(1999) 12 GUJ CK 0022

In the Gujarat High Court

Case No : IT Application No. 330 of 1999 8 December 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) 109 TAXMAN 89

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

Bench : Full Bench

Advocate : B.B. Nayak and Manish R. Bhatt, for the Appellant;

Judgement

1. The Commissioner has preferred this application u/s 256(2) of the Income Tax Act, 1961 (the Act), being aggrieved by the order passed by the Tribunal, Ahmedabad, on 12-1-1999 in Reference Application No. 664 (Ahd.) of 1998.

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

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

2. Whether, the Appellate 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 fist of jewellery at the Mumbai Airport on 19-3-1985, 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.

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 assessing officer, 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."

The Commissioner (Appeals), after hearing both the sides, considered the submissions in detail in paragraph 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 assessing officer. The Commissioner (Appeals) 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 assessing officer 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 Commissioner (Appeals), 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.

