



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA NO. 782/2010

% DATE OF DECISION: 25<sup>TH</sup> JULY, 2011

**SUBHASH VERMA** .....APPELLANT  
THROUGH: MR. BHARAT BERIWAL, ADVOCATE FOR THE  
APPELLANT.

VERSUS

**ASSISTANT COMMISSIONER OF INCOME TAX** .....RESPONDENT  
THROUGH: MS. SURUCHI AGARWAL, ADVOCATE FOR THE  
RESPONDENT.

**KORAM:**  
**HON'BLE MR. JUSTICE A.K. SIKRI**  
**HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether reporters of Local papers be allowed to see the judgment? No.
2. To be referred to reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

**M.L. MEHTA, J.(ORAL)**

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1. Present appeal has been filed by the appellant challenging order dated 30.10.2009 of the Income Tax Appellate Tribunal ('Tribunal' for short) in the appellate proceedings for block assessment period from 01.04.1995 to 04.03.2002.



2. Briefly stating, a search and seizure operation was conducted on the appellant and his father Shri Janardhan Verma under Section 132(1) of the Income Tax Act, 1961 ('the Act' for short) on 04.30.2002. It is gathered that during the search following items were found and seized by the Department from the searched premises: (i) loose papers and documents (diary, etc.) containing in Annexure A-1 to A-9; (ii) cash amounting to ₹2,03,550/- out of which a sum of ₹2,00,000/- was seized; and (iii) gold and silver jewellery valuing at ₹8,89,900/-

3. In the present appeal filed by the appellant we are only concerned with some of the additions made by the Assessing Officer, some of which were confirmed and others were deleted by the CIT(A). The Tribunal restored the order of the Assessing Officer on all these items.

4. With respect to item relating to addition on account of jewellery, the appellant explained that 244 grams of gold ornaments were stock in trade of his business whereas 783.28 grams of gold belonged to customers who had given their old gold ornaments for repair or for converting the same into ordered jewellery. The appellant explained that at the time of taking custody/receiving of old gold ornaments of the customers from them, receipts were issued to the customers on paper and entries were made in this regard in the diary. In this regard



reference was made to Annexure A-8 seized by the department, which allegedly contained the details of all the jewellery received from the various customers.

5. CIT(A) accepted the explanation of the jewellery valued to the extent of ₹5,90,587/- and consequently modified the order of the Assessing Officer and confirmed the additions of ₹1,27,623/- only. The Tribunal did not agree with deletion of ₹5,90,587/- and consequently set aside the order of the CIT(A) in this regard and restored the order of the assessing officer.

6. With regard to item relating to addition of ₹1,60,000/-, appellant explained that out of total consideration of ₹2,30,000/- paid by his wife Smt. Laxmi Devi for the purchase of Plot No.47, Bhagat Vihar property, ₹1,60,000/- came from the sale of an old property at Roorkee and balance consideration of ₹70,000/- was out of the past savings of Smt. Laxmi Devi. This plea of the appellant was not accepted by the Assessing Officer who observed that amount of ₹1,60,000/- which allegedly came from the sale of Roorkee property on 16.01.1995 was a three years old transaction before the purchase of plot No. 47, Bhagat Vihar and hence this was not acceptable to the Assessing Officer. He, accordingly, treated ₹2,30,000/- as unexplained investment and added to the income of the appellant. The CIT(A) accepted the explanation at



₹1,60,000/- from the sale proceeds of Roorkee property. He, however, did not accept the explanation regarding ₹70,000/- out of past savings of Smt. Laxmi Devi. Consequently, he disallowed the addition of ₹1,60,000/-, while maintained the addition of ₹70,000/-. The Tribunal reversed the findings of the CIT(A) in this regard and restored the order of the Assessing Officer regarding the addition of ₹1,60,000/- as an unexplained income of the appellant.

7. With respect to item relating to addition of ₹1,50,000/- on account of unexplained cash found during search, the plea of the assessee was that it belonged to one Raghunath Singh, who had given the money for purchase of jewellery. This plea of the assessee was not accepted by the Assessing Officer. The CIT(A) as well as the Tribunal maintained this addition.

8. We have heard the learned counsel for the appellant and also for the revenue and perused the records.

9. With regard to the stock of jewellery, the appellant sought to explain that 244 grams of gold belonged to his business and 283.28 grams of gold belonged to his customers who had given either for repair or for making of new jewellery. He also stated that gold jewellery weighing 300-400 grams including a tagri belonged to his wife Smt. Laxmi Devi and that jewellery weighing 400-450 grams belonged to his



brother's wife Smt. Suman Soni. He stated that these jewellery were lying in his shop for repair and polishing etc. The Assessing Officer noticed that no account books, purchase stock or sale voucher and also no stock register etc. were being maintained by the appellant. In the absence of these, he took the gold and silver jewellery stock available with the appellant as on 4.3.2002 as closing stock of last year which was valued at ₹1,46,460/-. In addition to this he also accepted the explanation regarding 58 grams of jewellery valuing at ₹25,230/- thereby totaling to ₹1,71,690/-. He thus treated the balance of ₹7,18,210/- (₹8,89,900/- (-)₹1,71,690/-) as unexplained income of the appellant. While accepting the explanation of 58 grams, he discussed the details of the entries as mentioned in annexure A-8 which was alleged by the appellant to be maintained in respect of gold items received from the customers for repair/polish etc. Before the CIT(A), affidavits were submitted, as mentioned in annexure A-8. The CIT(A), though, did not admit those affidavits, but, proceeded to record that the jewellery of 783.23 grams as explained. He also straight away accepted the explanation regarding jewellery alleged to be belonging to appellant's wife Smt. Laxmi Devi and his brother's wife Smt. Suman Soni respectively weighing 93.5 grams and 127.60 grams. The Tribunal has rightly set aside the order of CIT(A) in this regard and restored the order of Assessing Officer. It is noted that in his



statement recorded on oath the assessee had not stated any jewellery belonging to his wife or his sister-in-law to be lying in the shop. The Tribunal rightly recorded this plea to be an afterthought. With regard to the jewellery weighing 783.28 grams alleged to be belonging to customers for repair and polish, the CIT(A) was influenced by the explanation given by the appellant even while not admitting the affidavit of those customers. It is noted by the Tribunal that the appellant in his statement recorded immediately after the search had stated that 400 grams of gold belonged to the customers and balance to him, whereas he had filed affidavits in respect of 783.28 grams of jewellery. The Tribunal noted that there were certain affidavits where jewellery was given in the month of February 2002. He rightly noticed that from the details of annexure A-8 we may see that jewellery was given for repairs and was lying with the appellant for a period of more than six months to four years. He rightly recorded that no customers would give gold jewellery for repair or polish for such a long time. We do not find any infirmity in the findings recorded by the Assessing Officer and the Tribunal in this regard.

10. With regard to addition of ₹1,60,000/- made by the Assessing Officer and which was disallowed by the CIT(A), but confirmed by the Tribunal, we are of the view that this was a finding of fact recorded by the Assessing Officer and the Tribunal and there was no perversity



therein. It was a finding of fact recorded by both, the Assessing Officer as well as the Tribunal and rightly so that merely because the property was sold three years back, it cannot be believed that the appellant was having sale amount in house and utilized for purchase of property on 15.10.1998. There was no documentary evidence much less any books of accounts to substantiate the plea of the appellant that ₹1,60,000/- was the amount out of sale proceeds and was kept in the house for all this period. The observations made in 127 ITR 807 are on peculiar facts and are not applicable to the present case. We are not inclined to interfere with this finding of facts of the Tribunal.

11. With regard to the addition of ₹1,50,000/- which was recovered in cash during search, the plea of the appellant was not accepted by all the three authorities below that this money was given to the appellant by Shri Raghunath Singh on 03.03.2002 i.e. a day before the search for the purpose of purchasing jewellery. The Tribunal has rightly held that neither Raghunath Singh was produced before the Assessing Officer for the purpose of verification of facts nor his affidavit was filed. This plea was an afterthought inasmuch as the affidavit of Raghunath Singh was not filed before the assessing officer but only before the CIT(A). Moreover, no such contention was made by the appellant in his statement recorded on oath after the search. We do not find any



perversity in this finding of the authorities below. No question of law arises. Consequently, the appeal stands dismissed.

(M.L.MEHTA)  
JUDGE

(A.K.SIKRI)  
JUDGE

JULY 25, 2011  
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