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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ ITA 441/2011

% Date of Decision: 21st November, 2011

CIT

..... Appellant

Through: Mr.N.P.Sahni, Advocate

versus

YOGESH JAIN

..... Respondent

Through: Mr.Mukesh Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.

1. The present appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) impugns order dated 22.1.2010 passed in ITA No.1814/del/2008 in the case of Yogesh Jain and relates to the assessment year 2005-06.

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the digital data is as per the physical
file and no page is missing.

2. At the outset, we may notice that the Tribunal had also decided ITA No. 1107/Del/2008 which was filed by Yogesh Jain and has upheld addition of Rs.21,35,125/- on the basis of a document "Detailed report of Hyderabad" which was seized in the search. Order of the Commissioner of Income Tax (Appeals) [CIT (Appeals), for short] deleting additions of Rs.8,30,500/- from this amount, has been set aside by the tribunal and the order of the assessing officer making the addition of Rs.21,35,125/- has been affirmed.

3. The tribunal, has deleted addition of Rs.8,03,500/- separately made on account of cash seized at the time of search, unexplained investment in jewellery of Rs.16,11,302/- and addition under Section 68/69A for unaccounted for expenditure/investment on house hold articles, civil work etc. The aforesaid additions made by the assessing officer were deleted by CIT (Appeals) and the tribunal has affirmed/upheld this order of the CIT(Appeals).

4. The concurrent findings recorded by the tribunal and CIT(Appeals) on the said aspects are findings of fact. The question is whether the said findings are perverse and require interference.

5. On the first aspect, learned counsel for the Revenue has submitted that the respondent assessee was not able to explain cash of Rs.8,03,500/- found in his room and at the time of search in his statement under Section 132(4), the assessee had stated as under:-

"A: Part of its withdrawal from the account of same of the family concerns and part of it is on account of cash receipt from our distributors. I am not sure the exact amount which has been withdrawn from bank or received in cash from bank. This can be explained after checking my records."

6. CIT(Appeals) and the tribunal have accepted the explanation of the assessee that the said cash belonged to the firm Harsh Trading Co. of which the assessee was a partner. Cash book of Harsh Trading Co. was seized at the time of search and there is no dispute that as per the cash book, the said firm had sufficient balance to explain the said cash. The CIT(Appeals) and the tribunal have examined the statement recorded under Section 132(4) and felt that there was no contradiction between the statement and the explanation. The tribunal has held as under:-

"11. We have heard both the parties. Contentions advanced before the revenue authorities were reiterated before us. The learned Departmental Representative, on the other hand, relied upon the orders of the revenue authorities. However, after considering relevant material,

we do not find any justification to sustain addition of Rs.8,03,500/-. The claim of the assessee that M/s Harsh Trading Co. had sufficient cash to explain cash of Rs.8,03,500/-, has not been disputed. Further that books of account of the above concern were seized in search and that said concern had shown the cash with profit & loss account and balance sheet in the return filed with the Income Tax Department, is also not in dispute. The case set out by the assessee has been rejected as an after thought as such claim was not made at the time of search in statement U/s 132(4). A part of statement recorded at the time of search has already been reproduced above. The assessee, in our opinion, had clearly stated that cash belonged to family concern and he would give further explanation after checking records. Therefore, clear stand is later taken that cash belonged to M/s Harsh Trading Co., is not contradicting the statement of the assessee U/s 132(4). It is evidence from record that assessee and his family members are running large number of concerns and, therefore, position of exact cash withdrawn may not be remembered to a person under search. Assessee's general statement that cash belonged to family concern, and that position would be explained by checking record, was not unreasonable to be rejected when name of the concern was later given. As there is no challenge that M/s Harsh Trading Co. had sufficient cash in hand as per books to explain cash found in search. We are therefore, inclined to hold that possession of cash has been duly explained. It is nobody's case that cash shown by the firm M/s Harsh Trading Co. was found elsewhere and could not be with the assessee. We also do not agree with other reasons recorded by learned CIT(Appeals) for rejecting assessee's claim. On the facts and circumstances of the case, we hold that cash of Rs.8,03,500/- has been explained and addition of above amount is unjustified. The same is hereby deleted. Accordingly, we accept ground of appeal by the assessee."

7. It cannot be said that the findings of the tribunal are perverse and based on no material or evidence.

8. The assessee was living in the same house in a joint family with his parents and brother. Jewellery belonging to the family members including the assessee was seized. As per the inventory prepared at the time of seizure, jewellery having total weight of 3736 gms. was recorded in the name of the assessee. In the Wealth Tax Return filed by the assessee, jewellery of 1649 gms had been declared and thus the assessing officer treated jewellery weighing 2635 gms as unexplained and unaccounted. CIT (Appeals) and the tribunal have accepted the explanation of the assessee that the excess jewellery of 2635 gms belongs to other family members namely assessee's mother Vidya Devi Jain and his cousin Sajal Jain. The inventory of jewellery seized at the time of search and recorded in the name of Vidya Devi Jain and Sajal Jain was less than the jewellery declared by them in their Wealth Tax Returns. A similar contention was raised before the Assessing Officer but he had rejected the said contention holding, inter alia, that separate inventories were prepared at the time of search and there was no question of reconciliation of excess jewellery which was inventoried in the names of different family members.

