* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA Nos 721/08, 722/08, 723/08, 724/08, 725/08 & 726/08**

11th August, 2009

1. **ITA No. 721/2008**

SONIA MAGU ... Appellant.

Through: Mr. Dr. Narayan Sr. Advocate with Mr. Rajiv K. Garg and Mr. Vineet Garg, Advocates.

VERSUS

COMMISSIONER OF INCOME TAX ....Respondent

Through: Mr. Subhash Bansal, Sr. Standing counsel for I.T.

2. **ITA No. 722/2008**

SUDESH MAGU ... Appellant.

Through: Mr. Dr. Narayan Sr. Advocate with Mr. Rajiv K. Garg and Mr. Vineet Garg, Advocates.

VERSUS

COMMISSIONER OF INCOME TAX ....Respondent

Through: Mr. Subhash Bansal, Sr. Standing counsel for I.T.

3. **ITA No. 723/2008**

KUSUM MAGU ... Appellant.

Through: Mr. Dr. Narayan Sr. Advocate with Mr. Rajiv K. Garg and Mr. Vineet Garg, Advocates.

VERSUS

COMMISSIONER OF INCOME TAX ....Respondent

Through: Mr. Subhash Bansal, Sr. Standing counsel for I.T.

4. **ITA No. 724/2008**

AARTI MAGU ... Appellant.

Through: Mr. Dr. Narayan Sr. Advocate with Mr. Rajiv K. Garg and Mr. Vineet Garg, Advocates.

VERSUS

COMMISSIONER OF INCOME TAX ....Respondent

Through: Mr. Subhash Bansal, Sr. Standing counsel for I.T.

5. **ITA No. 725/2008**

KAMLESH MAGU ... Appellant.

Through: Mr. Dr. Narayan Sr. Advocate with Mr. Rajiv K. Garg and Mr. Vineet Garg, Advocates.

VERSUS

COMMISSIONER OF INCOME TAX ....Respondent

Through: Mr. Subhash Bansal, Sr. Standing counsel for I.T.

6. **ITA No. 726/2008**

SANTOSH MAGU ... Appellant.

Through: Mr. Dr. Narayan Sr. Advocate with Mr. Rajiv K. Garg and Mr. Vineet Garg, Advocates.

VERSUS

COMMISSIONER OF INCOME TAX ....Respondent

Through: Mr. Subhash Bansal, Sr. Standing counsel for I.T.

CORAM:
HON'BLE MR. JUSTICE A. K. SIKRI
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

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A.K.SIKRI, J (ORAL)

1. In all these cases, only one question of law has arisen for consideration under the same factual back drop.

2. Admit.

3. Following substantial question of law arises for consideration in all these cases.

> "Whether on the facts and in the circumstances of the case the Tribunal was right in law in upholding the addition as an unexplained investment in jewellery of the assessee during the block period in spite of its finding that the disputed jewellery stood fully explained?"

4. Filing of paper book is dispensed with.

5. With the consent of the parties, we have heard the matters finally and proceed to decide the aforesaid question of law. For the sake of convenience, we shall take note of all the facts as they appear in ITA No. 721/2008.

6. On 17.01.2002 a search and seizure operation was conducted und Section 132 of the Income Tax Act (hereinafter referred as the 'Act') at the premises of M/s Indair Carriers Pvt. Ltd. and also at the residential premises of its Directors, Shareholders and Employees and part of search was conducted at premises No. 68, Ring Road, Lajpat Nagar, III, New Delhi-110024. All these assessees/appellants who are related to each other are the family members of Magu family who are staying in the aforesaid premises. From the residence and locker, certain jewellery was recovered. The Assessing Officer treated some of the jewellery belonging to each of the assessee as disputed jewellery and called upon the assessees to explain the same. In the case of the assessee in ITA No. 721/2008, disputed jewellery was worked out at Rs.22,96,000/-. The assessee gave her explanation and stated that the disputed jewellery was purchased out of the cash withdrawn in the following manner:-

"a)	Jewellery acquired out of the cash gift Received after 01.10.98 from Sh. B.R.Magu From year to year.	12,00,000.00
b)	Jewellery acquired out of the cash gift received after 01.10.98 from Sh. V.K.Magu from year to year	7,80,000.00
c)	Jewellery acquired out of gift received from relative and friends etc.	3,15,998.00
		22,96,000.00
	say Rs.	22,96,000.00

7. Not withstanding the aforesaid explanation given by the assessee, the assessee also mentioned that in order to buy peace and avoid litigation, she was offering 20% in respect of such excess jewellery worked out at Rs.22,96,000/- i.e a sum of Rs.4,59,200.00 and was ready to pay tax thereupon.

