IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No.737/Bang/2016
(Assessment year: 2012-13)

Mr. P. Goutham Chand, "Sai Apartments" No. 201, 2nd Floor, No. 2, K. R. Road, Basavanagudi, Bengaluru – 560004. **PAN : ABZPG3883D**	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(1), Bangalore.
Appellant		Respondent

Assessee by	:	Shri. H. N. Khincha, CA
Revenue by	:	Shri. M. K. Biju, JCIT

Date of hearing	:	28.11.2016
Date of Pronouncement	:	06.12.2016

ORDER

Per George George K, JM :

This appeal at the instance of the assessee, is directed against the order of the CIT (A)-11, Bangalore. The relevant assessment year is 2012-13.

2. The assessee has, in his grounds of appeal, raised **two effective grounds**, namely:

> **(1) that the AO had erred in making an addition of Rs.4,44,829/- to the returned income for the assessee and the learned CIT (A) had erred in confirming the same. On the facts and circumstances of the case and the lad applicable, the addition as made/sustained was wholly erroneous both on facts and law and is to be deleted; &**
> **(2) that the interest u/ss. 234A, 234B and 234C of the Act having been levied erroneously is to be deleted.**

3. Briefly stated, the facts of the issue are as follows:

The assessee is an individual engaged in the business of pawn broking and money lending. A search and seizure operation u/s 132 of the Act was conducted in the case of M/s. Mangalchand Banthia and others on 12.3.2012 and, accordingly, the assessee was also covered by s. 132 r w s.153A during the search. During the course of search in the case of the assessee, gold jewellery to the extent of 3001.87 gms, silver to the extent of 62 Kgs and diamonds of 2.84 cts were found and seized. During the course of post search proceedings, the

assessee had admitted personal jewellery to the extent of 782 gms in the hands of Gauthamchand (HUF) and adopted the rate of Rs.2400/gm and offered Rs.18,76,800/- to tax. Out of 62 Kgs of silver seized, the assessee offered 40 kgs, admitting an amount of Rs.20 lakhs [40 x Rs.50,000] on this count. For the balance quantity of the gold seized, the assessee stated that out of the total gold jewellery of 3002 gms, about 2100 gms was explained in terms of Board's Instruction No.1916 dated 11.5.1994, the details of which given by the assessee vide his letter dt.11.4.2014 is as under:

Sl. No.	**Members**	**Gms**
01	Credit to be given for self	200
02	Santosh Kumari	500
03	G. Neeraj Kumar	200
04	G. Rohit Kumar	200
05	Neetha	500
06	Labdhi	250
07	HUF	250
	Total	**2100**

It was the case of the assessee that as he belongs to a Marwari business family and as per customs and traditions, gold jewellery or silver articles were acquired on various occasions and in the form of gifts. However, the contentions and submissions made by the assessee during the course of assessment proceedings were not accepted by the assessing officer for the elaborate reasons set out by her in the assessment order under dispute and, accordingly, made the following additions on the returned income:

(i) Unexplained gold	Rs.57,59,120.98
(ii) Unexplained silver	12,54,000.00
(iii) Rate difference in gold	1,51,708.00
(iv) Rate difference in silver	2,80,000.00
Total	Rs.74,44,829.00

4. Aggrieved, the assessee took up the issue with the CIT (A) for consideration. After having considered the assessee's submission and also reliance placed by the assessee on the (i) Board's Circular No.1916 dated 11.5.1994 and (ii) the ruling of the Hon'ble jurisdictional High Court in the case of Pati Devi reported in 240 ITR

727, the CIT (A), the CIT (A) had upheld stand of the assessing officer for the following reasons:

> ***"14. In the appellant's case also, a strong reliance on CBDT Instruction has been made. The appellant has not brought anything on record to suggest that he or his family members have received gifts during any function. All the contentions have been dealt with by the assessing officer in detail in her assessment order. Humbly following the order of the jurisdictional Tribunal in the above mentioned case of M. Sushil Kumar [M.Sushil Kumar v. DCIT in ITA NO.644(BNG)/2015 dated 30.12.2015]and in absence of any evidence to support the contention of the appellant, the addition made by the assessing officer is UPHELD".***

5. Aggrieved, the assessee has come up before us with the present appeal. During the course of hearing, the submissions made by the learned Counsel for the assessee are summarized as under:

- That the authorities below have erred in not considering the explanation offered by the assessee. On the facts and circumstances of the case and on the proper appreciation of the explanation, there being no excess gold jewellery and silver articles, the addition as made is to be deleted;
- That in any case, the addition on erroneous appreciation of facts on application of principles of law and not following judicial precedent makes the addition bad in law and liable to be deleted;
- That in any case, the AO had erred in making the additions on account of rate difference in gold and silver in the hands of the assessee. On proper appreciation of facts, the addition as made/sustained is not warranted in the hands of the assessee and the same is to be deleted; and

- That in any case and without prejudice, the value as adopted for making/sustaining the addition is excessive.

In conclusion, it was submitted that the authorities were not justified in making a huge addition in the hands of the assessee which deserves to be deleted.

6. On the other hand, the learned DR present supported the stand of the authorities below and, accordingly, pleaded that as there was no merit in the argument of the assessee's counsel, the assessee's appeal requires to be dismissed.

7. We have carefully considered the rival submissions, perused the relevant materials on record and also the reliance placed by the assessee on case laws furnished in the form of a Paper Book. It was the contention of the assessee that he belonged to a Marwadi business family and it was the tradition of the marwadi family to receive gold jewellery and silver items on various festive occasion

and other occasions like marriage, betrothal, child birth etc., It was also contended that it was common for every Hindu women-folk to have/possess gold, silver ornaments etc., which, according to the assessee, the status and background of the family will be gauged based on the possession of such ornaments. As could be seen from the findings of the AO in her impugned order under dispute that she had fairly conceded the assessee's submission with a rider [Refer: Para 5 (a) of the asst. order] *"…….Therefore its onus on the assessee to keep the entire receipts accounted and be able to explain the same whenever required…."* By interpreting the Instructions of the Board contained in Circular No.1916 dated 11.5.1994, the AO had stated that *"The Circular highlights only 'non-seizure' of certain minimum amount of gold jewellery only. No where the Circular mentions the assessee is immune from explaining the total quantum of gold or silver items found. The Circular clearly states the certain amount of jewellery not to be seized and credit to be given to married women in the family, unmarried women and men of the family. This*

credit does not mean the assessee should not explain the sources for the total quantum and account the entire gold and silver found in his books. Hence, the submission given by the assessee is rejected. [source: Para 5(b) of the asst. order]. However, on a careful perusal of the Instructions No.1916 of the Board, we find that the assessing officer had not verified/examined to ascertain (i) as to whether the family members of the assessee were wealth tax assesses and if so, (ii) as to whether the gold jewellery and ornaments found during the course of search were excess of the gross weight admitted in their wealth-tax returns. For ready reference, the operational portions of the Instruction No.1916 of the Board are reproduced as under:

> ***"Instances of seizure of jewellery…….the following guidelines are issued for strict compliance:***
>
> ***(i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need be seized;***
>
> ***(ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms. Per married lady, 250 gms. Per unmarried lady and 100 gms per male member of the family need not be seized;***
>
> ***(iii) The authorized officer may, having regard to the status of the family, and the custom sand practices of the community to which the family belongs and other circumstances of the case, decide to exclude a***

larger quantity of jewellery and ornaments from seizure. This should be reported to the director of Income-tax/Commissioner authorizing the search at the time of furnishing the search report;

(iv) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes."

8. At the outset, we would like to point out that the letter and spirit of the **Guidelines** issued by the Board **for seizure of jewellery and ornaments in course of search** had not been adhered to in the instant case, presumably, either at the time of search operation or during the course of assessment proceedings.

9. In the meanwhile, our reference is drawn to an identical issue considered by the earlier Bench of this Tribunal in the case of Shri M.Vimal Kumar and Sri M Sanjay Kumar v. DCIT, CC 2(1), Bangalore in ITA Nos.642 & 643/Bang/2015 dated 14.8.2015. After due consideration of the rival submissions and also extensively quoting the ruling of the Hon'ble Gujarat High Court in the case of Ratanlal Vyaparilal Jain [339 ITR 351 (Guj)] on a

similar issue, the earlier Bench had recorded its findings as under:

> ***"08. We are therefore of the opinion that assessee can always claim exclusion from undisclosed jewellery the quantum of jewellery mentioned in the said circular. However, the circular allows only 100 gms per male member, 250 gms for unmarried lady and 500 gms for married lady in the family. The list mentioned by the assessee claims 200 gms each for himself and his son and 250 gms for the HUF. As per the circular what could be given credit for a member is only 100 gms. No credit could be given for HUF for the simple reason that an HUF cannot wear any jewellery by itself. In our opinion, the maximum relief that could be given to the assessee in addition to what was given by the AO was 950 gms. Viz., 100 gms for assessee, 100 gms for assessee's son, 250 gms for assessee's daughter and 500 gms for assessee's daughter-in-law. Contention of the ld. AR that status of the assessee had to be considered and higher relief should be given cannot be accepted for the simple reason that nothing was produced to show any special social status enjoyed by the assessee except for stating that the assessee belonged to a Marwari business family."***

10. On an identical issue, the Hon'ble jurisdictional High Court in the case of Smt Pati Devi v. Income-tax Officer reported in (1999) 240 ITR 72 (Kar), had ruled as under:

> ***".....Learned counsel for the petition has brought to my notice instruction dated May 11, 1994 issued by the Central Board of Direct Taxes by which 500 gms of gold jewellery and ornaments per married lady, 250 gms per unmarried lady, 100 gms per male member of the family were directed not to be seized. The instruction issued could only be retrospective in the sense that even if a seizure is made to day irrespective of the date of acquisition of gold jewellery, the benefit has to be given to that extent. It is not the value which is increased but it is the weight***

which is considered reasonable looking to the social circumstances prevailing in the country. ……"

11. In view of the facts and circumstances of the issue as deliberated upon in the fore-going paragraphs and in consonance with the (i) Instruction No.1916 of the CBDT; (ii) the findings of the earlier Bench of this Tribunal (supra); and (iii) the ruling of the Hon'ble jurisdictional High Court (supra), we are of the view that the issue should be restored on the file of the AO for fresh consideration as the details furnished by the assessee's counsel during the course of hearing before us as well as the break-up of 2100 gms furnished by the assessee vide his letter dated 11.4.2012 [Refer: Para 5 of the asst. order], it could not be ascertainable as to whether the ladies mentioned in the list for 2100 gms are married ladies or not. Hence, the assessee should produce details and evidences on this aspect and thereafter the AO should quantify the quantum of jewellery to be accepted per lady whether 250 gms or 500 gms and then allow benefit to the assessee accordingly.

12. The assessee's second ground is not maintainable as levy of interest u/ss. 234A, 234B and 234C of the Act is mandatory and consequential in nature.

13. In the result, the assessee's appeal is partly allowed for statistical purpose.

SP 110/B/16

14. Since the assessee's appeal is disposed of as indicated supra, its stay petition No.110/B/16 becomes infructuous and, accordingly, the same is dismissed.

Order pronounced in the open Court on 06-12-2016.

Sd/-	Sd/-
(A. K. GARODIA)	**(GEORGE GEORGE K.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Place : Bangalore
Dated : 06/12/2016

/NS/

Copy to :

1. Appellant 2. Respondent 3. CIT(A)-II Bangalore
4. CIT 5. DR, ITAT, Bangalore 6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore