



UNREPORTED

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

+ **ITA 945/2008**

MISS ROOBY DHAWER ..... Appellant  
Through: Mr. Kaanan Kapur, Advocate

versus

DEPUTY COMMISSIONER OF INCOME TAX ..... Respondent  
Through: Ms. Rashmi Chopra, Advocate

% DATE OF DECISION: October 04, 2010

**CORAM:**

**HON'BLE MR. JUSTICE A.K. SIKRI**

**HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

**A.K. SIKRI, J. (ORAL)**

1. A search and seizure operation was conducted at the business/residential premises of the appellant-assessee on 02.11.2004.

During this operation, certain amount of jewellery was seized. The total jewellery seized was to the tune of ₹ 85,44,147/-. The appellant could



₹ 8,06,035/-. In respect of this jewellery, specific questions were put to the appellant during the search. Questions No.36 and 37 put to the appellant are relevant in this context and are reproduced below:-

*“Q.36 Jewellery valued at ₹ 8,06,035/- was found from the G.F. living room. Can you explain the source of this jewellery.*

*Ans. This jewellery was picked up on approval from K.K. as per card given – was to be returned.*

*Q.37 What is the complete name and address of this person.*

*Ans. The name is K.K. Jewellers, G-23, South Extension Part-I, N. Delhi.”*

2. It is clear from the above that explanation of the appellant was that this jewellery was taken from M/s. K.K. Jewellers, South Extension, on approval basis and was to be returned. Thus, the case set up by the appellant was that this jewellery did not belong to her and it in fact belonged to K.K. Jewellers, from where she had taken the same on approval basis.

3. On the basis of this statement, the officials of the Department examined Mr. Kailash Chand Jain, partner of K.K. Jewellers on the same day. For this purpose, the officials of the Department visited the premises of K.K. Jewellers on 02.11.2004 itself and recorded the statement of Kailash Chand Jain, its partner. He, however, in this statement stated that no jewellery was given to the appellant on approval basis and no issue voucher was pending in the name of Rooby Dhawer,



4. Thus, insofar as M/s. K.K. Jewellers is concerned, the categorical case was that no such jewellery was given to the appellant. In fact, the appellant ultimately conceded to this during the assessment proceedings.

5. The explanation, however, which was later on given by the assessee was that the aforesaid jewellery was in fact supplied by M/s. Kesri Chand & Co., another associate concern of K.K. Jewellers on approval basis. This is contained in her representation/communication dated 26<sup>th</sup> December, 2006 addressed to the assessing officer.

6. It so happened that during the assessment proceedings Mr. Kailash Chand Jain was again summoned by the assessing officer. On 11.12.2006, his statement was recorded. In this statement, he stated that he was partner both of K.K. Jewellers as well as M/s. Kesri Chand & Co. and that he knew the appellant. Thereafter, a question was put to him regarding supply of the jewellery by M/s. K.K. Jewellers. The said question and the answer given by him are reproduced hereunder:-

*“Q.6 It has been claimed by Ms. R. Dhawar during the course of search u/s 132 of I.T. Act which took place on 2.11.2004 that jewellery valued at ₹ 8,06,035/- found with her was received by her on approval basis from M/s. K.K. Jewellers. Please confirm.*

*A. I confirm that no such jewellery was given by K.K. Jewellers to Ms. Rooby Dhawar on approval basis, however it is submitted that some jewellery was given on approval basis to Rooby Dhawar through from M/s. Kesri Chand & Co.”*



such jewellery was given by the said firm. At the same time, he stated that jewellery was given on approval basis to the appellant through M/s. Kesri Chand & Co. Significantly, this statement was recorded on 11.12.2006, and till this date the appellant had not changed her stand that the jewellery was in fact supplied by Kesri Chand & Co. and not by K.K. Jewellers. It is after this statement was recorded that she addressed communication dated 26<sup>th</sup> December, 2006 stating that jewellery was in fact supplied by M/s. Kesri Chand & Co.

8. It is in these circumstances that the question arises for consideration as to whether this change of statement by her was an afterthought and should be accepted or not. The Income Tax Appellate Tribunal has arrived at a finding to the effect that the aforesaid plea taken by the appellant, namely, that the jewellery was supplied by M/s. Kesri Chand & Co. on approval, was an afterthought. In coming to this conclusion, the Tribunal has mentioned that initially Shri Kailash Chand Jain had denied having sent any jewellery on approval basis. This remark is based on the statement of Kailash Chand Jain, which was recorded on 2<sup>nd</sup> November, 2004. No doubt, the statement of Kailash Chand Jain was recorded on that date by visiting the premises of M/s. K.K. Jewellers, however, he is partner of M/s. Kesri Chand & Co. as well. Even if he had stated that no jewellery was supplied to the appellant and it is inferred therefrom that he was referring to K.K.



show that jewellery was in fact supplied by M/s. Kesri Chand & Co. was on the appellant having regard to the provisions of Section 132(4A) read with the provisions of Section 292C of the Act. The appellant did not come forward with any such explanation and became wiser only after the second statement of the Kailash Chand Jain was recorded on 11<sup>th</sup> December, 2006. Otherwise, from the date of the search, i.e., 2<sup>nd</sup> November, 2004, till 26<sup>th</sup> December, 2006 (which means for more than two years), the appellant maintained stoic silence in this behalf.

9. It would also be relevant to point out here that in her communication dated 26<sup>th</sup> December, 2006, the assessee has stated “This jewellery was sent by M/s. Kesri Chand & Co., another associate concern of K.K. Jewellers on approval basis a day earlier to the date of search.” It means that, according to her, jewellery was given on 1<sup>st</sup> November, 2004 as the search was conducted on 2<sup>nd</sup> November, 2004. However, the voucher, on which she relies, is dated 29<sup>th</sup> November, 2004. The Tribunal has also commented upon the sale voucher by observing that this sale voucher does not contain the name of the firm, the phone number, the sales tax number, the registration number of M/s. Kesri Chand & Co., though a stamp of M/s. Kesri Chand & Co. has been affixed on the sale voucher.

10. It will also be of interest to mention here that in her communication dated 26<sup>th</sup> December, 2006, the assessee has referred to



voucher, we are unable to understand as to how she could give the name of the wrong jeweller on 2<sup>nd</sup> November, 2004 when she was questioned about the jeweller from whom she had taken the jewellery on approval basis. Even if it was an unintentional slip on her part, no explanation has been given by her as to why she did not realize this fact for almost two years.

11. In view of the aforesaid, we are of the opinion that the finding of fact recorded by the Tribunal cannot be stated to be perverse. No question of law arises. This appeal is accordingly dismissed.

**A.K. SIKRI, J.**

**REVA KHETRAPAL, J.**

**OCTOBER 04, 2010**

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