

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.314/Mds/2015

निर्धारण वर्ष / Assessment Year : 2007-08

Shri S. Soundararajan,
98/1, Chitoor High Road, Katpadi
Vellore – 7.

v. The Addl. Commissioner of
Income Tax,
Central Circle – III,
Madurai.

PAN : AARPS 2411 E
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.315/Mds/2015

निर्धारण वर्ष / Assessment Year : 2007-08

Shri S. Soundararajan (HUF),
98/1, Chitoor High Road, Katpadi
Vellore – 7.

v. The Addl. Commissioner of
Income Tax,
Central Circle – III,
Madurai.

PAN : AAOHS 3557 E
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.316/Mds/2015

निर्धारण वर्ष / Assessment Year : 2007-08

Smt. M. Nandhini,
W/o Sh. S. Manivannan,
98/1, Chitoor High Road, Katpadi
Vellore – 7.

v. The Addl. Commissioner of
Income Tax,
Central Circle – III,
Madurai.

PAN : AACPN 5238 P
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.317/Mds/2015
निर्धारण वर्ष / Assessment Year : 2007-08

Smt. S. Chandralekha,
W/o Shri S. Soundararajan,
98/1, Chitoor High Road, Katpadi
Vellore – 7.

v. The Addl. Commissioner of
Income Tax,
Central Circle – III,
Madurai.

PAN : AFNPC 9444 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri T. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. A.B. Koli, JCIT

सुनवाई की तारीख/Date of Hearing : 12.04.2016

घोषणा की तारीख/Date of Pronouncement : 17.06.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

The independent assessee, who are members of the Hindu Undivided Family, filed the appeals against respective orders of the Commissioner of Income Tax (Appeals)-1, Madurai, dated 12.11.2014. Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that there was a search in the premises of the assessee on 04.07.2006. Shri S. Soundararajan, one of the assessee, is a

partner in Susee Motors, Susee Motor Finance and Susee Traders. The said Shri S. Soundararajan is also Director in Susee Cars Pvt. Ltd. and Susee Trucks Pvt. Ltd. Before the date of search, all the assesseees filed the return of income. The assesseees also filed return of income in response to notice issued under Section 153A and 153C of the Income-tax Act, 1961 (in short 'the Act'). The Assessing Officer made addition in respect of gold jewellery found during the course of search operation. During the course of search operation, according to the Ld. counsel, 4035.07 gms of gold jewellery was found, out of which 2622.71 gms of gold jewellery was seized from the residence of Shri Soundararajan and his family members. According to the Ld. counsel, the assesseees were in the business for more than five decades and they have good financial and social status in the locality. All the assesseees explained before the Assessing Officer that the gold jewellery belonged to all the members of the family. The assesseees also explained that Smt. S. Chandralekha and Smt. Nandhini have received gold jewellery at the time of their marriage as Stridhan from their respective parents. The children of the assesseees also received gifts from their respective grandparents in the form of gold, diamond, silver articles and ornaments.

3. In the case of Shri Soundararajan (HUF), the Assessing Officer made addition of ₹5,64,000/- being the value of 480 gms of gold jewellery at the rate of ₹1175/- per gram. According to the Ld. counsel, Shri Soundararajan (HUF) has also inherited jewellery from his parents. The assessee-Soundararajan inherited gold jewellery from his mother. The Assessing Officer, after giving a discount of 15%, made the addition of ₹4,79,400/-. The CIT(Appeals) allowed 100 gms of gold jewellery and sustained the addition of ₹3,61,900/-.

4. According to the Ld. counsel, there was a family partition in the year 1985 among the children of Shri M.V.M. Subramania Nadar & Sons. The assessee-HUF was allotted 60 soverigns of gold jewellery and 3 Kgs of silver articles. The 60 soverigns allotted in the family partition was equal to 480 gms of jewellery. According to the Ld. counsel, this was not accepted by the Assessing Officer. According to the Ld. counsel, when the assessee was in the business for more than five decades, the claim of the assessee that it was given in the family partition in 1985 cannot be doubted.

5. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that during the course of search

operation, the Revenue authorities found gold jewellery of 4035.07 gms, out of which, 2622.71 gms were seized. The assessee claims 60 sovereigns equivalent to 480 gms of gold jewellery belonged to Shri Soundararajan (HUF). Shri Soundararajan had not filed any wealth-tax return. There was no evidence to suggest that the HUF possessed any gold jewellery. In the return filed before the search, there was no reference about possession of 60 sovereigns of gold jewellery by the HUF, therefore, the Assessing Officer has rightly disallowed the claim of the assessee-HUF, which was partly confirmed by the CIT(Appeals). Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that the CIT(Appeals) has granted relief to the extent of 100 gms of jewellery, therefore, the assessee cannot have any grievance at all.

6. We have considered the rival submissions on either side and perused the relevant material available on record. From the material available on record, it appears that Shri Soundararajan (HUF) was in the business for more than five decades. The other assessee is a member of the HUF. Being a businessman for consecutively five decades, it cannot be denied that he acquired jewellery in routine course. The dispute is with regard to 60

soverigns of jewellery in the case of Shri Soundararajan (HUF). The assessee claims that it was obtained in the family partition. The Assessing Officer disallowed this claim only on the ground that it was not reflected in the return filed before the date of search. The fact remains that it is a customary practice to purchase jewellery whenever there is a marriage in the family and some ceremonial occasions. It is also a customary practice to give jewellery and receive jewellery as a gift on ceremonial occasions like birthday, wedding anniversary, etc. The assessee, being in business, it cannot be disputed that he has received gifts in the form of gold jewellery and also gifted jewellery on ceremonial occasions. Merely because the gold jewellery was not disclosed in the return filed before the date of search, the receipt of gold on family partition cannot be totally rejected. Taking into consideration the status of the family and financial background and the business activity carried on for more than five decades and the customary practice prevailing in this part of country, this Tribunal is of the considered opinion that Shri Soundararajan (HUF) might have received 60 soverigns of gold jewellery on family partition as claimed. Therefore, the addition made by the Assessing Officer is not sustainable. This Tribunal is of the considered opinion that the CIT(Appeals) ought to have

deleted the entire addition made by the Assessing Officer. In view of the above, this Tribunal is unable to uphold the orders of the authorities below and the same are set aside and the entire addition made by the Assessing Officer towards gold jewellery is deleted.

7. Now coming to the appeal of Shri Soundararajan (Individual), Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that the Assessing Officer found that 149.38 soverigns equivalent to 1195.07 gms was excess gold jewellery in the hands of Shri Soundararajan (individual). The Assessing Officer valued 1195.07 gms at the rate of ₹1175/- per gram and after reducing 15%, made an addition of ₹11,93,546/-. The CIT(Appeals), after allowing 100 gms of gold jewellery, confirmed the addition to the extent of 1095.07 gms and confirmed the addition to the extent of ₹10,76,046/-. According to the Ld. counsel, the assessee being a businessman engaged in the business for more than five decades, earned considerable income for the past several years. The income returned by the assessee was in fact accepted by the Assessing Officer. The assessee's father Shri M.V.M. Subramania Nadar is a reputed businessman in the locality and has accumulated gold jewellery and other assets over the period of time. The assessee

was in possession of gold jewellery even before 1985. Merely because the wealth-tax return was not filed, according to the Ld. counsel, there cannot be any addition. The Ld.counsel further submitted that the assessee's wife also received gold jewellery during her marriage from her parents. Therefore, the addition made by the Assessing Officer cannot be sustainable in law. According to the Ld. counsel, the CIT(Appeals) ought to have deleted the entire addition made by the Assessing Officer.

8. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that Shri Soundararajan (individual) or his family have not filed any wealth-tax return. The Assessing Officer made addition towards the value of 1195.07 gms of gold jewellery and also 3955.17 gms of silver articles. Even though the assessee was in the business for several years, no wealth-tax return was filed by Shri Soundararajan (individual) or any of his family members. In the absence of any material, according to the Ld. D.R., the addition made by the Assessing Officer has to be sustained. However, the CIT(Appeals) was very fair enough in granting an allowance of 100 gms of gold jewellery. Therefore, the assessee cannot have any grievance at all.

9. We have considered the rival submissions on either side and perused the relevant material available on record. The financial background, the social status and the business activity of the assessee for more than five decades are not in dispute. The assessee claims that the gold jewellery found was from the accumulated income earned for the last five decades. In a family of businessman, receipt of gift in the form of gold jewellery and purchase of gold jewellery on ceremonial occasions cannot be ruled out. Moreover, it is customary practice to gift gold jewellery as Sridhan at the time of marriage of girl children. The CIT(Appeals), after considering the CBDT circular No.1916, found that 100 gms of gold jewellery was explained. We have carefully gone through the circular of the CBDT. The CBDT instructed its officers not to seize gold jewellery found during the course of search operation, in the case of married lady to the extent of 500 gms, In the case of unmarried lady, the CBDT instructed not to seize the gold jewellery to the extent of 250 gms and in the case of men, the CBDT instructed its officers not to seize gold jewellery to the extent of 100 gms. This circular does not prohibit possession of any jewellery more than 100 gms. The CBDT cannot issue circular in the guise of

exercising its power under Section 119 of the Act prohibiting the possession of gold jewellery by the individuals if the individuals were capable of earning more money. They can very well invest money either in gold or in any other form of asset in this country. Therefore, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer by placing reliance on the CBDT circular. As observed, the CBDT circular is only to instruct its officers not to seize 100 gms of gold jewellery in the case of men. If any man is holding more than 100 gms of gold jewellery and if he is able to explain the source for acquisition of gold jewellery, then the Department cannot seize the gold jewellery merely because it has exceeded 100 gms.

10. In the case before us, it is not in dispute that the assessee Shri Soundararajan (individual) and other family members are in business for more than five decades. They have daughters-in-law in their family and they have received gold jewellery and silver articles as Sridhan property. Therefore, by taking into consideration the social status, customary practice, business of the assessee for more than five decades, this Tribunal is of the considered opinion that addition of the value of 1195.07 gms of gold jewellery is not

justified. When a family is successful in business for more than five decades and earning income every year in a routine manner, this Tribunal is of the considered opinion that the surplus income available could have been invested in gold. Therefore, the addition made by the Assessing Officer, as confirmed by the CIT(Appeals), is not justified. Accordingly, the orders of the authorities below are set aside and the addition is deleted.

11. Now coming to the appeal of Smt. M. Nandhini, the daughter-in-law of Shri Soundararajan and wife of Shri S. Manivannan, Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that Shri S. Manivannan is the son of Shri Soundararajan. The Assessing Officer made an addition of 1560 gms of gold jewellery in the hands of Smt. Nandhini. The CIT(Appeals), by following the circular of CBDT, allowed 500 gms of gold jewellery and sustained addition of 1060 gms. According to the Ld. counsel, 880 gms of gold jewellery was received by Smt. Nandhini from her parents at the time of marriage in 1990, 480 gms of jewellery was received by her from her mother at the time of her daughter's birth and 200 gms of jewellery was received from her mother at the time of her son's birth. Merely because the return filed by Smt. Nandhini

before the date of search did not reflect the gold jewellery, the same cannot be a reason for disallowing the claim of the assessee. The Ld.counsel further submitted that the assessee's father apart from 880 gms of gold jewellery, has also gifted 9.5 Kgs of silver to Smt. Nandhini at the time of marriage. Therefore, the addition made by the Assessing Officer is not justified.

12. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that in the return filed by the assessee Smt. Nandhini before the date of search, there was no reference about the gold jewellery found during the course of search operation. Smt. Nandhini has not filed any wealth-tax return. Therefore, the Assessing Officer has rightly made the addition. The CIT(Appeals) was very fair enough in granting relief to the extent of 500 gms of jewellery based upon the CBDT circular.

13. We have considered the rival submissions on either side and perused the relevant material available on record. The quantity of jewellery and silver articles would be depending upon the family status and financial background. The assessee Smt. Nandhini was married to a man whose family was in business for more than five decades. The status of Smt. Nandhini's father is also equally well

placed and they would have definitely generated 880 gms of gold jewellery and 9.5 Kgs of silver articles as claimed by the assessee. This Tribunal is of the considered opinion that the customary practice prevailing in this part of country, namely, giving of gold and silver articles at the time of marriage of girl children cannot be totally ignored by the authorities below while valuing the gold jewellery found during the course of search operation. Of course, the CBDT instructed its officers not to seize the gold jewellery to the extent of 500 gms in the case of married lady during the course of search operation. This circular does not say that no married lady should possess more than 500 gms of gold jewellery. This is only enabling provision for the income-tax authorities not to seize gold jewellery upto 500 gms. If the assessee was able to explain the background in which the gold jewellery was acquired, then the Revenue authorities cannot seize the gold jewellery found during the course of search operation. Therefore, this Tribunal is of the considered opinion that the circular issued by the CBDT instructing its officers not to seize gold jewellery upto 500 gms in the case of married lady, cannot be construed that an addition has to be made when the married lady possesses gold jewellery more than 500 gms. In the case before us, the assessee received 880 gms of gold jewellery

from her parents at the time of her marriage and 480 gms of gold jewellery was received as gift from her mother during the birth of her daughter Madhumita and another 200 gms of gold was received at the time of birth of her son Rushi. This Tribunal is of the considered opinion that it is customary practice to gift gold jewellery at the time of marriage and birth of children by the respective parents. It is not the case of the Revenue that the parents of Smt. Nandhini did not have any creditworthiness to gift this kind of jewellery to her. When the creditworthiness of parents are not in doubt, this Tribunal is of the considered opinion that the Revenue authorities cannot make any addition merely because the possession of gold jewellery was not reflected in the income-tax return and wealth-tax return.

14. In view of the above, this Tribunal is unable to uphold the orders of the authorities below and hence the same are set aside and the addition made by the Assessing Officer is deleted.

15. Now coming to the addition made in the hands of Smt. Chandralekha, Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that the assessee Smt. Chandralekha received 100 sovereigns of gold jewellery which is equivalent to 800 gms from her father Late S.S.A.S. Subramanian and also received 9 Kgs of silver

articles. To support the claim, according to the Ld. counsel, the assessee filed an affidavit from her brother Shri S. Subbiah, who is an advocate. He has stated in the affidavit that his father Shri S.S.A.S. Subramanian Nadar gave 100 sovereigns of gold jewellery on the occasion of the marriage of the assessee Smt. Chandralekha. The assessee has also claimed before the Assessing Officer that she received 9 Kgs of silver articles at the time of marriage.

16. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that the so-called possession of gold jewellery and silver articles was not disclosed in the income-tax and wealth-tax returns. Therefore, the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

17. As discussed in the case of other assesseees in the earlier part of this order, it is customary practice to give gold jewellery and silver articles at the time of marriage of girl child by the respective parents. This customary practice prevailing in this part of country cannot be totally ignored while framing the assessment. When the girl's parents purchased the gold jewellery and gifted the same to their daughters, this Tribunal is of the considered opinion that there

cannot be any addition in the hands of the assessee. Gifting 100 sovereigns of gold jewellery at the time of marriage is a common practice in this part of the country in all the communities. By taking into consideration the family status and financial background of the assessee, this Tribunal is of the considered opinion that the claim made by the assessee cannot be doubted by the Revenue authorities at all. Therefore, this Tribunal do not find any reason to make addition in the hands of the assessee in respect of 800 gms of gold jewellery and 9 KGs of silver articles. Therefore, the orders of the authorities below are set aside and the addition is deleted.

16. In the result, all the appeals stand allowed.

Order pronounced on 17th June, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 17th June, 2016.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | |
|---|--------------------------|
| 1. अपीलार्थी/Appellants | 2. प्रत्यर्थी/Respondent |
| 3. आयकर आयुक्त (अपील)/CIT(A)-1, Madurai | |
| 4. आयकर आयुक्त/CIT, Central-II, Chennai | |
| 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |