

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1778/Del/2012
(Assessment Year: 2006-07)

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| Nitin Manaktala, C-1, Streel, 6F, Sainik Farms, New Delhi PAN:AAGPM5423M (Appellant) | Vs. | DCIT, Central Circle-13, New Delhi (Respondent) |
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ITA No. 1779/Del/2012
(Assessment Year: 2006-07)

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| Pooja Mantaktala, C-1, Street, 6-F, Sainik Farms, New Delhi PAN:AIBPM4313M (Appellant) | Vs. | DCIT, Central Circle-13, New Delhi (Respondent) |
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| Assessee by : | Sh. Ajay Wadhwa, Adv |
| Revenue by: | Sh. RS Rawal, CIT DR |
| Date of Hearing | 19/12/2016 |
| Date of pronouncement | 17/02/2017 |

ORDER

PER PRASHANT MAHARISHI, A. M.

ITA No. 1778/Del/2012
(Assessment Year: 2006-07)
Nitin Mantaktala Vs. DCIT,

1. This is the appeal filed by the assessee against the order of the Id CIT(A)-I, New Delhi dated 09.02.2012 for the Assessment Year 2006-07 raising following ground of appeal :-
 - "1. That the order of the Id Commissioner of Income Tax (appeals) is bad in law and on facts.
 2. That the Id CIT(A) has erred in upholding the addition made by the Assessing on account of unexplained investment (after reducing the value of jewellery of 100 gm per male as per Board instruction no 1916 dated 11.05.1994) under the provision of section 69 of the income tax Act, 1961.
 3. That the Id CIT(A) has erred in upholding the disallowance a claim u/s 80C of the Income Tax Act, 1961 for sum of Rs. 20000/-."
2. The ground No.1 is general in nature therefore same is dismissed.

3. Ground No. 2 of the appeal of the assessee is against the order of the Id CIT(A) wherein an addition of Rs. 923000/- was reduced by only 100 grams instead of deleting and thereby confirming the balance jewellery as undisclosed income of the assessee. During the course of search u/s 132 of the Act on 17.01.2006 jewellery amounting to Rs. 1505075/- was found in case of the assessee and his wife Pooja Mantaktala. During the course of search the assessee submitted that it was received on various social occasion. For this submission the assessee substantiated by producing letters of the gift and also the affidavit of the mother in law of the wife of the assessee. The Id Assessing Officer rejected the submission for the reason that since the jewelry was neither disclosed in wealth tax nor in income tax in the statement of affairs it was added as undisclosed income in the hands of the assessee to the extent of Rs. 923000/-. Similarly a sum of Rs. 1050000/- was added as unexplained income in the hands of the wife of the assessee Ms. Pooja Manaktala. On appeal before the Id CIT(A), he granted deduction only 100 grams of gold jewellery in case of the assessee as per Board Instruction No. 1916 dated 11.05.1994. Consequently, the assessee is in appeal before us.
4. The Id AR submitted before us that the assessee and his wife from close relatives on the occasion of their marriage on 06.12.2011 received the said jewellery. It was further submitted that as the jewelry held by the assessee was less than the amount chargeable to Wealth Tax, the return was not filed and further, as the assessee is not required to maintain statement of affairs, it was not shown. He submitted that against this, he has submitted the confirmation of the parties' form that the gift has been received and the same is disregarded. He referred to page 26 and 27 of the paper book to show that details. He further referred to the affidavit of the mother of the assessee who was an income tax assessee showing gift received. He further explained that a sum of Rs. 5 lakhs was withdrawn from the saving bank account of the mother of the assessee for purchase of jewellery etc at the time of marriage. He vehemently explained that family status of the assessee and the instruction No. 1916 dated 11.05.1996 squarely covers the issue in its favour. He therefore, submitted that the Id CIT(A) has erred in confirming the addition.

5. Ld DR relied upon the order of the Id Assessing Officer and Id CIT(A) and further submitted that the assessee's family status can be seen from the fact that he was earning salary of only Rs. 45000/-.
6. We have carefully considered the rival contentions. During the course of search jewellery weighing 1036 gm was added in the hands of the assessee amounting to Rs. 923000/- and jewellery 1330 gms amounting to Rs. 1050000/- was added in the hands of the wife of the assessee. During the course of search the statement of the assessee was recorded wherein it was submitted that the locker No. 375 contains the jewellery received by wife of the assessee during the course of search. For this, the assessee submitted item wise list of jewellery and also the name of the relatives, their relationship with the assessee who gave the gift at the time of marriage. Regarding the gift received from the mother of the assessee confirmatory affidavit with the quantity of gold gifted was also mentioned. The Id lower authorities have not looked at the confirmation letters but has simply proceeded to make and confirmed the additions. In view of the fact that assessee has received gold jewellery on occasion of his marriage which is confirmed by the persons who gifted the same and further looking to the family status of the assessee who is belonging to a business man family residing at Sainik Farms and wife of the assessee belonging to non-resident Indian family based in Nairobi and whose father is garment exporter and grandfather was in the Ministry of Himachal Pradesh, it is not unreasonable to have the quantity of gold in his possession. Further, it was unexpected to reject the contention of the assessee merely for non-filing of return of wealth tax as well as the statement of affairs under the income tax act when assessee is not legally obliged to. In view of this, we delete the addition made by the Id AO and reverse the order of Ld CIT (A) . In the result ground no 2 of the appeal of the assessee is allowed.
7. Ground No 3 of the appeal of the assessee is against the disallowance of claim of deduction u/s 80 C of the act of Rs 20,000/- . the claim of the assessee was for Rs 50,000/- out of which Rs 30,000/- was allowed by the Id AO for the reason that it should be out of income chargeable to tax, which was confirmed by CIT (A).

8. LD AR submitted that there is no condition as envisaged by the lower authorities. He submitted plethora of case laws to support his contention. Ld DR relied up on the orders of lower authorities.
9. We have carefully considered the rival contentions. There is divergent view of the legal contentions raised by the parties and we are duty bound to take the view, which is favorable to assessee. Therefore respectfully following the decision in case of Rajkumar Dewan & Sons V CIT 277 ITR 561 {All} where in it has been held that

“6. We find that this court in I. T. R. No. 14 of 1989, CIT v. Ramesh Chandra Khandelwal [2005] [273 ITR 363](#) decided on December 17, 2004, has held that it is normal behaviour of an individual's private life that all incomes are amalgamated and spent. The Income-tax Act does not require that the investment in NSC should be made from the same amount which an assessee had earned by way of income. It is always open to an assessee to either spend the amount earned by him as an income which is more than the amount invested under section 80C. The investment in NSC can be said to be out of income of the previous year. This court has agreed with the view taken by the Orissa High Court in the case of CIT v. N. Benugopal Choudhury [1991] [187 ITR 614](#), the Kerala High Court in the case of CIT v. Jobie K. John [2000] [245 ITR 258](#) and the Punjab and Haryana High Court in the case of Ravi Kumar Mehra v. CIT [1988] [172 ITR 108](#). This court had respectfully dissented with the view taken by the Orissa High Court in the case of CIT v. Usharani Panda (Dr.) [1995] [212 ITR 119](#) and CIT v. Ram Mohan Rawat [2002] [255 ITR 555](#) (Raj).

7. For the reasons given in the case of CIT v. Ramesh Chandra Khandelwal [2005] [273 ITR 363](#) (All) with which we respectfully agree.”

We allow the claim of the assessee fully for deduction u/s 80 C of the act reversing the orders of lower authorities. The Ground No 3 of the appeal of the assessee is allowed.

10. *In the result, appeal of the assessee is partly allowed.*

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(Assessment Year: 2006-07)

Pooja Mantaktala,
C-1, Street, 6-F,
Sainik Farms, New Delhi
PAN:AIBPM4313M
(Appellant)

Vs.

DCIT,
Central Circle-13,
New Delhi
(Respondent)

11. The assessee has raised the following grounds of appeal:-

“1. *That the order of the ld CIT(A) is bad in law and on facts.*

2. *That the ld CIT(A) has erred in upholding the addition made by the Assessing on account of unexplained investment after reducing the value of jewellery of 500 gm per married lady at per Board instruction No. 1916 dated 11.05.1994 under the provisions of section 69 of the Income Tax Act, 1961.”*
12. *Ground no is general and therefore dismissed.*
13. This ground of appeal is identical to ground no1 of the appeal of the husband of the assessee and parties before us have stated that there is no change in the facts and circumstances of the case compared to the case of the husband of the assessee. As we have already discussed the facts in ground no 2 of the appeal of the husband of the assessee in ITA No 1778/Del/2012 for AY 2006-07 where in we have deleted the addition. Therefore, for the same reason s we also delete the addition of Rs 10,50,000/- as unexplained income on account of gold found during the course of search which was revived from relatives, who confirmed the factum of gift and also the family status of the assessee also justify the quantity found. In the result, we reverse the orders of lower authorities on this ground. In the result ground no 2 of the appeal of the assessee is allowed.
14. The appeal of the assessee is partly allowed.
15. Both the above appeal are partly allowed.

Order pronounced in the open court on 17/02/2017.

-Sd/-

**(H.S.SIDHU)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 17/02/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**ASSISTANT REGISTRAR
ITAT, New Delhi**