

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

महनीय श्री मनोज कुमर अग्रवाल, लेखक सदस्य एवं
महनीय श्री मनोमोहन दास, न्यायिक सदस्य का समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM,
AND HON'BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.1113/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2020-21)

DCIT Central Circle -2(4) Chennai	बनाम/ Vs.	Shri Kandiah Muthukrishnan 161, Rangarajapuram Main Road, Kodambakkam, Chennai-600 024.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AFTPM-5826-Q		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

Cross Objection No.50/Chny/2023
(In ITA No.1113/Chny/2023)
(निर्धारण वर्ष / Assessment Year: 2020-21)

Shri Kandiah Muthukrishnan 161, Rangarajapuram Main Road, Kodambakkam, Chennai-600 024.	बनाम/ Vs.	DCIT Central Circle -2(4) Chennai
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AFTPM-5826-Q		
(पीलार्थी/ Cross Objector)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri P. Sajit Kumar (JCIT) – Ld. Sr. DR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri P.M. Kathir (Advocate) and Ms. S. Revathy (CA) - Ld. ARs
सुनवाई की तारीख/Date of Hearing	:	27-03-2024
घोषणा की तारीख /Date of Pronouncement	:	03-04-2024

आदेश / ORDER

Per BENCH:

1.1 Aforesaid appeal by revenue for Assessment Year (AY) 2020-21 arises out of an order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 09-08-2023 in the matter of an

assessment framed by the Ld. AO u/s.143(3) on 29-09-2021. The assessee has also preferred cross-objection.

1.2 The grounds taken by the revenue read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2 The Ld.CIT(A) erred in deleting the addition of Rs.78,23,239/- made as unexplained investment towards value of jewellery found in the residence of the assessee during the course of search

2.1 The CIT(A) erred in relying on the assessee's explanation that the assessee & his wife admitted income of over Rs.2 Crores from the assessment years 2014-15 to 2020-21 and concluding that the assessee had enough resources to invest in Jewellery, without considering the other investments and outflow of funds from his returned income.

2.2 The CIT(A) erred in concluding that the assessee had enough resources to invest in jewellery, without appreciating that the assessee himself admitted drawings in the name of himself and his wife amounted to only Rs.17,10,102/- for AYs 2014-15 to 2019-20 whereas the value of jewellery found is Rs.78,23,239/-

2.3 The CIT(A) ought to have appreciated that the assessee failed to discharge the onus cast on him to prove that the investment in jewellery was made from the explained sources of income.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

1.3 The grounds taken by the assessee in its cross-objection read as under:-

1.1 The CIT(A) has rightly deleted the addition on the ground that the Assessee and his wife have sufficient resources to make investments in the gold jewellery based on their earning capacity & social status of the family.

1.2 The CIT(A) has rightly deleted the addition on the ground that no findings were made by the AO in his order to treat the entire value of jewellery found during the course of search as unexplained.

2.1 The CIT(A) erred in sustaining the addition of Rs.33,48,921/- as unexplained income u/s.69A of the IT Act.

2.2 The CIT(A) having taken note of the fact that the entire assessment was solely based on the sworn statement of the accountant, erred in sustaining the addition of Rs.33,48,921/- as unexplained income u/s.69A of the IT Act.

2.3 The CIT(A) having taken note of the fact that the cash was found from the business premise of M/s.Sri Ram Studio, erred in upholding the action of AO in treating the same as unexplained in the hands of the Appellant, who is a partner of M/s. Sriram Studio.

As is evident the sole grievance of the revenue is qua addition of unaccounted jewelry. The assessee, besides supporting impugned order, assails the confirmation of addition of Rs.33.48 Lacs as made by Ld. AO u/s 69A.

1.4 The Sr. DR advanced arguments and assailed the findings of Ld. CIT(A) by relying upon CBDT Instructions No. 1916 dated 11.05.1994. Ld. Sr. DR also tabulated the cash flow to assail the findings given by Ld. CIT(A). The written submissions filed by Ld. Sr. DR on the issue of source of jewellery read as under : -

Written Submission dated 27/03/2024 Source for Jewellery found during the course of search

Various appellate forums have been giving relief to the taxpayers stating that the source for gold jewellery found during the course of search shall be deemed to have been proven as held in the CBDT circular No. 1916 dated 11/05/1994 to the extent of the quantity covered by such circular. In this regard, the following submission is made.

a) First and the foremost submission is that the CBDT has not issued any circular in this regard. What CBDT had issued vide No.1916 dated 11/05/1994 is an Instruction and only to take a decision on quantity of seizure that the Departmental authorities will have to make. As far as source of jewellery, irrespective of the quantity seized, the holder of jewellery will have to explain the source for each gram found during the course of search. There is a world of difference between a CBDT Circular and CBDT Instruction.

