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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 50/2019**

PR. COMMISSIONER OF INCOME TAX -2 , NEW DELHI

..... Appellant

Through: Mr. Shlok Chandra, Advocate

Versus

ROSHAN AGARWAL

..... Respondent

Through: Mr. Ved Jain and Mr. Nischay
Kantoor, Advocates

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV**

ORDER

06.03.2024

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1. The appellant seeks to assail the judgment of the Income Tax Appellate Tribunal [“ITAT”] dated 04 July 2018.

2. We had by our order dated 22 January 2019 admitted the appeal on the following question of law:-

“Did the lower Appellate Authorities err in law or act unreasonably in holding that unexplained investment of Rs.4,61,12,100/- brought to tax by the AO in the facts of this case was unwarranted and not justified in law”.

3. However, both the Commissioner of Income Tax (Appeals) [“CIT(A)”] as well as the ITAT have concurrently found that the consignment of gold bars formed the subject matter of the declarations made before the Income-tax Settlement Commission [“Settlement Commission”]. This is evident from paragraph 3 of the order of ITAT, which is reproduced hereinbelow: -



“3. We have heard both the sides and perused the relevant material on record. It is an undisputed fact that during the course of search conducted in 2012, 100 gold bars weighing 1 kg. each were found. 43 certificates of gold bars dated 22/23.09.2009 were seized. The assessee made out a case before the authorities that they declared income in respect of 114.5 kgs. of gold during the course of earlier search in 2009 before the Settlement Commission. A copy of order passed by the Settlement Commission was produced before us, from which it is evident that both the assessee under consideration declared income in the speculation of commodities etc. and also investment of such income in 114 (33+81) gold bars each weighing 1 kg. As against the availability of such 114 kgs. of gold with them, the total amount of gold bars found during the course of search is 100 bars of 1 kg. each. The assessee not only declared income before the Settlement Commission, but the fact that the gold bars were purchased out of it has also been recorded in the Settlement Commission's order. It is not disputed that such order passed by the Settlement Commission has attained finality. This, therefore, establishes that both the assessee declared income during the course of original search in 2009 in respect of 114 gold bars. That apart, Wealth Tax returns showing so much gold were also filed. Now, in the instant search, only 100 gold bars were found, which number is patently less than the gold bars declared by the assessee during the course of earlier search with the same weight. When the amount of income was offered for taxation in the search carried out in 2009, in our considered opinion, the AO could not have once again made a fresh addition in respect of 100 gold bars found at the time of later search carried out in January, 2012, simply on the ground that the gold bars found in the locker were physically different as these were purchased at a later date from those declared before the Settlement Commission. The assessee has specifically submitted that the gold bars earlier declared were exchanged later on with the new gold bars which were placed in the bank locker and found at the time of search. The AO simply dislodged the claim of the assessee on the premise that they could not place on record any evidence of such exchange. He has not pointed out anywhere in the orders that the investment in gold bars surrendered by the assessee during the course of the earlier search was liquidated and the amount so realized was utilized elsewhere. Once the factum of the assessee having purchased the gold bars during the course of search in 2009 got established, for which income was also offered for taxation as well, in our considered opinion, no fault could be found with the Id. CIT(A) in accepting the assessee's explanation that 100 gold bars found from the locker pursuant to search in 2012 came out of the amount surrendered in the search carried out in 2009. We, therefore, countenance the view taken by the Id. CIT(A).”



4. Since the fact that the impugned gold bars which were attributed to the respondent-assessee formed the subject matter of proceedings before the Settlement Commission and nothing contrary to the above has been shown to us, we find no occasion to interfere with the judgment rendered by the ITAT.

5. Consequently, the appeal fails and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 06, 2024

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