

## **Unexplained Jewellery placed in locker shall be assessed in year of opening of locker by revenue**

**Summary – The High Court of Bombay in a recent case of Ajay R. Dhoot, (the Assessee) held that In terms of section 69A, assessee would be treated in possession of jewellery, from date of opening of locker, i.e., when jewellery was found and seized by revenue, and would be added to his income accordingly**

### **Facts**

- A search action under section 132 on 19-3-1986 was carried out at assessee's premises where a locker key belonging to assessee's aunt was seized. On 28-7-1986, the locker of assessee's aunt was opened by the revenue. The jewellery valued in the aggregate of Rs. 2.53 lakhs was found in her locker from which jewellery valued at Rs. 2.41 lakhs was claimed to be belonging to the assessee. The assessee submitted that said jewellery was received as gift by him from one 'D'.
- The Assessing Officer did not accept the assessee's explanation of source of the jewellery found. Consequently, he added the cost of the jewellery as deemed income under section 69A.
- The Commissioner (Appeals) upheld Assessing Officer's order.
- On appeal, it was submitted by assessee that the addition of deemed income under section 69A to be made on account of jewellery found on opening of the locker on 28-7-1986 could only be made in the assessment year 1986-87 and not for the relevant assessment year. However, the Tribunal upheld Assessing Officer's order.
- On appeal:

### **Held**

- Section 69A provides that where in any financial year, an assessee is found to be the owner of any jewellery which is not recorded in the books of account and the explanation offered by assessee about the nature and source of acquisition is not satisfactory, then value of such jewellery would be deemed to be income of the assessee in the year in which the assessee was found to be the owner of the jewellery. Admittedly, the locker key which was seized by the department during the course of the search on 20-3-1986, did not belong to the assessee. Thus, on that date the quantum of jewellery in the locker of, aunt of assessee which belonged to the assessee could not be ascertained/forecast. The normal presumption would be that the jewellery in the locker would belong to her and not to another person. Therefore, it is only on opening of the locker on 28-7-1986, did the revenue find the jewellery and also that some part thereof, belonged to the assessee as claimed by the assessee and as also declared by in her assessment proceedings as recorded in the order of her Assessing Officer. Thus it is only in the previous year relevant to the assessment year 1987-88, i.e., financial year 1-4-1986 to 31-3-1987 that the assessee was found to be owner of the jewellery in the locker.

- Therefore admittedly the jewellery was found and seized only on the opening of the locker on 28-7-1986. The assessment year in the present case is correctly the assessment year 1987-88.
- It was urged by the assessee that the jewellery found in the locker was sourced from the amounts received by the assessee in cash from company in which he was Director and the same was a subject matter of consideration by the revenue for the assessment year 1986-87. Thus charging of tax in the assessment year 1987-88 would lead to double taxation.
- The aforesaid explanation was not acceptable for the reason that at no point of time it was claimed that the jewellery found in the locker was sourced from the cash received by assessee. The case of assessee has always been that the jewellery found in the locker was a gift received by him on 27-1-1986 from his aunt. This theory of gift being received from his aunt was not accepted by the authorities under the Act including the Tribunal. Thus the deemed income being the cost of jewellery found in the locker of aunt who was being assessed to tax in assessment year 1987-88 cannot be found fault with.