Ashok Kumar Jora Vs. Assistant Commissioner of

Ashok Kumar Jora Vs. Assistant Commissioner of

SooperKanoon Citation : sooperkanoon.com/70746

Court : Income Tax Appellate Tribunal ITAT Jodhpur

Decided On : Nov-18-1999

Appellant : Ashok Kumar Jora

Respondent : Assistant Commissioner of

Judgement :

1. The assessee has raised as many as eight grounds of appeal. However, all those grounds relate only to two additions sustained by the CIT(A).

2. The first addition confirmed by the Dy. CIT(A) relates to estimation of assessee's income from profession of goldsmith at Rs. 33,000 as against the declared income of Rs. 10,000. Ground Nos. 1 to 4 relate to the aforesaid addition confirmed by the Dy. CIT(A).

3. Shri H. K. Ojha, the learned Advocate appeared on behalf of the assessee. He submitted that a survey under s. 133A was conducted at the business premises of the assessee dt. 26th September, 1988, which falls in the year under consideration. The assessee declared income from profession at Rs. 20,000 on estimated basis. The AO estimated the same at Rs. 33,000 on the basis of statement given by the assessee during the course of survey under s. 133A. The Dy. CIT(A) confirmed the said estimate of income from provision made by the AO.4. Shri Ojha, learned counsel submitted that the statement of the assessee was recorded on 28th September, 1988, i.e. during the currency of the relevant previous year. He drew my attention to the copy of the said statement submitted in the compilation. At p. 32 of the paper-book, the relevant question No. 17 and its

answer appears. The assessee stated that his expected income from profession during the year ended on 31st March, 1989 will be approximately Rs. 30,000 on which he will pay advance tax in two instalments. The learned counsel drew my attention towards various other documents submitted in the compilation to show that the income from profession shown by the assessee at Rs. 20,000 was most reasonable and adequate. He also pointed out that facts pertaining to asst. yr. 1988-89 are different in which the assessee has disclosed income from profession at Rs. 28,000.

That was due to some difference found in the quantity of gold ornaments as have been shown in answer to question No. 16 of the assessee's statement dt. 28th September, 1988. There was a difference of gold ornaments to the tune of Rs. 40,700 gms. In order to get over the said difficulty, the assessee agreed to disclose an income of Rs. 28,000 in asst. yr. 1988-89. The AO has erred in relying upon the said income from profession shown by the assessee at Rs. 28,000 while estimating the income at Rs. 33,000 in the year under consideration. He thus strongly urged that the declared income should be accepted.

5. The second point relates to confirmation of the addition made by the AO on account of alleged undisclosed stock of silver ornaments weighing 5.235 kgs. found at the time of survey as stock-in-trade. The AO observed that the assessee has failed to explain the nature of possession and source of silver ornaments weighing 5,235 kgs found during the course of survey. He, therefore, made an addition of Rs. 26,698 after allowing deduction of 15 per cent for alloy contents/impurity in the said silver ornaments.

6. The learned Dy. CIT(A) held that half of the silver ornaments found during the course of survey be considered as stock-in-trade and the remaining half be considered as investment out of unexplained sources.

He further directed the AO to give deduction for impurity at 30 per cent while working out value of the half portion of silver ornaments to be treated as investment made out of unexplained sources. The assessee is aggrieved against the part confirmation of the said addition.

7. The learned counsel argued that the assessee has been carrying on the said business since 1978. The first assessment in his case was made for asst. yr. 1981-82. No other assets or unexplained investments were found in the course of survey. Some stock is bound to remain at all times in a concern which is dealing in silver ornaments. The meagre stock found at the time of survey represents the stock which is lying with the assessee for last many years. No part thereof can be treated as unexplained stock acquired in the year under consideration. The Dy.

CIT(A) ought to have deleted the entire addition.

8. The learned Departmental Representative strongly supported the order of the Dy. CIT(A). He contended that the Dy. CIT(A) has given elaborate reasons for conforming the aforesaid additions.

9. I have carefully considered the submissions made by the learned representatives of the parties and have gone through the orders of the learned Departmental authorities as well as the various other documents submitted in the compilation to which my attention has been drawn during the course of hearing. The assessee declared income from profession at Rs. 20,000 only. In the immediately preceding year the assessee declared income from profession at Rs. 28,000. In asst. yr.

1987-88 he declared income from profession at Rs. 22,000. A perusal of the comparative figures of income from profession given in assessee's letter submitted to Dy. CIT(A) shows that his income from profession in asst. yr. 1981-82 was shown at Rs. 11,000 which gradually increased to Rs. 28,000 in asst. yr. 1988-89. Therefore, there is no justification in showing net income from profession on an estimate basis only at Rs. 20,000 in asst. yr. 1989-90. The assessee has tried to explain the reasons for decline in the income from profession in the year under consideration as compared to the preceding year. However, such an explanation is not supported by clinching evidence or record. After careful consideration of the entire relevant facts, I am of the view that it will be just and proper to direct the AO to restrict the income from profession at Rs. 28,000 as against Rs. 20,000 declared by the assessee and Rs. 33,000 estimated by the AO. The assessee thus gets a relief of Rs. 5,000 in relation to this ground.

10. As regards the partial addition sustained on account of alleged unexplained investment in silver ornaments being stock-in-trade, I am of the view that no such addition can be validly made. It is an undisputed fact that the assessee is carrying on the business as goldsmith and also dealing in silver ornaments for last so many years.

A person who is dealing in silver ornaments is likely to keep some stock at all times. The silver ornaments weighing 5.235 kgs found at the time of survey can reasonably be accepted as the normal quantity of stock-in-trade of silver ornaments kept by such party dealers. The Dy.

CIT(A) has himself granted relief of more than 50 per cent in respect of the said addition. He has not given any reason as to why he has accepted the assessee's contention only to the extent of 50 per cent addition made by the AO. The assessee has given further explanation such as that the assessee in the course of survey had produced three vouchers showing that he purchased silver ornaments weighing 1.764 kgs in the year ended on 31st March, 1987. The assessee has been carrying on such business since 1978. The quantity of stock of silver ornaments accumulated over a period of more than 10 years of business hardly warrants any disbelief or suspicion. I, therefore, direct the AO to delete the addition made on account of alleged unexplained investment in silver ornaments which were found at the time of survey as stock-in-trade. This point in covered in ground Nos. 5 to 8 of assessee's appeal. Ground Nos. 5 to 8 are, therefore, allowed.