

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: C: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.2840/Del/2022
Assessment Year: 2020-21

The DCIT, Central Circle-17, New Delhi	vs.	Jyotsna Suri, N-119, Panchsheel Park, New Delhi 110017. PAN ABCPS 2295 L
(Appellant)		(Respondent)

For Assessee :	Shri U.N Marwah, CA Shri Parveen Goel, Adv.
Revenue For :	Shri Waseem Arshad, CIT(DR)

Date of Hearing :	23.08.2023
Date of Pronouncement :	06.09.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order CIT(A)-27, New Delhi dated 30.09.2022 for A.Y. 2020-21.

2. The grounds have been raised by the revenue are as follows:-

1. The Ld. CIT(A) has erred on the facts and in law, in deleting the addition to the extent of Rs.8,29,850/- on account of unexplained investment in two watches ignoring the fact that the same were not included in the valuation report taken at the time of opting for VDIS Scheme.

2. The Ld. CIT(A) has erred on the facts and in law, in ignoring the fact that the assessee failed to provide any documentary evidence that the said watches were declared in Wealth Tax return.

3. The Ld. CIT(A) has erred on facts and in law, in deleting the addition of Rs. 1,15,36,269/-ignoring the fact that this jewellery found from the locker no. 1984, U&I Vaults, Delhi was part of jewellery declared by the assessee in her Wealth Tax Return/VDIS disclosure and AO had already allowed the credit of the same while making additions on account of unexplained jewellery.

4. The Ld. CIT(A) has erred on facts and in law, in deleting the addition of Rs. 5,51,570/- on account of unexplained foreign currency found during the search relying upon a letter of Mrs. Ritu Suri claiming ownership of the said foreign currency dated 26.10.2021, i.e. after the completion of the assessment of the assessee on 30.09.2021, ignoring the fact, that, during assessment proceedings the assessee had failed to explain the source of the said foreign currency.

5. The Ld. CIT(A) has erred on the facts and in law, in relying upon the letter dated 26.10.2021 submitted by Mrs. Ritu Suri after the assessment proceedings, wherein she had claimed unexplained foreign currency found during the search belonging to her, whereas, no such claim was made before the AO during the assessment proceedings.

3. The Id. CIT(DR) submitted that The Ld. CIT(A) has erred on the facts and in law, in deleting the addition to the extent of Rs.8,29,850/- on account of unexplained investment in two watches ignoring the fact that the same were not included in the valuation report taken at the time of opting for VDIS Scheme and in ignoring the fact that the assessee failed to provide any documentary evidence that the said watches were declared in Wealth Tax return supporting the assessment order the Id. CIT(DR) submitted that the Assessing Officer rightly made addition in the hands of assessee which have been deleted by the Id. CIT(A) without considering the entire facts and circumstances of the issue therefore impugned first appellate order may kindly be set aside by restoring that of the Assessing Officer.

4. Replying to the above the Id. AR submitted that the AO made addition of Rs. 8,29,850/- on account of two watches item no. 1 of Rs. 4,96,550/- and item no. 6 of Rs. 3,33,300/- being part of declared watches in the Wealth Tax return (WTR) and the Id. CIT(A) after considering the explanation of the assessee deleted the same upholding the remaining addition of Rs. 48,48,660/- u/s. 69A of the Act, against which assessee has not filed any appeal terminating the litigation to buy peace of mind. The Id. AR submitted that the copy of Wealth Tax Return available at pages 115 to 126 reveals that the said two watches have been included by the assessee in the respective returns. Therefore the Id. CIT(A) was right in deleting the part addition of Rs. 8,29,850/- and upholding the other major part of addition amounting to Rs. 48,48,660/-. The Id. AR submitted that there is no ambiguity or perversity in the first appellate order therefore the same may kindly be uphold on this issue.

5. On careful consideration of above submission from relevant part of first appellate order we note that the Assessing Officer made addition of Rs. 56,78,510/- on account of watches found and seized during the search operation. In first appeal the Id. CIT(A) upheld addition of Rs. 48,48,660/- and deleted other part of addition of Rs. 8,29,850/- pertaining to two watches listed at serial no. 1 & 6. The Id. CIT(A) evaluated and examined the assessment order along with reply and explanation of assessee and thereafter agreed to the submissions of assessee that said two watches being part of declared watches in the Wealth Tax Return cannot be taken as unexplained investment of assessee.

