

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 1904 of 2022

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RAKESHKUMAR BABULAL AGARWAL
 Versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) AHMEDABAD
 =====

Appearance:

MR FENIL H MEHTA(11663) for the Petitioner(s) No. 1
 MR MR BHATT SENIOR COUNSEL WITH MR KARAN SANGHANI,
 ADVOCATE FOR M R BHATT & CO.(5953) for the Respondent(s) No. 1,2,3,4
 =====

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
 and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 07/03/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 By this writ application under Article 226 of the Constitution of India, the writ applicant – an assessee has prayed for the following reliefs:

“(a) direct the respondent No.1 to accord the approval for release of the seized gold jewellery weighing 524.500 grams of the petitioner.

“(b) quash and set aside the seizure of the gold jewellery being stock-in-trade of business of the petitioner carried out by respondent No.4;

“(c) direct the respondent NO.4 to release the seized gold jewellery of the petitioner.

“(d) any other and further relief deemed just and proper by granted in the interest of justice;

“(e) to provide for the cost of this petition.”

2 The facts giving rise to this writ application may be summarized as

under:

3 It appears from the materials on record that the writ applicant is engaged in the business of Gold Jewellery. The writ applicant filed his return of income for the A. Y. 2018-19 on 29th September 2018 declaring his total income to the tune of Rs.16,41,430/-.

4 It appears that search was carried out in the case of one Shri Sureshkumar under Section 132 of the Income Tax Act (for short, "the Act"). It is the case of the Revenue that one M/s. Parv Kundan and Diamonds Private Limited, in its capacity as the consignor, dispatched a package containing gold jewellery weighing 524.500 grams, through a courier which was to be received by the writ applicant as the consignee. The case of the writ applicant is that he had purchased the gold weighing 524.500 grams from M/s. Parv Kundan and Diamonds Private Limited.

5 The assessment proceedings were carried out in the case of the writ applicant under Section 153C of the Act. In the assessment proceedings for the A. Y. 2018-19, the respondent No.3 added the seized gold jewellery weighing 524.500 grams valued at Rs.12,26,333/- to the total income of the writ applicant treating the same as unaccounted investment vide the assessment order under Section 143(3) read with Section 153C of the Act dated 19th December 2019.

6 The writ applicant is here before this Court with a prayer that the gold jewellery which came to be seized by the Revenue weighing 524.500 grams should be released and handed over to him.

7 We have heard Mr. Fenil H. Mehta, the learned counsel appearing

for the writ applicant and Mr. M. R. Bhatt, the learned Senior Counsel assisted by Mr. Karan Sanghani, the learned counsel appearing for the Revenue.

8 We need to consider the principal argument of Mr. M. R. Bhatt, the learned Senior Counsel appearing for the Revenue that the writ applicant is not entitled to claim back the seized articles i.e. the gold jewellery because the writ applicant is the receiving party and the addition made by the respondent No.3 was made on protective basis on account of the seizure of the jewellery. According to Mr. Bhatt, the sender party (consignor) is M/s. Parv Kundan and Diamonds Private Limited. Addition was made in the hands of M/s. Parv Kundan and Diamonds Private Limited on the basis of such jewellery seized weighing 524.500 gms. resulting into the demand of Rs.34,99,560/- and penalty under Section 271AAC of the Act. To put it briefly and more succinctly, the argument canvassed on behalf of the Revenue is that the jewellery cannot be released as the addition was made on the basis of such jewellery in the case of consignor i.e. M/s. Parv Kundan and Diamonds Private Limited and a demand of Rs.87.79 Lakh is outstanding.

9 The aforesaid stance of the Revenue needs to be considered in light of the order passed by the CIT(A) dated 25th February 2021. We are referring to the order passed by the Assessing Officer in the case of the writ applicant under Section 153C read with Section 143(3) of the Act which was challenged by the writ applicant in appeal before the CIT(A). We quote the relevant observations made by the CIT(A) while allowing the appeal filed by the writ applicant as under:

“12 I have considered the facts, submissions remand report and rejoinder by the appellant. The AO has made the addition of Rs.12,26,333/- treating the gold and jewellery of net weight at 524.5

gms valued at Rs.12,26,333/- as unaccounted investment of the appellant. It has been noticed that Shri Suresh Kumar from M/s.Jay Mataji Air Service and Shri Jagdish Prasad from M/s.Bright Courier were intercepted on 27.10.2017 at the Rajkot Airport during getting the delivery of parcels came through Jet Airways flight from Hyderabad and Delhi. The AO found that these two persons failed to furnish the details of ownership of the parcels and produce the relevant documents to prove the genuineness of the contents of the parcels i.e gold/jewellery. In the statement recorded u/s. 132(4) both the persons have confirmed that the items from the said parcels were to be delivered to the various persons at Rajkot. The said gold jewellery was related to the job work, purchases or repairing purposes. It was also noticed that both the above carriers were in whose possession said parcels were found and seized were not the real owners of the parcels and in the statement recorded they have provided correct details of the sender and receiver parties of such parcels. So proceedings u/s. 153A of IT Act were initiated in both the cases and during the proceedings u/s.153A the satisfaction was drawn to initiate proceedings u/s.153C of IT Act in the case of assessee also.

12.1 Subsequently in the proceedings an enquiry was also carried out from the sender party through commission issued to DDIT (Inv.), Delhi whereby the sender party namely M/s. Parv Kundan & Diamonds Pvt. Ltd. has denied to having any transactions with the assessee.

12.2 On perusal of the statements of the above person and documents submitted by the sender party the AO observed that party has probably failed to produce the form No.402/403 of GST for inter-state transfer of gold on job work/sale. Therefore, the AO inferred that the above party have failed to establish the genuineness of transaction and documents submitted were nothing more than a futile effort based on afterthought for colouring the unaccounted transactions vis-à-vis transfer of unaccounted gold bullion. It was also observed by the AO that assessee has failed to substantiate actual owner of the gold/consigner.

12.3 On the other side the appellant has purchased gold from the above party vide bill No.PKD/GST/001 dated 26.10.2017 and payment made through banking channels. It was also submitted that the purchases made from the above party was duly accounted for in the books of accounts of the assessee. In support the appellant has also submitted the following documents:

- a) Copy of invoice of M/s. Parv Kundan & Diamonds Pvt. Ltd.
- b) Copy of bank statement highlighting the payment made to M/s. Parv Kundan & Diamonds Pvt. Ltd.
- c) Copy of purchase register fro the F.Y. 2017-18.

d) *Copy of audited financial statement for the F.Y. 2017-18.*

e) *Copy of VAT Annual Return and GST Annual Return for the F.Y. 2017-18.*

12.4 *Further, it was submitted that the purchases have been duly accounted for as per the bills received and the material reached through the courier and payments have also made through cheques. The stock was entered in the books of accounts. Therefore, there was no reason to make the addition. It was further pointed out that the provisions of Section 69A are not applicable in the case of appellant. The transactions were business transactions and duly accounted for in the books of accounts, therefore, the pre condition to apply section 69A that those are to be unaccounted transactions does not get satisfy.*

12.5 *Having considered the facts and submissions it was noticed the purchases was recorded in the books of accounts of the assessee vide GST bill dated 26.10.2017, so there was no case of any unaccounted purchases by assessee, The above party in the statement recorded have denied of any transactions with the assessee. This enquiry finding has not been confronted by the AO in the assessment proceedings. Moreover, the copy of the bill of the aforesaid party dated 26.10.2017 referred above has been provided by the appellant to the AO. There was no enquiry about the authenticity of the aforesaid GST bill and the payments made by the appellant to the above party through banking channels. The AO has not given any comments on the GST bill and the payments of purchases made by the assessee to the above party through banking channels for no reasons. The appellant has provided the necessary documents in support which shows that appellant has duly recorded the purchases in the books of accounts. Thus there was no question of any unaccounted transactions which could be considered for addition.*

12.6 *Without prejudice to the above, even if for the sake of arguments the version of the aforesaid party denying the transactions with the appellant before DDIT (Inv.), Delhi is taken to be true, even though the same will not have any adverse action in the case of appellant for the reason that in case the said purchases assumes to have been made from third party other than the above, still it has been recorded in the books of accounts and payment has been made through banking channels. Thus, irrespective of the above version of the aforesaid party the said purchases in the hands of appellant would not be regarded as unaccounted as it has already been recorded in the books of accounts. For such purchases it is not the case of the AO that the purchases was inflated or bogus one. Hence in that case also no disallowance was warranted.*

12.7 In view of the above discussion, the additions made by the AO is not correct more so when the documentary evidences in respect of the transactions were verifiable from the books of the appellant. Thus there was no case made out by the AO about the unexplained investments in the gold jewellery by the appellant. Thus, the protective addition made by the AO does not survive and hence the same is deleted. The ground of appeal is allowed.”

10 Thus, the CIT(A) recorded a finding that the writ applicant herein had purchased gold from M/s. Parv Kundan and Diamonds Private Limited vide the bill dated 26th October 2017 and had also made payment through the banking channels. There is a finding of fact recorded by the CIT(A) which has attained finality as the Revenue not thought fit to challenge the order passed by the CIT(A) before the appellate Tribunal that the purchases were duly accounted in the books of account of the assessee i.e. the writ applicant herein. The CIT(A) further recorded that even if the version of M/s. Parv Kundan and Diamonds Private Limited as regards the transaction with the writ applicant herein before the DDIT (Investigation), Delhi was to be accepted as true, still it would not make any difference because the purchase has been recorded in the books of account of the writ applicant and payment has been made by the writ applicant through banking channel. The CIT(A) came to the conclusion that the said purchase cannot be termed as unaccounted.

11 In view of the aforesaid findings recorded by the CIT(A) and such findings having attained finality as the order of CIT(A) has not been challenged further by the Revenue before the appellate Tribunal, we are left with no other option, but to accept the case put up by the writ applicant that he had purchased the gold in question from M/s. Parv Kundan and Diamonds Private Limited and had also accounted for the same in his books of account. In such circumstances, the Revenue cannot

withhold the seized gold jewellery weighing 524.500 grams. It has got to be released in favour of the writ applicant.

12 In the result, this writ application succeeds and is hereby allowed. The respondent No.1 shall accord the approval for release of the seized gold jewellery weighing 524.500 grams in favour of the writ applicant at the earliest. Direct service is permitted.

CHANDRESH

(J. B. PARDIWALA, J)**(NISHA M. THAKORE, J)**