
(2011) 07 DEL CK 0319
In the Delhi High Court
Case No : IT Appeal No. 274 of 2011

Ashok Chaddha

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Income Tax Act, 1961 — Section 132(1), 139, 143(3), 153A, 69

Citation : (2011) 202 TAXMAN 395

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Shashi M. Kapila and R.R. Maurya, for the Appellant; Kiran Babu, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Admit on the following substantial questions of law:-

(1) Whether the order of the Ld. ITAT is perverse in holding that the entire jewellery found during the search belonged to the appellant and not his wife and was undisclosed income of assessment year 2006-07 without any evidence?

(2) Whether the Ld. ITAT erred in wrongly upholding the addition of the entire 506.9 grams of jewellery pertained to assessment year 1996-97 without appreciating that the said jewellery was acquired at the time of marriage over a period of time?

Filing of paper books is dispensed with as the learned counsel for the parties are prepared to finally argue the matter. We have heard arguments of both the parties at length and now proceed to answer the questions formulated above. Before that, however, it would be necessary to take note of the relevant facts.

2. A search and seizure operation u/s 132(1) of the income tax Act, 1961 (hereinafter referred to as the Act) was conducted in the case of Dilbagh Rai Group on 1st September, 2005 and 28th September, 2005. This search covers

the residential premises of the appellant as also his locker No. 476 at Union Bank of India, Naraina. During the search, apart from some cash and jewellery, loose papers/documents were also found seized.

On 21st July, 2006, the assessee filed his return of income for the assessment year 2006 u/s 139 of the Act. In order to proceed with this assessment year detailed questionnaire was also issued which related to queries in connection with the seized material. This questionnaire was duly replied by the appellant who submitted supporting evidence as well. Thereafter, assessment order was framed by the Assessing Officer assessing the income at Rs. 2,64,02,210 making several additions u/s 69 of the Act. This assessment was made u/s 143(3) and u/s 153A of the Act in respect of assessment year 2000-01 to assessment year 2006-07. The assessee approached the CIT(A) by way of appeal against all the additions made by the Assessing Officer. The CIT(A) disposed of the appeals by consolidated order in respect of all these assessment years and deleted all the additions except two namely addition of Rs. 3,87,364 on account of jewellery found during the search and Rs. 50,000 on account of receipt of booking at Tivoli Garden. Both, the assessee as well as the Revenue challenged the orders of the CIT(A) by filing their respective appeals. In these appeals the two additions sustained by the CIT(A) are affirmed by the ITAT as well. In this appeal preferred by the assessee against the impugned orders dated 17th September, 2010, we are concerned with these two additions only. It may also be mentioned that at the time of arguments the learned counsel for the appellant did not press about the addition of Rs. 50,000 on account of receipt of Rs. 50,000 at Tivoli Garden. For this reason, the questions of law which are formulated pertain to addition of Rs. 3,87,364 on account of jewellery.

As far as addition qua jewellery is concerned, during the course of search, jewellery weighing 906.900 grams of the value amounting to Rs. 6,93,582 was found. The appellant's explanation was that he was married about 25 years back and the jewellery comprised "stree dhan" of Smt. Jyoti Chadha, his wife and other small items jewellery subsequently purchased and accumulated over the years. However, the Assessing Officer did not accept the above explanation on the ground that documentary evidence regarding family status and their financial position was not furnished by the appellant. The Assessing Officer accepted 400 grams of jewellery as explained and treated jewellery amounting to 506.900 grams as unexplained and made an ad hoc addition of Rs. 3,87,364 u/s 69A of the Act working on unexplained jewellery, by applying average rate of the total jewellery found. The relevant portion of the assessment order reads as follows:-

a very reasonable allowance of ownership of gold jewellery to the extent of 400 grams is considered reasonable and the balance quantity of 506 grams by applying average rate, the unexplained gold jewellery is considered at Rs. 3,87,364 (506/900 X 6,93,582) u/s 69A of the Act.

The CIT (A) confirmed this addition stating that the Assessing Officer had been fair in accepting the part of jewellery as unexplained. The ITAT has also endorsed

the aforesaid view. Learned counsel for appellant Ms. Kapila submitted that there was no basis for the Assessing Officer to accept the ownership of the gold jewellery to the extent of 400 grams only as "reasonable allowance" and treat the remaining jewellery of Rs. 506.900 as unexplained. She also submitted that another glaring fact ignored by the Assessing Officer as well as other authorities was that as the department had conducted a search of all the financial dealings which were within his knowledge and no paper or document was found to indicate that this jewellery belonged to the appellant and that it was undisclosed income of the assessment year 2006-07. In a search operation, no scope is left with the tax department to make addition on subjective guess work, conjectures and surmises. It was also argued that jewellery is "stree dhan" of the assessee's wife, evidenced in the form of declaration which was furnished by mother-in-law of the assessee stating that she had given the jewellery in question to her daughter. She argued that it is a normal custom for a woman to receive jewellery in the form of marriage and other occasions such as birth of a child. The assessee had been married more than 25-30 years and acquisition of the jewellery of 906.900 grams could not be treated as excessive.

3. Learned Counsel for the respondent on the other hand relied upon the reasoning given by the authorities below. After considering the aforesaid submissions we are of the view that addition made is totally arbitrary and is not founded on any cogent basis or evidence. We have to keep in mind that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. The learned counsel for the appellant/assessee is correct in her submission that it is a normal custom for woman to receive jewellery in the form of "stree dhan" or on other occasions such as birth of a child etc. Collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and treat the other as "unexplained". Matter would have been different if the quantum and value of the jewellery found was substantial.

4. We are, therefore, of the opinion that the findings of the Tribunal are totally perverse and far from the realities of life. In the peculiar facts of this case we answer the question in favour of the assessee and against the revenue thereby deleting the aforesaid addition of Rs. 3,87,364.

5. Appeal is allowed in the aforesaid terms.