9. The CIT (Appeals) accepted the explanation of the assessee and had held as under:-

"The elaborate submissions of the appellant as well as the contention of the AO in the assessment order and remand report were considered. It is an undisputed fact that, in the course of search action, the department has found some excess jewellery in assessee's case and shortage in his mother's hand. However, in the WT assessment the jewellery as declared by her was accepted. There was no attempt to bring the shortage of jewellery in any manner. That means the existence of jewellery as declared by Smt. Vidya Devi Jain was acknowledged by the department. It is established fact that both assessee and his parents are residing in the same premises. In the joint family it is not uncommon to exchange gold ornaments on various occasions. It is not the case that assessee is trying to take the benefit of jewellery belongs to any unrelated person or someone who is staying elsewhere. It is the jewellery of his own mother who is staying the same house as that of appellant. When, on physical inventory during search, found excess jewellery in appellant's bedroom and shortage in mother's room, there is no reason to disbelieve the contention of assessee. There is no material to reject such contention of appellant that the excess represents jewellery of his mother. So far as assessee is concerned the primary duty was discharged by explaining that the excess jewellery belongs to his mother. On the otherhand, the AO could not dismiss the same with any reasons. Hence there is no justification to make addition on account of such excess jewellery. Accordingly, the addition so made towards unexplained investment in jewellery of Rs.16,11,302/- is directed to be deleted."

10. The tribunal has affirmed the aforesaid findings. It is not disputed that list of jewellery was prepared at the time of search and an

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inventories were prepared in different names. As per the said inventory, the jewellery recorded in the name of Vidya Devi Jain was less than the jewellery declared by her in the Wealth Tax Returns. The contention of the assessee was that the assessee and other family members were living in the same house and the excess jewellery in assessee's hand and shortage of jewellery in his mother's hand, as per the declarations made in the wealth tax returns can be explained because the inventory prepared was not correct. Jewellery belonging to the mother was recorded in the name of the assessee in the inventory. The jewellery declared by his mother in the wealth tax return is not disputed. It is not disputed that as per the inventory of the jewellery prepared at the time of search in the name of the mother, there was shortage. In these circumstances, it cannot be held that the order of the tribunal is perverse.

11. With regard to the third addition of Rs.18,30,000/- on account of investment from undisclosed sources, the CIT (Appeals) had recorded as under:-

"I have examined the contents of these papers (photocopies) found in the possession of appellant in search. It contains no names, dates details of payment,

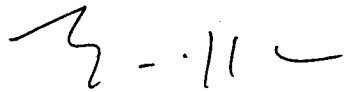
no specific details of materials brought etc. These papers reflect rough estimates on different types of work ranging from civil work, furniture, artwork, inlay work etc. The figures mentioned on these papers are in round some purely on estimate. There was no other evidence to conclude that the appellant has incurred these expenses. No specifics were mentioned to whom payments made or type material purchased. Solely on the basis of these estimated figures addition cannot be made. In case if these works mentioned on these papers has really been carried out as held by AO, then no separate addition is warranted in assessee's case since the value of the valuables inventorised during search were already subjected to assessment in the hands of Sh. S.K.Jain. Accordingly, the addition made in the instant case deserves to be deleted. Consequently the addition under this had is deleted."

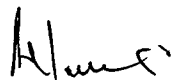
12. The tribunal had agreed with the aforesaid findings after holding as under:-

"18. The revenue is aggrieved and has brought the issue in appeal. We have heard both the parties. We have also seen the seized documents which are available at pages 1 to 13 of the paper book. 'Estimate' word is specifically written on the top of the document. Entries further show that it is terms & conditions for certain civil, electric work etc to be carried. There is no material nor there is any finding that work was actually carried and assessee had in fact spent any amount on any item. In order to invoke provision of section 69/69A, there has to be clear evidence that assessee made investment which has not been explained in terms of the statutory provision. No such case has been made out or established on record. The learned CIT(Appeals), after considering entire material on record, passed a reasonable order and we concur with his view. The addition made having rightly been deleted, this ground of appeal of the revenue is also dismissed."

13. The third finding cannot be categorised as perverse.

14. In view of the aforesaid, we do not find any merit in the appeal and the same is dismissed.


(SANJIV KHANNA)
Judge


(R. V. EASWAR)
Judge

NOVEMBER 21, 2011

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