

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA
BEFORE SHRI N.V. VASUDEVAN, JM & DR. A.L.SAINI, AM**

आयकर अपील सं./ITA No.373/KoI/2014

(निर्धारण वर्ष / Assessment Year :2007-2008)

Pranab Kumar Banik, C/o- Salarpuria Jajodia & Co 7, Chittaranjan Avenue, Kolkata-700072	Vs.	ACIT, Central Circle-II, Aaykar Bhavan, Purva, 110,Shantipally, Kolkata Kolkata-700107
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADQPB 4401 K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri S.Jhajharia, FCA
राजस्व की ओर से /Revenue by : Shri Bani Brata Dutta,Adl.CIT-(DR)
सुनवाई की तारीख / **Date of Hearing** : **12/04/2017**
घोषणा की तारीख/**Date of Pronouncement** **26/04/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee, pertaining to the assessment year 2007-2008, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-III, Kolkata, in Appeal No.258/CC-II/CIT(A)C-III/2008-09/Kolkata, dated 31.12.2013, which in turn arises out of an order passed by the Assessing Officer (AO) Under section 147/144 of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 31.12.2008.

2. Brief facts qua the assessee are that in the case of assessee a search and seizure operation was conducted at the residential premises of Shri Pranab Kumar Banik at 25, dumdum Park, Kolkata-700055 and the office of the Ajanta Group of companies and its directors. The assessee is a director of M/s Ajanta Footcare (India) Pvt. Ltd., one of the main companies of the Ajanta Group and a partner in the association of

persons in the name and style of m/s Ma Durga Traders having its business at 161, N.S.Road, Kolkata-7. During the course of search and seizure operation, cash, jewellery, various bank accounts, mutual funds, and credit debit cards etc. were found from the premises of the assessee. The AO completed the addition by making the addition on account of unexplained cash Rs.27,710, on account of undisclosed jewellery Rs.18,24,425, on account of undisclosed investment in the bonds Rs.50,000/- and on account of unexplained expenditure through credit cards Rs.1,93,688.

3. Aggrieved from the order of the AO the assessee filed an appeal before the CIT(A), who has partially deleted the addition made by the AO. The AO made addition in respect of undisclosed jewellery in the hands of Pranab Kumar Banik and Prithu Banik @3,87,061/- and Rs.81,153/-, aggregating Rs.4,68,214/-. The Ld. CIT(A) after taking into account the CBDT Instruction No.1916 dated 11.5.1994 provided some relief to the assessee. Out of total addition of Rs.4,68,214/- made by the AO, the Ld. CIT(A) considered Rs.2 lakhs to be unexplained and the balance Rs.2,68,000/- has been deleted. The Ld. CIT(A) observed that in respect of jewellery held by employee, Shri Ranjit Banik, it was held that out of total jewellery of Rs.6,06,666/-, the amount of Rs.3,00,000/- is to be considered unexplained and the balance Rs.3,06,000/- is to be treated as explained and belonging to the employee of Mr. Ranjit Banik. This way the CIT(A) provided some relief to the assessee.

4. Not being satisfied with the order of the Id. CIT(A) the assessee is in appeal before us and has taken the following grounds of appeal :-

1. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in holding the impugned *exparte* assessment order u/s 144/ 147 of the I. T. Act, dt. 31.12.2008 for the A. Y 2007-08 passed by the Assessing Officer as valid without considering the facts that - (i) the return duly filed on 29.03.2008 in response to notice u/s 142(1) was unlawfully declared as invalid u/s 139(9) on casual & vague observations without specifying any particular defect in the return and (iii) sufficient opportunity of hearing was not provided to the assessee before declaring the return as not legally valid.

2. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in holding the aforesaid order u/s 144 /147 dt. 31.12.2008 as valid without considering the facts that - (i) during the existence of an assessment proceeding already initiated u/s 142(1) of the Act on 21.01.2008, a second proceeding u/s 147 was illegally initiated by issue of a notice u/s 148 dt. 26.06.2008 for the same A.Y 2007-08 without prior cancellation of the first proceeding and (ii) the said notice u/s 148 was issued unlawfully, without ever communicating before completion of the *exparte* assessment, the reasons recorded for initiation of the said proceeding u/s 147 violating the judgement of the Hon'ble Apex court on this issue.

3. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in holding the aforesaid order u/s 144/147 dt. 31.12.2008 as valid without considering the facts that no statutory notice of hearing u/s 143(2) was issued and served on the assessee after the issuance of the notice u/s 142(1) or u/s 148 of the Act and before completion of the assessment. The order u/s 144/147 dt. 31.12.2008 being illegal and void *ab initio* is liable to be quashed / cancelled.

4. Without prejudice to the Gr. Nos. 1 to 3 above, the Ld. CIT(A) was wholly wrong and unjustified in confirming the arbitrary addition of Rs.4,68,214/- (Rs. 3,87,061/- + Rs.81,153/-), made in assessment as undisclosed investment *vis-a-vis* the income of the appellant on a/c of the alleged undisclosed jewellerys belonging to the appellant's two minor sons namely S/Sri Prithu Banik & Purnava Banik, to the extent of Rs.2,00,000/- only on pure estimate without allowing full relief on that a/c on the basis of the binding instruction no.1916 dt.11.05.1994 of the CBDT explained before him despite his acceptance of the normal social customs that in a family the minor children also possess jewellerys received from various relatives and friends on the occasion of their birth and other social ceremonies.

