

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, HON'BLE VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1727/Chny/2024**
निर्धारण वर्ष / Assessment Year: 2021-22

Laxmi Nanda Kishore Velegatla,
KG Signature City, D-2 Block,
Floor -12A, Flat No.9, 200 Feet
Bypass Road, Adjacent Service
Road, near Lalitha Mugambigai
Medical College & Hospital,
Maduravoyal, Chennai – 600 095.

Deputy Commissioner of
v. Income Tax,
Central Circle -1(4),
Chennai – 600 034.

[PAN: ACOPV-3242-P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Mr. P. Ranga Ramanujam, CA
: Ms. Swapna Nanu Ambatt, CIT

सुनवाई की तारीख/Date of Hearing

: 11.11.2024

घोषणा की तारीख/Date of Pronouncement

: 05.12.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), Chennai-18, dated 18.04.2024 and pertains to assessment year 2021-22.

2. The assessee has raised the following grounds of appeal:

1. *The order of the CIT(A) is unjust, unfair and contrary to the facts and circumstances of the case.*

2. *The CIT(A) ought to have deleted the entire impugned addition since it is contrary to the CBDT instruction 116 dated 11/05/1994, which is in binding on the income tax authorities instead of granting relief only to 50%.*

3. *The Ld.CIT(A) has erred in not appreciating that the AO erred in passing the assessment order without any corroboratory material.*

The Ld. CIT A has erred in not appreciating the addition made in the assessment by AO is based on conjectures and assumptions which are not sustainable in law.

4 *The Ld. CIT A has erred in not appreciating the fact that the AO has erred in not issuing notice U/s 142(1) before the issue of Show Cause Notice. Therefore the assessment order is bad in law.*

5 *The Ld. CIT A has erred in not appreciating that the impugned addition made by AO in the assessment order under the head Unexplained Investment is neither valid in law nor on merits.*

6 *The Ld. CIT A has erred in not appreciating that the addition made by the AO u/s 69 is bad in law in so far as is applicable to the assessee.*

7 *The Ld. CIT A has erred in not appreciating the fact that the AO has erred in taxing the impugned addition u/s 115 BBE instead of the normal rates.*

8 *For the reasons cited above and that may be adduced during the courses of the hearing, I pray the Hon'ble ITAT to delete the addition sustained by the Ld. CIT A in assessment and render justice."*

3. The brief facts of the case are that, the assessee is a Chartered Accountant and working as General Manager, Finance and Accounts in M/s Varficus Ventures P Ltd. As part of search in the group belonging to Ram Prasad Reddy, the assessee's residential premises was also searched on

27.11.2020. The unaccounted gold and silver jewellery amounting to Rs.12,14,570/- as per annexure ANN/MS/LNK/Gold Jewellery/S & ANN/MS/LNK/Silver/S dated 29.11.2020, gold jewellery weighing about 299.7 grams and silver jewellery weighing about 3,108 grams were found and seized from the premises of the assessee. The assessee filed belated return of income for assessment year 2021-22 u/s. 139(4) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), declaring a total income of Rs.19,33,550/-. The case was selected for scrutiny and issued statutory notices calling for details from the assessee. During the course of assessment proceedings, the assessee produced list of jewellery acquired in the recent past along with purchase bills. The assessee also contested the proposed addition in show cause notice on the basis of CBDT Instruction No. 1916 dated 11.05.1994. However, the Assessing Officer was not convinced with the submissions of the assessee and concluded the assessment by making an addition of Rs.12,14,570/- u/s. 69 of the Act as unexplained investment by passing an order u/s. 143(3) of the Act dated 24.09.2022, by holding as under:

"6. On perusal of the list of jewellery provided by the assessee, it is seen that purchase bills of jewellery submitted by the assessee does not meet with the description of jewellery seized by the above mentioned annexure. Furthermore, it is seen that the

assessee has provided purchase bill for gold jewellery weighing 276.945 grams. That being the factual position, the total of gold jewellery of 299.7 grams were seized during the process of search and taken together, the total weight of the gold jewellery comes to 576.645 grams (276.945-299.7). The total weight of silver jewellery is 3108 grams. Thus, weight of the jewellery owned by the assessee exceeds the limit of 500gms in case of gold jewellery prescribed in CBDT Instruction No.1916 dated 11/05/1994, Without prejudice to the above, it may not be out of place to state that the plain rendering of the language of the Instruction that it governs and relates to the seizure of Jewellery in the course of section 132 of the Income Tax Act, 1961. Thus, the contention of the assessee is not found to be acceptable.

