

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 365/JP/2019
निर्धारण वर्ष/Assessment Years : 2016-17

Shri Pankaj Ladha 20A, Talwandi, Kota.	बनाम Vs.	The DCIT, Central Circle, Kota.
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHPL 8294 Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya (Adv.)
Shri Devang Gargieya (ITP)
राजस्व की ओर से/ Revenue by : Shri K.C. Gupta (ACIT)

सुनवाई की तारीख/ Date of Hearing : 29/07/2020
उदघोषणा की तारीख/Date of Pronouncement : 03/08/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A)-II, Udaipur dated 26.12.2018 for the assessment year 2016-17 wherein the assessee has taken the following ground of appeal:-

"The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition of Rs. 1,50,000/-made by the Id. AO on account of unexplained jewellery. The addition so made and

confirmed by the Id. CIT(A), Kota being contrary to the provisions of law and facts, kindly be deleted in full."

2. The Id AR submitted that a search and seizure operation U/s 132(1) of the Act were carried out on 02-07-2015 at the residential premises of the assessee situated at Kota. During the search operations, jewellery including gold and silver items, silver coins, etc. were found in the locker being operated by Smt. Savitri Devi, mother of the assessee and inventoried by the Income Tax Department. The same were got valued by the authorized departmental valuer, Shri Kamal Kant Parekh on 03-07-2015 as under:-

Annexure			Gross Weight	Net weight	Value (As per Departmental valuer)
J-1	Pankaj Ladha	Gold	1480.500	1240.900	33,00,792/-
		Silver Item and Coins	5.790Kg	4.971 Kg	4,22,108/-
		Total			37,22,900/-

However, as per AO, the above chart does not show the correct picture which should be read as under:-

Annexure			Gross Weight	Net weight	Value (As per Departmental valuer)
J-1	Pankaj Ladha	Gold	1480.500	1240.900	33,00,792/-
		Silver item	5.790Kg	4.971 Kg	3,22,108/-
		And Coin item	2.503Kg	2.503 Kg	
		Total	8.239Kg	7.474Kg	37,22,900/-

When the AR/assessee was asked for the source of jewelry found, it was stated that the impugned jewellery belongs to the family members and also submitted the wealth tax returns filed by appellant and Smt. Savitri Laddha, mother of assessee along with a chart of ownership of such jewellery to the AO. The AO was however not satisfied with the reply of the assessee and held as under:

*"From perusal of above table, it is noticed that assessee and Smt. Savitri Laddha (His mother) has declared gold jewellery weighing 490 gram in the assessment year 1992-93. Assessee has filed affidavits of his family members but no supporting documents submitted to substantiate his claim. Considering the reply of the assessee and taken into consideration to the customs of the society, I hold that it will be fair and reasonable to accept disclosed net gold jewellery 900 gram, including declared in wealth tax returns. Balance gold jewellery weighing 340.900 gram (1240,900-900) is treated as unexplained and value of this is worked out at Rs,9,06,794/- (340.900*2660). Silver items and jewellery valuing at Rs, 1,50,000/- is treated as unexplained. Thus total addition is worked out at Rs.10,56,794/- and same is added in taxable income of the assessee U/s 69A of the IT Act, 1961. I am satisfied that, penalty proceedings are required to be initiated U/s 271AAB(1)(c) because assessee has undisclosed income. Therefore, penalty U/s 274 r.w.s. 271AAB(1)(c) is initiated for her undisclosed income"*

3. In the first appeal, Id. CIT(A) deleted the addition relating to the gold jewellery, however, the impugned addition of Rs. 1.50 lakhs

relating to silver ornaments jewellery and coins was confirmed in the following words:-

"7.3 2 Further, regarding silver jewelry of 4.971 kg (valued @ Rs. 35,900/- per kg) at Rs.1,78,459/- and silver coins valuing Rs.1,43,650/-, found during search, I find that the assessee has not given any reply regarding source of investment therein. However, the AO has, considering the overall facts, fairly treated investment of Rs.1,72,108/- as explained and taken unexplained investment in silver coins and jewellery at only Rs.1.50,000/-. The of the A.O is found to be 3 reasonable and accordingly. addition of Rs. 1,50,000/-, is hereby sustained. The ground of appeal is thus allowed."

4. In the above factual matrix, it was submitted by the Id AR that gold & silver ornaments, jewellery and coins all were found from the locker of Smt. Savitri Devi, mother of the assessee. Therefore, the impugned addition cannot be made in the hands of the assessee without any valid reason particularly when she is a separate assessee. It was submitted that the entire gold and silver jewellery and coins belongs to six family members and this fact was duly submitted before the Assessing Officer. In support, the assessee filed the details of such gold and silver jewellery and coins belonging to each of the family members and even their affidavits were also submitted before the Assessing Officer however, the same were not considered by the Assessing Officer as well as by the Id. CIT(A). It was further submitted that both the witnesses Shri Anil Mundra and Shri Harish Sharma clearly confirmed these facts vide their separate letters dated 13.02.2018 &

10.02.2018. Further, the Id. CIT(A) herself admitted similar explanation with respect to the gold ornaments however, she has completely ignored this fact when it come to silver jewellery and coins. Further, it was submitted that the assessee in his statement recorded U/s 132(1) of the Act in reply to question no. 2 as stated that the silver items belongs to the family members. It was further submitted that the AO has determined the figure of Rs. 1,50,000/- based on blind estimation. It appears that he has confirmed the relief only w.r.t the wealth tax returns of mother Smt Savitri Ladha and Pankaj Ladha. It was submitted that Pankaj Ladha having already declared whatever silver jewelry/coins he possessed, hence there was no occasion for making any addition. Otherwise also, when the AO had not disputed the possession of the ornaments by the family members, the addition of the silver jewelry & coins could not be added in the hands of the assessee alone and more particularly when CIT(A) accepted a similar explanation w.r.t. the gold ornaments.

5. It was submitted that there appears a non-application of mind on the part of the lower authorities in as much as the valuer has not given the nature of the coins nor their weight. He simply estimated the value at Rs. 1,43,650/-. The AO considered the figure of Rs 4,22,108/- as against the amount of Rs. 3,22,108/- estimated by the valuer. The authorities below did not appreciate that these are jarshai and not ordinary silver coins purchased in the years of search but continued with the family since last several years and got accumulated. Shri Rajaram, father of the assessee categorically affirmed that he has been collecting coins since last 50 years as a hobby out of his own income.

6. It was further submitted that the benefit of the CBDT circular No. 1916 dated 11-05-1994 should also be given to the appellant in the sense that the circular recognizes the habit of possessing gold in the Indian society therefore, some amount of silver ornament is always kept by the Indian families and once the family members has already affirmed through the possession of the silver ornaments and coins, the authorities below must have accepted the same. Hence the entire impugned addition may please be deleted.

7. Per contra, the Id. DR drawn our reference to the findings of the Id CIT(A) at para 7.3.2 of her order wherein the AO's action of treating Rs 1,72,108 as explained and remaining amount of Rs 1,50,000/- as unexplained has been held reasonable by the Id CIT(A), it was submitted that given that the assessee has failed to explain the source of investment in silver jewellery and coins and the assessee has already been provided appropriate relief by the AO and no further relief may be provided. He accordingly supported the findings of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. In the statement recorded u/s 132(4), the assessee in response to question no. 28 where he was asked to explain the source of gold jewellery weighing 1240.90 grams and silver jewellery/utencils weighing 4.971 kgm has stated that gold and silver jewellery and utencils so found during the course of search had been received/purchased on the occasion of marriage of his parents, his own marriage and thereafter, on birth of his children and various other social

occasions from time to time. The registered valuer in his report dated 3.07.2015 has valued the same at Rs 3,22,108/-. The Assessing officer sought assessee's explanation during the course of reassessment proceedings and thereafter, arrived at a figure of Rs 1,50,000/- as unexplained investment in silver items and jewellery and brought the same to tax. The AO has not specified the basis of arriving at the said figure, however, on perusal of the Valuer's report dated 3.07.2015 and other material on record, we find that he has given credit of Rs 143,650 in respect of 221 silver coins as well as Rs 28,325/- towards silver utensils and has thereafter, arrived at a figure of Rs 150,133/- and held the said figure (after rounding off) as unexplained investment in the hands of the assessee. However, we find that he has failed to consider two key aspects. Firstly, the silver jewellery so found belongs to all the family members as stated by the assessee in his statement recorded u/s 132(4) of the Act. A fact, which seem to have been accepted by the AO, where he has given credit of silver coins belonging to Rajaram Ladha and Savitri Ladha as well as silver utensils belonging to Savitri Ladha and also fairly accepted by the Id CIT(A) where she has accepted the assessee's explanation regarding gold jewellery so found during the course of search along with silver jewellery/items. Therefore, once it is accepted that these items belong to all family members and where the assessee has thereafter given specific details regarding such items identified to each of the individual members as per his submissions dated 18.08.2017, the remaining items should therefore be accepted as belonging to respective family members and not just that of the assessee only. Secondly, the assessee and her mother have already declared silver jewellery items in their respective wealth tax returns

which need to be considered. In case of assessee, he has declared 0.5 kgs of silver in his wealth tax return for A.Y 92-93 and to that extent, the same stand explained. Therefore, as against 1.480 kgs of silver items belonging to the assessee, he has already declared 0.5 kgs of silver in his wealth tax return for A.Y 92-93. The possession of remaining 0.98 kgs of silver items over the period of 24 years and given the societal customs of accepting/buying such items on occasion of birth and other social functions seems reasonable and the addition sustained by the Id CIT(A) is hereby deleted.

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

Order pronounced in the open Court on 03/08/2020.

Sd/-

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/08/2020.

***Santosh**

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

1. अपीलार्थी / The Appellant- Shri Pankaj Ladha, Kota.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 365/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar