

## **Mere shortage in jewellery found during survey wouldn't be deemed as undisclosed investment by jeweller**

**Summary – The Kolkata ITAT in a recent case of Subhas Brothers Jewellers (P.) Ltd., (the Assessee) held that merely because shortages had been noticed as compared to books, it could not be said that any undisclosed investment/money was made by assessee.**

### **Facts**

- The assessee-company filed its return of income disclosing a total income of Rs. 8.19 lakhs.
- During the course of survey certain discrepancies like deficit in cash, stocks etc. was noticed. Accordingly the assessee while filing the return of income admitted Rs. 14 lakhs as additional income under the income from other sources.
- The Assessing Officer not being satisfied with the explanations offered by the assessee, made additions under section 69A.
- On appeal, the assessee contended that section 69A had been wrongly applied by the Assessing Officer. It had no application in the facts of the case of the assessee, as cash found is part of cash balance as recorded in books. Cash not found but which existed as per cash book was utilized to do business and income of Rs. 14 lakhs was mutually discussed with search party and admitted as income which did appear in accounts and the Assessing Officer had accepted the same.
- The Commissioner (Appeals) thus deleted the addition holding that the additions made were irrational and unjustified.
- On further appeal:

### **Held**

- It was found that in the case of the assessee during the course of survey operations, certain shortages were noticed. These shortages pertained to cash in hand, gold ornaments, diamond items and silver items. Since shortages have been noticed as compared to books it cannot be said that any undisclosed investment/money was made by the assessee. Thus, the finding of the Commissioner (Appeals) that no addition can be made as undisclosed investment made by the assessee was right. In such circumstances addition under section 69A is not warranted.
- As regards cash shortages, shortage has been found as compared to books. The cash might have been used for making unaccounted purchases or other purposes for which no cogent material is available. In such circumstances merely on conjectures or surmises addition under section 69A cannot be made. As regards shortage in gold ornaments 22 carat and the gold ornament that is said to have given to sister concerns, addition to the extent of Rs. 17.28 lakhs and Rs. 5.13 lakhs respectively had been made. In this regard it was noted that the shortage in the above gold

ornaments cannot be treated as undisclosed investment and the shortage can at best be treated as undisclosed sales. In such circumstances only profit elements arising out of the said sale can be added in the hands of the assessee and not the entire undisclosed sales. In this regard the assessee has offered an addition of Rs.14 lakhs. The Commissioner (Appeals) has accepted the same as sufficient. Thus, the finding of the Commissioner (Appeals) that the offer made by the assessee in this regard suffice the ends of justice is proper.

- The shortages in gold ornaments, diamond and silver items can at best be treated as undisclosed sales. In such circumstances the entire amount cannot be added. Therefore, an estimated addition of 10 per cent profit on the above sales would be sufficient and would serve the ends of justice. Accordingly the order of the Commissioner (Appeals) was to be confirmed, with only modification that 10 per cent profit may be added for the items mentioned above.
- In the result, the appeal of the revenue stands partly allowed.