

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA Nos.133 & 134/Bang/2016
Assessment year : 1998-99

Smt. Kanchanbai M. Jain, C/o. M.M. Jain, 101/102, Arihant Nagar, Kusugal Road, Keswapur, Hubli. PAN: ABCPJ 7844Q	Vs.	The Income Tax Officer, Ward 1(3), Navanagar, Hubli.
Late Shri Milapchand M. Jain, By Legal Heir Smt. Kanchanbai M. Jain, C/o. M.H. Jain & Co., Ganesh Peth, Hubli. PAN: ABSPJ 8703E		
APPELLANTS		RESPONDENT

Appellant by	:	Shri Vinay Kulkarni, CA
Respondent by	:	Smt. Swapna Das, Jt. CIT(DR)

Date of hearing	:	27.06.2016
Date of Pronouncement	:	30.06.2016

ORDER

These appeals are preferred by the assesseees against the separate orders of the CIT(Appeals), Hubli, both dated 30.11.2015 for the assessment year 1998-99 *inter alia* on the following identical grounds:-

“1. The Learned CIT (Appeals) has failed to read properly, which is also the case with the learned Assessing Officer, the direction given to the department by the Hon'ble High Court and proceeded to uphold the order of the Assessing Officer without appreciating the documentary as well as circumstantial evidence available before him.

2. While passing the order the Learned CIT (Appeals) has held that sale is not proved. This clearly undoes the conclusion drawn by the Honorable High Court regarding sale transaction.

3. In the order the learned CIT (Appeals) has not given any concrete reasons to reject the evidence produced in support of the fact that the assets sold are the same assets as declared under VDIS 1997, though in different form.

4. The appellant craves leave to add, alter, modify, delete or substitute any or all of the grounds and to file a paper book at the time of hearing the appeal.

In view of the above and other written submission that may be made during the course of hearing, it is prayed to hold that:

1. The assets sold are the same assets, may not be in the same form, which are declared under VDIS 1997. And
2. The addition of Rs 7,51,788/- made on above account be deleted (ITA No.133/Bang/2016)
3. The addition of Rs 13,61,990/- made on above account be deleted (ITA No.133/Bang/2016).”

2. Though various grounds are raised, but they all relate to introduction of cash in the books of accounts of the assesseees on sale of gold & diamonds (ITA 133/Bang/2016) and on sale of sliver and diamonds (ITA No.134/Bang/2016), which were declared under Voluntary Disclosure of Income Scheme, 1997 (VDIS).

3. During the course of assessment proceedings, the Assessing Officer has noted that certain introduction of cash was explained by the assesseees to have been introduced on account of sale of gold jewellery & diamonds and silver & diamonds respectively. It was also contended by the assessee that under VDIS, the assesseees have declared the gold ornaments/jewellery & diamonds studded with gold as well as the silver and diamonds. The declaration was accepted under VDIS and later on gold jewellery was converted into gold bullion and separate diamonds as well as silver utensils were converted into silver bullion & separate diamonds which were sold and the sale proceeds were introduced in the books of account. The AO has raised a technical objection by stating that the items declared under VDIS were not the same, which were sold and the sale proceeds were introduced in the books of account.

4. When the matter reached the Hon'ble High Court of Karnataka, the Hon'ble jurisdictional High Court has remanded the matter back to the AO to give a specific finding as to, whether the items sold were the same which were disclosed under VDIS?

5. In the remand proceedings, the assessee has furnished the details of items sold and the evidence of conversion of the gold jewellery into gold bullion and diamonds. The weight of gold bullion and the diamonds were the same. The AO did not accept the contentions of the assessee and

again made the additions. Though the assessee has tried to explain the facts with details, but it was not acceptable to the CIT(Appeals).

6. Before the Tribunal, the assessee has filed a copy of the Valuation Report, VDIS Certificate, copy of sale of diamond and gold bullion/copy of sale of silver bullion and diamonds and the evidence of conversion of gold jewellery into gold bullion/silver utensils into silver bullion and diamonds. From this evidence, the assessee has tried to explain that the same quantity of gold/silver which were declared under VDIS were sold. Similar is the position in respect of diamonds also.

7. Per contra, the Id. DR strongly opposed the contentions of the assessee and placed heavy reliance upon the order of the CIT(Appeals).

8. Having carefully examined the orders of lower authorities and documents placed on record in the light of rival submissions, we find that the same quantity of gold/silver and diamonds which were declared under VDIS were sold. Though the assessee has declared the gold jewellery studded with diamonds/silver and diamonds in different form under VDIS, but in sale bill the assessee has sold gold bullion/silver bullion and diamonds separately. The assessee has filed evidence with respect to conversion of gold jewellery into gold bullion/conversion of silver utensils into silver bullion and diamonds.

9. Since the same quantity which were disclosed under VDIS were sold, we find no justification in making the addition on introduction of sale proceeds in the books of account. Once the Revenue has accepted the declaration under VDIS and accepted the tax deposited by the assessee, it should not have made a further addition on account of introduction of sale proceeds of the said jewellery in the books of account. We therefore find no merit in the additions made by the revenue authorities. Accordingly, we set aside the order of the CIT(Appeals) and delete the addition.

10. In the result, the appeals by the assessees are allowed.

Pronounced in the open court on this 30th day of June, 2016.

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 30th June, 2016.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.