(2011) 11 KL CK 0040

In the High Court Of Kerala

Case No : ITA No''s. 183 and 223 of 2010

K.P. Beeran APPELLANT

Vs

Asstt. CIT RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Income Tax Act, 1961 — Section 69B

Citation : (2012) 207 TAXMAN 65

Hon'ble Judges : K. Vinod Chandran, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.B. Muhamed Kutty and K.M. Firoz, for the Appellant; P.K.R. Menon and Jose Joseph, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the learned senior counsel Dr. K.B. Mohamed Kutty appearing for the appellant and learned Standing Counsel for the respondent. Both the appeals arise from block assessment completed after search on the appellant/assessee who was a dealer in Gold ornaments. During search conducted by the department, unaccounted gold was recovered and the assessee was required to explain the source. Even though, assessee tried to explain stating that 27 goldsmiths working for him gave gold as security, in the course of enquiry and evidence, assessee could not establish it with evidence. His explanation was that the seized gold belongs to goldsmiths. Even though, goldsmiths were examined they did not give any convincing evidence to establish assessees case. Further, confirmation letters issued by the goldsmiths were stereotyped bearing same date. Receipts issued accepting the gold deposits were found to be too stereotyped forms without itemized details, but only the weight of gold. The letters issued by the goldsmiths were also found to be not genuine; because all the letters demanding return of gold were retained in the same stereotyped form with same date on the letters. The appellant was granted substantial relief in CIT (Appeal) against which assessee as well as the department filed appeals before

the Tribunal. The Tribunal dismissed the said appeals, but remanded the Revenues Appeal for the reason that CIT (Appeal) has not considered the assessment order on the basis of the materials on which the assessment is made.

2. So far as the appeal filed against the order of remand is concerned, we feel that what the Tribunal stated is that the CIT (Appeal) has not considered the findings in the assessment order on the basis of the materials relied on with reference to section 69B of the Act. So much so, we do not find any grievance for the assessees because assessee gets opportunity before the CIT (Appeal) in fresh proceedings to substantiate his case. We therefore, dismiss this appeal. So far as the appeal filed against the order of the Tribunal dismissing the assessees appeal is concerned, what we notice is that the Tribunal reconfirmed the findings on additions based on evidence recovered in the course of search. This is a case where assessment is only based on recovery of Gold. Admittedly, the assessee had to explain the source failing which the value of gold is to be assessed as unaccounted income. Assessees attempt to prove the source of the gold seized through the 27 goldsmiths miserably failed before the 3 authorities, namely the Assessment Officer, the first appellate authority as well as the Tribunal. We do not find any reason to interfere with the findings of the Tribunal on the additions made based on recovery of gold, the source of which could not be explained by the assessee.

In view of the findings above, we dismiss both the appeals leaving it open to the assessee to pursue the remanded case before the first appellate authority.