आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No.475/JP/2014
निर्धारण वर्ष/Assessment Year : 2008-09.

Shri Udai Kant Mishra, 601, Geeta Enclave, Vinobha Marg, C-Scheme, Jaipur.	बनाम Vs.	The DCIT, Central Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ACSPM 8470 A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rajeev Sogani (CA) and Shri Rohan Sogani (CA

राजस्व की ओर से/ Revenue by: Shri Varinder Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 18.08.2017.
घोषणा की तारीख/ Date of Pronouncement : 05/09/2017.

आदेश/ ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the assessee is filed against the order of ld. CIT (A), Central, Jaipur dated 09.04.2014 pertaining to assessment year 2008-09. The assessee has raised the following grounds of appeal :-

" 1. In law and in facts and in the circumstances of the appellant's case, the learned CIT (A), Central, Jaipur having considered the validity of the department circular no. 1916 whilst determining any unexplained jewellery in the hands of the appellant has grossly erred in allowing partial relief to the appellant instead of total relief and hence the ld. CIT (A) ought to have allowed total credit of jewellery available to the appellant.

2. In law and in facts and in the circumstances of the appellant's case, the learned CIT (A), Central has erred in not appreciating the

facts, as evident from his own finding, whilst rejecting the bonafide claim of the appellant interalia;

(a) That Smt. Roshni Mishra being married lady credit of jewellery of 500 grams is available to the appellant and not 250 grams as held by the ld. CIT (A). He therefore ought to have directed to allow 500 grams of gold jewellery.
(b) That the family consisting of minor children as bonafidely claimed by the appellant whilst explaining the total jewellery, the ld. CIT (A) ought to have therefore allowed the claim of the minor children available as per the said circular which he had grossly failed to take into consideration.

3. Without prejudice, in law and in facts of the case, the learned CIT (A) should have allowed the relief to the extent of 500 grams of jewellery as available to married lady as per the circular whilst deciding any unexplained jewellery.

4. In law and in facts and in the circumstances of the appellant's case, the learned CIT (A), Central, Jaipur has further failed to consider the fact that additional income having been offered by the appellant as sources, its consequent application by way of jewellery if any remained unexplained, as telescoping is required to be allowed.

5. In law and in facts and in the circumstances of the appellant's case, the learned CIT (A), Central, Jaipur has erred in confirming the addition of Rs. 1056769/- as notional interest though in facts of the case there was no justification for confirming the same. The ld. CIT (A) should have deleted the same.

5.2. Without prejudice, in law and in facts and in the circumstances of the appellant's case, the learned CIT (A), Central, Jaipur has grossly erred in confirming the impugned addition by invoking the provision of section 14A of the Act when the assessing officer had not invoked the said provision. The impugned addition is therefore ultra virus, and bad in law as it being notional should have been deleted.

6. The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or at the time of hearing of the appeal.

2. Briefly stated the facts of the case are that the assessee Shri Udai Kant Mishra is a part of the Trimurty Group, on whom a search operation under section 132 of the Income Tax Act, 1961 (hereinafter referred to as the Act) was conducted

on 03.05.2007 whereby certain incriminating documents were found and seized. The assessee filed his e-return declaring total income of Rs. 1,05,32,110/-. The AO framed the assessment under section 153A/143(3) of the Act vide order dated 24.12.2009 by making additions on account of deemed dividend income, Unexplained jewellery and on account of Disallowance of Interest and assessed the total income of Rs. 1,26,32,909/-. Aggrieved, the assessee preferred an appeal before ld. CIT (A), who after considering the submissions, partly allowed the appeal of the assessee. Now the assessee is in further appeal before this Tribunal.

3. Ground nos. 1 to 4 are against non-granting of relief as per CBDT Circular in respect of the jewellery belonging to the married female.

