation was obtained for gold jewellery also. Accordingly, the Id.AO concluded that diamond jewellery worth Rs.12,23,061/- and gold coins totalling to 237 grams worth Rs. 7,39,440/- remain unreconciled and gave an opportunity to assessee by show-causing him as to why the said sum of Rs.19,62,501/- should not be treated as income of the assessee u/s.69B of the Act. In response to the

same, the assessee provided its reply stating that the entire jewellery found and at the time of search operation belongs to himself, his wife Smt. Varsha Shah, his son Shri Janil Shah and his daughter Smt. Riddhi Shah. The assessee submitted that the details of item wise of gold and diamond jewellery which had remained unreconciled was submitted to him and though this gold and diamond jewellery were already disclosed under VDIS 97 and during the intervening period, Smt. Varsha Shah, wife of assessee altered or made some changes in the diamond jewellery as per the new design and fashion. Due to such alteration, the number of carats have been reduced but there is increase in the quantity of gold due to change in design etc., He also drew the attention of valuation report dated 31/08/2018 issued by the department valuer where the change can be seen from the attached comparison sheet vis a vis valuation report. It was also explained that the total difference in diamond jewellery was only 0.53 carats i.e.16.44 minus 15.91, which is very very insignificant and may arise due to weighing difference and judgement of valuer which varies from valuer to valuer. The assessee also pointed that some more jewellery were also disclosed by him under Income Disclosure Scheme (IDS 2016). The Id AO however, did not heed to these contentions and proceeded to make an addition towards diamond jewellery treating it as unexplained in the sum of Rs.12,23,062/-, which was deleted by the Id. CIT(A). Against this, no appeal has been preferred by the Revenue before us.

3.1. As regards gold coins totalling to 237 grams found and seized during the course of search, the assessee explained that they were received as gifts on the occasion of Diwali, Wife's Birthday and various auspicious occasions like

Rakshabandan, Bhai Duj etc from friends, relatives particularly In-laws side etc. Moreover, his daughter Smt. Riddhi Shah has got recently married and some of the coins were received during her marriage were also forming part of 237 gms. It was submitted that considering the quantity of the gold and stature of the assessee, no adverse view need to be taken on the assessee. The Id. AO however, did not agree to the contention of the assessee and proceeded to treat the value of gold coins amounting to Rs.7,39,440/- as unexplained in the assessment. This action was upheld by the Id. CIT(A).

3.2. From the aforesaid narration of facts what is required to be adjudicated is only the addition made in respect of gold coins of 237 gms valued at Rs.7,39,440/-. This was sought to be explained by the assessee as gifts received on various occasions like Diwali, Raksha Bandhan, Bhai Duj from friends and relatives and also during Wife's Birthday. Moreover, the assessee also submitted that his daughter Smt. Riddhi Shah had got recently married and certain gifts were also received at the time of her marriage from various friends and relatives. It is a fact that as per the customs and prevailing practice followed, considering the stature of the assessee, to offer gifts in the form of gold coins at the time of marriage. Moreover, we find that there are two adult ladies in the family i.e. assessee's wife and assessee's daughter (who got recently married). The Id. AR had pleaded in his written submissions that the value of addition towards gold coins constitute 2.16% of the gold and diamond jewellery found at the time of search which is insignificant compared to the stature of the assessee. Moreover, we find that assessee had disclosed substantial amount of time and gold jewellery in VDIS 97 itself. During the intervening period of 22 years it is very likely that the

household ladies resorting to change the old jewellery to be in tune with the latest fashion or design thereon. This fact has been duly submitted by the assessee before the Id. AO which was not accepted. In fact the assessee had also submitted that the diamond jewellery had been changed to be in tune with the latest trend and fashion which had resulted in reduction in carats of diamond and correspondingly, contributed to increase in gold jewellery. We are inclined to accept this line of argument advanced by the Id. AR in his written submissions and also the submission made before the lower authorities. However, it is also a fact that assessee had not brought any material on record to prove the receipt of gifts in the form of gold coins completely. Hence, considering the totality of facts and circumstances and considering the stature of the assessee and also considering disclosure made by him in VDIS-97 and IDS-2016, we hold that assessee should be given credit to the tune of 137 gms in the form of gifts received by it on various occasions. Accordingly, 100 gms of gold coins alone would be subject matter of addition. The Id. AO is directed accordingly to recomputed the addition. Hence, the grounds raised by the assessee are partly allowed.

4. In the result, appeal of the assessee is partly allowed.

Order pronounced on 23/09/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 23/09/2022
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai