

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.7476/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2007-08)

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| Mr. Amir B. Maharjan, 12 Panchratna, Opera House, Charni Road, Mumbai - 400 004. | बनाम/ v. | Income Tax Officer, Ward 16(3)(1), Aayakar Bhavan, Mumbai - 400020. |
| स्थायी लेखा सं./PAN : AFFPM3743L | | |
| (अपीलार्थी / Appellant) | .. | (प्रत्यर्थी / Respondent) |

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|--------------|----------------------|
| Assessee by | Shri Bhupendra Shah |
| Revenue by : | Shri A. Ramachandran |

सुनवाई की तारीख / **Date of Hearing** : 29-6-2016

घोषणा की तारीख / **Date of Pronouncement** : 20-07-2016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 7476/Mum/2013, is directed against the appellate order dated 20-09-2013 passed by learned Commissioner of Income Tax (Appeals)- 6, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2007-08, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 30-12-2009 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

“1. The learned Assessing Officer has erred in adding a sum of Rs. 6,66,754/ - on account of Closing Stock whereas the Appellant has already disclosed the same in the closing stock statement filed at the time of assessment and also duly reflected in the Audited Statement of account filed at the time of assessment. The Appellant on receipt of the Order from the Commissioner of Income Tax (Appeals)-6, Mumbai filed an application for rectification in the Order passed by Commissioner of Income Tax (Appeals)-6 to rectify the said mistake which has not been accepted by the CIT(Appeals)-6.

The Appellant respectfully states before your office as under:

There was a purchase of 311 pendants and in-house assembly of 66 additional pendants during the year 2006-07. These 66 pendants were assembled out of the gold introduced by the proprietor at the time of commencement of the business as already stated under the ground No. 1. Thus totaling to 377 pendants which were all sold during the year 2006-07, the sale value of which is adequately reflected in the books of accounts. The 66 pendants assembled are sold during the year and are no longer in the possession of the Appellant and thus the addition to income on account of sale from unaccounted is therefore not warranted as it cannot be disputed that a particular item is sold without purchases in case of a trader.

The Appellant has sold 377 pendants and have offered the value of sale for taxation purpose. The addition of cost of 66 pendants as computed by the Assessing Officer being the cost of the same as unaccounted stock is not justified as it amounts to taxing of the same transaction again and again first time as a cost and second time as a sale, which is already offered by the Appellant.

The Appellant contends that since it has been offered for tax and there should not be taxation of the same transaction twice on the ground of natural Justice. The Item wise reconciliation of Inward and Outward entries of the Stock and Stock records have not been verified by the Assessing Officer which needs a detailed verification before confirmation of this addition.

The Appellant therefore prays that on the aforesaid addition is not justified and hence prays to delete the aforesaid addition based on the aforesaid facts and circumstances of the case after due verification and to your satisfaction, the facts are looked into as there is no unaccounted stock which has been sold.

2. The learned Assessing Officer has erred in initiating penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961.”

3. The brief facts of the case are that the assessee is engaged in a proprietary business of trading in diamonds and jewellery. During the course of assessment proceedings u/s 143(3) read with Section 143(2) of the Act, the A.O. observed, inter alia, as per the labour bills, that the total 154 rings, 94 earrings, 311 pendants and 18 necklace were available , whereas the assessee has sold 154 rings, 56 earrings, 377 pendants and 18 necklaces. As such due to non reconciliation, the assessee was asked to explain the difference of 66 pendants , the assessee submitted before the AO that 66 pendants were assembled by the assessee on his own as per requirements of the customer and no labour charges have been paid on these 66 pendants . The AO rejected the contentions of the assessee as it was evident to the AO that assessee is showing closing stock of diamonds of 153 carats. The AO held that the assessee has come out with an explanation which is an afterthought without any evidence to support the contentions that the assessee has assembled the said 66 pendants which could not be reconciled with the quantity as per labour bill and sale figures. The A.O. added the value of difference of 66 pendants working it out to be Rs. 6,66,754/- by treating it as sale from unaccounted stock by estimating the value as per value shown in export invoice dated 03-05-2006 , vide assessment orders dated 30-12-2009 passed u/s 143(3) of the Act

4. Aggrieved by the assessment orders dated 30-12-2009 passed u/s 143(3) of the Act by the A.O., the assessee carried the matter in first appeal before the learned CIT(A) .

5. It was the argument of the ld. Counsel for the assessee before the ld. CIT(A), that there was a purchase of 311 pendants from outside and in house assembly of 66 additional pendants during the previous year 2006-07 relevant to the impugned assessment year. These 66 pendants were

assembled by making use of the gold introduced by the assessee at the time of commencement of the business. Thus, in total 377 pendants were sold during the relevant previous year, the sale value of which is reflected in the books of account. It was submitted that 66 pendants which were assembled by the assessee were sold during the previous year and are no longer in the possession of the assessee. Thus, the grievance of the assessee was that the authorities have failed to appreciate the facts that the 377 pendants was sold during the relevant previous year and merely because the labour charges were not there in respect of 66 pendants, it is not justified on the part of authorities to say that it is an unexplained stock of gold in respect of 66 pendants while the assessee assembled himself 66 pendants out of gold introduced by the assessee. The assessee submitted that adding cost of 66 pendants in the hands of the assessee is not justified as it amounts to taxing of the same transaction twice as once as cost and second time as a sale which is not permissible under the provisions of the Act. The learned CIT(A) called for remand report from AO which is reproduced hereunder:

“As regards point No.3 i.e. sale of unaccounted stock amounting to Rs.6,66,754/-, the A.O. had observed that as per labour bills only 311 pendants were available for sale whereas the assessee has sold 377 pendants. Hence the AO added the value of 66 pendants worked out at Rs. 666754/- and treated the same as unaccounted stock sold. During the course of assessment proceedings as well during remand proceedings, the assessee has explained that 66 pendants were assembled by the assessee on his own with the help of his staff and contractor labour support as per the requirement of the customer and no labour charges has been paid on it. These pendants were assembled out of the gold introduced by the proprietor at the time of commencement of the business. As per the submission of the assessee, this assembling is a small process which do not require any big machinery, these are all

handmade process, wherein the gold is melted and poured on the wooden die and once the melted gold is dried the stones, diamonds etc are fixed. Only normal running loose tools are required. On verification of the balance sheet, it is seen that the assessee has shown a 'die machine' in the fixed asset and claimed depreciation on it.”

The learned CIT(A) held that the assessee as well as AO in remand report is contending that the assessee has assembled 66 pendants out of the gold introduced by the assessee and assembled by the assessee but this fact is not emerging from the records as no evidence is placed on record by the assessee to that effect and is merely a claim made by the assessee which remained unsubstantiated. The learned CIT(A) held that as per records there is no opening and closing stock of gold and the assessee has introduced 173 grams of the gold and the stock of gold tallies, there is no gold available which is used for manufacturing 66 pendants. Thus, the learned CIT(A) after considering the material placed before him refused to interfere with the findings of the A.O. and while confirming the same he dismissed the appeal of the assessee for the impugned assessment year vide appellate orders dated 20-09-2013.

6. Aggrieved by the appellate orders dated 20-09-2013 passed by the learned CIT(A), the assessee filed second appeal before the Tribunal.

7. The Id. Counsel for the assessee reiterated the submissions as were made before the authorities below which are not repeated for sake of brevity, and submitted that making of pendants does not require any expertise or complicated technology and requires merely melting of the gold and pouring it in the wooden die and once the melted gold is dried, the stones, diamonds etc. are fixed, whereby 66 pendants were made in-house without claiming any labour charges. The learned Counsel contended that material evidences were submitted before the learned CIT(A) and as such the learned CIT(A)

should have accepted the contentions of the assessee and deleted the quantum addition. The learned counsel for the assessee drew our attention to the remand report of the AO which is placed in paper book page 69-72 filed with the Tribunal which also find mentioned in the order of learned CIT(A), and also drew our attention to page 6 of paper book to contend that stock of gold of 3197.41 grams received during the year which tallies with gold utilized for making jewellery during the year of 3197.41 grams which included 173 grams of gold introduced by the assessee. He also drew our attention to page 13 of paper book which reflects that 377 pendants were made and sold out of gold of 3197.41 grams utilized during the relevant previous year. Thus , the ld. Counsel prayed to allow the appeal and delete the quantum addition.

8. The ld. D.R. placed reliance on the orders of authorities below and submitted that only 173 grams was shown to be introduced by the owner at the commencement of the business, as such the assessee failed to prove that it was sufficient to make 66 pendants in the absence of any proof of availability of sufficient gold, the authorities are justified in making the addition and prayed to dismiss the appeal filed by the assessee.

9. We have heard the rival contentions and carefully gone through the material placed before us. We have observed that the assessee has contended that for making 377 pendants which were sold during the relevant previous year by the assessee , 311 pendants were made by outsourcing which was evident from labour bills received by the assessee , while 66 pendants were contended to be made in-house for which the assessee has contended that in all 3197.41 grams of gold was utilized , inter-alia , for making in total 377 pendants and other items of jewellery for which stock reconciliation is placed on record which included 173 grams of gold received from the assessee itself and the said stock reconciliation is placed on record at page 13 of paper book. Further, before the Tribunal, the assessee has produced copy of the register

of sold items, stock register, purchase and sales, quantitative details as per the audit report and other relevant evidences in paper book filed before the Tribunal to contend that the stock is fully reconciled including making of 66 pendants which were manufactured in-house. All these evidences produced before the Tribunal assumes importance in view of the fact that the A.O. on verification of the balance sheet found that the assessee had shown the die machine as a fixed asset and claimed depreciation in respect of it. On perusal of the material, we are of the considered opinion that all these material evidences placed on record before the Tribunal by the assessee in support of contentions of the assessee including stock reconciliation statement at page 13 of paper book need verification by the A.O., including verification of explanations about the source of introduction of 173 grams of gold by the assessee. In this view of the matter keeping in view peculiar factual matrix of the case, we considered it just and expedient to set aside the order of learned CIT(A) and remit the matter back to the file of A.O. for de-novo determination of the issue on merits after considering the relevant evidences and explanations of the assessee in support of his contentions. We, therefore, hold that the impugned order is liable to be set aside. In the result, appeal is allowed by way of setting aside of the impugned order of the learned CIT(A) and restoring the issue to the file of the A.O. for fresh consideration and de-novo determination of issue on merits after verifying the relevant evidences and explanations produced by the assessee after giving opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. This disposes of ground no 1 of the appeal filed by the assessee. We order accordingly.

10. The ground no 2 is with respect to the initiation of penalty u/s 271(1)(c) of the Act is consequential and does not require our adjudication at this stage.

11. In the result, the appeal filed by the assessee in ITA NO. 7476/Mum/2013 for the assessment year 2007-08 is allowed for statistical purposes.

Order pronounced in the open court on 20th July , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 20-07-2016 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 20-07-2016

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व.नि.स./ ए.के., Ex. Sr. PS

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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