Reserved

Court No. - 39

Case :- INCOME TAX APPEAL No. - 172 of 2000

Block Period 1986-87

Appellant :- M/S. Raghunandan Prasad Sarraf
Respondent :- Commissioner, Of Income Tax, & Another
Counsel for Appellant :- P.K.Jain,Amitabh Agrawal,Saurabh Jain
Counsel for Respondent :- C.S.C,R.K. Upadhya

Along-with

Case :- INCOME TAX APPEAL No. - 255 of 2000

Block Period 1996-97

Appellant :- Commissioner Of Income Tax & Another
Respondent :- Raghunandan Prasad Sarraf
Counsel for Appellant :- A.N.Mahajan
Counsel for Respondent :- P.K. Jain,Saurabh Jain
Hon'ble Tarun Agarwala,J.
Hon'ble Dr. Satish Chandra,J.

1. Cross appeals have been filed by the assessee as well as by the Department against the impugned order dated 27.3.2000 passed by the Income Tax Appellate Tribunal, Delhi in I.T.A. No.5586/Del/1996 for the block period 1986-87; and 1996-97.

2. On 24.11.2009, a coordinate Bench has admitted the assessee's appeal on the following substantial questions of law:-

> *"(i) Whether on the correct and true interpretation of Chapter XIV B and the definition of undisclosed income given therein the Tribunal was justified in law to confirm the addition of Rs.2,32,417 on account of peak investment in the purchase of ornaments and then also to assume gross profit of*

Rs.1,29,239/- being 25% of assumed sales of Rs.5,16,956/- outside the account books of the appellant thereby ignoring the fact that page no.41 of seized paper marked as 28-Y found during the search was merely a dump paper which did not entitle the Income Tax Appellate Tribunal to confirm the addition.

(iii). Whether the Tribunal was legally correct in upholding the additions of Rs.2,32,417/- and Rs.1,29,239/- by not only ignoring the provisions of Sec. 69 of the I.T. Act but also judgment cited from the bar coupled with the fact that during search neither any unaccounted for assets were found nor any documents were found suggesting carrying on business by the appellant firm outside its accounts books?

(iv). Whether on the true and correct interpretation of Chapter XIV and the relevant provisions contained therein the Tribunal was legally justified in upholding the addition with reference to the deposits of Gold made by Mrs. Nutan Verma and Sh. Jai Prakash Agarwal thereby ignoring the provisions of Sec.132(4A) of the Income Tax Act also?"

3. On 23.2.2007, a coordinate Bench has admitted the Department's appeal on the following substantial questions of law:-

"(1). Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition corresponding the G.P. on sales of 7120 gms. of gold jewelry, ignoring the fact that the assessee failed to explain the short stock of jewelry at the time of search and further during the course of assessment proceedings?

(2). Whether on the facts and in the circumstances of the case the Tribunal was justified in law in deleting the addition of Rs.29,49,024/- on account of pawning business.

(3). Whether on the facts and in the circumstances of the case the Tribunal was justified in deleting the addition on account of undisclosed income on account of gold jewelry, alleged to have been

> *deposited in the names of Sarvashri Dinesh Kumar Gupta, B.S. Tayal and Dharmvir Singh.*
>
> *(4). Whether in the absence of any material on record, the Tribunal was justified in deleting the addition of Rs.13,55,466/- on account of design order books seized during search.*
>
> *(5). Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in deleting the additions of Rs.3,52,999/- and Rs.47,480/- on account of calculations in the seized books?"*

4. The brief facts of the case are that on 11.9.1995, a search and seizure operation was carried out under Section 132 of the Income Tax Act, against the assessee's firm. During the course of search, various documents were found and seized. The A.O. made various additions. In appeal, as per the then law, the Tribunal partly deleted the additions. Being aggrieved, the parties have filed the cross appeals.

<u>I.T.A. No.172 of 2000 filed by the Assessee:-</u>

5. The first grievance of the assessee is pertaining to the addition of Rs.2,32,417/- on account of peak investment; and Rs.1,29,239/- aggregating Rs.3,61,656/- on account of sale out side the books.

