

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL " C " BENCH, MUMBAI

श्री अमित शुक्ला, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।
BEFORE SHRI AMIT SHUKLA, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.6710/Mum/2012

(निर्धारण वर्ष / Assessment Year: 2008-09)

Smt Parul Kapil Jain, 2, Jeevandeep Building, station road, Kopri Colony, Thane (E)-400603	बनाम/ Vs.	Income Tax Officer COD 3(2), Thane
(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./ PAN : AJFPJ5492D		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by :	Dr.P Daniel
प्रत्यर्थी की ओर से/ Revenue by :	Shri R K Shah

सुनवाई की तारीख / **Date of Hearing** : **19.10.2016**

घोषणा की तारीख / **Date of Pronouncement** : **05.12.2016**

आदेश / ORDER

PER RAJESH KUMAR, AM :

This is an appeal filed by the assessee challenging the order of Commissioner of Income Tax(A)-1, dated 14.8.2012 passed in the assessment order under section 143(3) of the Income Tax Act, 1961 for the assessment year 2008-09.

2. Brief facts of the case are that the assessee filed return of income on 3.3.2009 declaring total income at Rs.36,230/- besides showing long term capital loss on the sale of jewellery at Rs.1,48,588/-. The case of the assessee was selected for scrutiny and statutory notices under section 143(2) and 142(1) of the Income Tax Act, 1961 were issued and served upon the assessee.

During the course of assessment proceedings, the assessee was required to furnish bank statement and other supporting documents. After examining the said bank statement and other records produced by the assessee including balance sheet, the AO noted that the assessee has deposited a sum of Rs.3,99,000/- on various dates in cash beside depositing two cheques of Rs.9,89,010/- on 16.2.2008 and Rs.9,08,000/- on 29.2.2008. The assessee is a house wife (married on 21.2.2007). The balance sheet as on 31.3.2007 filed by the assessee reflected various items of moveable assets such as silver utensils, jewellery, diamond, cash, bank balance and other receivable on the assets side aggregating to Rs.27,36,000/- and on the liability side an opening balance was shown at Rs.25,94,100/-; gift received at the time of marriage Rs.1,24,000/-; and interest of Rs.17,900/- all aggregating to Rs.27,36,000/-. The AO required the assessee to prove the source of credits in the bank statement which was responded by the assessee by filing an affidavit dated 16.9.2010 of grandparents wherein it has been affirmed that the assessee is the granddaughter of Shri Devlal Mehta who gifted her 45 carat diamonds studded jewellery and 150 gms gold on 18.3.1984 at the time of her birth and similar declaration was made by Shri Devlal Mehta on behalf of his late wife stating that she had also gifted 40.14 carat diamond studded jewellery and 300 gms gold as well as silver utensils weighing approximately 4 kg to the assessee on her birth . The sworn affidavit of

the assessee was also filed affirming that the jewellery was received from her grandfather and her grandmother at the time of her birth which was handed over to the assessee at the time of her marriage. It was also submitted that that the diamonds which were received by the assessee from her grandparents to the extent of 19.14 carats were sold for Rs.18,97,010/- and the sale proceeds were received by way of two account payee cheques deposited in the bank account of the assessee. Regarding the cost of indexation claimed for calculating the long term capital loss, the assessee had submitted five valuation reports dated 17.12.2010 from the approved valuers before the AO. A statement of the assessee was also recorded during the course of assessment proceedings wherein in response to question no.2, the assessee admitted to have sold jewellery however the details of jewellery and information thereof were stated to be known to her husband. Similarly, in reply to question no.3 the assessee had submitted that jewellery comprised of diamond jewellery, silver utensil and gold but it was admitted that since sale of jewelry was made by her husband, she did not know about the exact items sold as of now. In reply to question no.5, the assessee specifically admitted to have received the jewellery from her grandparents and but the assessee was not knowing the exact details of jewellery given by her grandparents.

3. The AO did not find the contentions and submissions of the assessee as convincing and accordingly added the same to the total income of the

assessee being sham transactions. The AO also observed that it was not possible that the lady was possessing the jewellery and allowed her husband to sell the jewellery without knowing the details of jewellery possessed and sold by her husband. The AO also added a sum of Rs.3,99,000/- on account of cash deposited into the bank account u/s 68 of the Act as unexplained cash credits by rejecting the contention of the assessee that the said cash was received out of cash gift received at the time of her marriage. The AO also added a sum of Rs.19,06,350/-u/s 68 of the Act which was calculated as under :

Total opening capital -Cost of jewellery sold	Rs.27,36,000/- -Rs.4,30,650/-
Addition u/s 68 in respect of gift received at the time of every birthday	Rs.3,99,000/-
Amount remained opening capital T	Rs.19,06,350/-

Similarly, the addition of Rs.18,97,010/- was made without allowing any cost of acquisition of the jewellery by holding that the assessee's grandfather has not mentioned the details of gift ,date and cost of acquisition and thus the AO treated the entire sale proceeds, as income of the assessee. The AO also added a sum of Rs.17,929/- on account of interest received by the assessee. The AO observed that during the year the assessee received total interest of Rs.79,429/- from five parties, the details whereof was given in para 8 of the assessment order and the

assessee has offered interest income to the extent of Rs.61,500/-. Accordingly, brought to tax the balance amount of Rs.17,929/- by framing the assessment order under section 143(3) dated 29.12.2010 by assessing the income of the assessee at Rs.42,56,520/- as against the return of income of Rs.36,930/-.

4. Aggrieved by the order of AO, the assessee preferred first appeal before the Id.CIT(A) who vide para 4.3 of the appellate order dismissed the plea of the assessee by observing and holding as under:

"4.3 In view of the above facts and circumstances, it is clearly established that -

(i) the existence of the jewellery has not been proved by the appellant with documentary evidences.

(ii) The existence of the jewellery claimed to have been gifted by the grandparents with them, has not been proved with documentary evidences.

(iii) Capacity of the grandparents to gift the jewellery worth Rs. 14.97 lacs in 1984 has not been proved as they are not assessed to income tax as also to Wealth-tax.

(iv) No evidence in the form of Capital A/c., Balance Sheet, Gift Tax return, etc. of grandparents has been filed.

Thus, I hold that the capital introduced by the appellant to the extent of Rs. 18,97,010/- through bogus sale of jewellery is unexplained and hence liable to be taxed u/s. 68 of the Act. Consequently, the source of investment made as Kisna Investment is also unexplained to this extent. Thus, the addition of Rs.8,97,010/- made on this account is confirmed and appellant fails on "Ground Nos.1,3 and 4"

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

5. Before us, the Id. AR vehemently contended that the Id. CIT(A) has erred in facts and on law by confirming the order of the AO without verifying the various documents and materials produced before him during the course of appellate as well as assessment proceedings. In support of contention, the Id. AR had filed before us the copy of affidavit of assessee, copy of balance sheet as on 31.3.2007 and as on 31.3.2008 along with sworn affidavit regarding gifts received from the grandparents and also details of bills for the sale of jewellery. The Id AO has completely ignored these documents and material and did not made any further inquiry either from the jewellery shops where the same were sold or from the grandfather of the assessee whose affidavit affirming the gifts were filed before AO. He had proceeded to pass the assessment order on conjecture and surmises that the assessee has not received any jewellery or precious metals from her grandparents. Similarly, the AO has not even applied his mind to the facts that the jewellery sold was gifted by her grandfather and added the entire amount of sale proceeds citing the reasons that no date and cost of acquisition were mentioned in the affidavit /confirmation of the grandparent. Ultimately the AO came to the conclusion that there was no cost of acquisition to the assessee which was totally wrong and incorrect in terms of provision of section 49(a)(ii) of the Act. It is also contended before us that the assessee was married in the month of February, 2007 and received cash gifts which is customary in

the Indian Social Scenario and in the marriage money and gifts are given by the relatives and friends as "SHAGUN" . The cash deposits out of the "SHAGUN" received was also disbelieved by the AO and was added to the total income of the assessee. The AO made the addition of Rs.18,97,010/- being sale proceeds of jewellery; Rs.3,99,000/- being cash deposits in the bank; and an amount of Rs.19,06,350/- as difference in the opening balance as capital shown in the balance sheet which was calculated by reducing Rs.3,99,000/- cash deposits made into the banks; Rs.4,30,650/- cost of the jewellery sold out of opening capital of Rs.27,36,000/- as per the balance sheet as at 31.3.2008 only based on surmises and presumptions. The Id. CIT(A) too has upheld the order of the AO which was based upon conjecture and surmises and without appreciating the facts. In view of these facts, the Id.AR submitted that the addition made by the AO were based upon imagination and guess work and therefore should be directed to be deleted.

6. The Id DR on the other hand relied heavily on the orders of the authorities below and referred to the various observations given in the impugned order and submitted that the statement of the assessee itself shows that she was not aware of the details of jewellery and hence the presumption of make belief theory cannot be ruled out.

7. We have carefully considered the rival submissions and perused the relevant material placed before us and the orders of authorities below. We

find that the assessee got married on 21.2.2007 and as per the material on record, the assessee at the time of marriage has brought with her some jewellery, other precious metals gifted by her grandparents and also cash as per the details given in the balance sheet as at 31.3.2007 filed at pages 2 to 5 of the paper book. We also find from the details filed, a copy of the bank statement which are at pages 9 to 13 of the paper book showing that that the assessee has deposited cash on various dates to the tune of Rs.3,99,000/- which was claimed to be deposited by the assessee out of the gift received at the time of marriage from her family members, relatives and other near and dear one as shoguns. This has been stated and confirmed by her at time of recording her statement during the course of assessment proceedings. Similarly, we find that the assessee has received two cheques of Rs.9,89,010/- deposited on 16.2.2008 and Rs.9,08,000/- deposited on 29.2.2008 and the same were deposited in the account No.0266101118158 maintained with Canara Bank, Kopri Colony Thane which was received by the assessee out of sale of jewellery. The assessee had also filed a copies of sales bills from the respective parties to whom the assessee had sold her jewellery copies of which are placed at pages 14 and 15 of the paper book. The assessee had also filed five copies of valuation report dated 17.12.2010 to show the authenticity and value of jewellery which has been sold and it has been noted by the AO in assessment order at page 6. These reports certify the cost of the

jewellery. Having perused the records and heard the rival contentions we find that the AO has not carried out any investigation or inquiry to verify the documents such as confirmation/affidavit as filed by the assessee from the grandparents and sale bills evidencing the sale of jewellery. Once the assessee has produced prima facie relevant material and documentary evidences of the entries in the balance sheet, then the onus shifts upon the AO for carrying out some kind of inquiry or verification of the evidences filed and explanation furnished. In the context of Indian social customs, the gifting of cash and jewellery from parents, grandparents, relatives, near and dear ones cannot be ruled out. The jewellery and cash received at the time of marriage for a woman is considered to be "Stridhan" which is even recognized under law. Therefore, the presumption and pre-ponderance of probabilities goes in favour of the assessee that she was in possession of the jewellery and cash. The assessee's explanation and evidence have not been dislodged by the AO by bringing any contrary material on record. The AO has proceeded to make the entire addition u/s 68 of the Act simply on the basis of presumption and assumptions which has been confirmed by the Id. CIT(A). In our opinion, the lower authorities have failed to carry out any inquiry or verifications to justify the various additions made u/s 68 of the Act. Accordingly, we reverse the order of Id. CIT(A) in respect of ground No.1 to 1(3) and direct the AO to delete all the additions.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 5th Dec, 2016

आदेश की घोषणा खुले न्यायालय में दिनांक: 5th Dec, 2016 को की गई ।

Sd
(AMIT SHUKLA)
न्यायिक सदस्य / JUDICIAL MEMBER

sd
(RAJESH KUMAR)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 05.12/2016

व.नि.स./ SRL , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai