(2008) 11 PAT CK 0106

In the Patna High Court

Case No : Misc. Appeal No. 344 of 2002

Dr. Ranjan Kumar Akhauri, J-90, P.C. Colony, Kankarbagh, Patna — APPELLANT

Vs

The Commissioner of Income Tax-1, Patna and Another — RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Citation : (2009) 2 PLJR 398

Hon'ble Judges : Ravi Ranjan, J;Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Ajay Kumar Rastogi, for the Appellant; Archana Sinha for Revenue, for the Respondent

Final Decision : Allowed

Judgement

Prasad & Ranjan, JJ.—Appellant Dr. Ranjan Kumar Akhauri is a medical practitioner. A search and seizure operation was conducted in his premises situated at Mohalla Kankarbagh in the town of Patna as also the bank locker on 10.8.1994. The income tax authority found in the bank locker standing in the names of Dr. Ranjan Kumar Akhauri, hereinafter referred to as the assessee and his wife Kumkum Akhauri jewellery weighing 916.500 gms. The assessee explained that 550 gms. out of 916.500 gms. of jewellery was received by his wife at the time of marriage and 366.500 gms. was purchased by them during their stay in the United Kingdom from 1984 to 1988. The Assistant Commissioner of income tax, hereinafter referred to as ''the Assessing Officer'' accepted the assessee''s plea that gold jewellery to the extent of 500 gms. was received by his wife at the time of her marriage. It is relevant here to state that assessee''s plea was that jewellery weighing 366.500 gms. was purchased during their stay at United Kingdom, but he had produced purchase voucher of the jewellery weighing 35 gms. only. The Assessing Officer accepted the plea of the assessee in respect of 35 gms. and the balance quantity of jewellery weighing 381.500 gms. was treated as unexplained investment in jewellery at the hands of the assessee. The Assessing Officer calculated the value of the jewellery at Rs. 1,52,600/- at the rate of Rs. 4,000/- per 10 gms. and added back the aforesaid amount as unexplained investment in jewellery. The Assessing Officer also added the amount of Rs. 4,73,331/- as unexplained investment in the construction of the clinic/nursing home. The assessee carried the matter in appeal. The Commissioner of income tax accepted the plea of the assessee in total as regards the receipts of the jewellery of 550 gms. at the time of marriage. Accordingly, the addition in respect of unexplained jewellery to the extent of 50 gms. at the rate of Rs. 4,000/- per 10 gms. was reduced to Rs. 1,32,600/-. However, the finding of the Assessing Officer that the jewellery weighing 331.500 gms. remains unexplained, has been affirmed in appeal. As regards the unexplained investment in construction, the appellate authority reduced it to Rs. 2,50,000/-.

2. The Commissioner of income tax aggrieved by the order of the Commissioner of income tax (Appeals) reducing the unexplained investment to Rs. 1,32,600/-in place of Rs. 1,52,600/-, preferred appeal before the Patna Bench of the income tax Appellate Tribunal, which was registered as ITA No. 331 of 2000. The assessee aggrieved by the orders in relation to unexplained investment in jewellery and clinic also preferred appeal before the Tribunal which was registered as ITA No. 311 of 2000. Both the appeals were heard together. The Tribunal confirmed the amount of Rs. 1,32,600/- as unexplained investment in jewellery and as regards the unexplained investment in the clinic, it remitted the matter back to the Commissioner of income tax (Appeals) for fresh disposal.

3. Aggrieved by the aforesaid, the assessee has preferred this appeal and by order dated 12.10.2006, this appeal has been admitted on the following substantial questions of law:

1. Whether on the facts and in the circumstances of the appellant''s case, Tribunal is justified in confirming addition of Rs. 1,32,000/- on account of unexplained investment in gold jewellery belonging to the appellant''s wife?

2. Whether the addition of Rs. 1,32,600/- sustained by the Tribunal is legal and valid on the facts and in the circumstances of the appellant''s case?

3. Whether on the facts and in the circumstances of the appellant''s case the Tribunal is justified in restoring the issue of unexplained investment in construction of clinic to the file of CIT(A)?

4. Whether the Tribunal is justified in restoring the issue of unexplained investment in construction of clinic to the file of CH''(A) despite the order of settlement commission?

4. Mr. Rastogi, appearing on behalf of the appellant, raises a very short point. He submits that the value of the jewellery can be deemed to be unexplained investment at the hands of the assessee only when a finding is recorded that he is the owner thereof. He points out that the jewellery was found in the locker jointly belonging to the assessee and his wife. Our attention has been drawn to

the statement of the assessee''s wife taken on oath by the income tax authority in which she claimed that the jewellery belong to her.

5. Mrs. Archana Sinha, appearing on behalf of the respondents-Revenue, however, submits that the assessee shall be deemed to be the owner of the jewellery and therefore, value of the jewellery has rightly been held to be an unexplained investment of. the assessee.

6. Having appreciated the rival submission, we find substance in the submission of Mr. Rastogi. Neither the Assessing Officer nor the Commissioner of income tax (Appeals) or the Tribunal had held that the assessee is the owner of the jewellery. In our opinion, the value of the jewellery can be deemed to be the income of the assessee u/s 69A of the Act only when the assessee is found to be the owner of the jewellery. Here, there is no finding that the assessee is the owner of the jewellery and in absence thereof, there is no escape from the conclusion that the value of the jewellery cannot be deemed to be the unexplained investment of the assessee.

7. In view of the discussions aforesaid, answers to question Nos. 1 and 2 are in the negative, against the Revenue and in favour of the assessee and it is held that the Tribunal was not justified in confirming the addition of Rs. 1,32,6007-in its order.

8. In fairness to Mr. Rastogi, he submits that the Tribunal has remitted the matter back so far as question Nos. 3 and 4 are concerned and therefore, aforesaid questions of law be not adjudicated by this Court for the present. We accede to his request.

9. Needless to state that the Commissioner of income tax (Appeals) shall decide those questions in accordance with law in the light of the order passed by the Tribunal. In the result, the appeal is allowed to the extent indicated above. However, there shall be no order as to cost.