

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.9/Chny/2023
निर्धारण वर्ष /Assessment Year: 2018-19

M/s. MRS Jewellery,
41, Mariamman Koil Street,
Tindivanam,
Villupuram District – 604 001.
[PAN: AAZFM-7925-M]

The Dy. Commissioner of
Vs. Income Tax,
Central Circle-1(2),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri J. Prabhakar, F.C.A
प्रत्यर्थी की ओर से /Revenue by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 16.05.2023
घोषणा की तारीख /Date of Pronouncement : 14.06.2023

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

Aforesaid appeal of assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax (Appeals)-18, Chennai dated 14-12-2022 [hereinafter "CIT(A)"] in the matter of an order passed by learned Assessing Officer [AO] under section 143(3) of the Income Tax Act, 1961 [hereinafter "the Act"] on 03-06-2021. The grounds taken by the assessee are as under:

"1. The learned Commissioner (appeals) is not justified in holding that only 25% of the alleged excess stock represents old gold jewellery or old silver articles on trade-ins from Customers

2. The learning Commissioner (appeals) is not justified in granting ad-hoc relief to the extent of 487.14 per gram of gold in respect of alleged old gold jewellery represented by 25% of alleged excess stock thereof.

3. The learned Commissioner (appeals) is not justified in granting ad-hoc relief to the extent of 12.,94 per gram of Silver in respect of alleged old Silver items represented by 25% of alleged excess stock thereof.

4. The learned Commissioner (appeals) is not justified in sustaining the additions on alleged excess stock merely on the basis of sworn statement which is not legally valid under a survey under section 133A without mandate when such sworn statement is valid only during search under section 132(4) of the Act.

5. The learned Commissioner (appeals) has no valid basis to uphold existence of excess stock when factually no itemised inventory was done by the survey team but only empirical estimate without individual weight of stratified items of gold or silver was attempted to hold the appellant contumacious on alleged tax evasion.

6. The learned Commissioner (appeals) is not justified in omitting to construe the true import of letter dated 28-2-2018 addressed to the survey team about non consideration of bought out notes of old gold and silver from customers.

7. The learned Commissioner (appeals) is not justified in holding in para 7.4 of his appellate order that no tangible evidence was furnished during course of survey about existence of bought notes when the culmination of survey resulted in letter dated 28-2-18 on this subject matter.

8. In any event the order of the CIT(A) is illogical, arbitrary and not based on facts and circumstance obtaining on record on the date of survey.

9. You are appellant craves the indulgence of the honourable ITAT to adduce additional evidence/additional grounds to satisfy the veracity of the grounds raised in the appeal.

10. For these grounds, and for such other grounds that may be adduced at the time of hearing it is prayed that the additions made in the assessment order be deleted in toto."

2. The brief facts of the case are that the assessee is a partnership firm having two partners and is engaged in the retail business of gold and silver jewellery. It filed its return of income under section 139(1) of the Act declaring a total income at Rs. 1,19,25,480/- on 06-08-2018. A survey operation under section

133A of the Act was carried out on 19-02-2018 at the business premises of the assessee situated at No. 41, Mariyamman Street Tindivanam, Villupuram, Tamilnadu. During the course of survey operation, excess stock of gold and silver was found by the survey teams gold jewellery weighing 11138.89 gms. and silver articles weighing 52815 gms. against the book stock of gold of 6448.356 gms. and 21715.88 gms. of silver articles. Thereafter, the case of the assessee was selected for scrutiny.

3. The assessee was directed to explain as to why the excess stock of gold and silver to the extent of Rs. 1,50,65,130/- should not be brought to tax. The assessee made submission before the learned Assessing officer that they had purchased old gold and silver through bought notes and the same were valued by adopting the market price. It was also submitted that the said bought note purchases of gold and silver would have more impurities and that is why it was bought at a lower price than the prevailing market rate. The claim of the assessee is that the AO ought to have taken 80% gold value and 70% of silver value for the bought note purchases.

4. The assessee himself computed the value of excess stock of gold at Rs. 1,14,86,414/- and silver at Rs. 8,91,202/- totaling in

all Rs. 1,23,77,613/- and was offered the same in the income tax return filed. However, the Ld. AO did not accept the submission of the assessee and brought to tax the value of excess gold jewellery at Rs. 1,50,65,130/- and the difference amount of Rs. 26,87,517/- has added to the total income of the assessee.

5. Being aggrieved, the assessee filed first appeal before the Ld. CIT(A). The Ld. CIT(A) after considering the observations of the Assessing Officer and reply of the assessee vide order dated 14-12-2022 partly allowed the appeal of the assessee.

7. Aggrieved further, the assessee filed the present appeal before the Tribunal against the impugned order of the Ld. CIT(A) dated 14-12-2022.

8. Heard the representatives of both the parties and perused the materials on record.

9. Before the Ld. CIT(A) the assessee by a written submissions inter alia claimed that, the only issue which is involved in the appeal is the alleged value attributed to actual book stock admitted as non-updated stock and offered to tax on the date of survey (19-02-2018). It was also submitted before him that there was no excess gold or silver if the quantity of the bought note

purchases are taken as the bought notes have impurities, hence there would be lot of wastage when it will be converted into pure gold or silver.

10. After considering the submissions of the assessee and the assessment order, the Ld. CIT(A) vide his order has disposed of the appeal by observing as under:

"7.4 I have considered the reasons given by the AO in the assessment order as well as the submissions of the appellant. The appellant while filing the return of income has accepted the quantum of excess stock found in respect of gold jewellery at 4690.543 gms and silver articles of 31099.12 gms. Thus, the ground that there was no excess stock does not hold water. The addition was not made by the AO merely based on the statement of the assessee but based on the physical stock inventory and thus the ground in this regard is not tenable. There was only a difference in the valuation of the excess stock found during the course of survey. The appellant had valued the excess gold jewellery of 4690.543 gms. at Rs.2448.85 per gram as against Rs.2935.99 per gram adopted by the AO, while the excess stock of silver articles found was valued at Rs 28.66 per gm. against Rs.41.60 per gm. adopted. The assessee thus claims that the entire excess stock found during the course of survey represent only bought note purchases as according to them, the bought note purchases of gold jewellery was 4691 gms. and silver articles 31099 gms. This cannot be accepted. The appellant seems to have made a claim that all the excess stock represents bought note purchases. The appellant has not stated during the course of survey with any tangible evidence that the stock found contained bought note purchases also which was not taken into the stock in the books. The appellant had not also identified the old jewels or old silver articles found during the course of survey. Hence, the computation of income offered by the appellant adopting, a lesser rate for all the quantity of excess stock found in gold and silver cannot be accepted as genuine and correct."

11. Although the Ld. CIT(A) has rejected the claim and submission of the assessee, by considering the nature of the business of the assessee, he has given relief to the assessee that

estimation of 25% of the excess stock gold jewellery and silver articles found during the course of survey represent old gold jewellery/silver articles purchased from customers. Accordingly, the assessee got a relief of Rs. 6,71,850/-

12. However, after hearing of both the parties and considering the materials on record, we are of the view that the 50% relief to the assessee will meet the ends of justice for which the parties also have no objection. Accordingly, we raise the relief from 25% to 50% and direct the Ld. AO to reduce the addition by Rs. 13,43,700/- from the addition made of Rs. 26,87,517/-. The addition to the extent of Rs. 13,43,517/- is sustained. Thus, the appeal of the assessee is partly allowed.

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

Order pronounced on 14th June, 2023.

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 14.06.2023.

EDN/-

Sd/-
(मनोमोहन दास)
(Manomohan Das)
न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF