(1999) 12 GUJ CK 0060

In the Gujarat High Court

Case No : IT Application No. 330 of 1999

Commissioner of Income Tax APPELLANT

Vs

Mrugesh Jaykrishna RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 69A

Citation : (2000) 162 CTR 433 : (2000) 245 ITR 638

Hon'ble Judges : K.M. Mehta, J;B.C. Patel, J

Bench : Division Bench

Judgement

1. The CIT has preferred this application under s. 256(2) of the IT Act, 1961 (the Act), being aggrieved by the order passed by the Tribunal, Ahmedabad, on 12th January, 1999 in Ref. Appln. No. 664/Ahd. of 1998.

2. The questions sought to be referred by the Revenue are as under :

"(1) Whether, the Tribunal is right in law and on facts in confirming the order passed by the CIT(A) deleting the addition of Rs. 3,82,895 on account of unexplained investment in jewellery in view of the express provisions of s. 69A of the IT Act ?

(2) Whether the Tribunal has correctly appreciated the facts on record so as to arrive at the above conclusion ?"

3. The assessee, in the instant case, was found with a list of jewellery at the Mumbai Airport on 19th March, 1985, and the assessee''s immediate explanation about the list was that the list consists of items they were planning to get prepared for the next 5-7 years by the time his son is ready for marriage, who at the relevant time was around 16 years old.

4. Section 69A of the Act reads as under :

"Unexplained money, etc. - Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the AO, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

5. The CIT(A), after hearing both the sides, considered the submissions in detail in para 37 of the order, and deleted the addition of Rs. 3,82,895. The Revenue moved the Tribunal. The Tribunal has held that it was a mere list and not jewellery in weight, etc. In fact, there was no recovery of jewellery. Section 69A provides that the jewellery could be deemed to be the income of the assessee only if the assessee fails to explain about the nature and source of acquisition or the explanation is not satisfactory in the opinion of the AO. The CIT(A) found that there was no other evidence in the form of any notings regarding purchase or making of the ornaments. Except the piece of paper found in the brief case, there was no other material to indicate that there was undisclosed investment in acquiring the ornaments. The Tribunal after hearing the appeal recorded the finding that the AO failed to appreciate the explanation submitted by the assessee and decided to make the addition upon conjectures and surmises without any evidence to dispute the explanation offered by the assessee. When a reasonable explanation was offered, then it is for the fact-finding authority, viz., assessing authority, to come to a definite conclusion whether the explanation offered is reasonable and probable or not. Once the CIT(A), which is the first appellate authority and the Tribunal which is the second appellate authority both have accepted the explanation, we find that no question of law arises in the matter. In the result, this application is rejected.