

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TAXC No. 93 of 2018**

- Assistant Commissioner of Income Tax Circle-2(1), Bilaspur, Chhattisgarh.

---- Appellant**Versus**

- Shri Praveen Saluja, In Front Of Ghosh Nursing Home Tirapara, Bilaspur, Chhattisgarh.

---- Respondent

For Appellant	:	Ms. Naushina Ali, Advocate on behalf of Shri Amit Chaudhary, Advocate.
For Respondent	:	None

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Manindra Mohan Shrivastava, Judge

Judgment on Board**Per P.R. Ramachandra Menon, Chief Justice****15/05/2019**

1. Challenge is at the instance of the Revenue. Grievance is against the order passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur (for short 'the Tribunal') granting relief to the Respondent-Assessee.
2. The factual matrix reveals that assessment finalized in respect of year 2007-2008 as per order dated 31.12.2008 (Annexure A/3) came to be affirmed by the appellate authority vide order dated 30.01.2011 (Annexure A/2). This was sought to be challenged by the Assessee by filing further appeal before the Tribunal which led to passing of the impugned order dated 17.01.2018 (Annexure A-1) whereby relief has been granted to the Assessee directing the Assessing Officer to delete the addition of Rs.1,06,31,248/-. This made the Revenue to challenge the said verdict contending that the unexplained excess stock of gold jewellery/bullion weighing 7.696 Kg valued at

Rs.47,79,969/- ad silver jewellery/bullion weighing 227 Kg valued at Rs.43,13,000/- were found and seized. Apart from these, 146 NSCs in the name of various persons of Saluja family were seized alongwith books of account and documents as per Panchnama. Consequently, assessment was completed for the assessment year 2007-08 under Section 143 (3) read with Section 153-B of the Income Tax Act, 1961 on 31.12.2008 by making addition and fixing the figure as to Rs.1,04,86,158/-.

3. It is in the said circumstances that the above appeal has been filed, suggesting the following substantial questions of law:

"1. Whether in law and on facts & circumstances of the case, the Income-tax Appellate Tribunal is justified both in law and on facts in dismissing the appeal preferred by the Department?

2. Whether in law and on facts & circumstances of the case, the ITAT is justified in upholding the order of CIT(A) deleting the addition of Rs.90,92,969/- made by the AO on account of unexplained excess stock of gold and silver unearthed as a result of search & seizure action in the case of the assessee?

3. Whether in law and on facts & circumstances of the case, the ITAT is justified in upholding the order of CIT(A) that the excess amount of gold and silver of Rs.90,92,969/- found during search & seizure action had already been disclosed under the VDIS*97 Scheme, thereby without properly appreciating the fact that the assesses had failed to reconcile the excess stock during the course of assessment and more so when the failed to establish the authenticity and identity of the ownership of the jewelleries in the individual hands of family members during the assessment proceedings?

4. Whether in law and on facts & circumstances of the case, the ITAT is justified in upholding the order of CIT(A) thereby ignoring the fact that none of the family members of the assessee in their preliminary statement recorded at the time of search stated that any of their jewelries were kept in the stock of M/s Mahendra Jewellers?

5. Whether in law and on facts & circumstances of the case, the ITAT is justified in upholding the order of CIT(A) that disclosure of jewellery in VDIS-97 Scheme,

gives immunity to the assessee in a case where excess stock was detected during search & seizure operation executed on 31.01.2007?

6. Whether in law and on facts & circumstances of the case, the ITAT is justified in upholding the order of CIT(A) deleting the additions of Rs.47,340/- and Rs.6,10,223/-, made by the AO on u/s 69A of the Act on the basis of loose papers found and seized during search & seizure action in the case of the assessee?

7. Whether in law and on facts & circumstances of the case, the ITAT is justified in upholding the order of CIT(A), while CIT(A) erred in appreciating the fact that as per section 106 of Evidence Act where any fact is within the knowledge of any person, the burden of proving that fact is upon him, thus when certain transactions are recorded by the assessee then primary onus of explaining the transactions lies on the assessee and not on the Revenue?

8. Whether in law and on facts & circumstances of the case, the ITAT is justified in upholding the order of CIT(A), while CIT(A) erred in not appreciating the fact that as per the decision of Delhi High Court in CIT Vs. Motor General Finance Ltd. (254 ITR 449) for failure of the assessee to produce documents and facts, adverse inference can be drawn against the assessee?

9. Whether in law and on facts & circumstances of the case the ITAT is justified in confirming the order of Ld.CIT(A) thereby giving a decision in favour of the assessee and against the revenue though there is no nexus between the conclusion of fact and primary fact upon which conclusion is based?

10. Whether in law and on facts & circumstances of the case, the ITAT is justified in confirming the order of CIT(A) who has been erred by giving a finding which is contrary to the evidence on record and findings by the AO, as the CIT(A) has accepted the submission of the assessee and deleted the addition of Rs.97,50,532/- in toto, which is factually incorrect, thereby rendering the decision, which is perverse?"

4. When the matter is taken up for consideration, learned Standing Counsel for the Revenue fairly concedes that the appeal was filed way back in June, 2018. By virtue of the 'new litigation policy' and the circular issued subsequently on 11.07.2018 by the Central Board of Direct Taxes (CBDT), the subject matter of litigation for approaching the High Court shall be of a

minimum value of Rs. 50,00,000/- which requirement is not satisfied in the instant case, as in the present case, the tax effect is to the extent of Rs. 34,01,999/- only.

5. This Court is also aware of the fact that the scope of the said circular was considered by the Apex Court and in terms of the contents of such circular, it has been held that the same is having retrospective application i.e. in respect of the pending litigations as well.
6. In view of the above circumstances, the learned Standing Counsel seeks permission of this Court to withdraw this appeal.
7. It is ordered accordingly. The appeal is dismissed as withdrawn.

Sd/-

(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-

(Manindra Mohan Shrivastava)
JUDGE