

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1127 OF 2000

Ajay R. Dhoot ..Appellant

Vs.

The Deputy Commissioner of Income Tax,
Mumbai and Ors. ..Respondents

....

Mr. Subramniam a/w V.S. Hadade, Advocates for Appellant.
Mr. Arvind Pinto, Advocate for Respondents.

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**CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.**

DATED : 15 JULY 2015

ORAL JUDGMENT (PER: SANKLECHA, J):

This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') is directed against the order dated 18 April 2000 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The relevant assessment year is Assessment Year 1987-88.

2. On 5 March 2002, this appeal was admitted on the following two substantial questions of law:

“1) Whether on the facts and in the circumstances of the case and in law the Tribunal was right in law in confirming the addition of

Rs.2,01,200/- under section 69A of the Act in the Assessment Year 1987-88 when the assessee was not found to be owners of jewellery valued at the said amount in the financial year 1986-88 being the relevant previous year for the Assessment Year 1987-88 which is the requirement of section 69A of the Act?

2) Whether on the facts and circumstances of the case and in law the Tribunal erred in confirming the addition of Rs.2,01,100/- in the Assessment Year 1987-88 specially in view of the addition made in the assessee's own case for the Assessment Year 1986-87 which addition includes the alleged source of the jewellery valued at Rs.2,02,100/-, thereby resulting in a double addition?"

3. The common facts necessary to answer both the above questions in this appeal are as under:

On 19 March 1986, a search action under Section 132 of the Act was carried out by the revenue in respect of the appellant's premises. During the course of the search, on 20 March 1986, a locker key belonging to one Mrs. Sujata Malani was seized, who at the relevant time was staying with the appellant.

4. On 28 July 1986, the locker of Mrs. Malani (the key to which was seized on 20 March 1986) was opened by the revenue. On opening the locker, jewellery valued in the aggregate of Rs.2.53 lakh was found therein. In the course of proceedings under Section 132(5) of the Act, the revenue on 25 November 1986 accepted the explanation of Mrs. Malani that jewellery valued at Rs2.41 lakh out of Rs.2.53 lakh belonged to the appellant. The appellant also claimed to be owner of the same which was valued at the cost of Rs.2.01 lakh.

5. On 21 March 1990, the Assessing Officer passed an order for the Assessment Year 1987-88 in respect of the appellant. In the assessment order, it is recorded that the appellant had filed its wealth tax return for the Assessment Year 1987-88 on 25 June 1987 declaring jewellery valued at Rs.2.15 lakh received as gift by him from one Mrs. Shashikala L. Dhoot. The Assessing Officer did not accept the appellant's explanation of source of the jewellery found in Mrs. Malani's locker as being a gift received from Mrs. Shashikala L. Dhoot. Consequently, the Assessing Officer added the cost of the

jewellery which at Rs.2.01 lakh as deemed income under Section 69A of the Act.

6. In appeal, the Commissioner of Income Tax (Appeals) (the 'CIT(A)') did not interfere with the order of the Assessing Officer to the extent a sum of Rs.2.01 lakh which was added as deemed income on account of unexplained jewellery owned by the appellant.

7. On further appeal, the Tribunal by the impugned order dismissed the appellant's appeal. In particular it did not accept the appellant's contention that as the locker key belonging to Mrs. Malani has been seized on 20 March 1986, the addition of deemed income under Section 69A of the Act to be made on account of jewellery found on opening of the locker on 28 July 1986 can only be in the Assessment Year 1986-87 and not for the Assessment Year 1987-88. The impugned order holds that in terms of Section 69A of the Act, the financial year in which an assessee is found to be owner of any jewellery and for which no sufficient explanation is offered, then the value of such jewellery is deemed to be income of the

assessee in such financial year in which the jewellery was found. In this case, the impugned order holds that the jewellery was found to be owned by the appellant only on opening the locker i.e. on 28 July 1986. Consequently, the year of assessment in respect of such deemed income for unexplained jewellery would be the Assessment Year 1987-88.

8. We shall now deal with the submission made in respect of both the above questions separately as under:-

9. Question 1:-

(a) Mr. Subramaniam, the learned Counsel for the appellant in support of the appeal with particular reference to questions submits that the locker key was found by the revenue on 20 March 1986 at the time they conducted the search of the appellant's premises. Thus it would be on that date, that the jewellery valued at cost of Rs.2.01 lakh was found in the ownership of the appellant for the purposes of Section 69A of the Act. The finding of the jewellery it is submitted was not dependent upon opening of the locker but on the revenue having possession of the

keys to the locker which contained the jewellery. In these circumstances, it was submitted that the jewellery was found in the previous year relevant to Assessment Year 1986-87 and not Assessment Year 1987-88. In support, Mr. Subramaniam also placed reliance upon the decisions of Gauhati High Court in *Patoa Brothers Vs. CIT*¹, Madhya Pradesh High Court in *Harlal Mannulal Vs. CIT*² and of this Court in *Mathuradas Gokuldas Vs. CIT*³.

(b) As against the above, Mr. Pinto, the learned Counsel for revenue in support of the impugned order states that the locker keys which were seized on 20 March 1986 belonged not to the appellant but to one Mrs. Malani. Therefore it is only on opening the locker that the quantum/value of the jewellery could be ascertained for subsequent decision/finding on ownership. Consequently, in terms of Section 69A of the Act, the ownership of the appellant in respect of the jewellery in the locker of Mrs. Malani was found only on opening of the locker. Thus the Assessment Year 1987-88 is the correct assessment year to which jewellery has been brought to tax as deemed income in view of unexplained jewellery.

1. 133 ITR 672
2. 147 ITR 11
3. 102 ITR 425

(c) We have considered the rival submissions. Section 69A of the Act provides that where in any financial year, an assessee is found to be the owner of any jewellery which is not recorded in the books of account and the explanation offered by assessee about the nature and source of acquisition is not satisfactory, then value of such jewellery would be deemed to be income of the assessee in the year in which the assessee was found to be the owner of the jewellery. Admittedly, the locker key which was seized by the department during the course of the search on 20 March 1986, did not belong to the appellant. Thus on that date the quantum of jewellery in the locker of Mrs. Malani which belonged to the appellant could not be ascertained/forecast. The normal presumption would be the jewellery in the locker of Mrs. Malani would belong to her and not to another person. Therefore, it is only on opening of the locker of Mrs. Malani on 28 July 1986, did the revenue find the jewellery and also that some part thereof, belonged to the appellant as claimed by the appellant and as also declared by Mrs. Malani in her assessment proceedings as recorded in the order of her Assessing Officer at Kolkata on 25 November 1986. Thus it is

only in the previous year relevant to the Assessment Year 1987-88 i.e. financial year 1 April 1986 to 31 March 1987 that the appellant was found to be the owner of the jewellery in the locker belonging to Mrs. Malani.

(d) The three decisions relied upon by the appellant do not have any application to the present facts. The basic difference in all the cited cases to the present facts is that the locker key which was seized on 20 March 1986 did not belong to the appellant but to one Mrs. Malani and therefore it was only on the opening of her locker that the question of finding jewellery in the locker and if found, the ownership of such jewellery would arise for determination. In all the cited cases the offending goods/money etc was found in the possession of the party in whose hand Section 69A of the Act was applied.

(e) So far as decision in Patoa Brothers by Gauhati High Court is concerned, the facts are that the revenue during the course of search proceedings found at the residence of the applicant therein undeclared articles such as Swiss made wrist watches, hair and main springs and Indian currency notes, etc. at a total value of

Rs.1.2 crores. This was assessed to income under Section 69A of the Act. The search took place on 3 March 1970. The revenue assessed the applicant therein to tax for the Assessment Year 1970-71. However the applicant therein claimed that as ownership of the articles found in its residence was determined only when an assessment order was passed on 25 August 1971, the appropriate assessment would be the Assessment Year 1972-73. The Gauhati High Court on the basis of plain interpretation of Section 69A of the Act held that the date on which the applicant was found to be in possession of the jewellery, etc. would be the date to be taken into consideration while assessing the party to tax. The fact that the assessment order renders a finding that the applicant in whose possession the jewellery was found is the owner will have retrospective effect to the date the articles were seized. In this case, admittedly the jewellery was found and seized only on the opening of the locker of Mrs. Malani on 28 July 1986. Therefore the assessment year in the present case is correctly the Assessment Year 1987-88.

(f) The next decision relied upon by the appellant was of Madhya Pradesh High Court in the case of *Harlal Mannulal*. In the that case for the Assessment Year 1973-74, the relevant previous year of the applicant therein was 19 October 1971 to 5 November 1972. For the Assessment Year 1973-74, an addition of Rs.20,000/- as income from undisclosed sources was made by the Assessing Officer. This was on the basis of statement filed by the appellant alongwith his return for the Assessment Year 1972-73 that he was inter alia possessed of Rs.20,000/- on 18 October 1971 i.e. one date before the commencement of the relevant previous year. The Court held that as Rs.20,000/- of unexplained money declared by the applicant on 18 October 1971 alongwith his return of income for the Assessment Year 1972-73 ought to have been added to the assessee's income for the Assessment Year 1972-73 and not for the Assessment Year 1973-74 as done by the authorities. In this case, the jewellery was found in the locker of Mrs.Malani only on opening it on 28 July 1986 unlike in the case of *Harlal Mannulal* where an unexplained cash of Rs.20,000/- was disclosed by the applicant in

its return of income for the Assessment Year 1972-73 and therefore it was to be assessed in the Assessment Year 1972-73.

(g) The last case relied upon by the appellant is *Mathuradas Gokuldas* decided by this Court wherein the assessee had made a declaration on 19 January 1946 that she possessed 138 notes of Rs.1,000/- each. The revenue assessed the aforesaid Rs.1,38,000/- representing 138 notes as income from undisclosed sources and sought to tax in the Assessment Year 1947-48. This Court held that income from undisclosed sources has to be assessed in the relevant assessment year dependent upon the financial year in which such income has been declared. In these circumstances, the assessment year applicable would be the Assessment Year 1946-47 when the income was declared and not Assessment Year 1947-48 as done by the authorities under the Act. The aforesaid decision also has no application to the present facts, as admittedly the jewellery was found only on 28 July 1986 on opening the locker belonging to Mrs. Malani for which the relevant Assessment Year is 1987-88.

(h) In view of the above, so far as the first question is concerned, we find no infirmity in the impugned order of the Tribunal and the same is answered in the affirmative in favour of the revenue and against the assessee.

10. Question 2:-

(a) It was urged by Mr. Subramaniam that the jewellery found in the locker of Mrs. Malani belonging to the appellant was sourced from the amounts received by the appellant in cash from M/s Industrial Meters Ltd. in which he was Director and the same was a subject matter of consideration by the revenue for the Assessment Year 1986-87. Thus seeking to charge the tax on the same jewellery, as deemed income where the source of jewellery is found in diaries which were the subject matter of consideration during the Assessment Year 1986-87. Thus charging of tax in the Assessment Year 1987-88 would lead to double taxation.

(b) As against the above, Mr. Pinto submits that the occasion to tax the jewellery found in the locker of Mrs. Malani valued at Rs.2.01 lakh during the Assessment Year 1986-87 does not arise. This for the reason that it has never been the appellant's

case that the jewellery which was found on opening of Mrs. Malani's locker was jewellery which had been purchased out of the cash entries found in the diary maintained by the employee of M/s Industrial Meters Ltd. evidencing receipt of cash by the appellant.

(c) The contention urged before us is that the amount of Rs.2.01 lakh is actually a part of Rs.9.73 lakh which were a part of the entries made in a diary by one Mr. Gandhi, the Chief Accountant of M/s Industrial Meters Ltd. of which the appellant was a Director. This diary kept a record of amount of cash paid by Mr. Gandhi to the appellant. It is on the basis of the above diary that the appellant contends that the jewellery found in the locker on 28 July 1986 had been acquired by him out of the cash amount given by M/s Industrial Meters Ltd. to the appellant. The entries in the diary according to the appellant were a subject matter of consideration by the Assessing Officer for the Assessment Year 1986-87. Consequently, it is submitted that the addition to be made on account of jewellery found in the locker ought to have been made in the Assessment Year 1986-87 and not in Assessment Year 1987-88.

(d) The aforesaid explanation is not acceptable for the reason that at no point of time, the jewellery found in the locker was sourced from the cash received by the appellant from M/s Industrial Meters Ltd. The case of the appellant has always been the jewellery found in the locker was a gift received by him on 27 January 1986 from his aunt. This theory of gift being received from his aunt was not accepted by the authorities under the Act including the Tribunal. Thus the deemed income being the cost of jewellery found in the locker of Mr. Malani being assessed to tax in Assessment Year 1987-88 cannot be found fault with.

(e) In the circumstances, the second question as framed has to be answered in negative i.e. in favour of the revenue and against the appellant-assessee.

11. Accordingly the appeal is dismissed. No order as to costs.

[N.M. JAMDAR, J]

[M.S. SANKLECHA, J.]