

आयकर अपीलीय अधिकरण
मंबई पीठ " एच". मंबई पीठ
श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " H ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं. 2558/मुं/ 2022 (नि.व. 2014-15)
ITA NO. 2558/MUM/2022(A.Y.2014-15)

Kishori Dwarakanath Pandey,
604, Dahisar Jaya Apartment CHSL,
Ramkumat Thakur Road,
Dahisar East, Mumbai – 400 068.

PAN: AHSP-7195-A

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer -32(2)(2),Mumbai,
Room No.304, Kautilya Bhavan,
Bandra Kurla Complex, Bandra East)
Mumbai – 400 051

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri Prateek Jha & Prayag Jha

प्रतिवादी द्वारा/Respondent by : Shri Tejinder Pal Singh Anand

सुनवाई की तिथि/ Date of hearing : 03/01/2023

घोषणा की तिथि/ Date of pronouncement : 24/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 10/08/2022 for the assessment year 2014-15.

2. Shri Prateek Jha appearing on behalf of the assessee submitted that the assessee in appeal has assailed the impugned order primarily on two counts;

(i) Confirming addition of Rs.42,69,550/- u/s. 69A of the Income Tax Act, 1961 [in short 'the Act'];

(ii) Rejection of assessee's claim of deduction u/s. 54F of the Act.

3. The Id. Counsel for the assessee submits that the assessee is a teacher and takes tuition classes. During the period relevant to assessment year under appeal, the assessee jointly with her husband purchased residential flat vide registered agreement dated 11/12/2013 (at pages 16 to 25 of the paper book). The assessee in order to source the funds for purchase of flat sold her gold jewellery for a consideration of Rs.42,69,550/- and had also prematurely encashed fixed deposits to the tune of Rs.22,00,000/- in the joint name with her husband. The assessee filed her return of income for the impugned assessment year declaring total income of Rs.8,49,778/- on 24/03/2015. During the course of scrutiny assessment proceedings the assessee explained the source of fund for purchase of immovable property in the joint names with her husband. The assessee made claim of deduction u/s. 54F of the Act during assessment proceedings. Admittedly, the claim of deduction u/s. 54F of the Act was not made in the return of income or by way of revised return of income.

3.1 The Id. Counsel for the assessee submits that during scrutiny assessment proceedings the assessee furnished copies of sale invoices issued by Kaveri Jewellers to substantiate sale of gold jewellery. The assessee had also furnished copy of the bank statement, wherein the amount from sale of

jewellery was credited. The assessee had issued cheque towards part consideration for purchase of residential property. The Assessing Officer without considering the aforesaid evidences raised the query as to how the gold jewellery was acquired. The assessee explained that the gold jewellery was received by the assessee from her mother at the time of her marriage in 1985 and some of the gold jewellery was received at the time of death of her mother in 2005. The Assessing Officer disbelieved contentions of the assessee and made addition of the amount contributed by assessee from sale of gold jewellery u/s.69A of the Act. The Assessing Officer further rejected assessee's claim of deduction u/s.54F of the Act following the ratio laid down by the Hon'ble Supreme Court of India in the case of Goetze (India) Ltd., 284 ITR 323. Aggrieved by the assessment order dated 27/12/2016, the assessee carried the issue in appeal before the CIT(A). The CIT(A) also rejected the contentions of assessee and upheld the assessment order. Hence, the present appeal.

3.2 The Id. Counsel for the assessee submits that there is no impediment for the Appellate Authorities to admit fresh claim not made in the return of income. Therefore, the CIT(A) ought to have admitted the ground raised by the assessee claiming deduction u/s. 54F of the Act.

4. Per contra, Shri Tejinder Pal Singh Anand representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submits that the assessee has failed to explain source of acquisition of gold jewellery. The assessee had not filed any return under Wealth Tax Act to show possession of gold jewellery.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee purchased a residential flat in the joint name with her husband. The registered agreement for sale of flat dated 11/12/2013 is available on record and has not been disputed by the Revenue. The assessee in order to contribute towards the consideration for purchase of flat sold her gold jewellery for a total consideration of Rs.42,69,550/-. To substantiate sale of gold jewellery, the assessee had filed copy of invoice from Kaveri Jewellers, the same are at pages 9 to 13 of the paper book. The gold jewellery was sold in the month of June/July 2013. The amount from sale of jewellery was deposited in the bank account of the assessee with UCO Bank. The assessee had furnished statement of accounts at pages 14 and 15 of the paper book to show sale of jewellery as well as issue of cheque in the name of Better Builders & Developers Pvt. Ltd. from whom the assessee had purchased flat vide registered agreement. The Assessing Officer questioned source of purchase of jewellery. The assessee explained that the gold jewellery was acquired by the assessee at the time of her marriage in 1985 and at time of demise of her mother in 2005. It is a well accepted norm that at the time of marriage, the bride gets jewellery as gift from her parents as well from close relatives and friends. Similarly, at the time of demise of parents the married daughters get share in the jewellery of her mother. The assessee has given plausible explanation for acquiring the jewellery. Taking into consideration entirety of facts, the addition made u/s. 69A of the Act is directed to be deleted. The ground No.2 of appeal is allowed.

6. The assessee has claimed deduction u/s. 54F of the Act in respect of sale of long term capital asset (jewellery) for investing in purchase of residential flat. It is an undisputed fact that the assessee has not claimed deduction u/s.

54F of the Act in the return of income. The claim was first made in the course of scrutiny assessment proceedings. The Assessing Officer rightly rejected claim of assessee in the light of decision rendered by Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra). However, the Hon'ble Apex Court has clarified that the powers of the Appellate Authorities are not impinged to admit additional claim of the assessee. The assessee has drawn our attention to the sale invoices vide which the assessee had sold gold jewellery. A perusal of the same shows that the assessee has sold gold jewellery in the month of June/July 2013. The assessee had also drawn our attention to the bank statement, which clearly show that the assessee had issued cheque to the Builder in the month of June/July 2013 immediately after sale of gold jewellery and the registered agreement was executed in December, 2013. The proximity of the sale of gold jewellery and payments made towards purchase of flat establishes live nexus between sale of gold jewellery and purchase of flat. Therefore, we hold that assessee is eligible for claiming deduction u/s. 54F of the Act. The assessee succeeds on ground No.4 of the appeal.

7. The other grounds i.e. ground No.1,3,5 & 6 are the grounds raised in support of the ground No.2 and 4, hence, requires no separate adjudication.

8. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on Tuesday the 24th day of January, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 24/01/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai