IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDITION

INCOME TAX APPEAL NO.501 OF 2001

The Commissioner of Income Tax,
Mumbai-VIII ... **Appellant**
V/s.
Rakesh Kumar Arora ... **Respondent**

.....

Mr.Arvind Pinto, Advocate for the Appellant.

Mr.Sashi Tulsiyan with Mr.P.C.Tripathi, Advocate for the Respondent.

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CORAM : S.V.GANGAPURWALA & A.M.BADAR JJ.

DATED : 6th July 2017.

P.C.

1 The Assessing Officer passed an order under Section 158BC of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The Commissioner of Income Tax passed an order under Section 263 of the Act against the said Order of the Assessing Officer passed under Section 158BC, whereby the Commissioner of Income Tax directed the Assessing Officer to enhance the income of the Assessee in respect of block period 01/04/1987 to 11/12/1997 by a sum of Rs.26,67,547/- being value of the seized

jewellery. So also, enhancing the income assessed by the Assessing Officer by further amount of Rs.12,00,000/- on the ground that this amount was assessable as the income of the Assessee under Section 2(24)(iv) of the Act. The Assessee filed an appeal before the Tribunal. Tribunal allowed the appeal. Aggrieved thereby, the present appeal by the Revenue.

2 Mr.Pinto, the learned counsel submits that the Tribunal was not justified in deleting the enhanced income on the count of concealment of income valued, in respect of jewellery seized. According to the learned counsel, Assessee could not give satisfactory explanation with regard to the seized jewellery to the extent of Rs.26,67,547/-. The benefit was given to the Assessee in respect of items of jewellery of which explanation was given by the Assessee. Total jewellery seized was valued more than Rs.52 Lakhs. The learned counsel submits that even the travelling expenses of wife and daughter of the Assessee would come within the meaning of perquisites and the Assessee is required to be taxed for the same. The Tribunal has not properly appreciated the facts as appreciated by the Commissioner (Appeals).

3 We have also heard the learned counsel for the Respondent.

4 The whole matter depends upon the appreciation of the facts on record.

5 So far as the directions of the Tribunal with regard to jewellery for the enhanced income of Rs.26,67,547/- on account of jewellery is concerned, it has been observed that the wife and the daughter of the Assessee were also assessed to the income tax since many years. They had their independent source of income. The jewellery was seized from the joint locker of the Assessee, wife and daughter. The Assessing Officer had accepted the version of the Assessee and the explanation of the wife and daughter of the Assessee. The Tribunal in this regard has observed as under :

> “....We find the approach of the learned CIT to be rather contradictory in this respect. While he has accused the Assessing Officer of having accepted that the Jewellery represented undisclosed income of the assessee's wife and daughter without establishing that they were capable of earning such income. He himself readily believes that the assessee had utilised this concealed income without having carried out any such enquiry in respect of the assessee. We therefore find it to be a simple case of mere substitution of the opinion of the learned CIT for the view as held by the Assessing Officer in the order u/s.158BC.”

6 The Commissioner of Income Tax itself did not carry out necessary inquiry and merely substituted his view for the view of the Assessing Officer.

7 With regard to the travelling expenses, it was observed that the sum of Rs.12,00,000/- was offered for taxation in this respect in the assessment of M/s.D.C.Silk Mills Pvt. Ltd., and was assessed and subjected to tax. It was observed that the Foreign Trips were in connection with the business of the Company. The said finding is a finding of fact. It was also observed that the Assessee's wife and daughter were regular assesses of long standing and had sufficient sources of income of their own to bear their own travelling expenses.

8 In light of above, no substantive question arises.

9 Appeal is disposed of.

(A.M.BADAR J.) **(S.V.GANGAPURWALA J.)**