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

% *Date of Decision: 08.11.2023*

\+ **ITA 616/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 ..... Appellant

Through: Mr Sanjay Kumar, Sr Standing Counsel with Ms Easha Kadian and Ms Hemlata Rawat, Advs.

versus

SH. NIRMAL KUMAR MINDA ..... Respondent

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal concerns Assessment Year (AY) 2018-19.

2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 03.05.2023 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

3. The record shows that on 08.06.2017, a search and seizure operation was conducted under Section 132 of the Income Tax Act, 1961 [in short, "Act"] against the Minda Group at business and residential premises.

4. Insofar as the respondent/assessee is concerned, who is part of Minda Group, the search action brought to the fore articles such as jewellery, paintings and wrist watches. These articles were found at the residence of the respondent/assessee.

5. Since, according to the appellant/revenue, the source of the money

concerning investment in the aforesaid articles was unexplained, additions were made qua each of these articles.

5.1. Consequently, against the returned income amounting to Rs.14,73,30,720/-, the cumulative amount that was added was Rs.3,21,70,029/-. As a result, the assessed income was pegged at Rs.17,95,00,749/-.

6. The appellant/revenue, being aggrieved, preferred an appeal with the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]. The CIT(A) allowed the appeal, *albeit* partly *via* order dated 26.06.2020.

7. This resulted in cross appeals being filed with the Tribunal. The Tribunal *via* the impugned order dated 03.05.2023 allowed the appeal preferred by the respondent/assessee and dismissed the appeal preferred by the appellant/revenue.

8. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/revenue, submits that the additions qua the aforementioned articles have been wrongly deleted. In support of this submission, Mr Kumar relies upon the assessment order.

9. The record shows that the addition made by the Assessing Officer (AO) towards jewellery was Rs.2,64,35,029/-. Insofar as the addition concerning investment for paintings is concerned, the AO added Rs.55,85,000/-, while as far as wrist watches are concerned, the AO added Rs.1,50,000/-.

10. Having perused the record, we are of the view that qua each of these articles, a finding of fact has been returned by the Tribunal after examining the record.

11. Insofar as the jewellery is concerned, the Tribunal noted that the entire family lived in one residential premises as a single family unit. It also

found that the jewellery declared/disclosed by the family as one unit in its wealth tax return was more than the jewellery found during the search action.

11.1 It was also noted by the Tribunal that the respondent/assessee had placed before the AO item-wise reconciliation of the articles mentioned in the wealth tax return, along with the valuation report prepared during the search. The Tribunal found that the AO was unable to flag any defect in reconciliation statement submitted by the respondent/assessee. It is the Tribunal's observation that a general remark had been made by the AO that there was a mismatch in the articles.

12. In our view, the Tribunal correctly made the following observations with regard to the aspect concerning mismatch in the description of the articles:

> *"13….It is customary amongst the married women to keep on changing the jewellery as and when new designs come in the market. The fact that needs to be considered is that the weight of the jewellery more or less remained the same though the design may change. Sometimes new stones are engraved and sometimes the engraved stones are taken out of the jewellery. However, the status of the family, the return of income of the family has to be kept in mind."*

12.1. In support of this observation, the Tribunal relied upon the judgment of a coordinate bench of this court rendered in ***Ashok Chaddha Vs. ITO*** 14 taxman.com 57.

13. In our view, no fault can be found with the approach adopted by the Tribunal with regard to the deletion of addition made by the AO qua jewellery. Besides the above observations, the Tribunal has also taken into account the fact that there were substantial withdrawals every month and also the income declared by the respondent/assessee. It is noted (something

which is not disputed before us by Mr Kumar), that the returned income for the period in issue was Rs.14.73 crores.

13.1. Thus, having regard to the totality of facts and the contents of the wealth tax return, the Tribunal deleted the entire addition made in respect of jewellery.

13.2. We are of the opinion that no fault can be found in the appreciation of the material placed on record and deduction drawn therefrom by the Tribunal. The Tribunal has taken into account the status, returned income of respondent/assessee as also the fact that the jewellery declared and disclosed by the family in its wealth tax return was more than the jewellery found during the search operation.

14. As regards the addition made with regard to paintings, what has emerged is that not only had the respondent/assessee placed on record a valuation report, but also the appellant/revenue had the paintings valued by two valuers.

14.1. The valuation arrived at by the two valuers appointed by the appellant/revenue were Yellow Flute and Delhi Art Gallery. Evidently, Yellow Flute valued the subject six paintings at Rs.55,85,000/-, while Delhi Art Gallery valued the said paintings at Rs.37,50,000/-.

14.2. However, the valuer appointed by the respondent/assessee pegged the worth of five out of the six paintings at Rs.19,50,000/-.

14.3. Furthermore, the respondent/assessee had disclosed that out of five paintings, three paintings were purchased in 2004, while the remaining paintings were purchased in 2012 and 2017.

14.4. As noted above, the respondent/assessee's valuer has not estimated the worth of the sixth painting and, therefore, perhaps, has not provided the year in which it was purchased.

14.5. Interestingly, insofar as the painting purchased in 2017 is concerned, the source of purchase was shown as "bank". The remaining four paintings were claimed by the respondent/assessee as having been purchased by "drawings".

15. The Tribunal, while taking into account the year of purchase (at least with regard to the paintings which were purchased in 2004), noted that this aspect had not been put in issue by the valuers appointed by the appellant/revenue. Based on this, the Tribunal, *inter alia*, concluded that no addition qua paintings purchased in 2004 could be made in the relevant period i.e., AY 2018-19.

15.1 That apart, the Tribunal noted, as indicated above, that the two valuers appointed by the appellant/revenue had estimated the worth of paintings differently and furthermore, had not pointed out any defect in the valuation report submitted by the expert appointed by the respondent/assessee.

15.2. From this, the Tribunal concluded that insofar as valuation of artwork is concerned, experts could differ in their conclusions. Furthermore, given the fact that the valuers appointed by the appellant/revenue had not expressed any reservation with regard to the report submitted by the expert appointed by the respondent/assessee, the Tribunal held that the addition made with regard to the paintings was unmerited.

16. We are of the opinion that the Tribunal's approach, in the given facts and circumstances, cannot be faulted. Estimating the worth of an artwork can vary from expert to expert.

16.1. As indicated above, four out of five paintings were purchased, according to the respondent/assessee, in 2004; an aspect which was not contested by the valuers appointed by the appellant/revenue.

16.2. Insofar as the painting which was purchased in 2017, the investment had been made, evidently, through banking channels.

16.3. Thus, on the whole, the Tribunal, in our view, correctly deleted the addition.

17. This brings us to addition made qua wrist watches. The Tribunal has deleted this addition having regard to the returned income of the family members in the previous AY i.e., AY 2017-18, which is noted as Rs.9.50 crores. As observed above, the returned income in the AY in issue i.e., AY 2018-19 was Rs.14,73,30,720/-.

17.1. Having regard to the declared income and the fact that there were substantial withdrawals, the Tribunal deleted the additions made on account of investment in wrist watches.

17.2. Once again, we are of the view that the Tribunal has, broadly, come to the correct conclusion.

18. In sum, this is a case of wherein the Tribunal has returned the findings of fact after appreciating the material placed on record by the respondent/assessee.

19. We are of the opinion that none of the findings of fact are perverse. We also notice that no question concerning perversity has been proposed by the appellant/revenue.

20. In these circumstances, the appeal is closed, as, according to us, no substantial question of law arises for consideration by this court.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

NOVEMBER 8, 2023/pmc