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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/49/2022
IA NO. GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, 13 KOLKATA
-VERSUS-
SHRI GOUTAM CHAKRABORTY

BEFORE :
THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYA
Date : 8th May, 2023

Appearance :
Mr. Soumen Bhattacharjee, Adv.
...for appellant
Mr. Avratosh Majumder, Adv.
Mr. Avra Mazumder, Adv.
Mr. Kousheyo Roy, Adv.
Mr. Suman Bhowmick, Adv.
Mr. Samrat Das, Adv.
...for respondent

The Court : - This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 23/6/2021 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (Tribunal) in ITA/13/Kol/2019 for the assessment year 2017-18. The revenue has raised the following questions of law for consideration :-

- i) Whether the Learned Tribunal has committed substantial error in law by dismissing the appeal of the Revenue thereby deleting the additions made by the Assessing Officer under Section 69A of the Income Tax Act, 1961 on account of seized gold bullion and ornaments.
- ii) Whether the order passed by the Learned Tribunal is perverse in not considering the factual trial of the

transaction where identity of the original purchaser as well as the identity of the seized gold remain undisclosed.

- iii) Whether the Learned Tribunal has committed substantial error in law by not considering that the copy of invoice of purchase produced by the assessee is having a receipt dated 04.07.2016 which is not earlier than the date of seizure of gold bullion on 01.07.2016.
- iv) Whether the Learned Tribunal was committed substantial error in law by not considering the applicability of section 292C(1) of the Income Tax Act in the present case because the assets/gold were found at the custody of the assessee when he was caught by the search party and the assessee failed to establish the actual ownership of the assets inspite of opportunity given to him.
- v) Whether the Learned Tribunal has committed substantial error in law by relying the observations of CIT(A) with regard to Section 132(I)(iii) read with section 132(1)(C) of the Income Tax Act, wherein the ownership of the asset has not been established by the assessee.

Heard learned Counsel on either side.

The revenue preferred the appeal before the learned Tribunal challenging the order passed by the Commissioner of Income Tax, Appeals (13), CIT(A) dated 30th October, 2019. The said appeal was filed by the assessee challenging the assessment order made under Section 143(3) of the Act declaring the total income of the assessee at

Rs.6,64,71,382/- and making an addition of Rs.6,41,92,737/- under Section 69A of the Act as undisclosed and unexplained income of the assessee being gold and jewellery which were seized. The contention of the department before the Tribunal was that the assessee did not produce any identification number for gold, bullion and ornaments and explanation given by the various parties along with evidences which were produced by them should not have been accepted by the CIT(A). It was further contended that in absence of cogent material to rebut the presumption the addition made by the assessing officer ought to have been sustained by the CIT(A). The assessee resisted the submission by contending that on the date of search and seizure of the gold and the ornaments convincingly explained the source of the same and had submitted the gold and jewellery were being brought from Chennai to Calcutta for manufacturing of ornaments and for polishing of some of the ornaments. Further this statement was duly corroborated by each of the parties, who had given this gold and jewellery to the assessee for manufacturing of jewellery or for re-polishing of jewelleries etc. Further the assessee contended that in response to the notices issued under Section 131 of the Act the parties who were noticees before the assessing officer had confirmed the statement given by the assessee and there was no adverse material in the hands of the assessing officer to make addition in the hands of the assessee.

The various factual findings recorded by the CIT(A) were referred to by the assessee and the assessee sought to sustain the said order. The learned Tribunal first noted the facts of the case and the chain of events

and found that the assessee was a partner in a firm which carried on the business of manufacturing gold ornaments and they have been regularly receiving orders from one B B Jewellers, Chennai and others and the gold in question was handed over to the assessee by B B Jewellers. The Tribunal found that the original challans seized with the gold, bullion and gold jewellery supported the claim of the assessee. Further, it is found that the claim of the assessee has been supported and proved by independent verification done by the investigation wing with third party jewellers in Chennai. The only reason based on which the assessing officer made the addition was on the ground that the gold, bullion lacked distinctive identification numbers on the challans. The correctness of this finding was considered by the learned Tribunal and the learned Tribunal agreed with the finding recorded by the CIT(A) at page 4 of the order dated 30th October, 2019. The Tribunal has extracted the relevant paragraphs at the said order. From paragraph 8 of the impugned order we find that the factual findings recorded by the CIT(A) was not controverted by the department and the Tribunal having been satisfied with the factual conclusion arrived at by the CIT(A) agreed with the same and dismissed the revenue's appeal.

The matter being entirely factual and the CIT(A) and the Tribunal having concurrently held in favour of the assessee on facts, we find no question of law, much less substantial questions of law, arising for consideration in this appeal.

Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant revenue, places reliance on the decision of the Hon'ble

Supreme Court in the case of Chuharmal s/o Takarmal Mohnani -vs- Commissioner of Income Tax, M.P. Bhopal, (1988) 3 SCC 588. On going through the facts of the said case which are noted by the Hon'ble Supreme Court in paragraph 6 of the judgement, it was a case where the petitioner did not adduce any evidence, far less discharged the onus of proving that the wrist watch in question did not belong to the petitioner. As noted in the preceding paragraph, the CIT(A) on an examination of the facts found that the stand taken by the assessee that the gold and ornaments were given to him for the purpose of making jewellery and for polishing was established and proved. Therefore, the decision in Chuharmal s/o Takarmal Mohnani (supra) relied on by the revenue would not lend any support to their case.

In the result, the appeal is dismissed.

The stay application being GA/2/2022 is also dismissed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)