Ground no. 1 of Revenue

6. The Id. CIT(DR) supporting the assessment order submitted that the Id. CIT(A) has granted relief to the assessee by wrong appreciation of facts. He further submitted that The Id. CIT(A) has erred on facts and in law, in deleting the addition of Rs. 1,15,36,269/- ignoring the fact that this jewellery found from the locker no. 1984, U&I Vaults, Delhi was part of jewellery declared by the assessee in her Wealth Tax Return/VDIS disclosure and AO had already allowed the credit of the same while making additions on account of unexplained jewellery. The Id. CIT(DR) pointed out that the jewellery found in the said locker was unexplained but the Id. CIT(A) granted relief to the assessee by wrongly holding that the said jewellery was part of jewellery declared by the assessee in her Wealth Tax Return/VDIS disclosure while the AO had already allowed credit of the same while making additions on account of unexplained jewellery. Therefore, the Id. CIT(A) submitted that the first appellate order may kindly be set aside by restoring that of the AO.

7. Replying to the above, the Id. AR supporting the first appellate order submitted that the Id. CIT(A) after considering the explanation of assessee rightly held that the Assessing Officer to appreciate an except that to watches namely item no. 1 (Rs. 4,96,550/-) and item no. 6 (Rs. 3,33,300/-) being part of declared watches has despite evidence not being accepted by the Assessing Officer hence he deleted the addition. The Id. counsel submitted that page 92 of assessee paper book, which is reconciliation

of watches during the course of search with the watches declared in the Wealth Tax Return show that the watches at serial no. 1 & 6 were part of valuation report as on 31.03.2013 and these were listed at item no. 48 & 50 respectively in the valuation report no. 1 and the watches at serial no. 1 & 6 were taken in exchange of these two watches already shown in the Wealth Tax Return. The Id. AR, vehemently pointed out that the Revenue is agitating the baseless issue without any positive adverse material against the assessee therefore ground of revenue may kindly be dismissed upholding the first appellate order.

8. On careful consideration of above submissions, we clearly note that the Id. CIT(A) has uphold the major part of addition of Rs. 48,48,660/- deleting the another part of addition of Rs. 8,29,850/- against said deletion the Revenue is in appeal. The Id. CIT(DR) could not rather did not controvert a factual position discernable from the document submitted by the assessee in her paper book pages 92 to 98 particularly page 92, which is reconciliation statement of watches during the course of search with the watches declared in the Wealth Tax Return show that the watches at serial no. 1 & 6 were part of valuation report as on 31.03.2013 and these were listed at item no. 48 & 50 respectively in the valuation report no. 1 and the watches at serial no. 1 & 6 were taken in exchange of these two watches already shown in the Wealth Tax Return. In such a factual position we are of the view that the Id. CIT(A) has granted relief to the assessee on the basis of correct appreciation of facts and circumstances and by considering the Wealth Tax Return, valuation report and reconciliation statement which clearly reveals that the watches at serial no. 48 & 50 declared in the wealth tax return were exchanged and listed at serial no. 1 & 6 of reconciliation statements with the all details of exchanged watches. Therefore the Id. CIT(A) was right in granting relief to the assessee and there is no valid reason to interfere with the findings recorded by the Id. CIT(A) while granting part relief to the assessee. Accordingly ground no. 1 & 2 of revenue are dismissed.

Ground no. 3 of Revenue.

9. The Id. CIT(DR) submitted that The Ld. CIT(A) has erred on facts and in law, in deleting the addition of Rs. 1,15,36,269/-ignoring the fact that this jewellery found from the locker no. 1984, U&I Vaults, Delhi was part of jewellery declared by the assessee in her Wealth Tax Return/VDIS disclosure and AO had already allowed the credit of the same while making additions on account of unexplained jewellery. He further pointed out that the Id. CIT(A) has granted relief to the assessee by relying fabricated documentary evidence and considering the irrelevant facts therefore findings of Id. first appellate authority may kindly be set aside by restoring that of the Assessing Officer.

10. Replying to the above, the Id. AR drew our attention towards submissions of assessee reproduced by the Id. CIT(A) at pages 11 & 12 of his order and submitted that the documentary evidence placed at assessee's paper book pages 99 to 105 clearly reveals that the locker was last operative on 26.06.2012 during FY 2012-13 which falls beyond the period of block assessment u/s. 153A of the Act and the jewellery in the said locker was in the possession of assessee prior to FY 2012-13 i.e. as on 31.03.2012 at the end of FY 2011-12 which is clearly beyond the period of block assessment as per provision of section 153A of the Act.

11. On careful consideration of above submissions, we note that the assessee before Id. CIT(A) submitted written submissions which have been reproduced by him at page no. 11 to 13 of first appellate order. We further note that the Id. CIT(A) granted relief to the assessee with following observations of findings:-

7. Ground No. 2 relates to addition of Rs. 1,15,36,269/- on account of unexplained Jewellery seized from Locker No. 1984, U & I Vaults Ltd, New Delhi u/s 69A of the Act.

