

Ram Devi Vs. Asstt. Cit

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Court : Delhi

Decided On : Oct-30-2003

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Appeal No. : IT(SS)A No. 261/Del/1997 30 October 2003 Block period 1987-88 to 16-8-1996

Appellant : Ram Devi

Respondent : Asstt. Cit

Advocate for Pet/Ap. : T.R. Talwar,;for the assessed; Prahlad Singh,;for the Revenue

Judgement :

ORDER

R.K. Gupta, J.M.:

This is an appeal by assessed against the order of assessing officer passed under section 158BC for the block period relevant to assessment year 1987-88 to the date of search, i.e., 16-8-1996.

2. The search and seizure operation under section 132(1) was conducted on assessed on 16-8-1996, which was concluded on 3-9-1996. Notice under section 158BC of the Income Tax Act was issued on 9-1-1997, requiring the assessed to file the return of income within a period of 16 days from the date of notice.

However, the return for the block period was filed on 27-8-1997. Thereafter, detailed questionnaire was issued and the assessed was required to explain the nature of documents found during the course of search and was also required to file details and Explanationn in regard to evidences filed during the course of search. The details were filed by the assessed and the assessment was completed by the assessing officer on the basis of searched material and after discussing the details and Explanationn filed by assessed. The assessing officer dealt with item wise and then completed the assessment under section 158BC on a total income of Rs. 1,08,37,830 against the total income disclosed by assessed at Rs. 65,14,400 of the block period.

3. As stated above, the assessed filed return of income of the block period at Rs. 65,14,400 and out of this income, the assessed has claimed credit for returned/assessed income at Rs. 43,00,080, Thus, the total undisclosed income declared by assessed was at Rs. 21,96,320. Out of this undisclosed income, the assessed has claimed a further deduction of Rs. 14,22,896 on account of undisclosed agricultural income and in this way, balance sum of Rs. 7,73,424 was declared as non-agricultural and undisclosed income. The chart showing income of Rs. 65,14,400 and then claiming deduction on account of undisclosed agricultural income and net undisclosed income, which was filed by the assessed, is reproduced at p. 2 of the order of the assessing officer, which is reproduced here as under :

Asst. yr.

Total income

Returned/ Assessed income

Undisclosed income

Agrl.

Non-agrl.

Total

1987-88

3,15,800

Nil

2,51,305

46,495

2,97,800

1988-89

3,47,780

2,09,260

85,170

53,350

1,38,520

1989-90

4,73,650

3,04,070

96,820

72,760

1,69,580

1990-91

5,11,430

3,08,360

1,19,346

83,724

2,03,070

1991-92

5,61,020

3,53,660

1,29,425

77,935

2,07,360

1992-93

4,55,920

2,50,350

1,33,500

72,070

2,05,570

1993-94

7,35,750

5,15,300

1,44,580

75,870

2,20,450

1994-95

8,07,710

5,69,120

1,46,500

92,090

2,38,590

1995-96

7,03,990

4,57,990

1,53,750

92,250

2,46,000

1997-98

7,61,380

7,61,380

(16.8.96)

Total

65,14,400

43,00,080

14,22,896

7,73,424

21,96,320

4. As stated above, the assessed was required to explain the reason for not disclosing the agricultural income and for filing other details as per questionnaire issued by the assessing officer, and the assessed had filed relevant details. In regard to undisclosed agricultural income, it was stated that assessed has agricultural land at two places, one at Kullu and the other at Surath, Mandi. It was explained by the assessed that income from the Kullu orchard was not disclosed at all and the income from Surath orchard was shown partly. The reason for not showing total income of these two orchards was that whatever the sale proceeds were received through account payee cheques, they were shown and whatever amount was received in cash, could not be shown inadvertently at the time of filing the regular return. The supporting evidence in shape of confirmations from few parties and certificate from Tehsildar, along with copies of Khasra and Katauni establishing ownership of the assessed, were also filed. It was further stated that the orchard at Surath, Mandi, was owned by assessed since 1962 and the orchard at Kullu was inherited by the assessed from her mother in the year 1972. The evidence in this regard were also filed. Affidavits from some of the persons, who purchased certain fruits from the assessed during the financial years 1992-93 to 1996-97 were also filed. However, these parties could not be produced by assessed before the assessing officer. The assessing officer was not satisfied with the reply filed by the assessed. It was observed that no cogent reasoning or evidence has been filed to establish the agricultural income earned by the assessed during the block period. It was also observed by assessing officer that the assessed was in the net of highest group of income, therefore, there was nothing in not showing the agricultural income while filing the regular returns. It was also observed by the assessing officer that the onus was on the assessed to substantiate her claim which she failed to do so. Accordingly, the claim of the

assessed of undisclosed agricultural income of Rs. 14,22,896 was not admitted and the same was treated as undisclosed income of the assessed.

5. At the time of hearing here before the Tribunal, the learned counsel, firstly, reiterated his contentions raised before the assessing officer. Further, it was submitted that there is no dispute the assessed was owning two orchards which were acquired by the assessed in the years 1962 and 1972. The attention of the Bench was drawn on the various papers establishing that the orchards were belonging to the assessed. It was further stated that it is a matter of common knowledge that if any person has some agricultural land, then there must be some agricultural income also. It was further stated that after the block period, the assessed herself has shown agricultural income from these two orchards and the assessments for the subsequent years have been completed under section 143(3), accepting the agricultural income shown by assessed. The attention of the Bench was drawn on copies of assessment orders for assessment years 1998-99 and 1999-2000, placed in the paper book at pp. 148 to 150. It was further stated that assessed has filed copies of Khasra, Khatauni and Jamabandi from revenue authorities, which are placed at pp. 12 to 15 and 32 to 34 of the paper book.

6. On the other hand, the learned Departmental Representative placed strong reliance on the order of the assessing officer.

7. After considering the rival submissions and perusing the material on record, we find that assessed deserves to succeed in this ground in part. We have examined the papers and found that the assessed was owner of two orchards situated at Kullu and Surath (Mandi). We further noted that agricultural income from these two farms were shown by assessed from assessment year 1998-99 onwards, and the assessments were completed under section 143(3) and the net agricultural income of Rs. 8,60,733 for assessment year 1998-99 and Rs. 7,06,264 for assessment year 1999-2000 were accepted by the assessing officer while passing assessments under section 143(3). From the orders of these two assessment years, it is clearly established that there was agricultural land with the assessed. We have also seen the other evidences by which it is emerged that assessed has sold fruits to some persons in the nearby locality in cash which was not disclosed

by the assessed. A copy of assessment order for assessment year 1991-92 is placed on record and the assessing officer has mentioned in this order that assessed has shown agricultural income from orchard at Mandi. From these observations of the assessing officer, it is established that assessed has shown income from agriculture from one orchard only, whereas the assessed owned two orchards. therefore, we hold that there was agricultural income during the block period from these two orchards, which was not shown by the assessed fully. The assessed has claimed the undisclosed agricultural income of Rs. 14,22,896 for the block period. The detail of year-wise income is given at p. 9 of the written synopsis filed by assessed. The agricultural income of the, assessed of the block period was ranging between Rs. 85,000 to Rs. 1,62,500. From the chart it is also seen that assessed has shown agricultural income from one orchard ranging between Rs. 1,73,000 to Rs. 7,05,975 during the block period. We further noted that from assessment year 1998-99 to assessment year 2002-03, the total income shown by assessed from these two orchards is ranging between Rs. 8,60,000 to Rs. 5,48,000. From these facts it is seen that there is a much variation in the agricultural income of the block period as well as in subsequent years. We further noted that the assessed's family, i.e., husband of the assessed, sons and daughters of the assessed are also having similar orchards in the State of Himachal Pradesh, and they were showing agricultural income from those orchards while filing their regular returns of income for the years which fall under the block period searched. In some of the cases, the Bench has held that there were agricultural income in the hands of the family members of the assessed, as the appeals of family members of the assessed have already been heard and disposed of. It is settled principle that if there is any income and could not be shown for any reason, then it that case that has to be taken into account. And it is also seen that where the assessed has not disclosed any income and the same is detected by the department either by way of search or by way of survey, etc., then in that case, that part of income is always treated as undisclosed income of the assessed and the same is added accordingly. In the present case there is no dispute that there were two orchards acquired by the assessed and once it is established that there are orchards, then, of course, it is a normal presumption' that there is some income from those orchards which could not be shown by the

assessed inadvertently. However, we are of the view that to ascertain that how much agricultural income was earned by assessed during the block period, the matter should go back to the file of the assessing officer. While ascertaining the quantum of the agricultural income the assessing officer will take into consideration the income of the family members shown from similar orchards in their hands. While doing so the assessing officer will also keep in mind the size of the orchards or agricultural land. We further direct that assessed should be allowed opportunity to file necessary details to substantiate her claim.

8. The assessed has also raised an alternate plea that against this agricultural income, the assessing officer has not allowed set-off against other investments found by the assessing officer as undisclosed. therefore, the benefit should be allowed to the assessed. There is no dispute that if there is any income, which was earned by the assessed during block period and was available with the assessed, then, of course, benefit of the same has to be allowed. Accordingly, we direct the assessing officer that benefit of availability of agricultural income should also be allowed to the assessed.

9. Before parting from this ground, we will like to mention that the assessed has shown total income of Rs. 3,15,800 for assessment year 1987-88 and no regular return was filed by the assessed in this regard. The assessed has claimed that out of this total income, Rs. 2,51,305 relates to agricultural income and the remaining amount of Rs. 46,495 has to be treated as undisclosed income of the assessed. The assessed has shown total undisclosed income of Rs. 7,73,424. While deciding the issue of agricultural income of Rs. 2,51,305 also, which is part of total undisclosed agricultural income of Rs. 14,22,896. We order accordingly.

10. Next item which was considered by the assessing officer was in regard to opening cash balance of Rs. 4,32,651 as on 1-4-1986. The assessed was required to substantiate the existence of such a large amount as cash-in-hand and source of the same. In response to this the assessed has stated that the same was on account of her savings from out of agricultural income earned before the block period. The assessed has also stated that the opening cash balance has been estimated by her after fairly analyzing the income and expenditure related to

agricultural produce. After considering the submissions and perusing the other material on record, the assessing officer noted that during financial year 1991-92, there was only a cash balance of Rs. 23,894 with assessed. therefore, he drew an inference that an attempt has been made by assessed to explain the assets in existence in the balance sheet enclosed with the return of income for the block period. It was further observed by the assessing officer that during financial year 1991-92 there was a cash balance of Rs. 23,894 only and to explain the investment made in assets, the assessed has worked out backward in framing the balance sheet for different years and whatever cash-in-hand was required to explain the existence of various assets, the same has been shown as opening cash-in-hand. therefore, the Explanationn of the assessed was rejected and the addition of Rs. 4,32,651 was made to the income of the assessed for the block period.

11. Here, before the Tribunal again, the contentions raised before the assessing officer were reiterated and it was further stated that there were two agricultural farms, one at Kullu and the other at Surath (Mandi) and the income from these two orchards could not be shown by assessed since long. However, the income was kept as cash-in-hand, therefore, it was submitted that an amount of Rs. 4,32,651 is not such a big amount which cannot be said that there was no cash-in-hand with assessed as on 1-4-1986. It was further stated that the assessed belongs to a very high status family, as her husband was a Cabinet Minister during the block period and her father was also a Minister with Himachal Government. On the other hand, the learned Departmental Representative strongly placed reliance on the order of the assessing officer.

12. After considering rival submissions and perusing the material on record, we find that here also the assessed deserves to succeed in part. While disposing the first issue, i.e., in regard to undisclosed income from agricultural income, we have held that the assessed was owning two orchards and the income from those orchards could not be shown inadvertently, and we have restored the matter to the assessing officer to ascertain the quantum of the agricultural income of the block period. As stated above, the orchards were acquired by assessed in the year of 1962 and 1972 and since then the assessed is earning agricultural income and

has shown the same partly. Once it is established that there were agricultural income, then in that case the availability of cash is also established. therefore, this issue is also we are restoring to the file to the assessing officer to ascertain the cash availability afresh. While doing so, the assessing officer will keep in mind that there are two orchards and there were agricultural income from those orchards. therefore, in view of the past history and in view of the income shown by other family members from similar orchards should be taken into consideration. We have also said above that while deciding the issue afresh, the assessing officer will keep in mind the size of the orchards owned by assessed, that whether the size of the orchards is bigger or smaller, vis-a-vis other family members of the assessed. Accordingly, we restore the matter to the file of the assessing officer to decide this issue afresh and after affording a proper opportunity to the assessed to explain her side once again.

13. Next issue pertains to unexplained cash credit. The assessed in her balance sheet for financial year 1996-97 (up to 16-8-1996) has shown the following loans :

Rs.

Shri Anoop Sharma

43,903

Shri Vinod Mahanta

15,000

Smt. Kavita Sharma (Gaur)

4,00,000

Mayfair Hotel, Mandi

2,72,759

Shri Anil Sharma (for purchases)

50,000

Sundry creditors

30,153

13.1 The loan in the name of Shri Vinod Mahanta was old one. thereforee, the same treated as explained. The loan shown in the name of Smt. Kavita Sharma (Gaur) was stated that Smt. Kavita Sharma has received a sum of Rs. 4,00,000 from her in-laws at the time of demise of her husband in the year of 1975. This amount was added in the hands of assessed on substantive basis and a protective assessment was made in the hands of Smt. Kavita Gaur.

13.2. We have already disposed of the appeal of Smt. Kavita Gaur, daughter of the assessed, wherein we have held that amount of Rs. 4,00,000 belongs to Smt. Kavita Gaur and source of the same has also been accepted as explained while disposing her appeal in IT(SS) Appeal No. 39/Del/1997, vide order dated 23-10-2003. thereforee, we are not inclined to discuss the issue further. Accordingly, this addition of Rs. 4,00,000 is deleted.

13.3. Regarding the balance amount it was stated that all the persons are assessed to tax and they have disclosed in their regular returns. It was further submitted that the same was taken during the year under consideration by the assessed and the return for the year 1997-98 was not due, as the search took place on 16-8-1996. The return for the assessment year 1997-98 was due to be filed on 31-3-1997. However, the assessing officer was not satisfied. He has seen that there is a variation in the balance sheet filed by the other creditors. thereforee, the entire amount shown in the names of the persons stated above was treated as unexplained cash creditors and the same was added in the hands of the assessed.

13.4. Here before the Tribunal, the contentions raised before the assessing officer were reiterated and it was further stated that except the sundry creditors, all other persons are assessed to tax and the assessment for the block period has also been completed of all the persons stated above. It was further sated that the amounts shown as credits in the hands of the assessed, have been shown by the

abovementioned persons in their respective balance sheets. The attention of the Bench was drawn on various pages of the paper book, where the copies of accounts of all the persons are enclosed. It was further stated that all the persons, i.e., Shri Anoop Sharma, Mrs. Kavita Sharma (Gaur), Shri Anil Sharma and Shri Amrit Lal have confirmed the deposits with assessed. The confirmations are placed from pp. 70 to 76 of the paper book. Regarding Mayfair Hotel, Mandi, it was stated that in regular returns this amount has already been shown by Shri Anil Sharma, who is proprietor of M/s. Mayfair Hotel, Mandi. Attention of the Bench was drawn on p. 26 of the paper book, where a copy of Mayfair Hotel is placed. On the other hand, the learned Departmental Representative placed reliance on the order of the assessing officer.

13.5. After considering rival submissions and perusing the material on record, we find that the assessed deserves to succeed in this ground. The assessment of almost all the creditors, i.e., Shri Anoop Sharma, Kavita Sharma and Shri Anil Sharma, who is proprietor of Mayfair Hotel, were completed of the block period and the appeals of all these assessed have already have heard and disposal of by the Tribunal, wherein such deposits with the assessed have been held as genuine. We further noted that all these loans are part of regular books of accounts and the return for the assessment year 1997-98 was not due at the time of search, therefore, these cash credits cannot be treated as undisclosed. In view of all these facts and circumstances, we delete the entire addition, i.e., of Rs. 7,96,815.

14. Next issue relates to investment in immovable property. During the block period the assessed has constructed a farm house at Surath (Mandi) and also renovated residential house at Sanmiketpur, Mandi. The investment in both these properties has been worked out by Engineering Cell of CBI and the Departmental Valuation Officer under section 131(1)(d) of the Income Tax Act. The assessed has shown investment in these two farm houses at Rs. 8,17,536. The investment in farm house at Surath, Mandi was taken at Rs. 41,30,000 as against the cost of farm house (new) and farm house (F&F;) declared by the assessed by Rs. 8,17,536. In this way, the difference of Rs. 33,12,464 was found by the assessing officer.

15. The assessed further has shown an investment of Rs. 3,02,912 towards renovation of residential house at Samketpur, Mandi. This investment has been shown during financial years 1995-96 and 1996-97, against which the Engineering Cell of CBI has evaluated the investment towards such renovation at Rs. 5,69,000. In this way, a difference of Rs. 2,66,088 was found by the assessing officer. During the assessment proceedings, the assessed was required to explain that why the value taken by Engineering Cell of CBI be not adopted. The reply was filed and it was stated that no incriminating material was found during the course of search and, therefore, the valuation shown by the assessed is correct. It was further stated that even the DVO has valued the valuation at Rs. 9,85,464, which is very near to the valuation shown by the assessed. therefore, the value taken by the Engineering Cell of CBI was on surmises and conjectures and without any basis. However, the assessing officer was not satisfied with the Explanationn filed by assessed. The assessing officer noted that the Engineering Cell of CBI and DVO have evaluated the investment in the basic structure almost on a similar figure, as the CBI has evaluated at Rs. 8,55,266, whereas the DVO has evaluated at Rs. 8,54,886. It was further noted by the assessing officer that the Engineering Cell of CBI has stated in its report that flooring of the farm house is made of super quality white marble with mosaic tiles. It was further noted that there is a wooden linings in the rooms. Further, wooden cupboards, wardrobes have been fixed and there was slopped roof decoration, electric installation, internal water supply and sanitary installation and the value of investment of these articles is much higher than the value shown by the assessed or the DVO. The assessing officer further noted that Engineering Cell of CBI has evaluated the value of these articles, as mentioned above and then arrived at a figure of Rs. 41,30,000. By further observing that the valuation given by Engineering Cell of CBI and DVO or any other valuer is only advisory in nature, therefore, the value which is near to realistic that should be adopted. It was further observed by the assessing officer that the assessed herself could not have given the details of expenses incurred by her on various items other than the basic structure. She could also have furnished report from any registered valuer about the cost of construction. The assessing officer further observed that the assessed could not controvert the valuation report of CBI Engineering Cell neither assessed has filed any supporting evidence

justifying the cost of construction in these houses, therefore, the valuation adopted by the Engineering Cell, CBI was taken by the assessing officer in regard to investment in farm house (new) and farm house (F&F;), and renovation of residential house of Samketpur, Mandi. The difference in the valuation shown by the assessed and in the valuation made by CBI Engineering Cell was arrived at Rs. 35,78,552. Accordingly, the same was added to the income of the assessed by holding that the investment was from undisclosed sources of the assessed.

15.1. During the course of hearing, the learned counsel of the assessed has drawn the attention of the Bench at p. 3 of written synopsis and it was stated that the Engineering Cell of CBI has completely ignored the period of construction and estimated the investment on the basis of current rate in Surath farmhouse and residential house at Mandi, respectively. It was further stated that no incriminating document/material was found as a result of search, which could lead to the conclusion that the assessed had spent more than what she has declared as her investment in the said properties. It was further stated that even the assessing officer has ignored the valuation of its own department, which was near to the valuation shown by assessed. It was further added that the assessing officer has not given any benefit on account of agricultural income and cash-in-hand which could not be disclosed by the assessed. Further, reliance was placed on various case law, the list of same is enclosed in the written synopsis.

15.2. On the other hand, the learned Departmental Representative again placed strong reliance on the order of the assessing officer.

15.3. After considering the rival submissions and perusing the material on record, we find that this matter should go back to the file of the assessing officer to decide the issue afresh. We noted that the valuation done by the Departmental Valuation Officer was not provided to the assessed and we further noted that even no time was given to the assessed to file the valuation report by her own registered valuer. We noted that the valuation shown by assessed and valuation done by DVO, almost is similar as there is a difference of only about Rs. 70,000, against which the valuation made by Engineering Cell of CBI was on a very high figure, i.e., about Rs. 47 lakhs. The DVO is also an authorized authority under the Income Tax

Act and Wealth Tax Act, and valuation done by him cannot be ignored. Though in the order of the assessing officer it is mentioned that the valuation in regard to wooden work, furnishing, etc., has not been taken into consideration by the DVO, whereas the assessed's contention is that the DVO has taken all the items into consideration while preparing the report. therefore, in view of all these facts and circumstances, we are of the considered opinion that matter should go back to the file of the assessing officer to examine the issue afresh, after affording full opportunity to the assessed to explain the investment in the properties by filing registered valuer's report and other evidences, etc. The assessing officer is further directed to allow the benefit of the amount after ascertaining the figure of amount on account of undisclosed agricultural income and opening cash-in-hand shown by assessed, as directed by us while disposing these issues above. We order accordingly.

15.4. Before parting, we will like to mention that we do not find any weight in the contention of the learned authorised representative that no incriminating document or material was found during the course of search. The items and articles mentioned in the report of Engineering Cell of CBI are very clear and specific and if these items were there in the farmhouse or in the renovated house, then it cannot be said that there was no material on which basis the assessing officer has made the addition. therefore, we hold that there was material for estimating the valuation in the properties. However, we have restored the matter to the file of the assessing officer to examine afresh as stated above.

16. Next issue relates to an addition of Rs. 30,20,780 on account of unexplained cash and jewellery. During the course of search and seizure operation, the following assets were found from the various premises :

Details of Premises

Cash

Jewellery

Locker No. N-6, Syndicate Bank, R.K. Puram, New Delhi in the name of assessed

4,00,000

4,50,472

Locker No. 664, Punjab & Sind Bank, Vasant Vihar, New Delhi in the name of assessed

6,60,000

5,13,075

Locker No. F-39, Syndicate Bank, R.K. Puram in the joint names of assessed, Sh. Anup Sharma & Smt. Shailja Sharma

11,89,205

Residence-12 Safdarjang Lane

10,29,404

10,60,000

31,82,156

16.1. An addition of Rs. 4,00,000 on account of cash and jewellery amounting to Rs. 4,50,472 found from locker No. N-6, Syndicate Bank, R.K. Puram was made in the hands of the assessed by the assessing officer on substantive basis; whereas on protective basis the addition was made in case of Smt. Aruna Vashist, the daughter of the assessed. In fact, during the course of search the statement of the assessed was recorded and in the statement it was stated that this locker belongs to her daughter Smt. Aruna Vashist, who is living abroad in London with her husband, who is a doctor. The assessment for the block period was also completed in the case of Smt. Aruna Vashist and the matter travelled up to the stage of Tribunal and the Tribunal has already decided the appeal of Smt. Aruna Vashist in ITA No. 260/Del/1997, decided in the month of April, 2003. A copy of order of the Tribunal is also placed on record. While deciding the appeal in case of Smt. Aruna Vashist, the Tribunal has held that the cash and jewellery was

belonging to Smt. Aruna Vashist, daughter of the assessed. The findings of the Tribunal are given in paras 8 to 12 of its order. thereforee, in view of the decision of the Tribunal in case of Smt. Aruna Vashist (supra), we hold that the cash of Rs. 4 lakh and jewellery amounting to Rs. 4,50,472 does not belong to assessed. Accordingly the addition to this extent is deleted.

16.2. Regarding the next item, i.e., cash of Rs. 6,60,000 and jewellery of Rs. 5,13,075 found from locker No. 664 of Punjab & Sind Bank, Vasant Vihar, New Delhi, this addition has been made by the assessing officer in the hands of assessed on substantive basis, whereas the addition has been made in the hands of Smt. Kavita Gaur, the daughter of the assessed, on protective basis. The assessment in case of Smt. Kavita Gaur was also made for the block period and the matter travelled up to the stage of Tribunal and the Tribunal while disposing the appeal of Smt. Kavita Gaur has held that the cash of Rs. 6,60,000 and jewellery of Rs. 5, 13,075 belongs to Smt. Kavita Gaur, the daughter of the assessed. thereforee, in view of the reasoning given by the Tribunal in case of Smt. Kavita Gaur, the additions of Rs. 6,60,000 on account of cash and Rs. 5,13,076 on account of jewellery is deleted in the hands of the assessed.

16.3. The total jewellery in the hands of the assessed was taken by the assessing officer at Rs. 22,10,780. Out of this total jewellery, we have already deleted the additions of Rs. 4,50,572 belonging to Smt. Aruna Vashist and Rs. 5,13,075 belonging to Smt. Kavita Gaur, the daughters of the assessed. The remaining jewellery now remains at Rs. 6,74,860 found from locker No. F-39, Syndicate Bank, and Rs. 5,82,373 found form the residence of the assessed. The Explanationn regarding jewellery found from locker No. F-39, Syndicate Bank, amounting to Rs. 6,74,860 was given by the assessed that this jewellery was received by her as gift from King of Nepal and from Minister of Communication, Malaysia. It was further stated that the assessed's husband was the Central Minister of Communication, who visited Malaysia and Nepal during the block period and at that time the gifts were given to the assessed by the Minister of Malaysia and King of Nepal. The Explanationn of the assessed was not accepted by the assessing officer by observing that assessed could not furnish any evidence whatsoever in support of the claim made. It was further observed by the

assessing officer that furthermore, the period in which the said gifts have been stated to have been received, Shri Sukhram, husband of the assessed, was a Minister in the Central Government and as such if any gifts had been received, the same were on account of his official position. Any such gifts received over and above the certain value are required to be deposited in Government depository called 'Toshakhana' and are not supposed to be retained as personal property.' As earlier observed by the assessing officer that the assessed could not substantiate her claim of having received the said jewellery worth Rs. 6,74,860, accordingly the Explanationn was rejected and the addition was made.

16.4. After hearing both the parties and considering the material on record, we find that the jewellery of Rs. 4,34,860 mentioned as item No. 3 of the valuation report and jewellery of Rs. 2,46,000 mentioned at item No. 14 of the valuation report were received by the assessed during financial year 1994-96 from Minister of Communication, Malaysia and from King of Nepal, respectively. The total of these two jewellery is equal to Rs. 6,74,860. A copy of affidavit of the assessed is placed on record, by which it was sworn by the assessed that these were received by her as gifts from Minister of Communication, Malaysia, and King of Nepal. Her husband visited these countries in the capacity of Cabinet Minister of Central Government. We have seen the order of the assessing officer as well as other details on record and found that the assessing officer has stated that assessed could not substantiate the claim of gifts by filing any further supporting evidence. However, we noted that the assessing officer has not examined the affidavit filed by assessed and also the make of jewellery, that whether the same was made outside India or in India. The jewellery is in possession of the department. thereforee, it can be easily ascertained that whether the jewellery is manufactured outside India or in India, If it is ascertained that jewellery were manufactured outside India, i.e., in Malaysia or in Nepal, then the benefit of doubt should be allowed to the assessed by holding that the jewellery mentioned above were received by her through gifts from the Minister of Communication, Malaysia and King of Nepal, respectively. We also find weight in the observations of the assessing officer ' that if these jewellery are received by assessed as gifts in the capacity of wife of a Central Minister, then in that situation these items should go to 'Toshakhana' as per rules. thereforee, if it is ascertained that these items were

received as gifts by assessed, then fresh order may be passed in regard to these jewellery that how they will be transferred to Toshakhana.

The assessing officer is further directed to give a further opportunity to the assessed to explain her side on this issue. With these observations, we restore this matter to the file of the assessing officer to dispose of the same as per our observations above. We order accordingly.

16.5. Regarding the remaining jewellery of Rs. 5,72,373 found from the residence of the assessed, the assessing officer has allowed the benefit of 500 grams and taking the value at Rs. 2,50,000 for 500 grams jewellery, the remaining amount of Rs. 3,22,373 was added in the hands of the assessed as jewellery acquired from undisclosed sources,

16.6. After hearing rival submissions, we find that assessed deserves to succeed on this issue. Undisputedly, the assessed belongs to a very high class family, as she was wife of a Central Cabinet Minister and is a very rich family of the State of Himachal Pradesh. Her parents are also very rich of the State of Himachal Pradesh. The assessing officer has also observed in his order that the status of the assessed is very high. thereforee, the amount of jewellery found from the residence of the assessed amounting to Rs. 5,72,373 is not such, which can be said that the assessed could not have possessed the jewellery to this extent. It is also worth noting here that the assessed was married as early as in 1953 and at that point of time the rate of jewellery was very meager. It is also an undisputed fact that in Hindu families, the daughters are given heavy jewellery by the parent side as well as the by in-laws side. thereforee, the jewellery of about 1200 gms found from the residence of the assessed cannot be said that it was not acquired by the assessed at the time of marriage or on various occasions after the marriage. thereforee, in view of these facts and circumstances, we delete the addition of Rs. 5,72,373 on account of jewellery found from the residence of the assessed. This ground of the assessed of the assessed is allowed in part.

17. Next issue relates to an addition of Rs. 1 lakh on account of unexplained cash deposit in bank. The assessing officer found that a sum of Rs. 1 lakh was deposited on 28-3-1994, in saving bank account No. 1402 in Canara Bank, Mandi.

The assessed was required to explain the source of deposit. It was stated that assessed entered into an agreement of sale of agricultural crop and a sum of Rs. 1 lakh was received in advance and the same was deposited in the bank. However, the assessing officer was not satisfied with the Explanation because he noted that the agreement was of dated 27-3-1994, and as per agreement no advance was received by the assessed. Accordingly, the Explanation of the assessed was rejected and the addition was made in the hands of the assessed by treating the same as income from undisclosed sources.

17.1. After hearing rival submissions, we find that the assessed deserves to succeed in this ground. We noted that the amount of Rs. 1 lakh was received during financial year 1994-95 and the same has been duly accounted for as income relevant to assessment year 1995-96. The return for the assessment year 1995-96 has already been filed by the assessed. therefore, this will tantamount to double addition in the hands of the assessed. Once the amount has already been shown and declared by assessed while filing the regular return, then in that case it cannot be treated as income from undisclosed sources. Accordingly, we delete this addition of Rs. 1 lakh.

18. Next issue relates to credit of returned/assessed income allowed by the assessing officer at Rs. 36,05,370 as against Rs. 43,00,080. The credit by the assessing officer was not given on account of agricultural income relating to assessment years 1987-88, 1988-89 and 1989-90, by observing that the assessed has not filed returns for these years.

18.1. At the time of hearing it was stated by the learned counsel of assessed that the returns for assessment years 1988-89 and 1989-90 were filed and acknowledgement receipts of the same were produced before the assessing officer. It was further stated that, of course, the return for assessment year 1987-88 was not filed, but there is no dispute that there was an income from agricultural produce. therefore, the credit on account of agricultural produce and credit of income shown in the returns for assessment years 1988-89 and 1989-90 has to be allowed by the assessing officer.

18.2. After considering the rival submissions and perusing other material on record, we are of the view that if the photocopies of the returns were produced by the assessed, then credit should have been allowed by the assessing officer. Accordingly, we direct the assessing officer to allow the credit of the amounts shown in the regular returns for assessment years 1988-89 and 1989-90 on the basis of returns filed by the assessed. Regarding assessment year 1987-88, we have already restored the matter to the file of the assessing officer for ascertaining the quantum of agricultural income, which was not shown for the assessment year 1987-88, and other years which falls in the block period. thereforee, after ascertaining the same, the credit has to be allowed to the assessed. We order accordingly.

19. There is another issued raised by the assessed in this ground, i.e., in regard to non-allowing the credit on account of agricultural income which was not disclosed by the assessed inadvertently. We have already restored this issue to the file of the assessing officer to decide the quantum of agricultural income. thereforee, this ground be treated as disposed accordingly.

20. The remaining issue is in regard to investment in house at Kaushambi. The entire property at Kaushambi has been treated in the hands of Mr. Sukh Ram and the appeal in case of Mr. Sukh Ram is pending before the Tribunal. thereforee, we restore this matter to the file of the assessing officer to decide the issue afresh after considering the decision of Tribunal* in case of Shri Sukh Ram, which is yet to be decided. Both parties were agreed on this proposition of the Bench, which was announced in the Court.

21. In the result, the appeal of the assessed is allowed in part for statistical purposes.