5. Without prejudice to the Gr. Nos. 1 to 3 above, the Ld. CIT(A) was wholly wrong and unjustified in confirming the arbitrary addition of Rs.6,06,666/- made in assessment as undisclosed investment vis-a-vis the income of the appellant on a/c of the alleged undisclosed jewellery owned and held by Sri Ranjit Basak, an employee in the appellant's business concern, to the extent of Rs.3,00,000/- only on pure estimate without allowing full relief on that a/c on the basis of binding instruction no.1916 dt.11.05.1994 of the CBDT explained before him.

6. Without prejudice to the Gr. Nos. 1 to 3 above, the Ld. CIT(A) was wholly wrong and unjustified in confirming the arbitrary addition of Rs.50,000/-, made in assessment as undisclosed investment in the units of mutual funds / bonds merely on assumptions and presumptions without any basis and application of mind, to the extent of Rs.20,000/- only on pure estimate without allowing full relief on that a/c.

7. Without prejudice to the Gr. Nos. 1 to 3 above, the Ld. CIT(A) was wholly wrong and unjustified in confirming the arbitrary addition of Rs.1,93,688/-, made in assessment as undisclosed investment on a/c of undisclosed expenses made through credit/debit cards merely on assumptions and presumptions without any basis and application of mind, to the extent of Rs.1,38,745/- on pure estimate without allowing full relief on that a/c.

8. For that your petitioner craves leaves the right to put additional grounds and/or to alter/amend/modify the present grounds before or at the time of hearing of the appeal petitions.

In this appeal, the assessee has raised eight grounds of appeal, but at the time of hearing the main grievance of the assessee has been confined to ground No.4 and ground No.5 and other grounds were not pressed.

5. Ground No.4 relates to addition of Rs.(3,87,061/- + 81,151/-) = Rs.4,68,214/- out of that Id. CIT(A) provided the relief of Rs.2,68,000/- and addition sustained was at Rs.2,00,000/-. The assessee is in appeal before us for Rs.2,00,000/-, which was considered by the Id. CIT(A) as unexplained jewellery.

5.1. Ld. AR for the assessee has submitted before us that both, the AO as well as the CIT(A) had treated the jewellery of both the sons (Purnava Banik and Prithu Banik) as if, it was acquired by the assessee out of his undisclosed income, as both the children were minors on the day of search and never had any source of income to acquire such jewellery from their own funds. The Id AR submitted that the jewellery in question were acquired by the two minor children Purnava Banik and Prithu Banik through inheritance and on their birthday and various social functions from relatives and friends and could under no circumstances be treated as to be acquired from undisclosed income of the assessee. The assessee relied on CBDT Instruction no. 1916 dated 11-05-1994, requiring non seizure of jewellery to the extent of 500 gms for married lady, 250 gms for unmarried lady and 100 gms for male. In the context of the said CBDT circular the Id AR for the assessee stated that Purnava Banik the quantity of gold is 97.50 gms which is below 100 gms therefore, it should be treated as explained. Likewise, another son is having total gold at 95.90 which is below 100 gms, therefore it is covered by CBDT Circular.

5.2. On the other hand, Id. DR for the Revenue has primarily relied on the findings of the AO, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

5.3. Having heard the submissions of Id AR for the assessee and perused the material available on records, we are of the view that this issue under consideration is fully covered by the CBDT Instruction No. 1916 dated 11-05-1994, requiring non seizure of jewellery to the extent of 500 gms for

married lady, 250 gms for unmarried lady and 100 gms for male. As we have noticed that in case of both the sons of the assessee, the weight of gold is below 100 gms therefore it is fully covered by the said CBDT circular. Based on the above facts we are of the view that addition confirmed by Id CIT(A) at Rs.2,00,000/- needs to be deleted. Accordingly, we delete the addition.

5.4 In the result, the appeal filed by the assessee on ground No. 4, is allowed.

6. Ground No.5 relates to addition made by the AO at Rs.6,06,666/- out of which Rs.3,06,666/- has been deleted by the CIT(A) and the assessee is in appeal before us for Rs.3,00,000/-.

6.1 The Id AR for the assessee submitted that in case of Mr.Ranjit Basak, the total weight of gold is at Rs.101.40 gms, which is very near to 100 gms therefore, the same should also be covered by the CBDT instructions. Hence, in this case also the assessee relied on CBDT Instruction no. 1916 dated 11-05-1994, requiring non seizure of jewellery to the extent of 500 gms for married lady, 250 gms for unmarried lady and 100 gms for male.

6.1 On the other hand, Id. DR for the Revenue has primarily relied on the findings of the AO, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6.3 Having heard the submissions of Id AR for the assessee and perused the material available on records, we are of the view that this issue under consideration is covered by the CBDT Instruction No. 1916 dated 11-05-

1994, requiring non seizure of jewellery to the extent of 500 gms for married lady, 250 gms for unmarried lady and 100 gms for male. However, we noticed an insignificant difference in weight (Quantity) at 1.40 gms, being the difference between gold possessed at 101.40.gms by Mr. Ranjit Basak and as per CBDT instruction at 100 gms. In our view it is not a material difference therefore we treat it that assessee has explained the gold quantity satisfactorily as per CBDT instructions (supra). Based on the factual position discussed above, the addition made by the Id CIT(A) needs to be deleted. Accordingly, we delete the addition.

6.4. In the result, the appeal filed by the assessee on ground No. 5, is allowed.

Order pronounced in the open court on this 26/04/2017.

Sd/-
(N.V. VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 26/04/2017

प्रकाश मिश्रा/Prakash Mishra,Sr.PS.

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

1. अपीलार्थी / The Appellant- *Pranab Kumar Banik*
2. प्रत्यर्थी / The Respondent.-ACIT-CC-11, Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, Kolkata