

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 3175/Del/2017  
Assessment Year: 2012-13**

**Deepak Garg, A-3/23,  
Pashchim Vihar, New Delhi.  
PAN : AABCN 6808R  
(Appellant)**

**vs.**

**Income-tax Officer,  
Ward 41(3), New Delhi.  
  
(Respondent)**

Appellant by : Sh. Lalit Mohan, C.A.  
Respondent by: Ms. Ashima Neb. Sr. DR

Date of hearing: 18.12.2019

Date of order : 19.02.2020

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Challenging the order dated 24/03/2017 in appeal No. 26/15-16 passed by the learned Commissioner of Income Tax (Appeals)-14, New Delhi ("Ld. CIT(A)"), for assessment year 2012-13, Shri Deepak Garg ("the assessee") preferred this appeal.

2. The assessee is engaged in the business of trading in bullions and all types of gold and diamond jewellery under the name and style of M/s. Sai Jewels. For the assessment year 2012-13, assessee had filed its return of income on 13.06.2012 declaring total income of Rs.4,87,370/-. Assessment u/s. 143(3) was, however, complete at an income of

Rs.64,53,540/- making certain additions including addition of Rs.45 lacs on account of sundry creditors.

3. Aggrieved by such addition, the assessee preferred appeal before the Id. CIT(A) and by way of the impugned order, Id. CIT(A) deleted other additions but confirmed the addition of Rs.40 lacs out of Rs.45 lacs added by the Assessing Officer u/s. 28 read with section 41 of the Income-tax Act ("the Act").

4. The assessee is, therefore, before us in this appeal contending that the authorities below failed to appreciate the fact that neither section 28 of the Act nor section 41 of the Income-tax Act, 1961 ("the Act") is applicable to the facts of the case, inasmuch as the gold introduced by the assessee into the business belonged to his father on whose death it was inherited by mother, brothers and sister of the assessee.

5. Learned AR submitted that both the authorities below proceeded on the basis of gold worth Rs.45 lacs introduced into the business of the assessee though originally belonged to his father, but subsequently on death of father of assessee, such a liability ceased to exist and therefore, in view of the non-playability of such a debt, it assumes the character of income u/s. 28 read with section 41 of the Act. The Id. AR, however, submitted that father of assessee died intestate, the estate of father devolves upon on class-I heirs and therefore, it is incorrect to conclude that the liability of the assessee ceased to exist on death of father. He further submitted that the assessee had shown the gold of his father to have been purchased by the assessee and such purchases were accepted by the Assessing Officer and therefore, it would be futile to contend that it is a case of introduction of unexplained and unaccounted money into

the capital. According to Id. AR, the facts of this case are similar to the facts of the case in CIT vs. Sugauli Sugar Works P. Ltd., 236 ITR 518. Lastly, he contended that in view of the decision of Hon'ble Apex Court in the case of CIT vs. Mahindra & Mahindra Ltd., 404 ITR 1 (SC), section 28 of the Act has no application since the alleged benefit of the assessee is not in the nature of cash or money and section 41(1) has also no application since there was no cessation of any trading liability.

6. Per contra, it is the submission on behalf of the Revenue that the assessee did not produce any purchase voucher before the Assessing Officer to substantiate his claim and further that there was no rebuttal of the observation of the Assessing Officer that the rates on which the assessee had shown to have purchased the gold from his father on 01.03.2012, 03.03.2012 and 17.03.2012 also vary as the rate on which the gold is claimed to have purchased does not tally with the gold rate on those dates. She further submitted that the assessee has been changing his version from time to time, inasmuch as initially he had shown as a creditor to himself which was disbelieved by Assessing Officer.

7. We have gone through the record in the light of submissions made on either side. It could be seen from the record, as pleaded by the assessee both before the Assessing Officer and CIT(A), the case of the assessee has been that his father died intestate on 15.05.1993 leaving behind five legal heirs and some gold bars; that the assessee commenced his business in the latter half of financial year 2010-11 relevant to assessment year 2011-12; with a view to utilize the gold bars and ornaments left behind by his father, the assessee passed a general entry on 04.02.2012 admitting the purchase amount by Rs.5 lacs and crediting

it to separately opened ledger account in the name of his father; that during the financial year 2011-12, the assessee purchased gold ornaments etc. worth Rs.40 lacs by crediting a corresponding amount of Rs.40 lacs to ledger account opened in his own name under the legal advice since the gold did not belong to him exclusively but equally belong to other legal heirs of his father.

8. In so far as the books of account of the assessee are concerned, the Assessing Officer examined the books of account and accepted the trading results by stating that *“the assessee is engaged in the business of Trading in bullions and all types of gold and diamond jewellery under the name and style of M/s. Sai Jewels. During the year under consideration, the assessee has declared Gross Turnover at Rs.71,34,82,470/- and Gross Profit of Rs.22,04,057/- yielding G.P. rate of 0.22%. After debiting expenses in P&L account, the Net Profit of Rs.4,93,828/- has been declared. The details furnished with respect to trading results supported with bills and vouches were examined and placed on record.”*

9. The entire question in this matter revolves around whether the liability of the assessee towards the gold of his father introduced into the business of assessee ceased to exist or not. According to assessee, he alone is not entitled to inherit the entire estate of his deceased father, but along with him, four other legal heirs are there upon whom the estate of his deceased father devolves. On this aspect, the assessee produced before the CIT(A) affidavits of other legal heirs and we have gone through such affidavit to be found from page 47 to 56 of the paper book, wherein, wife and children of late Dharam Chand Garg (father of assessee) stated in unequivocal terms that the deceased left behind five legal heirs and

the deceased owned a debt of Rs.45 lacs from M/s. Sai Jewels on account of sale of goods to them. This particular aspect is not in dispute. Further, the Assessing Officer accepted the purchase of gold and approved the trading results. Having accepted the trading results, it is not open for the Assessing Officer to say that the assessee introduced unexplained and unaccounted money into the capital.

10. In this set of circumstances, the only question that arises for our consideration is whether really there was any cessation of liability of assessee in respect of his father's gold that was purchased during the year. As rightly contended by the Id. AR, inasmuch as the other legal heirs are available and the debt is acknowledged in the books of account of the assessee, it cannot be said that the liability ceased to exist. As a matter of fact, it cannot be said that such a liability ceased to exist on the death of assessee's father because the father of assessee died way back in the year 1993 and the introduction of gold of father into the business of assessee took place in the assessment years 2011-12 and 2012-13 only.

11. In Mahindra & Mahindra Ltd. (supra), Hon'ble Supreme Court clearly held that unless the benefit accrued to the assessee is in nature of cash or money, section 28 has no application and in the absence of cessation of liability, section 41(1) has no application. What all that happened in this matter is that the assessee introduced the gold left behind by his father into his business and had shown the trade liability in his own name in the name of other family as a whole or individual legal heir. We, therefore, are of the considered opinion that such an act cannot be termed either as introduction of unaccounted or unexplained money into the capital or that the trade liability ceased to exist. For these

reasons, we find it difficult to sustain the addition made by the Assessing Officer and confirmed by the Id. CIT(A). Ground of appeal is accordingly allowed.

12. In the result, the appeal is allowed.

Order pronounced in the open court on 19<sup>th</sup> February, 2020.

Sd/-  
**(PRASHANT MAHARISHI)**  
ACCOUNTANT MEMBER

Sd/-  
**(K. NARASIMHA CHARY)**  
JUDICIAL MEMBER

Dated: 19/02/2019  
'aks'