3.1. The ld. Counsel for the assessee has reiterated the submissions as made in the written brief. The submissions of the assessee are reproduced as under :-

> " 3.1. Lower Authorities were duty bound to give benefit of 250 grams of jewellery each in the hands of Aditi Mishra and Anchal Mishra and 500 grams of jewellery in the hands of Roshni Mishra in accordance with the CBDT Circular No. 1916 as no jewellery was recorded in their names in the books. This is evident from the chart submitted to the lower authorities, in this regard, also reproduced by the ld. CIT (A) in her order at page 5.
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> 3.2. In not providing full credit in the hands of Smt. Roshni Mishra of the jewellery, lower authorities have wrongly taken shelter of the below mentioned points :-
>
> > 3.2.i. Her Statements recorded during search, wherein she mentioned that she did not have any source of income.
> >
> > 3.2.ii. In the statements, she mentioned that she had received gifts and dowry in her marriage in Feb'2007 in the form of jewellery from her family members for which no confirmation was available on record.
>
> 3.3. Lower authorities have irrelevantly indulged into the issue that Smt. Roshni Mishra was married in Feb 2007 and which was very close

to the date of search, i.e. 03/05/2017. Similarly, the age of minor grand-daughters was irrelevant.

3.4. CBDT Circular No. 1916, looking to the Indian social circumstances, allows blanket benefit of 500 grams per married lady and 250 grams per unmarried lady, without considering any other parameter.

3.5. It is submitted that where jewellery found in possession of assessee's family was personal wearing of ladies and if the same is within permissible limit stipulated by CBDT Circular, no addition can be made by the Income Tax Authorities. For this proposition, reliance is placed on the judgment of the Hon'ble Jurisdictional High Court in the case of Satya Narain Patni (2014) 46 taxmann.com 440 (Rajasthan)(Copy Enclosed Page-1) wherein Hon'ble High Court held that –

" Head Notes …Section 69A of the Income-tax Act, 1961 – Unexplained money (Jewellery) – Assessment year 2005-06 – Addition made by Assessing Officer on account of unexplained jewellery found during search proceeding was under challenge – In statements, family members clearly stated that these were personal wearing jewellery and same were received by ladies/daughter-in-law on/or at time of their marriage either from parental side or in-laws side – Revenue could not place any material to show otherwise than that stipulated in CBDT Circular 1916, dated 11.5.1994 which states that if jewellery found in possession of a married lady, unmarried lady and male member of family is to extent of 500 gms., 250 gms and 100 gms. Each, officials would not question source and acquisition – Further, Assessing Officer, in first instance, did not seize said jewellery – Whether since jewellery was found to be within tolerable limit prescribed by CBDT, no addition was justifiable – Held, yes (Paras 12 to 14)(In favour of assessee)."

In view of the above, additions made by the ld. AO and sustained by the ld. CIT (A), on account of excess jewellery found, during the course of search at the assessee premises, is not in consonance with the CBDT Circular and deserves to be deleted."

3.2. Per contra, the ld. D/R opposed the submissions.

3.3. We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. The ld. CIT (A) has not given any reason for denying the benefit/set off to the extent of 250 gms in case of Aditi

Mishra and Aanchal Mishra (minor grand-daughters) and partly allowing the benefit to the extent of 250 gms to Smt. Roshni Mishra. We find that the case of the assessee is covered by the CBDT Circular No. 1916 dated 11.05.1994 whereby the CBDT had issued guidelines stating that " *In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male member of the family need not be seized."* Therefore, following the above guidelines and also judgment of Hon'ble Jurisdictional High Court in the case of Satya Narain Patni (2014) 46 taxmann.com 440 (Raj.), we direct the AO to allow gold jewellery weighing 250 gms [(500gms – 250 gms allowed by CIT (A)] in the hands of Roshni Mishra (daughter-in-law), 250 gms. each in the hands of Aditi Mishra and Aanchal Mishra (minor grand-daughter). The grounds of the assessee are allowed.

4. Ground Nos. 5 & 6 relates to disallowance of interest expense of Rs. 10,56,769/-.

4.1. The ld. Counsel for the assessee has reiterated the submissions as made in the written brief. The submissions of the assessee are reproduced as under :-

> " 3.1. It is submitted that the assessee made investments through his personal books in various companies, whereas ld. AO, for the purpose of disallowance, considered the books of the proprietorship concern, i.e. Surya Properties and Investments, in which interest expense of Rs. 20,72,096/- was incurred.
>
> 3.2. Attention is drawn towards the fact that the Capital Account of the assessee, as per his individual books, as on 31.03.2008 amounted to Rs. 2,01,82,808 (AE PB : 1-6). Entire investments in the companies, which had the potention of generating exempt income, was made from the personal books in which business loan was taken by the assessee. Interest expense on such loan amount, incurred during the relevant previous year, amounting to Rs. 1,30,061/-.

3.3. thus entire investment had been made by the assessee, in shares of the companies, out of his own funds. Disallowance made by the lower authorities is on completely wrong appreciation of facts.

3.4. Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bombay) held that " ….. The principle therefore would be that if there are funds available both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments….."

3.5. Ratio laid down, in the above mentioned judgment by the Bombay High Court has also been subsequently laid down by the Hon'ble Gujarat High Court in the case of Hitachi Home and Life Solutions (I) Ltd. (2014) 221 Taxman 109 (Gujarat)(MAG.) and by Hon'ble Karnataka High Court in the case of Microlabs Ltd. (2016) 383 ITR 490 (Karn.)(HC).

3.6. It is submit6ted that the assessee himself was engaged in the business of Real Estate wherein he acted as a broker for executing real estate deals. It is undisputed that investment made by the assessee was in to companies also engaged in Real Estate Business. As a result, these investments were nothing but strategic investments of the assessee in order to generate business in the future. It is now a settled proposition that Section 14A does not apply to investment of such nature. Reliance is placed on the following judicial pronouncements :-

Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Delhi HC)
Selvel Advertising P. Ltd. (2015) 37 ITR 611 (Kol.Trib.)

3.7. Section 14A disallowance can be made only if exempt income in the form of dividend is received. In the case at hand, no dividend income has been received by the assessee during the relevant previous year. The said fact has also been acknowledged by the ld. CIT (A) in her order at para 6.3(ii) page 10. Under such scenario, no disallowance under section 14A can be made. Reliance is placed on the following judicial pronouncements :-

CIT vs. Holcim India (P) Ltd. (2014) 272 CTR 282 (Delhi)
CIT vs. Shivam Motors (P) Ltd. (2014) 272 CTR 277 (Allahabad)
CIT vs. Lakhani Marketing Inc. (2014) 272 CTR 265 (P&H)
CIT vs. Corrtech Energy P. Ltd. (2015) 372 ITR 97 (Gujarat)

3.8. Even otherwise, as the assessee's own funds are greater than the borrowed fund, no disallowance can be made under section

> 36(1)(iii) as presumption can be drawn that own funds were used for the purpose of such investments. Reliance is placed on the below mentioned judicial pronouncements :-
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> CIT vs. Vijay Solvex Ltd. (2015) 59 taxmann.com 294 (Raj.HC)
> CIT vs. Sharada Erectors P. Ltd. (2016) 76 taxmann.com 107 (Bom.HC)
> CIT vs. R.L. Kalthia Engineering & Automobiles P Ltd.
> (2013) 33 taxmann.com 14 (Gujarat HC).
>
> In view of the above, additions of Rs. 10,56,769/- made by the ld. AO and sustained by the ld. CIT (A) deserves to be deleted."

4.2. On the contrary, the ld. D/R opposed the submissions.

4.3. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. After considering the submissions of the assessee, we find that the assessee was having sufficient own funds as reflected in the capital account of the assessee as on 31.03.2008 so as to make investment for purchase of shares of other companies and generate exempt income. The ld. Counsel for the assessee placed reliance on the various pronouncements of various Hon'ble High Courts in support of his contention. He also drew our attention to the judgment of Hon'ble Jurisdictional High Court in the case of CIT vs. Vijay Solvex Ltd. (2015) 59 taxmann.com 294 (Raj.HC) wherein it has been held as under :-

> " ……In view of the authoritative pronouncement of the apex Court and other judgments referred supra, in our view, the assessee admittedly had its own funds, as referred to earlier, and admittedly such funds/reserves being substantially higher than, even otherwise, the advances to the debtors, no notional interest of hypothetical interest could have been disallowed on such facts. The revenue has failed to prove nexus. In our view, the Tribunal has correctly appreciated the f acts and law."

The ld. D/R could not bring any contrary material to controvert the submissions of the assessee. Therefore, in view of the above discussion and case laws, the order of ld. CIT (A) is quashed. The AO is directed to allow the interest expenses. The grounds of the assessee are allowed.

5. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 05.09.2017.

Sd/-	Sd/-
(भागचन्द)	(कुल भारत)
(BHAGCHAND)	(KUL BHARAT)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 05/09/2017.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Udai Kant Mishra, Jaipur.
2. The Respondent – The DCIT Central Circle-3, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 475/JP/2014)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar