

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./I.T.A. No.481/Chny/2024
निर्धारण वर्ष/Assessment Year: 2018-19

The Assistant Commissioner of
Income Tax,
Central Circle 1,
Trichy.

Vs. Shri Somasundaram Venkatesan,
4656, East Street,
Pudukkottai 622 001.
[PAN:ABRPV2396J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri C. Murugesan, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri R. Venkatesh, FCA
सुनवाई की तारीख/ Date of hearing : 28.11.2024
घोषणा की तारीख /Date of Pronouncement : 19.12.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order dated 27.12.2023 passed by the Id. Commissioner of Income Tax (Appeals) Chennai-19, Chennai for the assessment year 2018-19.

2. The Appellant-Revenue raised ground Nos. 2 to 2.3 of appeal amongst which the only issue emanates for our consideration is to whether the Id. CIT(A) was justified in deleting the value of excess gold stock in the facts and circumstances of the case.

3. Brief facts leading to the case are that the assessee is an individual and Prop. of M/s. Sri Bhuvanewari Jewellers, Pudukkottai. A survey was conducted on 18.01.2018 under section 133A of the Income Tax Act, 1961 ["Act" in short]. According to the Assessing Officer several incriminating materials were found and impounded. On examination of the same, the Assessing Officer found excess gold stock of 14915.42 grams being difference between quantity mentioned in the books of account and as per the inventory. The assessee was asked to explain about the said difference vide notice under section 142(1) of the Act, in response to which, the assessee filed reply. According to the Assessing Officer that the assessee could not explain vide 8 bills regarding 6056.389 grams and remaining balance of 9214 grams held unexplained. Accordingly, the Assessing Officer quantified net excess gold stock at 7839.643, valued at ₹.2,26,35,622/- and added to the total income of the assessee vide order dated 24.03.2022 passed under section 147 of the Act. The Id. CIT(A), taking into consideration the confirmation of Mr. Mitesh Surana, which is reproduced in page 22 of the impugned order, observed that the assessee duly reconciled and satisfactorily explained excess gold stock, which cannot be treated as unexplained investment, consequently, directed the Assessing Officer to delete the same. The relevant part of which is reproduced herein below:

6.2.14 Further, bought not purchases are those purchases which are made from walk in customers and unregistered dealers. Thus, bought note purchases will not reflect in the GST portal. Without appreciating the background of bought note purchases, A.O. has stated that the credit for the same cannot be given in the absence of corresponding entries in GST portal. Out of bought note purchases, substantial quantity to the extent of 5876.563 grams were purchased from one Mr. Mitesh Surana who has duly confirmed the sale to the Appellant. Copy of the confirmation given by Mr. Mitesh Surana is extracted below:

07/12/2017

From

Mitesh Surana,
Flat No. 2D, 2nd Floor, Orchid Villa, \\
No. 15, Harrington Road,
6th Avenue, Chetpet,
Chennai 600 031.

To

Sri Bhuvaneswari Jewellers,
3179, Nellumandi Street,
Pudukkottai 622 001.

Sir,

This is to confirm that I have sold Old Gold Ornaments weighing 5876.563 Grams amounting to Rs .1,67,65,864/- to Sri Bhuvaneswari Jewellers, 3179, Nellumandi Street, Pudukkottai- 622 001 (PAN ADRPV2396J) on 07/12/2017 with Bill No. 126. As the said supply is of Old Gold Ornaments GST is not attracted. I have also received the entire amount via several bank transfers. As of 31/03/2018 I have no dues pending from Sri Bhuvaneswari Jewellers. My PAN Number is DMCP3835J and my GST Number is 33DMCP3835JIZU.

*Thanking you,
Sd/-
Mitesh Surana*

6.2.15 The above evidence was very well available before the A.O. and the A.O. should have carried out enquiry with the above suppliers which was not done. In the absence of which, the explanation of the Appellant cannot be rejected out-rightly. The undersigned has verified the Bank Account No. 37336115258 maintained by the Appellant with State Bank of India, Pudukkottai Branch. While going through the Bank Account, it has been found that the Appellant has paid the purchase amount invariably by way of NEFT/RTGS. The Appellant has paid the amount to Shri Mitesh Surana on various dates from 28.01.2018 to 27.03.2018 by way of RTGS. In view of the fact that as the payments were made through bank (and more particularly when the A.O. has not made any findings that the above purchases were made

by way of cash), the undersigned is of the view that 7839.643 grams of gold jewellery can no longer be treated as unexplained. In respect of rounding off the difference of 0.891 grams of gold, it is quite common that minor difference between invoiced quantity and physical quantity will always prevail due to various factors. Hence, 0.891 grams arising on account of rounding off difference need not be treated as unexplained excess quantity.

6.2.16 In view of the above detailed discussion, the undersigned is considered that the Appellant had duly reconciled and satisfactorily explained the reasons for excess gold stock of 7840.534 grams found at the time of survey. Thus, the same cannot be treated as unexplained investment.

Accordingly, all the grounds raised by the Appellant upon this issue are hereby treated as allowed, and the A.O. is hereby directed to delete the addition of ₹.2,26,35,622/- made by the A.O. u/s. 69 of the Act.

4. Having aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us by raising ground mentioned herein above.

5. The Id. DR Shri C. Murugesan, Addl. CIT submits that the Assessing Officer, considering the submissions of the assessee, clearly held there was difference of excess gold stock with the assessee. The Id. DR drew our attention to para 10.1 and 10.4 of the assessment order and submits that the assessee clearly stated during the course of survey that there are 40 bills/invoices relating to the period from 01.01.2018 to 18.01.2018 to the extent of 13,896.032 grams in respect of gold jewels. Further, he drew out attention the 2nd table in page 11 of the assessment order and argued that the assessee failed to give complete details in respect of 32 bills/invoices during the course of assessment proceedings. He argued that the Assessing Officer rightly valued the excess gold stock

by treating the same as unexplained investment. The Id. DR prayed to allow the ground.

6. The Id. AR Shri R. Venkatesh, FCA drew our attention to the confirmation letter of Shri Mitesh Surana, which is reproduced at page 22 of the impugned order and submits that the above said evidence was very much available before the Assessing Officer during the course of assessment proceedings and no examination was carried out with the above said supplier. He argued vehemently in the absence of such verification, the addition made by the Assessing Officer is not justified. The Id. CIT(A) verified the bank statement and details of purchase, amount paid to Shri Mitesh Surana in various dates and held the said payments were made through NEFT/RTGS. The Id. AR drew our attention to paper book containing 105 pages. He referred to page 1 of the paper book and submits that the Assessing Officer asked the details of bought note and bills through notice under section 143(2) of the Act and the assessee filed the same on 18.10.2021 vide acknowledgement at page 10 of the paper book. The Id. AR drew our attention to Sl.No. 2 to 6 in the said acknowledgement and argued that the assessee furnished the details of 43 bills/vouchers. Further, he drew our attention to page 12 & 14 of the paper book and argued that the assessee provided all the

details as sought by the Assessing Officer during assessment proceedings. Further he drew our attention to page 16 of the paper book in support of the finding of the Id. CIT(A) in respect of confirmation of Mr. Mitesh Surana. Further, he referred to page 19, 85 & 100 of the paper book and vehemently argued that no efforts were taken by the Assessing Officer in examining all the details provided in respect of the transactions with Mr. Mitesh Surana. He prayed to dismiss the ground raised by the Revenue.

7. Heard both the parties and perused the material available on record. The case of the Assessing Officer is that there was difference in quantity as per books of account and inventory to an extent of 14915.42 grams of gold which is evident from para 10.1 of the assessment order. According to the Assessing Officer, in the reply, the assessee explained the total purchase consisting of bought note and also purchases through 31 bills, but, no original bills were furnished. Further, it was observed vide para 10.4 of the assessment order that the excess gold jewellery as found during the course of survey were transacted through 40 bills/invoices, but, it was only 8 bills were submitted to an extent of 6056.389 grams of gold jewellery. As discussed above, the Assessing Officer proceeded to add an amount of ₹.2,26,35,622/- to the total income of the assessee, taking

into account the rate of gold as on the date of survey at ₹.2,887/- per gram for the excess gold stock [7840.534 x ₹.2887]. We find assessee's and Assessing Officer's working showing the difference as reflecting in para 10.8 of the assessment order and on perusal of the same, according to the Assessing Officer, there was difference of excess gold stock of 7839.643 grams. We find the Assessing Officer has given benefit of 6056.389 grams in respect of 8 bills, but no consideration was given for remaining bills/invoices. The Id. CIT(A) has given consideration to the confirmation letter of Mr. Mitesh Surana and given relief to the assessee by holding that there was no excess gold stock.

8. We find from the assessment order, according to the Assessing Officer, there was no bills submitted by the assessee in respect of balance jewellery [40-8], but, however, the acknowledgement at page 10 & 11 of the paper book clearly shows the submission of further details relating to remaining bills paid vide letter dated 18.10.2021, which is placed at page 12 of the paper book. On perusal of the acknowledgement, we note that the assessee furnished other bills through online in response to the notice dated 30.09.2021, which is at page 1 of the paper book. On perusal of the notice issued by the Assessing Officer under section 143(2) of the Act, which clearly shows

that the Assessing Officer sought explanation from the assessee along with difference of excess gold as found during the course of survey. On examination of the letter dated 18.10.2021, which is at page 12 of the paper book, clearly shows that the assessee furnished 40 bills pertaining to the period 01.01.2018 to 18.01.2018. We find the difference was explained due to non-accounting purchase of gold jewellery amounting to 13.89 kg. Further, the details of purchase invoices are placed at page 79 of the paper book, wherein, at S.No. 6, details of Mr. Mitesh Surana is reflecting. According to the said details, the assessee purchased 5876.563 grams of gold jewellery from Mr. Mitesh Surana under bill No. 126. The said bill details are provided at page 85 of the paper book. Further, the confirmation of the said sale of old jewellery is placed at page 101 of the paper book stating that Mr. Mitesh Surana received full amount in respect of sale of 5876.563 grams from the assessee. Therefore, the contention of the Id. DR that there was no submission or furnishing of full details by the assessee before the Assessing Officer is not acceptable. The relevant evidences as provided in pages 10 to 15, 75, 79, 85 & 101 of the paper book, clearly shows that the assessee provided complete details to the Assessing Officer during the assessment proceedings. Therefore, we find the reasons recorded by the Id. CIT(A) vide para 6.2.14, 6.2.15 and 6.2.16 in holding that there was no excess stock of

good are justified and thus, the grounds raised by the Revenue are dismissed.

9. In ground No. 2.4, the Revenue challenged that the assessee had not properly explained the source of excess stock of gold and silver. The Id. CIT(A) recorded the reasons in respect of alleged excess silver stock cannot be added in the hands of the assessee when it is clearly stated that the survey team identified the excess value of silverwares pertaining to assessee's wife who is trading in silver wares under the name of Bhuvanewari Silvers. The reasons recorded vide para 6.3.3 of the impugned order is reproduced below for better understanding:

6.3.3 During the course of survey, the survey team identified the excess value of silverwares pertaining to the Appellant's wife who is trading in silverwares under the name of Bhuvanewari Silvers. Obviously, this excess value should be added in the hands of Appellant's wife, However, the Appellant admitted it, in his Return of Income filed. There exists no dispute that the excess value of silverware found during the course of survey does not pertain to the business of the Appellant. When the income itself is not attributable to the Appellant's business, treating such income as unexplained in the hands of the Appellant is illogical and cannot hold good. The undersigned is of the view that the Appellant having voluntarily admitted the value of excess quantity of silverware, found during the course of survey under the head 'Other Sources' need not to be disturbed. In this backdrop, the ground raised by the Appellant upon this issue is treated as allowed, and the A.O. is hereby directed to delete the addition of Rs. 10,44,316/- made u/s 69 r.w.s. 115BBE of the Act, and directed to treat the same as income from 'Other Sources' as admitted by the Appellant.

10. On perusal of the same, we note that admittedly, there was no dispute by the Id. DR that the assessee himself admitted the excess silver stock belongs to assessee's wife's business and it that is so, the addition

cannot be made in the hands of the assessee in the absence of any contrary evidence. We find no infirmity in the reasons recorded by the Id. CIT(A) and it is fully justified. Thus, the ground raised by the Revenue in ground No. 2.4 is dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 19th December, 2024 at Chennai.

Sd/-
(JAGADISH)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 19.12.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.