

IN THE HIGH COURT OF DELHI

ITA NO.2070/2010

COMMISSIONER OF INCOME TAX, DELHI

Vs

MAHESH KUMAR

A K Sikri and Siddharth Mridul, JJ

Dated: September 20, 2011

Appellant Rep by: Mr. Suruchii Aggarwal, Adv

Respondent Rep by: None

JUDGEMENT

Per: A K Sikri:

1. Notice was issued in this Appeal on the following two questions proposed in the Appeal:

(i) Whether the ITAT could uphold the deletion of Rs. 2,52,021/- unexplained investment in Jewellery?

(ii) Whether the ITAT could uphold the deletion of Rs. 2,17,100/- and Rs. 7,70,000/- on account of unexplained investment in house property at Pitampura and godown at Bakoli respectively?

2. A search and seizure operation was conducted at the premises of the Respondent-Assessee wherein some cash and jewellery was found and seized. The jewellery found was to the extent of Rs. 12,12,891/-. The Assessee had submitted his explanation with regard to the jewellery vide letter dated 12th March, 2007. However, during the course of post search enquiry he stated that there was an excess jewellery to the tune of Rs. 2,52,021/-, which may be considered unexplained investment in purchase of jewellery and surrendered that amount. On this ground addition to the extent of Rs 2,52,021/- was made by the Assessing Officer under Section 69 of the Income Tax Act. Before the CIT(A), however, the Assessee gave his explanation about the source of the said jewellery as well. In addition, he relied upon the Board's Instruction No.288/63/92-IT (Inv.) dated 11th June, 1994 regarding the possession of jewellery and submitted that on the basis of the Board's instructions the jewellery of such a low value is not to be seized. Accepting this contention the CIT(A) deleted the said addition which is confirmed by the ITAT.

3. Learned Counsel for the Revenue could not point out as to how the aforesaid order was not in conformity with the Board's Instruction No. 288/63/92-IT (Inv.). We are, therefore, of the opinion that no question of law arises on this aspect.

4. Second addition made was on account of unexplained investment in house property at KU-81, Pitampura and Godown at Bakoli. Here again, there is no much of the difference between the valuation shown by the Assessee of these properties and valuation arrived at

by the DVO. It is less than 10%. The CIT(A) and ITAT, in these circumstances, stated that when difference is between 10% to 15% no addition should be made as per the various judgments on this issue. No question of law arises. Dismissed.