

Submission of evidence during seizure isn't necessary; can be done in assessment proceeding as well: HC

Summary – The High Court of Bombay in a recent case of Rakesh Ramani, (the Assessee) held that where in course of block assessment, assessee brought on record various documents to establish that jewellery seized from him actually belonged to his employer, impugned addition made in respect thereof merely on ground that assessee in course of statement made under section 132, had admitted that said jewellery belonged to him, could not be sustained

Facts

- The assessee was spotted with a suitcase under suspicious circumstances by the Police. On examination of the suitcase, the Police found it contained jewellery valued at Rs. 36.90 lakhs. Thus, the assessee was asked to produce documentary evidence in support of the same.
- The Police authorities also intimated said facts to the revenue authorities at Consequent thereto, the revenue authorities searched the suitcase on the same day and also recorded the statement of the assessee under section 132 of the Act.
- Consequent thereto, the jewellery found in the suitcase was seized and the assessment proceedings for the block period commenced against the assessee. During the course of the block assessment proceedings, the assessee pointed out that he was a salesman working with one 'P', and the seized jewellery belongs to his employer.
- He also produced various evidences in support of his contention that the seized jewellery belonged to his employer 'P' Jewellers. However, the Assessing Officer did not accept the evidence filed by the assessee on the ground that it was an afterthought. He, finally passed assessment order holding that the jewellery valued at Rs. 36.90 lakhs should be treated as unexplained income of assessee under provisions of section 69A.
- In appellate proceedings, the assessee brought on record issue voucher of 'P' Jewellers, return filed by assessee declaring income from salary received from 'P' Jewellers, copy of their stock register *etc.* in support of its claim. The Commissioner (Appeals) having accepted evidence on record, deleted addition made under section 69A.
- The Tribunal upheld the order passed by the Commissioner (Appeals).
- On revenue's appeal:

Held

- There can be no dispute that an appeal on questions of fact would be entertained if the same is perverse. However, where on the finding of fact, the authorities have taken a possible view then it would not give rise to any question of law. In the present case, the entire grievance of the assessee that the impugned order is perverse stands nullified by the fact that the first ground of appeal taken by the appellant is that "it is doubtful whether the jewellery belongs to assessee or assessee's employer". Thus, even the revenue is not certain about the ownership of the seized jewellery.

Besides, the entire basis of the revenue's case is the statement made on the date of the seizure. The voluminous evidence filed by the respondent during the course of the assessment proceedings has been completely ignored on the ground that the same was not produced when the seizure was made.

- There is no requirement in law that evidence in support of its case must be produced by assessee only at the time when the seizure has been made and not during the assessment proceedings. Besides, the reference to the newspaper report in the impugned order was not the basis of the decision, it was referred to as it corroborated the respondent's claim that documents given to the Police at the time of seizure of the jewellery indicated that they belonged to his employer in Mumbai. However, the basis of the decision was the evidence led by the respondent during the assessment proceedings which established that the jewellery belonged to his employer 'P' Jewellers.
- Therefore, the view taken by the two Authorities namely the Commissioner (Appeals) as well as the Tribunal is a possible view on the facts as existing. Therefore, the question of law does not arise to any substantial question of law.
- Accordingly, the appeal is dismissed.