7.1 The relevant part of the submission is as under:

"2.1.15 With regard to jewellery of Rs. 1,15,36,269/- lying and seized from Locker No.1984, U & I Vaults Limited, F-41,South Extension, Part-I, New Delhi, in joint name of Jotsna Suri & Divya Suri the appellant vide letter: 18.09.2021 (Copy at Page No.99-105 of PB) submitted that the said locker was not operated since 2012.

2.1.16 That the appellant also submitted that copy of log book of locker maintained by U & I Vaults Limited for operation of the locker (Copy at Page No. 106-107 of PB) in accordance with which the locker was last operated on 26.06.2012 (FY 2012-13) which falls beyond the period of block assessment and establishes the fact that the jewellery in the said locker was in possession of the appellant prior to 2012 i.e. beyond the period covered under block assessment."

7.2 In support of the above argument, the appellant filed the copy of the "Record of Visit" issued by U & I Vaults Limited which is as under:

RECORD OF VISITS

Locker Type No. 1984L Lessee's Name

Date	Whether Opened by self or nominee	Signature of Person opening the locker	Time		Initials of custodian	Date	Whether Opened by self or nominee	Signature of person opening the locker	Time		Initials of Custodian
			H	M					H	M	
3.7.96	Self	Jyotsna Chouh	4	50		13.3.2000	Self	Jyotsna Chouh	2	50	Jyotsna Chouh
21.10.96	Self	Jyotsna Chouh	4	55		28.6.2012	Self	Divya Suri	5	45	Divya Suri
21.12.96	Self	Jyotsna Chouh	1	45		21.01.2000	Self	Divya Suri	6	35	Divya Suri
26.2.97	Self	Jyotsna Chouh	3	25		9.11.2000	Self	Divya Suri	10	30	Divya Suri
21.7.97	Self	Jyotsna Chouh	5	50							
8.11.97	Self	Jyotsna Chouh	2	15				To close and handover empty locker no operation			
21.11.97	Self	Jyotsna Chouh	5	15							
22.11.97	Self	Jyotsna Chouh	5	20							
29.11.97	Self	Jyotsna Chouh	5	45							
2.12.97	Self	Jyotsna Chouh	6	0							
4.1.98	Self	Jyotsna Chouh	4	0							
14.1.98	Self	Jyotsna Chouh	4	45							
28.3.99	Self	Jyotsna Chouh	5	45							
4.1.2001	Self	Jyotsna Chouh	2	50							
4.1.2001	Self	Jyotsna Chouh	2	50							

U & I Vaults Ltd
F-41 South Extension
Part-I, New Delhi-110049
Call: 011-26100000

CABIN No. 33
New Delhi-110 002
Certified True Copy of the Original
BY NOTARY PUBLIC
NEW DELHI (INDIA)
AZAD KUMAR-ADV

10 AUG 2022

Appeal No. CIT (A) Delhi-27/2022/2021

Jyotsna Suri, A 7/2021

7.3 In view of the confirmation from M/s U & i Vaults Ltd which is duly notarized, filed by the appellant, it is observed that the locker was last operated on 28.06.2012. This establishes that the jewellery lying in locker No. 1984 was acquired by the appellant on or before 28.06.2012.

7.4 The relevant judicial decisions in this regard are as under:

7.4.1 Commissioner Of Income Tax-X vs Vivek Aggarwal [2015] 121 DTR 241 (Delhi HC)

"So far as the second Investment of Rs 41,32,800/- is concerned there cannot be any doubt that the above was made in the period 1999-2000. Clearly that was beyond the block period and therefore time- barred and no addition can be made u/s153A. That apart the CIT(Appeals) noted that after the remand during the pendency of appellate proceedings, the affidavit relied upon by the assessee in

BrijBhushan Gupta was not adversely commented upon. This being a factual finding the Court finds no reason to interfere with the ITAT's order."

7.4.2 Commissioner of Income-tax v. K.I. Pavunny [1998] 99 Taxman 327 (Kerala) KERALA HC

"The aforesaid authority squarely applies to the facts of the case at hand. When the gold articles were recovered from the compound of the assessee, unless cogent evidence was adduced by the assessee, it would have to be presumed that the articles belonged to him and they were owned by the assessee himself. Not only this, unless the assessee sets up a clear case and leads cogent evidence to show that the gold articles were acquired in some different assessment year, there would be a further presumption that the articles were acquired in the year in question and they represented the concealed income of the year in question itself."

7.5 In view of the above judicial decisions and the facts of the case, it is held that the jewellery found from the Locker No.1984, U & I Vaults Ltd, New Delhi was acquired by the appellant on or before 28.06.2012 and therefore any addition on account of this unexplained jewellery could have been made in AY 2013-14 only and therefore addition of Rs. 1,15,36,269/- on account of unexplained jewellery in the A.Y. 2020-21 is not sustainable and therefore same is deleted and this ground of appeal is hereby allowed.

12. Relevant part of first appellate order we note that the Id. CIT(A) after considering the entire facts & circumstances, stand of the Assessing Officer, submissions of assessee and supportive documentary evidence concluded that the jewellery was found & seized from the locker no. 1984, U & I Vaults Ltd, New Delhi was acquired by the appellant on or before 28.06.2012 and therefore any addition on account of this unexplained jewellery could have been made in AY 2013-14 only and therefore addition of Rs. 1,15,36,269/- on account of unexplained jewellery in the AY 2020-21 is not sustainable and therefore same is deleted. On being asked by the bench the Id. CIT(DR), however disputed the fact that the locker was last operative on 28.06.2012, but has not controverted the notarized certificate issued by U & I Vaults Ltd. placed at pages 110 & 111 of the assessee's paper book, which clearly reveals that the locker was last operative on 28.06.2012 and thereafter it was operative on 21.01.2020 during course of search & seizure operation which was conducted on 19.01.2020 on Bharat Hotels Group including the assessee. From the date of search i.e. 19.01.2020 the block period of six years is AY 2014-15 to 2019-20 and the subsequent

year 2020-21 is the year of search. Thus the jewellery purchased or acquired before 28.06.2012 cannot be stretched and taken into consideration as unexplained jewellery in the hands of assessee neither in the year of search i.e. present AY 2020-21 nor even in the six block assessment years. We are unable to see valid reason to interfere with the findings arrived by the Id. CIT(A) and thus we uphold the same. Our conclusion also gets support from various judgment of Hon'ble High Court including judgment of Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Vivek Kumar Aggarwal (supra). Therefore ground no. 3 of Revenue is also dismissed.

Ground no. 4 & 5 of Revenue.

13. The Id. CIT(DR), supporting the action of the Assessing Officer, submitted that The Ld. CIT(A) has erred on facts and in law, in deleting the addition of Rs. 5,51,570/- on account of unexplained foreign currency found during the search relying upon a letter of Mrs. Ritu Suri claiming ownership of the said foreign currency dated 26.10.2021, i.e. after the completion of the assessment of the assessee on 30.09.2021, ignoring the fact, that, during assessment proceedings the assessee had failed to explain the source of the said foreign currency. He further submitted that The Ld. CIT(A) has erred on the facts and in law, in relying upon the letter dated 26.10.2021 submitted by Mrs. Ritu Suri after the assessment proceedings, wherein she had claimed unexplained foreign currency found during the search belonging to her, whereas, no such claim was made before the AO during the assessment proceedings. The Id. CIT(DR) vehemently contended that since the Id. CIT(A) has granted relief to the assessee without any basis therefore impugned first appellate order may kindly be set aside by restoring that of the Assessing Officer.

14. Replying to the above, the Id. AR supporting the first appellate order submitted that the impugned foreign currency was found from the premises of Mrs. Ritu Suri and not from appellant and Mrs. Ritu Suri had acknowledge and signed the annexure of inventory of foreign currency found & seized belonging to her. The Id. AR also submitted that on completion of assessment proceedings Mrs. Ritu Suri also wrote an application to ACIT (CC-17) New Delhi, u/s. 132B of the Act claiming return of seized

assets including foreign currency of Rs. 5,51,570/-. Therefore the Id. CIT(A) rightly granted relief to the assessee by observing that the foreign currency found & seized from residence of Mrs. Ritu Suri belongs to her and not to the assessee, thus the grounds of revenue may kindly be dismissed.

15. On careful consideration of above submissions, we note that the Assessing Officer made addition by observing that the foreign currency found & seized during the course of search & seizure operation whereas the Id. CIT(A) after considering the explanation of assessee concluded that the foreign currency was found & seized from the resident of Mrs. Ritu Suri and she signed the inventory of seized material including the foreign currency. It is also pertinent to mention that the Id. CIT(A) further noted that on conclusion of assessment proceedings Mrs. Ritu Suri filed an application u/s. 132B of the Act before the authorities concerned requesting the returned the seized movable properties including the foreign currency. This factual position has not been controverted neither by the Assessing Officer nor by the Id. CIT(DR) before us. Therefore we are unable to see any valid reason to interfere with the findings recorded by the Id. CIT(A) in favour of the assessee for deletion of addition. Accordingly, ground no. 4 & 5 of revenue are also dismissed.

16. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 06.09.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 06th September, 2023

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi