

Mrs. Asha Devi Vs. Assistant Commissioner of Income

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-24-2006

Reported in : (2006)101TTJ(Delhi)332

Judge : P Parikh, Vice, A Jain

Appellant : Mrs. Asha Devi

Respondent : Assistant Commissioner of Income

Judgement :

1. The appeal in IT(SS) 362/Del/04 for block period 1st April, 95 to 26th Feb., 2002 is against the order of CIT(A)-II, New Delhi dt. 22nd Sept., 2004, alleging that both the taxing authorities have erred in taking the amount of Rs. 2,48,453 as unexplained income of the assessee. The appeal in IT(SS) 153/Del/2005 is filed by the husband of the assessee for the same block period. It is pleaded that the taxing authorities have erred in making addition of Rs. 4,75,671 regarding alleged unexplained expenditure pertaining to jotting of letter of M/s Mulberry Silk Affairs (the paper found and seized during the search and seizure operation). It has further been pleaded that addition of Rs. 4,09,267 regarding jewellery was wrongly made, despite the fact that the family of the assesseees was an affluent family.

2. The facts are that a search and seizure operation was conducted on Deepsons Group, on 26th Feb., 2002. The assessee is connected with the said group. In response to notice under Section 158BC of the 'IT Act, the assessee declared undisclosed income at nil, in the return filed.

Assessment order dt. 27th Feb., 2007 was passed under Section 158BC of the Act, making the impugned order. In the search operation, jewellery of Rs. 7,41,836 was found. Of this jewellery, jewellery worth Rs. 4,02,948 was seized. The statement of the assessee was recorded on 26th Feb., 2002. The assessee deposed that she was an adopted child; that she had received jewellery at the time of her marriage; that she had no evidence regarding the source of jewellery; that the excess jewellery found, worth Rs. 4,02,948, belonged to the other members of her family and that it had been gifted by relatives on different occasions of the marriage. In the assessment proceedings, the husband of the assessee, namely, Shri Mohinder Lal Haryani claimed in his block return that out of the total jewellery found, jewellery worth Rs. 2,78,383 belonged to him. Out of the remaining jewellery of Rs. 4,63,543, the AO treated the jewellery worth Rs. 2,15,000 as explained, whereas the rest of the jewellery worth Rs. 2,48,453 was treated as having been acquired from undisclosed sources.

3. The learned CIT(A), by virtue of the impugned order dt. 22nd Sept., 2004, upheld the addition. This has brought the assessee before us.

4. Before us, the learned counsel for the assessee has argued that the jewellery of the assessee, Asha Devi is common with that of the assessee in IT(SS)153, namely, Shri Mohinder Lal Haryani, the husband of Asha Devi. A paper was found in the search. A copy thereof has been filed. It is submitted that no year has been mentioned with the date written. So, this is a dumb document. Further, this paper mentions silk, in which, the assessee has never dealt. Mohinder Lal has no independent business. He was only a partner. It has further been argued that the assessee cannot prove a negative. The addition was made under Section 69C/69D of the IT Act. It was the burden of the Department to prove application thereof. This burden was not discharged. There was no enquiry. The assessee was associated with "Mulberry" distributors of Suchitra Silk, which has remained closed down for 5 to 10 years. The assessee filed an affidavit before the learned CIT(A) (copy filed). In this affidavit, the assessee submitted that the assessee's husband filed an affidavit. In this affidavit Shri Mohinder Lal stated that the vouchers showing purchase of silk garments alleged to have found from their premises, did not belong to him or any of his concerns, or to any of the members

of his family; that it was a dumb document, since it did not bear either date or name of the party who had made the purchases; that it was emphatically denied that the voucher belonged to them, or they had made any purchases to the extent of the goods mentioned therein, at any time between 1st April, 1995 to 26th Feb., 2002. This affidavit was sent by the learned CIT(A) to the AO, for examination and reporting thereon. The AO did not give any reply. Still, the learned CIT(A) decided in favour of the Department. The assessee, 'as stated, outrightly and vehemently denied the paper found in the search. Even on the facts and circumstances of the case, the paper could not belong to the assessee. Therefore, the addition in question, as sustained by the learned CIT(A), is arbitrary and has been made without discharging the onus under either Section 69C or Section 69D of the IT Act. It has further been argued that alternatively also the peak of the amount mentioned in the paper found comes to Rs. 94,000. If the assessee is taken to have made an investment of Rs. 94,000, it is only this amount which can be rotated.

5. Apropos the jewellery, the assessee has filed a chart (p. 45 of the assessee's paper book). This chart contains the details of the jewellery. It is submitted that the rate applied by the Government Valuer was about Rs. 4,600. The marriage between the two assessees took place in 1968. It was a rich family. Asha Devi, the assessee was adopted. So, she got gifts both from her natural family as well as her adopted family. Mohinder Lal's father was a partner in the well known firm J.B. Mangha Ram. This renowned firm had its business in Connaught Place. In the year 1993, the assessees completed 25 years of their marriage. Their friends in Bangkok invited them for celebrating the occasion. The passports and photographs of both the assessees in Bangkok are on record. Affidavits from 4 parties have also been filed, regarding the jewellery received as gift, amounting to Rs. 3,55,616.

The learned counsel submits that this voluminous cogent evidence was wrongly rejected by the taxing authorities. It is further, submitted that if from the addition, the gifts are taken out or subtracted, the remaining jewellery amounts to worth of Rs. 7 lakhs. If the stones are taken out, the value as per the Valuer gets reduced to Rs. 2,15,000, though it came to Rs. 3 lakhs. The remaining gold, if at all

remains, amounts to 442 grams. The family of the assesseees is a family of status. So, more credits should be given. Reliance has been placed on Radha Kishan Soni v. CIT . On this averments, the 6. On the other hand, the learned Departmental Representative, supporting the addition in question, has submitted that the affluence of the assesseees is of no importance. The addition in question has been made on merits. Moreover, these facts were not disclosed to the Department. Even so, a benefit of Rs. 2 lakhs was given as per Board's Circular. Regarding the gifts, the learned Departmental Representative has submitted that whatever jewellery was found, it was taken care of in accordance with Board Circular. The rest were brought to tax and rightly so. The assesseees were not wealth-tax assesseees. This jewellery was not brought to tax. Regarding the loose papers, the learned Departmental Representative has submitted that it is a natural presumption that custody means ownership. The papers were found in the custody of the assessee, "during the course of search. The assesseees' reply has been a mere bald denial, which is not a plausible answer.

Regarding the challenge of the assesseees as to the date mentioned in the seized paper, the learned Departmental Representative has submitted that where no year has been mentioned against the date, the presumption is that the year is the current year. As such, the learned Departmental Representative has sought the addition to be maintained by dismissing both the appeals.

7. In his counter, the learned counsel for the assessee has submitted that w.e.f. asst. yr. 1993-94, the limit regarding wealth-tax is Rs. 50 lakhs. Further, it has been submitted that the presumption of custodian being owner, is a rebuttable presumption, which stands amply rebutted in the present case. Apropos the issue regarding the date, the learned counsel for the assessee has reiterated that the taxing authorities have remained oblivious of the fact that the firm "Mulberry", was closed years back and has remained closed ever since . Also, there was no enquiry carried out by the AO. So no presumption can be drawn against the assesseees.

8. We have heard the parties and have perused the material on record.

The facts discussed above have not been disputed by the parties inter se. It stands out that in the paper recovered in the search, nothing incriminating has been mentioned against either of the assesseees. This paper, true, relates to Mulberry with which the assessee Mohinder Lal was associated as partner. However, it has not been disputed that Mulberry closed down years ago and has remained closed. The Delhi Bench of the Tribunal in the case of *Raj Pal Singh Ram Autai v. ITO* (1991) 39 TTJ (Del) 544 has held, inter alia, that the presumption arising out of Section 132(4A) of the Act is available to the Revenue only for the limited purpose of search and seizure and the proceedings under Sections 132(5) and 132(11), such presumptions are available only for the limited purpose of estimating the undisclosed income and the estimated tax liability for the purpose of deciding whether the seized assets should be seized or retained; that this presumption cannot have the effect of excluding or overriding the provisions of Section 69 during the course of regular assessment proceedings.

8.1. Further, clearly, the provisions of neither Section 69C nor Section 69D are attracted. Section 69C envisages an expenditure already incurred. This is not the case here. No expenditure has been proved by the Department to have been incurred by the assesseees. Further, s, 69D talks of amount borrowed on a hundi, which is also not the case here.

8.2. '*Raj Pal Singh Ram Autar*' (supra), has also held that the initial presumption of possessor being owner, was a rebuttable presumption which could be dislodged by the person in possession of the paper found. Where there was a denial coupled with the surrounding circumstances that the seized paper was not in the handwriting of the partners or employees, and it did not contain the name of the assessee, this factum clearly supported the view that the initial onus lying on the assessee was successfully dislodged.

8.3. In this view of the matter, the contention of the learned counsel for the assessee apropos the initial presumption having been rebutted and apropos the assessee being unable to prove the negative, is justified.

9. So far as regards the jewellery, undeniably, the affidavits of the parties to the effect that the jewellery was received as gifts on the silver jubilee marriage

celebrations of the assessee was forwarded by the CIT(A) to the AO for examination and comments. However, the AO offered no comments. In such a situation, in our view, it ought to have been taken that the AO had no comment to offer. On the contrary, the learned CIT(A) sustained the addition. This, to our minds, is not proper. On this count also, the order of the learned CIT(A) is erroneous. The grievance of the assessee in this regard also is justified.

10. In this view of the matter, we hold that there is merit in both the appeals of the assessee. The addition in question is not justified. It is, therefore, deleted.

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