8. The Assessing Officer, however, did not accept the aforesaid explanation given for the jewellery recovered. He accepted only the gift of jewellery of Rs.3,16,000/- from relatives as proved. The value of the unexplained jewellery was added as undisclosed income by the A.O in his orders dated 21.1.2004. The assessee preferred appeal thereagainst before the Commissioner of Income Tax (Appeals).

9. The CIT(Appeals) examined the issue on the basis of records and was of the opinion that the assessee had been able to satisfactorily explained the source of the purchase/acquisition of the aforesaid jewellery. The relevant discussion contained in the order of CIT(Appeals) in this behalf reads as under:

> "4.9 I have considered the reasoning given by the A.O and the submissions made by the A.R. A perusal of assessment order indicates the contradiction of the stand taken by the A.O. One of the reasons for rejecting the claim of the appellant is that she could not produce the total bills to substantiate that jewellery was acquired out of her disclosed income. In the same order, the A.O. confirms that bills of Rs.9,58,411/- were also not found from the premises of the appellant but were subsequently found on the basis of enquiries conducted by him from Jewellers. In other words, these bills were not provided by the appellant but were found by the A.O on the basis of names of jewelers

> provided by the appellant. As mentioned by the appellant she has told the names of four jewelers out of her memory. Often the sales made by jewelers are cash sales in which no name of the buyer is mentioned. I fail to understand how the absence of bills regarding purchase of jewellery can be made a basis for treating the jewellery as unexplained when the source of purchase of jewellery is duly explained. It is not the case of the A.O. that the gifts received by the appellant from Sh. B.R.Magu, Sh. V.K.Magu were not sufficient to cover up the jewellery of Rs.19,80,000/-. It is also not the case of the A.O. that the gifts were not received, as claimed by the appellant. The fact that appellant did not declare the impugned jewellery in the regular returns of W.Tax is also not relevant to decide the issue. Regarding this, suitable remedial action can be taken under the Wealth Tax Act. The A.O. has not controverted the reasoning of the appellant that among the entire family, a cash of Rs.1,14,77,500/- was available for purchase of jewellery and other articles. He has also not been able to establish that the gifts received by appellant are not sufficient to cover the disputed jewellery. In fact the undisclosed income of the Sh. B.R.Magu and Sh. V.K.Magu has been assessed at "NIL"."

10. It is clear from the aforesaid discussion contained in the order of CIT(A) that the assessee was able to explain the source of entire jewellery. After accepting the explanation in the aforesaid manner, the CIT(A) still proceeded to give partial relief to the assessee in view of voluntary statement contained in Form 2-B as per which the assessee had offered 20% of the jewellery amount to tax in respect of excess jewellery worked out at Rs.22,96,000/- i.e. 4,59,200/-. Thus, maintaining the addition of Rs.4,59,200/-, relief to the extent of Rs.5,62,390/- was given by the CIT(A)

11. Both the revenue as well as assessee preferred appeals against the aforesaid orders of the CIT(A) to the Income Tax Appellate Tribunal. Income Tax Appellate Tribunal has rejected the appeal of the revenue. The revenue has

accepted that order. In so far as the appeal of the assessee was concerned, t said appeal has also been dismissed. We may note at this stage that plea of the assessee before the Income Tax Appellate Tribunal was that once entire source of purchase of jewellery was duly explained and that position was accepted by CIT(A), the CIT(A) had no authority or jurisdiction to give partial relief and not to give relief of an amount of Rs.4,59,200/- merely because no return was filed in Form 2B. The assessee had already offered the aforesaid amount for the purpose of taxation. It was the case of the assessee that the offer given was to buy peace and avoid litigation, however, that offer was not accepted by the A.O who decided to proceed with the matter on merits and passed the orders which compelled the assessee to file the appeal before the CIT(A). It was also submitted that once CIT(A) returned the finding that the source of entire jewellery was explained, merely because such an offer was made before the Assessing Officer, could not be held against the assessee. The ITAT, by dismissing the appeal of the revenue accepted the findings of the CIT(A) to the effect that the entire source of jewellery was duly and satisfactorily explained by the assessee. However, the Tribunal also proceeded to retain the addition of Rs.4,59,200/- on the ground that this was the amount offered by the assessee herself. At this stage, we may point out that in so far as revenue is concerned, it has not challenged the order of the Tribunal. In these circumstances, the only question of law which requires consideration, as framed above, is as to whether such addition of Rs.4,59,200/- could be made despite the fact that the source of

entire jewellery has been satisfactorily explained, only on the ground that t assessee/appellant herself had offered this amount for taxation along with the return in Form 2B. Before we proceed to answer this legal question, it would be appropriate to reproduce the exact wording in which the assessee had offered 20% in respect of such excess jewellery worked out at Rs.22,96,000/- Note given along with the Block return in Form No. 2B, the assesse had given the details of source of purchase/acquisition in cash of the jewellery of Rs.22,96,000/-. In note No.2, she mentioned that total family members are only three. Their expenses are minimum. The assessee and her husband live in the same house where all his brothers and uncles are living and there are no expenses by way of rent electricity etc. Obviously, this note was aimed at explaining that there was no other expenditure incurred by the assessee out of the cash withdrawal from which jewellery was purchased. Since, explanation of the assessee in this behalf has been accepted by CIT(A) as well as Income Tax Appellate Tribunal, we need not say further upon this note. For us, Note 3 and 4 are relevant and we reproduce the same herein:-

> "3) Therefore the entire jewellery noticed u/s 132 is accounted for. The sources for the possession is quite adequate.
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> 4) The assessee therefore, desire to buy peace and avoid litigation the assessee is offering 20% in respect of such excess jewellery worked out at Rs.22,96,000.00. Thus a sum of Rs.4.59,200.00 is offered and the tax due thereon at Rs.2,81,030.00 may please be adjusted out of seized cash of RS.15 lakhs from the group."

12. A conjoint reading of these two notes clearly demonstrates that assess maintained her stand that she had been able to account for the entire jewellery including the source thereof. Notwithstanding the same only with a desire to buy peace and avoid litigation, she had offered 20% of the excess jewellery i.e., a sum of Rs.4,59,200/-. This offer was thus conditional. She would have paid the tax on the aforesaid amount had the A.O accepted the offer thereby giving a quietus to the matter. Instead as pointed above, the AO ignored this offer and proceeded to deal with the matter on merits and fastened the liability of much higher amount upon the assessee. In these circumstances, the assessee was constrained to take up the matter in detail. She maintained her stand that she had proper explanation for the purchase of the aforesaid jewellery. Her stand was vindicated in as much as CIT(A) accepted her explanation in respect of the entire jewellery valued at Rs.22,96,000/-. Once the assessee was able to duly explain the source of purchase of the entire disputed jewellery, we are of the opinion that the CIT(A) committed an error in falling back on the conditional offer given by the assessee before the A.O. along with the return in Form 2B. From the language of the offer given, it is clear that it was a without prejudice offer and was not in the nature of "admission on the basis of which she could be fastened with the liability which otherwise did not exceed". Provision of Section 23 of the Indian Evidence Act would clearly be applicable in such a case. This section reads as under:-

> "**23. Admission in civil cases, when relevant**- In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given."

13. That apart, it is trite law that the principle of estoppels has no application in the Income Tax Act. Exactly, this very issue came up for consideration before this court in ***Commissioner of Income Tax Vs. Bharat General Reinsurance Co. Ltd. 80 ITR 303*** and the position was explained in the following manner.

> "It is true that the assessee itself had included that dividend income in its return for the year in question but there is no estoppel in the Income –tax Act and the assessee having itself challenged the validity of taxing the dividend during the year of assessment in question, it must be taken that it had resiled from the position which it had wrongly taken while filing the return. Quit apart from it, it is incumbent on the income-tax department to find out whether a particular income was assessable in the particular year or not. Merely because the assessee wrongly included the income in its return for a particular year, it cannot confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year. We are therefore of the view that the income from dividend was not assessable during the assessment year 1958-59, but it was assessable in the assessment year 1953-54. It cannot, therefore, be taxed in the assessment year 1958-59."

To the same effect are the following judgments.

91(1973) ITR 18- Pullangode Rubber Produce Vs. St. of Kerala., 66(1976) ITR 647 & 251 (2001) ITR 873

14. Matter can be looked into from another angle as well. Once the assess has given satisfactory explanation regarding the purchase/acquisition of the disputed jewellery, the necessary consequence is that there was no unexplained asset in the hands of the assessee. In such a situation, it is neither proper nor legally permissible for the revenue to still fasten the assessee with the liability of tax. It would be clear ground of illegal extraction of tax from the assessee. We are, therefore, answer the aforesaid question in favour of the assesse and allow these appeals. Consequently, the order of the Income Tax Tribunal and the CIT(A) to the extent it maintains the addition of Rs. 4,59,200/- is set aside and that amount is also deleted from the return filed by the assessee.

15. There is no order as to costs.

A. K. SIKRI, J

VALMIKI J.MEHTA, J

August 11 , 2009

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