6. During the course of search, a paper was seized (i.e. paper no.41 of book No.28Y). The A.O. observed that this paper contained details in terms of weight and amount of the total sale transactions for the period 7.4.1993 to 27.4.1993. The A.O.

calculated the peak investment and assumed profit on the sales as recorded on this page.

7. During the course of arguments, learned counsel for the assessee submitted that no amount was written on the said page and the figure pertaining to weight had been misunderstood by the A.O. as representing the amount. It was also submitted by the learned counsel that the document in question was a sham document.

8. On the other hand, learned counsel for the Department submitted that figure of Rs.74,000/- had been mentioned against the date 9.4.1993; and Rs.2,32,417/- had been mentioned against the date 10.4.1993, so the action of the A.O. was correct because it represented the sale against the respective dates and the A.O. has rightly estimated the profit.

9. After hearing both the parties and on perusal of material available on record, it appears that the figures were mentioned as 74,000/- and 2,32,417/- against the dates of 9.4.1993 and 10.4.1993 represented figures in rupees and the same cannot be taken as stock entry. Details in terms of weight, date and amount is mentioned. The total transaction comes to Rs.5,16,956/- as mentioned in the orders of the lower authorities. The assessee has stated that

this is regarding stock checking of ornaments on various dates from different safe almiras, so it was rightly presumed that it relates to sale, out side the books. Moreover, it is a finding of fact, hence we declined to interfere with the order of the Tribunal pertaining to the grievance of the assessee.

10. The next grievance of the assessee is related to the addition with reference to the deposits of Gold by Mrs. Nutan Verma; and Sri Jai Prakash Agarwal. During the course of search and seizure operation, 41 entires in the name of customers were found and it was claimed that they had deposited old gold ornaments with the assessee to the tune of Rs.26,781.140 grams. for conversion to the jewelry. uThe A.O. recorded the statement of nine persons on the back of the assessee, who initially denied any deposit of gold with the assessee, but in the second round, their statement was again recorded and out of nine persons three persons have accepted the deposit of gold. In the second round, Sri Dinesh Gupta stated that his wife Smt. Bina Gupta has deposited old gold ornaments, she has also filed affidavit to this effect. Sri B. S. Tayal and Sri Dharmvir Singh accepted in the second round that they have deposited the old gold for the conversion to the new jewelry. As regards Smt. Nutan Verma, a specific query was raised to her regarding deposit of

any gold. She denied in the first round by stating that she has never given any jewelry, however, in the second round she admitted that she deposited some jewelry to the assessee's firm but no details were submitted. Sri Brij Mohan Sharma was N.R.I. and he was never produced. Sri Jai Prakash Agarwal was also never produced before the A.O. In these circumstances, the A.O. has made the addition pertaining to only Smt. Nutam Verma and Sri Jai Prakash Agarwal.

11. The Tribunal after examining the material, observed that the statement of Smt. Nutan Verma recorded in the second round is not acceptable as there were various discrepancies. Sri Jai Prakash Agarwal was never produced so, the addition was confirmed by the Tribunal.

12. In the peculiar facts and circumstances of the case, order passed by the Tribunal appears reasonable and requires no interference. From the order of the Tribunal, it appears that the issue is based on finding of facts. Hence, we find no merit in the grievance raised by the assessee.

13. In view of the above, the order passed by the Tribunal is hereby sustained along-with the reasons mentioned herein

14. In the appeal filed by the assessee, the answer to the substantial question of law is in favour of the Department and against the assessee.

15. In the result, the appeal filed by the assessee is dismissed.

I.T.A. No.255 of 2000 (Departmental Appeal)

16. The first grievance of the Department is pertaining to the addition corresponding to the G.P. of sale 7120 grams. of gold jewelry.

17. After hearing both the parties, it appears that during search operation, shortage in the stock of gold was found. The explanation given by the assessee is that the assessee and M/s SRV Enterprises, Meerut, have close business connection and said firm was 100% export unit. On 10.9.1999, one of the partner of M/s SRV Enterprises come to the shop of the assessee at about 08:00 P.M., just before the closing of the shop, and the goods were given to the M/s SRV Enterprises without recording the same in the books of account. Next morning there was a search so, no entry was made by the assessee.

18. By considering the totality of the facts and circumstances of the case, it appears that M/s SRV Enterprises has made entry in their stock register pertaining to the jewelry received from the

assessee's firm. One of the partner has confirmed the same, but another partner who was ignorant about the said event has denied the knowledge of the said transaction, but fact remains that the said stock was duly reflected in the books of M/s SRV Enterprises. When it is so then we find no reason to interfere with the order passed by the Tribunal, the same is hereby sustained along-with the reasons mentioned therein.

19. Next grievance of the Department is pertaining to the addition of Rs.29,49,024 on account of pawning business. During the course of search, a bunch of loose papers was seized. On some of the papers word 'girvi' and description of jewelry etc. were indicated along-with the names of the borrowers. It is the claim of the assessee that they were not engaged in the pawning business. The said business was being done by M/s Mahindra Saraf and all these transactions were recorded on loose sheets. The persons whose names were written on the loose sheets were produced before the A.O. and they confirmed the claim of the assessee that they had no transaction with the assessee's firm.

20. By considering the totality of the facts and circumstances of the case, it appears that only bunch of loose papers was found, the person concerned were examined by the A.O. and they have denied any

transaction with the assessee. During the search, no material was found pertaining to the unaccounted cash or jewelry items mentioned on the loose papers. In these circumstances, it is proved that the assessee was not engaged in the pawning business and no transaction of advance money was taken place. When it is so then we find no reason to interfere with the impugned order passed by the Tribunal, who has rightly deleted the said addition.

21. Next grievance of the Department is pertaining to the undisclosed income on account of deposit of gold jewelry in the name of Sri Dinesh Kumar Gupta, Sri B. S. Tayal and Sri Dharamvir Singh.

22. We have already dealt this issue in the assessee's appeal (supra) and uphold the order passed by the Tribunal. For the similar reason, the ground taken by the Department is dismissed.

23. Last grievance of the Department is pertaining to the addition of Rs.13,55,466/- on account of designed order books.

24. During the search operation, 50 design order books (each having 50 pages) were found from the watchman's room which were seized. The A.O. opined that the books were pertaining to the order received from the customers as on various papers of

the books, the date of receipt and date of deposit along-with design description and quantity etc. were mentioned. On the other hand, assessee explained that it were the rough pages meant to lure a customer when he was dissatisfied with the readily available jewelry in the show room, then the salesman as per requirement, noted down the size, design, weight and advance etc. If the papers were torn off it means that the transaction is confirmed. If the paper was left over in the design book then this can be treated only as a rough work which could not be converted into actual transaction. Nearly 1500 out of 2000 pages were not available in the design book, it means that the same were torn off.

25. After recording the statement of the assessee, the A.O. made an addition of Rs.13,55,466/- as undisclosed income on this count consisting of estimated labour charges of Rs.2,41,838/-; the profit is Rs.8,13,628/-; and the initial unexplained investment estimated @ Rs.3 lakhs. However, the Tribunal has deleted the addition by observing that all the 81 persons whose names recorded in the books were produced before the A.O. and on oath they supported the claim/statement made by the assessee.

26. When persons concerned were examined by the A.O. and they confirmed on oath the claim made by

the assessee, then we find no reason to interfere with the order passed by the Tribunal, the same is hereby sustained along-with the reasons mentioned herein.

27. It may be mentioned that all the grievances in both the appeals are related to the facts and the Tribunal is a final fact finding authority as per the ratio laid down in the following cases:-

(i). M. Janardhana Rao Vs. JCIT (2005) 273 ITR 50 SC; and

(ii). Kamla Ganpati Vs. Controller of Estate Duty 253 ITR 692 SC.

28. In the appeal filed by the Department, the answer to the substantial questions of law is in favour of the assessee and against the Department.

29. In the result both the appeals are hereby dismissed.

Order Date :- _*17*__/__*10*___2014
Dev/-

(Dr. Satish Chandra,J.) (Tarun Agarwala,J.)