

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, " A-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 303/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Smt. Kalpana Garg, 224-A, Talwandi, Kota	बनाम Vs.	DCIT, Central Circle, Kota
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AEOPG 3231 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri P. C. Parwal (CA)
राजस्व की ओरसे / Revenue by: Shri Rajesh Ojha (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 05/06/2024
उदघोषणा की तारीख / Date of Pronouncement : 06/06/2024

आदेश / ORDER

PER: NARINDER KUMAR, J.M.

The assessee, named above is before this Appellate Tribunal, feeling dissatisfied with the order dated 31st Jan, 2024 passed by Id. CIT(A), which relates to the Assessment Year 2017-18.

2. Vide impugned order, Id. CIT(A) has modified the assessment order dated 21.12.2018 passed by Id. Assessing Officer.

3. In brief, for ready reference, the computation of income as per assessment order needs to be reproduced, so as to highlight the modification. Same reads as under:-

“7. After examination of the information and details placed on record and discussion with the assessee, the total income of the assessee is computed as under:-

Gross Income u/s 139 of the Act	Rs. 4,49,620/-
Add: Unexplained jewellery	Rs. 11,72,872/-
Add: Unexplained cash	Rs. 1,71,500/-
Total income	Rs. 17,93,992/-
Deductions Under Chapter VIA	Rs. 1,60,000/-
Net Income	Rs. 16,33,992/-
Assessed Total Income	16,33,992/-
R/o	Rs. 16,33,990/-

4. While disposing of this appeal, Id. CIT(Appeal) upheld the addition made by Id. Assessing Officer as regards the unexplained jewellery, only to the extent of Rs. 6,95,252/-. In other words, the remaining addition to the tune of Rs. 4,77,620/-as regards unexplained jewellery, has not been sustained, and consequently deleted.

5. Even though, Ld. CIT(Appeal) has partly allowed the appeal, in the manner indicated above, the assessee is before this Appellate Tribunal, by way of this appeal.

6. Arguments heard. File perused.

7. Admittedly on 02.02.2017, a search and seizure operation, as provided u/s 132(1) of the IT Act was carried out at various premises of Allen Career Institute Group, Kota.

The search also led to discovery of cash jewellery and other documents from residential and business premises of the assessee. Search operation was carried out even as regards her locker No. 160, with SBBJ, I. L. Township Branch, Kota.

8. As a result of the search and seizure, case of the assessee was centralized to Central Circle, Kota vide order dated 16.02.2017.

9. Undisputedly, the assessee had filed her return of income on 31.03.2018, u/s 139 of the Act, declaring her total income as Rs. 2,89,620/- , but, she was issued notices u/s 143(2) & 142(1) of the Act; and that the

assessee participated in the proceedings, represented by FCA, from time to time.

10. It may be mentioned here that ground No. 1 in the appeal, before Id. CIT(A) pertained to addition u/s 68 of the Act on account of cash deposits made in her bank account.

Admittedly, said ground of appeal was allowed, while deleting the said addition.

11. As regards ground No. 2 in the appeal before Id. CIT(Appeal), pertaining to addition of Rs. 11,72,872/-, u/s 69 A of the Act, the addition was made on the ground that the assessee had failed to explain gold jewellery weighing 1040.66 gms, stated to have been found from the residential premises of the assessee.

Significant to note that gold jewellery of the value of Rs. 8,69,828 is stated to have been found from the above said locker.

As per version given by the assessee, the summary of the jewellery so found, was sought to be explained as under:-

Jewellery belonging to	Gross Weight (in gms)	Net Weight (in gms)
Kalpna Garg	479.15	371.42
Late Smt. Chameli Devi	319.22	239.19
Ravi Garg	245.71	209.80
Sriyashi Garg	123.40	104.45
Athary Garg	41.00	33.00

Kapil Khatri	280.00	252.00
Total	1488.48	1209.867

12. It may be mentioned here that while opening his arguments, Id. AR for the assessee has opted not to press ground No. 2 mentioned in the ground of appeal i.e. Form No. 36.

13. The only contention raised by Learned AR for the assessee is that Id. CIT(A) erred in confirming the addition of Rs. 6,95,252/-, u/s 69A of the Act, on the ground that the assessee had failed to explain investments in jewellery.

14. Learned CIT(A) noted in the impugned order that vide assessment order the jewellery, found from the bed room of Shri Ravishanker Garg and Smt. Kalpana Garg, the assessee, during search action, was worth Rs.28,50,269/- and that the assessee and her family members had failed to explain its source.

It is noteworthy that Learned Assessing Officer had also observed that jewellery worth Rs.8,69,828/- was found from the locker of Smt. Kalpana Garg.

Learned Assessing Officer made total addition of Rs.11,72,872/-as regards the jewellery, source of which was not explained.

15. Admittedly, Learned CIT(A) has held that addition of Rs.30,24,845/-i.e. the value of 950 grams plus 93.05 grams was not required to be made.

Deletion of addition relating to 950 grams of jewellery

16. Addition as regards 950 grams of jewellery was deleted in view of CBDT instruction No.1916 dated 11.5.1994 and decision by Hon'ble Rajasthan High Court in case titled as **CIT v. Satya Narain Patni**, 106 DTR 436.

Deletion of addition relating to 93.05 grams of jewellery

17. Addition as regards 93.05 grams of jewellery was deleted, as learned CIT(A) was satisfied that the assessee had furnished evidence regarding purchase of said quantity of jewellery by way of cheques (details provided in the table at page 55 of the impugned order).

So, the question remained as to whether the assessee failed to explain jewellery worth Rs. 6,95,292/-.

As regards unexplained jewellery worth Rs.6,95,292/-

18. After deletion of the additions in the manner indicated above, Learned CIT(A) went on to hold that the assessee had failed to explain jewellery worth Rs.6,95,292/-

Contentions

19. Learned AR for the assessee has relied on statements recorded by the Search Team during search and seizure operation, the abovesaid circular dated 11.5.1994 issued by CBDT and also the decision in Satya Narain Patni's case (supra) and contended that the authorities below have erred in holding that the assessee had failed to explain jewellery worth Rs.6,95,292/-, and as such, the impugned order deserves to be set aside.

On the other hand, Learned DR for the department has defended the impugned order for the reasons recorded therein.

20. Firstly, we take up the circular dated 11.5.1994 issued by CBDT on the subject.

It is true that as per this circular jewellery 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.

It is also true that the circular does not contain any direction that the person found in possession of jewellery cannot be questioned. But, in Satya Narain Patni's case (supra), Hon'ble High Court has interpreted the circular to normally mean that any jewellery, found in possession of a married lady to the extent of 500 gms, 250 gms per unmarried lady and 100 gms per male member of the family would also not be questioned about its source and acquisition.

At the same time, Hon'ble High Court observed that if the authorized officer or the Assessing Officer finds any jewellery

beyond the abovesaid weight, then certainly they may question the source of acquisition of the jewellery, and further that in appropriate cases, if no proper explanation is offered, they may treat the jewellery, beyond the said limit, as unexplained investment of the person with whom the said jewellery has been found.

In that case, Hon'ble High Court having regard to the status of the family and the jewellery, found in possession of 4 ladies, held that the authorized officers had not seized the jewellery, same being within tolerable limits, and further that the subsequent addition was also not justifiable on the part of the Assessing Officer, and as such was rightly deleted by the two Appellate Authorities.

21. So far as observations made by Learned CIT(A) are concerned, restricting the claim of jewellery to 950 gms plus 93.05 gms, while discarding the version of the assessee and her

husband, we find no reasonable basis for the same, in the impugned order, for the reasons, which follow .

As regards Jewellery said to be belonging to mother in law of the assessee

22. Before AO, the claim of the assessee was that jewellery weighing “gross weight” 319.22 grams and valuing Rs.6,93,651/- belonged to her mother in law Smt. Chameli Devi Garg, who left this world only few days prior to the search operation, and further that said jewellery was the one recovered from the locker as well as from House No. 502-B, Chambal Apartment , Kota.

As further claimed as per last Will, said jewellery would be distributed equally amongst children of Smt Chameli Devi Garg i.e. her two sons and three daughters.

Same version was to be put forth before Id. CIT(A), but he did not allow this version so as to delete the addition in this regard. Leaned CIT(A) recorded reasons for rejection of said claim. He observed that the assessee had not provided any evidence to prove that the jewellery belonged to her mother in law; that no gift deed was furnished; that no evidence was led regarding purchase of the said jewellery or as to the source of income for its purchase.

It may be mentioned here that before the AO, certain affidavits were furnished but same were rejected by the AO. Learned CIT(A) upheld rejection of said affidavits on the ground that the assessee had failed to produce or prove bills or vouchers in proof of purchase of said jewellery.

23. Ld. AR for the assessee has submitted that Smt. Chameli Devi Garg left this world on 30-12-2016 i.e. some months before the search operation carried out by the Department and that steps were yet to be taken by the assessee and her husband to execute her last wish for equal distribution of her jewellery amongst her children, and that in given situation, the AO should have accepted the version of the assessee and the ld., CIT(A) should have allowed the appeal on this aspect.

No material has been brought on record by the Department to suggest that during her last days in this world, Smt. Chameli Devi Garg was not residing with the assessee or that she was residing somewhere else.

24. Learned DR has submitted that in the course of arguments before the ld. CIT(A), the ld. AR for the assessee contended that when the jewellery is received by way of gift at the time of marriage or on other occasion, it is difficult to produce evidence in proof thereof.

The contention raised by the Id.DR is that the gift of an article at the time of marriage is a claim different from the claim regarding purchase of ornaments, but this is a case where the assessee put forth alternative pleas at the time of argument before the Id. CIT(A), and as such, her version been rightly rejected, particularly when the assessee failed to produce there any convincing evidence that the jewellery belonged to Smt. Chameli Devi Garg.

25. It is true that the claim regarding gifting of items to the couple or his spouse may need to be supported by evidence, like any other claim regarding purchase of certain ornaments by its owner.

It is also true that the assessee did not produce before the AO or before the Id. CIT(A) any evidence that any of the said items of jewellery was gifted to her at the time of marriage of Smt. Chameli Devi. Similarly, the assessee did not produce before the authorities below any bills or vouchers in proof of purchase of said jewellery items in the name of her mother in law.

As regards the contention raised by Learned DR, reference need to be made to the observations made by Hon'ble High

Court in the above said case. Relevant portion of the decision

reads as:

“We can take notice of the fact that at the time of wedding, the daughter/daughter-in-law receives gold ornaments jewellery and other goods not only from parental side but in-laws side as well at the time of 'Vidai' (farewell) or/and at the time when the daughter-in-law enters the house of her husband. We can also take notice of the fact that thereafter also, she continues to receive some small items by various other close friends and relatives of both the sides as well as on the auspicious occasion of birth of a child whether male or female and the CBDT, looking to such cutoms prevailing throughout India, in one way or the another, came out with this Circular and we accordingly are of the firm opinion that it should also mean that to the extent of the aforesaid jewellery, found in possession of the varoius persons, even source cannot be questioned. It is certainly 'Stridhan' of the woman and normally no question at least to the said extent can be made. ”

In the case of Satynarai Patni (supra), there was discussion regarding grant of benefit of the CBDT Circular No. 1916 dated 11-05-1994, to the extent of particular quantity of jewellery specified therein, for the reasons recorded therein.

However, herein, Learned CIT(A) did not allow claim of the assessee for such concession as he was of the view that he had already given its benefit to the assessee to the extent of 950 gms. of jewellery thereby deleting the addition made by the AO. In this way, Learned CIT(A) was not inclined to include the said quantity i.e. 319.20 gms of jewellery belonging to Smt. Chameli Devi Garg.

