

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 9662/DEL/2019 [A.Y. 2017-18]

Smt. Shobha Jain
C - 469, Defence Colony
New Delhi

Vs. The Dy. C.I.T.
Central Circle - 3
New Delhi

PAN: AAFPJ 2144 M

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv
Shri Ajit Jha, Adv

Department By : Shri H.K. Choudhary, CIT- DR

Date of Hearing : 11.04.2023
Date of Pronouncement : 17.04.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 23, New Delhi dated 14.11.2019 pertaining to Assessment
Year 2017-18.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in upholding the addition of Rs. 9,98,815/- representing alleged unexplained gold jewelry found at the time of search and brought to tax u/s 69A r.w.s 115BBE of the Income-tax Act, 1961 [the Act, for short].

3. Briefly stated, the facts of the case are that search was conducted at the premises of the assessee on 06.12.2016. As a result of search, certain documents were seized from the residence of the assessee which represented vouchers for sale of old jewellery made by the assessee and her family members,

4. The sale of jewelry which is under dispute is the sale made to M/s Arjun Traders from whom receipt on account of sale of jewelry have been shown by the assessee for Rs. 4,99,963/- on 03.08.2016 for sale of old gold ornaments weighing 190 gms and for Rs. 4,99,122/- on 13.05.2016 for sale of old gold ornaments weighing 210.600 gms.

5. The assessee was asked to establish the genuineness of the transactions with supporting evidences.

6. The assessee filed detailed reply supported by evidences in the form of a reply filed by M/s Arjun Traders. In response to summons u/s 131(1A) of the Act, copy of confirmation from M/s Arjun Traders, copy of bills issued by M/s Arjun Traders, copy of bank statement of M/s Arjun Traders and copy of confirmation by Ms. Dolly Kapoor, Proprietor of M/s Arjun Traders along with copy of Acknowledgment of Return of Income for A.Y 2016-17 alongwith computation of income with PAN details alongwith copy of bank statement of Central Bank of India and Punjab National Bank were furnished.

7. The detailed reply of the assessee alongwith supporting evidences were dismissed by the Assessing Officer, who made addition of Rs. 9,98,815/- alongwith other additions by observing as under:

“No books of accounts were produced ever by M/s Arjun Traders despite so many opportunities informations were submitted through dak only. None appeared for personal deposition although was reminded from time to time.

Two bank accounts seems to have been maintained during the FY 2016-17 one with Punjab National Bank & the others one with Central Bank of India.

There are number of entries of cash deposits of almost similar amounts before clearance of cheque or RTGS of similar amount just after deposit entries indicating activity of providing accommodation entries

In the case of assessee cheque of Rs.499122 was cleared on 24.05.2016 from PNB A/c No.4184002100030836. The availability of source of funds was receipt RTGS of Rs.4.95 lacs on same day from other account of M/s Arjun Traders maintained with Central Bank of India no. 1041730339. On 24.05.2016 itself Rs.9,90,000/- were deposited in cash out of which RTGS of 495 las was made to its another account with PNB from which cheque was issued to assessee. Hence cash routed from one bank of party to another for issuing cheque only to divert the nexus

In the same account cash of Rs.5,05,000/- has been deposited on 03.08.2016 before RTGS of Rs.498972/- on the same day in favour of Ayesha Jain daughter of assessee. Cash handling charges have been paid by the account holder

As regards the other entry of Rs.4,99,963/- dated 05.08 2016 wherein RTGS was made to assessee after deposit of Rs.5 lac in cash on same day ie 05.08.2016 Cash handling charges have been paid by account holder. The necessity to pear cash handling charges was not explained Similarly, there are number of entries of cash deposits immediately before issue of TRGS or clearing to individual names in the account with Central Bank of India & Punjab National Bank which reveals that accommodation entries have been provided frequently to individual & purchase from dealers seems to be very less which seems to unrealistic nature of activities reflected

in books of accounts. The party could not provide quantity wise details of purchase made through dealer viz-a-viz from individual persons.

The party could not produce books of accounts of requisition summons u/s 131 dated 04.09.2018 (sent vide D.No. DCIT/CC-03/2018-19/723 dated 04.09.2018) reminder dated 30.10.2018 (vide no. DCIT/CC-03/2018-19/1279 dated 30.10.2018) Copies of invoices for purchase as per their books of accounts were requisitions vide letter F.No. DCIT/CC-03/18-19/1693 dated 30.11.2018 served in person on 03.12.2018 u/s 133(6) of the IT Act but were not furnished.

In view of the above purchase by M/s Arjun Traders of the alleged ornaments is not proved in the facts of the case.

Simultaneously, on the other hand, the assessee could not prove the acquisition and existence of jewellery which is alleged to be sold.

No wealth tax return have ever been filed by assessee (Although in order to cover up the wealth tax returns of years under assessment have been attempted to be filed manually but it was clarified that the returns of wealth filed during assessment proceedings are treated as nonest being not filed in response to notice.

No evidence of purchase / gift etc filed during assessment proceedings (although during investigation proceedings photographers were stated to be produced but neither such evidences were received from investigation wing not provided by assessee during assessment proceedings

During investigation enquiry the acquisition of alleged sold jewellery was stated to be of Darsna Devi. (But as per return of wealth of 1991-92 she was having sold jewelery of 427 gms and even on the date of search finally of 334. gms was stated to be owned by her so the claim that jewellery belonging to Smt. Darsna Devi was sold by him & his family is not correct which is many fold of the available jewellery as per evidence of her)

The jewellery stated to be sold by assessee, his wife & daughter comes to 3685 gms & besides 2426 grams jewellery belonging to them found from her residence whereas no return of wealth was ever filed by her.

During search no document of purchase invoice or gift deed found to prove the acquisition.

Assessee did not provide any justification or explanation with regard to existence of jewellery stated to be sold.

Known sources of income are not sufficient to prove the purchases in recent past.

In this way, it is observed that neither the existence of jewellery/acquisition proved nor the sale was proved as genuine. Hence the receipts shown to have been from sale of jewellery are proved bogus/ sham & are on account of accommodation entries only. In fact the husband of assessee required money through banking channels to invest in purchase of property so out of the undisclosed income the assessee managed to get cheques as accommodation entries in form of jewellery sale. The assessee was having unaccounted sufficient funds & she had managed to help her husband to reverse the entries taken from other persons at the time of execution of

purchase deed of property at Pearl Omaxe Complex, so she adopted the method of accommodation entry for repayment to these persons.

Accordingly an amount of Rs.9,98,815/- (Rs.499963 + Rs.499122/-) is held to be income from undisclosed sources & is hereby added u/s 69A of I.T. Act to the income of assessee. Tax is to be computed u/s 115BBE of I.T.Act Penalty proceeding u/s 271AAB of the 1. T. Act, is initiated separately.”

8. The assessee carried the matter before the ld. CIT(A) but without any success.

9. Before us, the ld. counsel for the assessee vehemently stated that the Assessing Officer was asking the assessee to do something which is impossible. It is the say of the ld. counsel for the assessee that the Assessing Officer wanted the assessee to explain the source of bank transactions in the bank accounts of M/s Arjun Traders.

10. The ld. counsel for the assessee further stated that provisions of section 69A of the Act do not apply on the facts of the case.

11. The ld. counsel for the assessee further pointed out that sale of jewelry has been duly confirmed by the purchaser of the jewels and consideration for sale of jewellery have been received through banking

channel. Referring to the tax returns of the purchaser, the ld. counsel for the assessee stated that the purchaser is a regular assessee and the authorized representative of the purchaser of the jewels did appear before the Investigation Wing and confirmed the transactions.

12. The ld. counsel for the assessee further stated that the assessee has discharged the burden as far as the existence of the jewelry and sale of jewelry is concerned and findings of the Assessing Officer that it is bogus transaction/sham transaction or an accommodation entry is nothing but a figment of his imagination, not based on any valid material or evidence and untenable.

13. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and read the relevant observations of the Assessing Officer while making the addition.

14. We have given thoughtful consideration to the orders of the authorities below. Facts on record show that in response to summons u/s 131(1A) of the Act, M/s Arjun Traders submitted its reply along with copy of Income tax Return, computation of income, balance sheet, Profit and Loss Account along with all Annexures for A.Ys 2016-

17 and 2017-18 along with copies of all bank account statements from 01.04.2016 to 30.09.2016 along with copy of stock register and copy of ledger account of purchase and sale.

15. With these evidences on record submitted before the Investigation Wing, it can be safely presumed that M/s Arjun Traders is a regular assessee. Therefore, it was incumbent upon the Assessing Officer to make direct enquiries from the officer of M/s Arjun Traders if it did not appear before the Assessing Officer during the assessment proceedings.

16. We find that the Assessing Officer has questioned the deposits made in the bank account of M/s Arjun Traders. We fail to understand how the assessee is responsible/answerable to the transactions made by an unrelated party in its bank accounts.

17. Interestingly, on similar facts, the Assessing Officer has also made addition in the case of sale of jewellery to Assure Jewels Pvt Ltd. where a person appeared before the Assessing Officer and in the case of M/s Arjun Traders, none appeared.

18. We are of the considered view that nothing prevented the Assessing Officer to force the attendance of M/s Arjun Traders since the Assessing Officer has all the powers vested with that of a court u/s 131 of the Act.

19. Moreover, as mentioned elsewhere, the assessee cannot be asked to explain the bank transactions of an unrelated party. Evidences in the form of confirmation, books of account, stock register and ledger account along with bank statement cannot be brushed aside lightly and considering these evidences, we do not find any merit in the impugned addition made u/s 69A of the Act. We, accordingly, direct the Assessing Officer to delete the addition of Rs. 9,98,815/-.

20. In the result the appeal of the assessee in ITA No. 9662/DEL/2019 is allowed.

The order is pronounced in the open court on 17.04.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: April, 2023.

VL/