b) CBDT Circulars are issued u/s 119(2) (a) of the Act and it is published and circulated for general information of public at large. Such circulars are binding both on the Income Tax Authorities as well as the taxpayers.

c) CBDT instructions are issued u/s 119(1) of the Act to the subordinate Income Tax authorities and is not published nor circulated for the general information of the public at large. The instructions so issued are made available only to the Income Tax Authorities and are not to be shared with the public. As could be demonstrated, no instructions issued by the CBDT, in the past or current, are published in the CBDT website as available in the URL <https://incometaxindia.gov.in>. Such instructions are made available for access to the Income Tax authorities only in the portal '<https://www.irsofficersonline.gov.in>', that too, under three layer authentication requirement indicating the maintaining of the confidentiality requirement for not getting access to the public at large.

d) It is very unfortunate that such confidential instructions issued by the CBDT to its subordinate officer are made available in the public domain and is subject matter of interpretations by various appellate forums treating it as a Circular.

1.5 The Ld. AR, on the other hands, relied on various case laws to support the impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

2. Assessment Proceedings

2.1 Pursuant to search action u/s 132 on 21.01.2020 in the premises of M/s Sri Ram Studios (a partnership firm of the assessee) as well as on assessee, the impugned assessment was framed. During search, cash of Rs.33.50 Lacs was found and inventorized. Shri V. Balamurugan, accountant of Shri Ram Studios deposed u/s 132(4) that the cash-in-hand as per books of account was Rs.1,809/- only. He could not explain the source of the same. It was also stated that the employees of the firm would collect cash and the assessee would keep cash in his cabin. During assessment proceedings also, the assessee failed to substantiate the source of the same. Accordingly, the same was added in assessee's hands as unexplained money u/s 69A.

2.2 The Ld. AO made another addition of jewellery found and seized at assessee's residence. As per valuation report, the gross weight of the jewellery was 2293.30 grams and that of diamond was 6.79 carats. The jewellery was valued at Rs.78.23 Lacs. In the sworn statement recorded u/s 132(4), the assessee was required to explain the source of the investment. In the absence of any satisfactory explanation forthcoming from the assessee, jewellery weighing about 637.100 grams valued at Rs.18.28 Lacs was seized after giving the allowance as per CBDT instruction no. 1916 dated 11.05.1994. Since the assessee failed to file any submissions during assessment proceedings as well, the value of jewellery amounting to Rs.78.23 Lacs was added to the income of the assessee.

3. Appellate Proceedings

3.1 During appellate proceedings, the assessee, inter-alia, submitted that nothing was brought on record to indicate that the excess cash belonged to the assessee. The basis of seizure was the statement of the accountant. However, considering the admission made by the assessee regarding carrying on of independent financial business and admission that the material seized from M/s Sriram Studios belonged to him, Ld. CIT(A) confirmed impugned addition which is the grievance of the assessee.

3.2 On the issue of jewellery, the assessee submitted that the addition was contrary to aforesaid CBDT instructions. The assessee relied on various judicial decisions holding the field wherein it was held that possession of jewellery to the extent of the quantities specified in the instructions was to be treated as reasonable and therefore, should not be subjected to addition. These decisions include the decision of Hon'ble Rajasthan High Court in the case of **CIT vs. Satya Narain Patni (46 Taxmann.com 440)**, the decision of Hon'ble Allahabad High Court in **CIT vs. Ghanshyam Das Johri (41 Taxmann.com 295)**; the decision of Hon'ble Gujarat High Court in **Ratanlal Vyaparilal Jain (339 ITR 351)**. The assessee also brought on record the fact that it admitted income of Rs.138.47 Lacs during AYs 2014-15 to 2020-21. Similarly, the assessee's wife reflected income of Rs.76.92 Lacs during AYs 2016-17 to 2020-21 to support the submissions that it had sufficient means to acquire the jewellery.

3.3 The Ld. CIT(A) considered the decision of Hon'ble Gujarat High Court in **Ratanlal Vyaparilal Jain (339 ITR 351)** wherein it was held that though circular was issued for non-seizure of jewellery during the

course of search, the basis for the same recognizes the customs prevailing in Hindu Society. Unless revenue shows anything to the contrary, it could be presumed that the source to the extent of jewelry as specified in the circular stood explained. Similar was the ratio of other decision as cited by the assessee. Concurring with assessee's submissions, Ld. CIT(A) deleted the impugned addition as under: -

6.1.3.13 The Appellant has pleaded that while recording the statement u/s 132(4) of the Act, the Appellant has admitted that the jewellery belongs to his wife, his brother's daughter who is staying with him, his wife's sister who is settled in USA and his mother-in-law and further claimed that his wife has brought 800 gms, of jewellery as Sreedhan during wedding. The Appellant in his submission has detailed the income disclosed by him and his wife including the drawings made. As correctly observed by the Appellant in his submission, the A.O. cannot treat the Appellant as a person of no means. Treating the entire value of jewellery as unexplained investment by the A.O is arbitrary. The Investigation Officer during the course of search found 2293.300 gms. and 6.79 Ct of diamond and valued as Rs. 78,23,239/- by the registered valuer. Out of this, the jewellery to the extent of Rs.537.100 gms. valued at Rs.18,28,235/- was seized by considering the Board's Instruction No. 1916 dated 11.05.1994.

6.1.3.14 .As observed by the Jurisdictional High Court in the case of V.G. P Ravidas Vs ACIT (2014) 51 taxmann.com 16 / [2015] 228 taxmann 93 (mag.) (Madras), the Appellant produced evidences supporting the income and status of his family. Now the issue before the undersigned is that what is the reasonable allowance to be provided to the Appellant by considering the status, social-norms and practices in India. Obviously, the entire value of jewellery found during the course of Search, cannot be treated as unexplained as held by the A.O. The Appellant has substantiated the holdings of jewellery by raising the ground that the appellant has earned income and admitted the same in the return of income filed from the AY(s) 2014-15 onwards. The total income disclosed by the Appellant from the AY(s) 2014-15 to 2020 is Rs.1.38 Crores and his wife from the AY(s) 2016-17 to 2020-21 is Rs.76 Lakhs and the total income disclosed by the appellant and his wife together is more than Rs. 2 Crores. These facts confirms that the Appellant and his wife have sufficient resources good enough to make investments in gold jewellery even it were not to consider Sreedhan brought by the Appellant's wife. In view of the submission I am constrained to treat the investment made in Gold jewellery by the Appellant as explained and consider the value of jewellery have been invested over a period of time by the Appellant, his wife and other members of his family. In view of this the action on the part of the AO to treat the entire value of jewellery found during the course of search is not reasonable. Moreover the AO has not made any findings in the assessment order to treat the entire value of jewellery found during the course of search as unexplained. In this background, it is considered that there exists no ground to treat any part of the jewellery as unexplained in the hands of the appellant. Accordingly the Ground No. 3 raised by the appellant upon this issue is treated as allowed.

Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

4. So far as the addition of cash seized by the department is concerned, the only submission that could be adduced by Ld. AR was that the income should be spread over the period during which it was earned. However, in the absence of any acceptable working shown to us, these submissions could not be accepted. The assessee has failed to even substantiate the fact that the income was earned over several years. Therefore, the orders of lower authorities, to that extent, find our concurrence. The cross-objection filed by the assessee stand dismissed.

5. So far as the addition of Jewellery is concerned, the decision of Hon'ble Gujarat High Court in **Ratanlal Vyaparilal Jain (339 ITR 351)** duly supports the case of the assessee. It was held by Hon'ble Court that though Instruction No.1916 was issued for non seizure of jewellery during the course of search, the basis for the same recognizes the customs prevailing in Hindu Society. Unless revenue shows anything to the contrary, it could be presumed that the source to the extent of jewelry as specified in the circular stood explained. Similar is the ratio of subsequent decision of Hon'ble Rajasthan High Court in the case of **CIT vs. Satya Narain Patni (46 Taxmann.com 440)** which held that the Board, looking to the Indian customs and traditions, has fairly expressed that jewellery to the said extent will not be seized and once the Board is also of the express opinion that the said jewellery cannot be seized, it should normally mean that any jewellery, found in possession of a married lady to the extent of 500 grams, 250 grams per unmarried lady and 100 grams per male member of the family will also not be questioned about its source and acquisition. Similar

analogous view has been expressed in the decision of Hon'ble Allahabad High Court in **CIT vs. Ghanshyam Das Johri (41 Taxmann.com 295)**. Considering all these decision, the arguments of Ld. Sr. DR that the CBDT instructions would apply only for seizure of the jewellery and not for source of the same could not be accepted. It has consistently been expressed by various High Courts that the quantities of jewellery as specified in the said circular could be considered as reasonable quantities considering the customs prevailing in Hindu Society. The source to that extent could not be questioned. It is also pertinent to note that the assessee, in sworn statement u/s 132(4), has attributed the jewellery as belonging to his wife, his brother's daughter, his wife's sister and his mother-in-law. It was also stated that his wife had brought 800 grams of jewellery as *Streedhan* during wedding. The same has not been questioned by Ld. AO and as such this fact remains uncontroverted. This fact alone would support the adjudication of Ld. CIT(A) that the impugned addition could not be sustained. Therefore, we concur with the same and dismiss the appeal of the revenue.

6. The appeal of the assessee as well as cross-objection filed by the assessee stand dismissed.

Order pronounced on 3rd April, 2024

Sd/-
(MANOMOHAN DAS)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

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