6.1 In view of the fact that the jewellery owned by the assessee exceeds the limits of 500 gms as discussed in the earlier paragraphs, the decision of the Hon'ble Gujarat High Court and Tribunals do not apply to the facts of the case and are as such distinguishable.

7. The assessee has not been able to prove the source of income for the acquisition of the above mentioned seized jewellery. The onus squarely lies on the assessee to adduce the sources for the investment in the jewellery with credible material documentary evidences. However, the assessee has not been able to discharge the primary onus cast on him as evident from the facts of the case as has been discussed above. Hence, the assessment is completed by making the following addition to the returned income.

8. The income of the assessee as per this order is as under:

Particulars	Amount (in Rs.)
Returned Income	19,33,550/-
Add: unexplained investment u/s. 69 of the Act	12,14,570/-
Assessed income	31,48,120/-

Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).

4. During the appellate proceedings, the assessee stated that he is a Chartered Accountant was in service in various organizations since 1998 to 2021 and earning more than Rs.20,00,000/- p.a. The assessee further submitted that his family consists of himself, his spouse aged about 40 years and his two girl children, aged around 18 & 14, respectively. The assessee had been to his native place at Rajamundhry, East Godavari District, Andhra Pradesh along with his family for short visit to see his parents and the search was taken place in his absence, wherein the authorized officer has broken the lock for the purpose of search and the search party has not found any incriminating material to show that the income of the assessee or the searched party group companies have escaped any income. Further, the assessee relied on the CBDT Instruction No. 1916 dated 11.05.1994, wherein the gold jewellery and ornaments to the extent of 500 grams per married women, 250 grams per unmarried women and 100 grams for male member of the family need not to be seized and the CBDT instruction is binding on the Assessing Authorities and hence, the same may be considered as a default explanation for the jewellery seized being less than the quantity of specified instruction.

5. On perusal of the submission and various judicial precedents relied by the assessee, the Id.CIT(A) passed order dated 18.04.2024 by holding 50% of the gold jewellery and silver items as explained in the hands of the assessee and the remaining 50% i.e., Rs.6,07,285/- of the gold jewellery and silver items was sustained as unexplained investment u/s. 69 of the Act by holding as under:

"7.6 I have considered all the above facts and decision of the High court of Madras. I have also bestowed my personal attention to the facts of the case with reference to the family status, social norms and customary practices prevailing in the Indian Society. It is an accepted practice that jewellery would be given by the bride's family as Streedhan at the time of marriage: and jewellery would be gifted by relatives and friends on the occasion of various functions such as birth of children, birthdays, ear boring ceremonies, puberty attainment functions, marriages, etc. The quantum only varies that would depend, inter alia, on factors such as the family status, community, social norms, traditions, geographical orientations etc. These factors cannot be, ipso facto, brushed aside. At the same time, it is incumbent on the revenue authorities to be reasonable in bringing such valuables that are reckoned as unexplained to taxation. Strict proof for purchase/ acquisition of jewellery cannot be expected in the Indian context nor is it feasible for each and every such Streedhans/ gifts stated to be received. Further, it would be next to impossible to maintain documentary evidence for Streedhan, gifts etc., received during marriages. On careful consideration of the facts of the case, appellant's background, the quantum of income offered for taxation in earlier years and to the socio-economic milieu to which he belongs to and in order to meet the ends of justice, I hold 50% of the gold jewellery and silver items seized as explained in the hands of the assessee and direct the AO the tax remaining 50% amounting to Rs. 6,07,285/- as unexplained investments u/s 69 of the Act."

Aggrieved by the order of the Id.CIT(A), the assessee preferred an appeal before us.

6. The Id.AR of the assessee argued that the assessee has furnished the details of gold purchases made from assessment years 2015-16 to 2021-22 to the tune of 276.945 grams along with corresponding purchase bills before the Assessing Officer as well as the Id.CIT(A). Further, as per the CBDT Instruction No. 1916 dated 11.05.1994, the CBDT itself has stated that in the case of a person not assessed to wealth tax, gold jewellery and ornaments to the extent of 500 grams per married women, 250 grams per unmarried women and 100 grams for male member of the family need not to be seized. The Id.AR relied on various judicial precedents, wherein the Hon'ble Courts have held that the quantum of jewellery mentioned in the CBDT instruction for the purpose of seizing the same at the time of search, the same has to be considered as the source for investments as explained:

(i) CIT vs Ratanlal Vyaparilal Jain [2010] 2 taxmann.com 997 (Gujarat)

(ii) Ankit Mnaubhai Kachadiya vs DCIT [2021] 131 taxmann.com 304 (Surat Trib.)

- (iii) N. Roja vs ACIT [2020] 117 taxmann.com 90 (Cuttack Trib.)
- (iv) R.Umamheswar vs DCIT [2015] 60 taxmann.com 400 (Hyd Trib.)
- (v) Muppavarapu Kavitha vs ACIT [2022] 142 taxmann.com 250 (Visakhapatnam Trib.)
- (vi) VGP Ravidas vs ACIT [2014] 51 taxmann.com 16 (Madras)
- (vii) CIT vs Satya Narain Patni [2014] 46 taxmann.com 440 (Rajasthan)
- (viii) Vibhu Aggarwal vs CIT [2018] 93 taxmann.com 275 (Delhi Trib.).

Since, the assessee is living with his wife and two girl children in the family, the quantity of 1,100 grams of gold jewellery has to be considered as explained source of investments for the jewellery as per CBDT Instruction No. 1916 dated 11.05.1994 and hence, the Id.AR prayed for setting aside the order of the Id.CIT(A) by allowing the appeal of the assessee.

7. Per contra, the Id.DR relied on the orders of the Id.CIT(A) and stated that the CBDT Instruction No. 1916 dated 11.05.1994 has been given only for the non-seizure to that

extent of quantity at the time of search and not for giving exemption from taxes.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is an admitted fact that the assessee is a Chartered Accountant, was in service working for more than 20 years in various organizations and has declared income of more than Rs.20,00,000/- per annum regularly. During the assessment proceedings, the assessee has filed the details of jewellery purchased to the extent of 276.945 grams along with supporting evidence of tax invoices from assessment years 2015-16 to 2021-22. We note that, the assessee is living in a family with his wife and two girl children. The total jewellery was seized during the search on 27.11.2020 was 299.7 grams of gold jewellery and silver jewellery weighing 3108 grams. Since, the assessee was not present at the time of search, the same could not be explained and hence, the same was seized by the search authorities. However, the Assessing Officer without considering any of the submissions erred in adding 276.945 grams, which was submitted by the assessee in support of gold jewellery seized of 299.7 grams as additional

jewellery and stated that the assessee is owning 576.645 grams and hence, confirmed the seized jewelery to the tune of Rs.12,14,570/- as unexplained investment u/s. 69 of the Act. Further, the Id.CIT(A) also without considering the entire details of submissions made by the assessee by explaining the jewellery seized by all supporting documents and also the CBDT Instruction No. 1916 dated 11.05.1994, had given a relief of 50% by sustaining the balance amount of Rs.6,07,285/-. In the present facts and circumstances of the case, we note that the assessee has furnished the bills of gold jewellery to the tune of Rs.276.945 grams out of 299.7 grams seized at the time of search proceedings. However, both the lower authorities have erred by ignoring the CBDT Instruction No. 1916 dated 11.05.1994, along with corresponding judicial precedents of various Hon'ble Courts relied by the assessee (supra) in making an addition of Rs.12,14,570/- which was reduced by the Id.CIT(A) to Rs.6,07,285/-. In the back drop of above discussion, since the assessee has explained the source of gold jewellery to the tune of 276.945 grams and relying on the CBDT Instruction No. 1916 dated 11.05.1994, and also respectfully following the judicial precedents (supra), we are of the considered view, that the addition made by the

Assessing Officer and reduced to the extent of 50% by the Id.CIT(A) is not warranted and hence, we delete the entire addition of Rs.12,14,750/- by setting aside the order of the Id.CIT(A) by allowing the appeal of the assessee.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 05th December, 2024 at Chennai.

Sd/-
(जॉर्ज जॉर्ज के)
(GEORGE GEORGE K)
उपाध्यक्ष /**VICE PRESIDENT**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated, the 05th December, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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