26. As noticed above, Smt. Chameli Devi Garg died on 31-12-2016 i.e. only two months prior to the search operation. Had she been alive at the time of the search operation, she might have helped production of evidence so as to avail of said concession as per Circular dated 11-05-1994.

Even otherwise, it is significant to mention that whatever statements were made by Shri Ravi Garg, son of Smt. Chameli Devi Garg during search proceedings and subsequently, same have been gone unchallenged for want of any evidence contrary to it from the side of the Department. It is noteworthy that Shri Ravi Garg even identified the ornaments belonging to his mother, and testified in this regard during his statement.

Conclusion

27. Having regard to the directions contained in the circular and applying the decision in Satya Narain Patni's case (supra), to the given facts and circumstances, it is held that the Id. CIT(A) ought to have deleted the addition in respect of jewellery 319.20 gms belonging to Smt. Chameli Devi Garg, while deleting the addition as regards the other quantity of her jewellery.

We order accordingly.

Jewellery weighing 280 gms mortgaged by Shri Kapil Khatri with husband of the assessee

28. From the very beginning i.e. from the stage of recording of statements during search operation and subsequently, it has been claimed by the assessee and her husband Shri Ravi Shankar Garg that the jewellery weighing about 250 gms was mortgaged with him by Shri Kapil Khatri.

Learned CIT(A) rejected said claim of the assessee and her husband on the ground that no such certificate (sic) was submitted in the assessment proceedings and, for the first time, affidavit of Shri Kapil Khatri was produced in the appeal proceedings before him i.e. before the ld CIT(A).

Before Learned CIT(A), it was submitted that the affidavit of Shri Kapil Khatri could not be submitted during assessment proceedings due to bona fide belief that no adverse inference was going to be drawn.

Learned CIT(A) observed in the impugned order that said new evidence i.e. in the form of affidavit of Shri Kapil Khatri was not going to be held admissible, having regard to the provisions of Rule 46A of Income Tax Rules.

29. Learned AR for the assessee has drawn our attention towards said affidavit sworn by Shri Kapil Khatri on 12-05-2017.

30. As per contents of the abovesaid affidavit, the deponent testified to have borrowed Rs.7.00 lacs from Shri Ravi Shankar Garg on four dates i.e. 17-11-2012, 21-11-2012, 7-12-2011, and 30-12-2011, against mortgage of gold jewellery weighing about 250/ 300 gms, with said Shri Ravi Shankar Garg.

Search operation was carried out on 02-02-2017. All the four cheques are stated to have been issued much earlier. Department has not brought on record any material to suggest that none of the said cheques was actually presented by Shri Kapil Khatri for encashment or that the same have been issued just to accommodate the assessee or her husband.

It is true that in the statement made on 02-02-2017, initially Shri Ravi Shankar Garg claimed to have lent Rs.5.00 lacs to Shri Kapil Khatri, but, it is significant to note that subsequently it stands explained that jewellery was mortgaged with him by Shri Kapil Khatri against loan of Rs.7.00 lacs.

In the impugned order, the Id. CIT(A) observed that during search, it was not disclosed that jewellery belonged to Shri Kapil Khatri and made it a ground for rejection of the said claim.

But, in view of the unchallenged material referred to above, it cannot be said that the claim was never put forth during search or that this plea is an afterthought.

Conclusion

31. In view of above discussion, we deem it a fit case for deletion of the additions made even as regards the value of 280 gms of gold jewellery, which was actually mortgaged by Shri Kapil Khatri with the husband of the assessee much earlier.

Result

32. As a result of the above findings, this appeal deserves to be allowed. Consequently, this appeal is allowed and the impugned order by learned CIT(A) as regards non-deletion of the additions relating to the remaining quantity of jewellery, is set aside.

Order pronounced in the open court on 06/06/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/06/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Kalpna Garg, Kota
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle, Kota
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 303/JPR/2024)

Sd/-

(नरेन्द्र कुमार)

(NARINDER KUMAR)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,
सहायक पंजीकार / Asstt. Registrar