IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 972/Coch/2022
(Assessment Year: 2020-21)

Vivek Lawrence Geo Riverside Near St. Alosius School Palluruthy, Kochi 682006 [PAN:ABRPL4407E] (Appellant)	vs.	Principal CIT (Central), Kochi (Respondent)

Assessee by:	Shri A. Gopalakrishnan, CA
Revenue by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	12.09.2023
Date of Pronouncement:	07.12.2023

O R D E R

Per Sanjay Arora, AM

This is an Appeal by the Assessee against the revision of his assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for Assessment Year (AY) 2020-21vide order u/s. 263 of the Act dated 29.09.2022 by the Principal Commissioner of Income Tax, Cochin (Pr. CIT).

2. The appeal raises a single issue, *qua* only which the revisionary authority found the assessment in the instant case as infirm and, accordingly, directed for examination and adjudication afresh by the AO in accordance with law after providing the assessee due opportunity of presenting his case before him.

3. The background facts of the case in brief are that the assessee, Managing Director of Monsoon Foods (P.) Ltd., was subject to search at his residence and business premises u/s. 132 of the Act on 20.12.2019. Gold jewellery weighing 900.22 gms. (gross) and 802.29 gms. (net) was found. The same was, however, not subject to

seizure following Board Instruction 1916 dated 11.05.1994 (BI 1916), which provides for, in view of the custom prevailing in several parts of India (including it forming – to varying extent, part of the personal effects of the female members of the family), pan India norms to be observed by a search party for seizing gold jewellery. The gold jewellery, where and to the extent not reflected in the wealth-tax returns of the family members, is to be seized only where and to the extent it exceeds 500 gms. per adult female member; 100 gms. per male member; 250 gms. per unmarried girl; and 100 gms. per unmarried boy. The same was in assessment not brought to tax for this reason. The ld. Pr. CIT found the same as erroneous and prejudicial to the interest of the Revenue inasmuch as BI 1916 only seeks to regulate seizure by providing uniform parameters, to be applied across the country, to avoid arbitrariness in seizure and indeed harassment to tax payers. The BI is, however, limited in its application to seizure, and its understanding by the Assessing Officer (AO) to imply a concession *qua* gold jewellery found though not seized in view of these norms, i.e., in the matter of assessment, is misplaced. The same is to be subject to assessment as per law.

3.1 Before us, the assessee's case was that once the AO has, as apparent, applying his mind to the matter, formed a view, which cannot be regarded as unreasonable, and completed the assessment on that basis, it is not open for the revisionary authority to unsettle the same in case he opines differently. The view adopted by the AO, before whom all details and explanations were furnished, is reasonable, and in fact supported by several decisions by the Tribunal, some of which find mention in the assessee's paper-book.

3.2 The Revenue's case, on the other hand, was the same as of the revisionary authority. The AO himself, as a reading of his order shows, was, on the contrary, of the clear view that the gold jewellery is to be assessed as income as unexplained investment. It is only in view of BI 1916, which rather requires him to, despite non-seizure, consider the jewellery found in search for assessment purposes, that 'led' him

not to do so. Further, if the assessee had indeed furnished the explanations and materials before the AO, explaining, as contended, the source of jewellery –though not brought on record by him, why should the assessee in that case feel aggrieved by the impugned order whereby the revisionary authority has not determined the matter, but only required it being adjudicated afresh, i.e., *de hors* BI 1916. The AO's opinion, rather, is clearly to the contrary, defeating the assessee's argument of a possible view.

4. We have considered the rival contentions, and perused the material on record.

4.1 Interestingly, both the parties before us relied on the AO's observations, reproduced in the impugned order, and also readout during hearing. The same are by way of foot-note to his order, which is *sans* any reference to the gold jewellery in its body, accepting the returned income, and read as under:

> "During the course of search at the residence of Sri. Vivek Lawrence, jewellery weighing 900.22 gms. (gross) and 802.28 gms. (net) were found. Sri. Vivek Lawrence claimed that the jewellery belongs to his wife Smt. Chinthu, and was brought at the time of marriage. However, no wealth tax return is filed by both Sri. Vivek Lawrence and Smt. Chinthu Vivek. *In the absence of any proper explanation the value of gold was proposed to be assessed in the hands of Sh. Vivek Lawrence or Chinthu Lawrence as undisclosed investment*. The *assessee* <u>failed to submit any evidence</u> with respect to the source of investment for the above gold ornaments found. Moreover, the assessee failed to disclose the value of ornaments in the return of income. *In view of the above, the value of gold ornaments weighing net 802.28 gms is treated as undisclosed investment.* <u>However</u>, after providing for allowance for holding gold in individual's possession according to the CBDT Instruction No. 1916 dated 11/05/1994, a female member of a household is permitted to hold 500 gms. of gold jewellery, a male member 100 gms., unmarried girl 250 gms., and a boy 100 gms. Accordingly, the family is permitted to hold 1050 gms. of gold which is above the gold found in possession of the family. Hence, no assessment is made in this regard."(emphasis, supplied)

4.2 The AO's factual finding is, clearly, of the gold found during search being not satisfactorily explained and, accordingly, liable to be deemed as income for the relevant year. The BI, in his view, however, constrains him not to do so. It would be therefore necessary to peruse the same, which, also read-out during hearing, is reproduced as under:

