

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'जी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री सी. एन. प्रसाद, न्यायिक सदस्य, एवं श्री राजेश कुमार, लेखा सदस्य, के समक्ष
BEFORE SHRI C.N.PRASAD, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं/ I.T.A. No. 301/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Shri Faisal Siddiqui A – Wing, 604A, Simla House, Napean Sea Road, Mumbai - 400036	बनाम/ Vs.	Asstt. Commissioner of Income Tax Central Circle – 47 Mumbai
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आयकर अपील सं/ I.T.A. No. 296/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Asstt. Commissioner of Income Tax Central Circle 8(4) 6 th Floor, Room No.658, Aayakar Bhavan, M.K.Road, Mumbai - 400020	बनाम/ Vs.	Shri Faisal Siddiqui A – Wing, 604A, Simla House, Napean Sea Road, Mumbai - 400036
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKPS6024L		
(□ पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ajay R. Singh
Revenue by:	Shri Anand Mohan (CIT-DR)

सुनवाई की तारीख / Date of Hearing: 12.01.2017
घोषणा की तारीख /Date of Pronouncement: 07.04.2017

आदेश / ORDER

PER C.N.PRASAD, JM:

These two appeals are filed by the assessee and the revenue against the order of the Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter referred to as the "CIT(A)"] dated 06.01.2015 for the A.Y. 2011-12.

2. The assessee in his appeal raised the following ground of appeal:-

- I. Foreign Currency of Rs.7,63,340/-**
1. *The learned CIT(A) erred in confirming the addition of Rs.7,63,340/- being foreign currency found at time of search action, without appreciating the fact that the said amount was duly accounted in the books of M/s.Fourways Travel Pvt. Ltd. and further these amounts were returned to the company by the assessee, therefore the addition ought to be deleted.*
- II. Deemed dividend Rs.90,00,000/-**
2. *The learned CIT(A) erred in sustain the addition of Rs.90 lacs u/s.2(22)(e) of the Act, as deemed dividend without appreciating the correct facts, therefore the addition ought to be deleted.*
- III. Addition of Jewellery of Rs.15,44,780/-**
3. *The learned CIT(A) erred in confirming the addition of jewelleryes at Rs.15,44,780/- without appreciating the complete facts."*

3. Briefly stated facts are that the assessee is into travel agency business and there was search and seizure action u/s.132 of the Income Tax Act, 1961 (in short "the Act") on 22.02.2011 at the residence and business premises of Zaka Group to which the assessee belongs to. During the course of search proceedings foreign currency valued at Rs.7,63,340/-

was found at assessee's premises and the details of the denomination of the such foreign currency was given at page 2 of the assessment order. During the course of search proceedings, statements were recorded from the assessee regarding the foreign exchange found and it was submitted by the assessee that this foreign exchange was drawn from Fourways Travels Pvt. Ltd. and Indo Saudi Services (Travel) Pvt. Ltd. being the director in these companies and frequently travelling abroad for business purpose. It was also submitted that this currency is fully accounted for in the books of accounts of the said companies. However, the Assessing Officer while completing the assessment presumed that since assessee made various foreign visits and foreign currencies were provided by the company on every foreign trip, the surplus foreign currency has been kept by the assessee with him instead of returning it to the company. Therefore he added foreign currency valued at Rs.7,63,340/- as undisclosed income. On appeal the CIT(A) sustained this addition observing that the remand report sent by the Assessing Officer is silent on this issue.

4. The learned counsel for the assessee submits that in the course of remand proceedings all the information was furnished, details were given to the Assessing Officer and it was explained that the currency seized does not belong to the assessee and merely because the currency is seized from the assessee's premises it is not a ground for making addition in assessee's hands. The learned counsel further submits that the foreign currency was received by the assessee from Fourways Travels Pvt. Ltd. and is duly accounted for and it belongs to the company. The foreign currency was

returned to the company on 31.03.2011, therefore, the addition is not justified. The DR supported the orders of the authorities below.

5. We have heard the rival submissions perused the orders of the authorities below. On hearing both the sides we are of the considered view that this issue has to be examined and verified by the Assessing Officer with reference to the submissions made by the assessee that the foreign currency is belongs to the company and it has been accounted for in company's books as on 31.03.2011. The learned counsel for the assessee further submits that as per the RBI Rules and Regulations assessee can retained the foreign exchange for 180 days. Thus we restore this issue to the file of the Assessing Officer who shall examine the issue afresh in accordance with law. The assessee shall provide necessary details to the Assessing Officer to substantiate his claim. Needless to say the Assessing Officer shall provide adequate opportunity of being heard to the assessee.

6. The second ground raised by the assessee is in respect of deemed dividend. Assessee is challenging the order of the CIT(A) in sustaining the addition of Rs.60,00,000/- u/s.2(22)(e) of the Act as deemed dividend. Before us the learned counsel for the assessee submits that the assessee's only plea is that the deemed dividend is to be restricted to the accumulated profits of the company. The DR has no serious objection in restricting the deemed dividend to the accumulated profits of the company. On hearing both sides in principle we hold that the CIT(A) is justified in sustaining the addition made u/s.2(22)(e) of the Act. However, such addition should be restricted only to the accumulated profits of the company as specified in the provisions of section 2(22)(e) of the Act. Therefore, for the limited purpose

on verification and quantification of deemed dividend we restore this issue to the file of the Assessing Officer who shall quantify the disallowance u/s.2(22)(e) of the Act restricting to the accumulated profits of the company.

7. The last issue in the assessee's appeal is in respect of confirmation of addition towards jewellery of Rs.15,44,780/-. Briefly stated the facts are that during the course of search, gold, diamond and silver valuables worth Rs.49,35,502/- were found in the wardrobe of the assessee's residence. In the course of search proceedings it was stated in the statement that the said gold, diamond and silver jewellery belongs to family members. It was further stated that though the entire jewellery belongs to his family members source of acquisition cannot be explained. In the statement it was also stated that gold, diamond and silver jewellery lying in the wardrobe valued at Rs.49,35,502/- also belongs to his family. However, the same is explained and acquired in the current Financial Year i.e. 2010-11 relevant to the A.Y.2011-12.

8. During the course of assessment proceedings, the Assessing Officer required the assessee to explain as to why the jewellery worth Rs.49,35,502/- found in the course of search should not be added as undisclosed income of the assessee for the A.Y.2011-12. The assessee in the course of assessment proceedings submitted that jewellery valued of approximately Rs.25,00,000/- belong to his forefathers and were collected over the period of time on various occasions in family and the remaining jewellery were acquired in financial year ending 31.03.2011 relevant to A.Y.2011-12. It was also stated that the assessee has already paid

Rs.51,82,505/- vide pay order dated 24.03.2011 for the undisclosed income relating the value of unaccounted jewellery found in the wardrobe and the bank lockers. It was further submitted that the inherited jewellery was passed on over ages in his family. Not satisfied with the explanation of the assessee the Assessing Officer added the jewellery, diamond and valuable worth Rs.54,96,155/- as against Rs.49,35,502/-. The CIT(Appeals) considering the submission of the assessee and applying CBDT Instruction No.1916 dated 11.05.1994 and looking into the social status of the family, agreed with the assessee's submission and partly allowed the ground of appeal by following various decisions of the Hon'ble High Courts and also the Mumbai Bench of Tribunal in ITA No.5706/Mum/2009 in the case of Shri Hiten Mehta Vs. ACIT. The CIT(A) restricted the addition to Rs.15,44,780/- accepting the alternate contention that if at all it is to be treated as unexplained income it is only Rs.15,44,780/- as per the working submitted in the course of appellate proceedings before the CIT(A). The assessee could not substantiate its claim that the jewellery was purchased in earlier years and its source. Therefore we do not see any good reason to hold that the assessee explained the sources for the jewellery found worth Rs.15,44,780/-. Hence the CIT(A) order is sustained and ground raised by the assessee is rejected.

ITA NO. 296/MUM/2015 (Revenue's Appeal):-

9. The only issued in the ground numbers 1 to 4 of the revenue's appeal is regarding the deletion of entire addition of Rs.54,96,155/- on account of unexplained investment in jewellery. As explained in the above para we find that the CIT(A) observing that the correct addition should have been

Rs.49,35,040/- and not Rs.54,96,155/-, restricted the addition to Rs.15,44,780/- based on the CBDT Instruction No.1916 dated 11.05.1994 and the case laws refer to therein. In the circumstances we do not find any valid reason to interfere with the directions of the CIT(A) in restricting the addition to Rs.15,44,780/-. Accordingly this ground is dismissed.

10. In the result, the appeal filed by **the assessee is partly allowed for statistical purpose and appeal of the revenue is hereby Dismissed.**

Order pronounced in the open court on 7th April, 2017.

Sd/-
(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 7th एप्रिल, 2017
MP

Sd/-

(C.N.PRASAD)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि □ ग्रेषित/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,

सत्यापित प्रति //True Copy//

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