> "Instances of seizure of jewellery of small quantity in the course of operation under section 132 have come to the notice of the Board. The question of a common approach to situation where search parties come across items of jewellery has been examined by the Board and following guidelines are *issued for strict compliance*.
>
> (i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need to be seized.
>
> (ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms, per married lady 250 gms per unmarried lady and 100 gms, per male member of the family, need not be seized.
>
> (iii) The authorized officer may having regard to the status of the family and the customs and practices of the community to which the family belongs and other circumstances of the case, decide to exclude *a larger quantity of jewellery and ornaments from seizure*. This should be reported to the Director of Income-tax/Commissioner authorising the search all the time of furnishing the search report.
>
> (iv) In all cases, *a detailed inventory of the jewellery and ornaments found* must be prepared to be used for assessment purposes."(emphasis, ours)

4.3 How we wonder, in face of such clear mandate, could anyone contend that the said BI provides for, much less prescribes, exclusion of unseized jewellery for assessment purposes; it, for the reasons stated, providing guidelines for the purpose of seizure by a search party *qua* gold jewellery. And, further, vide para (iv) thereof, specifically requires the assessing authority to consider the same for the purpose of assessment, i.e., from the stand-point of the investment being explained or otherwise. That is, he was obliged to, in terms of the Instruction itself, consider it, of course on merits, as per law. This is precisely what the revisionary authority has per the impugned order required the AO to do *inasmuch as he has completely misread the same*. There is, in purporting to adhere thereto, a complete disregard of BI 1916 by the AO in the instant case. His order is, per the law as amended by Finance Act, 2016, w.e.f. 01.06.2016, deemed as erroneous and prejudicial to the interest of the Revenue, liable for revision u/s. 263, to which provision (*Explanation 2(c)*to s. 263(1))reference was made during hearing. *What, then, is the controversy about*?

4.4 We may, though, if only for the sake of completeness of our order, continue further. The BI, which forms the basis of the assessee's case, is patently clear. The concession accorded thereby, also explaining the circumstances and reasons therefor, is to exclude gold jewellery under the circumstances and the extent specified therein, *from seizure*, making it, at the same time, clear that the same has nevertheless to be explained. Per contra, to the extent not, it would stand to be assessed as income as unexplained investment u/s. 69/69B of the Act. *Could possibly, one may ask, the said provisions be construed as inapplicable to gold jewellery, even if unexplained as to its source, where found in search, in view of the BI 1916*? The answer could only be an emphatic 'No', with there being further nothing in the said BI to even remotely so suggest, which led us to state hereinbefore of it having been in fact misread, and of there being, instead, a disregard thereof. Rather, were the BI to indeed provide otherwise, i.e., what the AO ascribes thereto, it would be outside the scope of s.119 of the Act, where-under the same is issued. The Board, even as explained time and again by the Hon'ble Apex Court, is not a judicial, but an administrative body, whose powers are clearly defined under the Act. It cannot, therefore, interfere in the exercise of judicial work by the Revenue authorities (*CIT v. Greenworld Corporation* [2009] 314 ITR 81 (SC); *J.K. Synthetics Ltd. v. CBDT* [1972] 83 ITR 335 (SC)). It is one thing to relax the rigor of the procedural law to mitigate 'genuine hardship' to any person or class of persons, and quite another to interpret the law. The interpretation being placed by the AO on the BI, besides being contrary thereto, is, with respect, outside the legal competence and mandate of the Board itself. Why, an interpretation whereby gold jewellery is to be under law treated differently from other assets, i.e., as not required to be explained as to its nature and source, would bear an inherent bias against persons holding assets other than gold jewellery, violating Art.14 of CoI.

4.5 The AO's, who claims to be in making the impugned assessment guided by the said BI, understanding thereof is, much less a reasonable construction, as contended, a disregard thereof; rather, contrary thereto. The argument is in fact misconceived

inasmuch as a possible view, precluding revision, is only *qua* a provision of law, conspicuous by its absence. On merits, as explained, the Board cannot, as per settled law, travel outside its bounds under law or usurp the power of adjudication by the assessing authority. It has, *as a matter of fact*, not, so that questions of competence or reasonability of construction are academic, stated only to meet the arguments made during hearing. No reason for such construction, needless to add, stands furnished before us. The impugned assessment is a clear case of misapplication of law, liable for revision qua the relevant aspect. That some other authority may have read BI1916 likewise, i.e., contrary to what it says, is immaterial (*Escorts Ltd. v. UoI* [1993] 199 ITR 43, 60 (SC)). The same can, under the circumstances, only be regarded as it's view in the matter, not supported by any cannon of interpretation of statutes – which the BI is in fact not, drawing inference from the fact of non-seizure advocated thereby, to thus travel outside its scope and purpose.

5. We, for the reasons stated, find no merit in the assessee's case and, accordingly, decline interference. We may though not be construed as having expressed any view *qua* assessment *per se*, i.e., of the jewellery found being explained or otherwise.

6. In the result, the assessee's appeal is dismissed.

Order pronounced on December 07, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: December 07, 2023
n.p.
Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT-DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin