

IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU BENCH 'C', BENGALURU

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

AND

SHRI. S. JAYARAMAN, ACCOUNTANT MEMBER

I.T.A No.1144/Bang/2016  
(Assessment Year : 2012-13)

Shri. M. Sunil Kumar,  
C/o. M/s. Mangalchand Phoolchand & Co.,  
Robertsonpet, K. G. F 563 122 .. Appellant  
PAN : AJQPS4697C

v.

Deputy Commissioner of Income Tax,  
Central Circle – 2(2), Bengaluru .. Respondent

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

Heard on : 28.02.2017  
Pronounced on : 28.03.2017

**ORDER****PER S. JAYARAMAN, ACCOUNTANT MEMBER :**

This is an appeal filed by the assessee against the order passed by the CIT (A)-11, Bengaluru, dt.26.12.2016, for the assessment year 2012-13.

02. On a Search & seizure action conducted at the residence of the assessee, among other things, gold jewellery of 2594.70 gms (Net) and silver bars of 18 Kgs were found. During the post search

proceedings, he was asked to explain them . The assessee explained as under:

*"In the course of search, gold jewellery of 2594.70 grams was found. Out of which 1341.40 grams was seized. My family consists of myself, my wife Neeta Kumari, my daughter Apeksha and Anchal and my son Shiok. My wife Neeta Kumari was declared gold jewellery of 1050 grams and 7 carats of diamond and silver of 12 Kgs before the department. Further, credit is to be given for jewellery of other 4 members of about 900 grams (250 + 250 + 200 + 200 grams). Also I had received a gift of 100 grams Gold on 29.09.2009 from Prameela Singh The gift is duly documented. Further as explained by Sri. Mahendra Kumar my elder brother in the letter jewellery of about 600 gms of Smt. Rajkumari W/o. Mahendra Kumar was brought to my residence on the occasion of engagement of my daughter Apeksha on 27.02.2012. Thus there is no excess gold personal jewellery."*

03. The summary of assessee's explanation is under :

	Quantity in Grams
a) Neeta Kumari	1050
b) Credit in terms of instruction No. 1916 dated 11.05.1994,	900
c) Gift from Prameela Singh	100
d) Gold Jewellery belong to Smt. Rajkumari	<u>600</u>
	<u>2650</u>

04. On verification of wealth tax returns, the A O found that the assessee's wife had declared 900 grams of gold and 10 Kgs of silver only .

Accordingly, he has allowed that much quantity only as an explained one. The A O has also accepted the gift from Premeela Singh of 100 grams and gold jewellery belonged to Smt. Raj Kumari of 600grams. Thus, he has given credit for 1600 grams of gold and 10 Kgs of silver and added the differential quantity of gold at 994.70 grams (2594.70 - 1600 grams) and 8 kgs of silver (18-10) as an unexplained investment. The A O has not accepted the assessee's reliance on the decision of the Hon'ble High Court of Karnataka in Pati Devi 240 ITR 727 to the effect that 'the source of quantum of jewellery mentioned in the circular no 1916 is deemed to have been explained and is to be accepted as such for the reason that the circular highlights only 'Non-seizure' of certain minimum amount of gold jewellery only. No where, the circular mentions that 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.

05. Aggrieved, the assessee filed an appeal before the CIT (A). The CIT (A) upheld the action of the AO. In view of that the assessee filed this appeal with following grounds of appeal:

1. The learned Assessing Officer had erred in making an addition of Rs. 34,25,351/- towards unexplained investment in Jewellery and Silver and the learned Commissioner of Income tax (Appeals) has erred in confirming the same.
2. On the facts and circumstances of the case and the law applicable, there was no unexplained investment in jewellery and silver and therefore, the addition being unwarranted is required to be deleted.
3. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the addition of Rs. 34,25,351/- as made and sustained be deleted.

06. The AR submitted that the assessee's wife Smt Neeta Bai, inter alia, had declared gold about 1050 grams and silver articles & vessels about 12 Kgs in her income tax return for ay 2006-07 although in her WT returns in ays 1991-92 & 92-93 she had declared 900 grams of gold and 10 Kgs of silver alone. He pleaded that the particulars contained in the earlier year return should be considered in favour of the assessee. Further, pleaded that the assessee belong to Marwadi business family. It is a tradition in family like them to get gold jewellery and silver items on various festive occasion and other occasions like marriage, betrothal, Child birth, etc., It is common for every Hindu family to have some gold, silver, etc. The reasonability of the quantum has to be decided on the basis of status and background of the family. In this connection, relied on the order of the Delhi High Court in ITA 274/2011. The CBDT has issued a Circular No. 1916 dated 11. 05.94 providing for non-seizure of certain minimum amount of gold jewellery, etc. Though it is true that the above mentioned Circular is with reference to seizure of jewellery, the same is

taken into account the quantity of jewellery which would generally be held by the family members as upheld by the Karnataka High court in the case of Pati Devi (240 ITR 727). Similar view has also been held by the Gujarat High Court in the case of Commissioner of Income-tax Vs. Ratanlal Vyparilal Jain in 339 ITR 351, Para 10 is relevant to this issue. The Ahmedabad Tribunal in the case of Harish S. Patel Vs. DCIT (2012) 6 Taxcorp (A. T) 28617 has endorsed the same view. Finally, the AR relied on this Tribunal decision in ITA Nos 642 & 643/Bang/2015 for ay 2012-13 dt 14.8.2015 in the cases of S/Shri M Vimal kumar & M Sanjay Kumar & ITA No 737/Bang/2016 for ay 2012-13 dt 28.11.2016 in the case of Mr P Goutham Chand. Per Contra, the DR relied on the CIT (A) order.

07. We heard the rival submissions and gone through relevant material. It is clear that Smt Neeta Bai had declared 900 grams of gold and 10 Kgs of silver only in her WT returns filed for a ys 1991-92 & 1992-93. Hence, the assessee's plea can not be accepted. With regard to the benefit claimed on the basis of Circular, the relevant portion of this Tribunal order from ITA Nos 642 & 643/Bang/2015 for ay 2012-13 dt 14.8.2015 in the cases of S/Shri M Vimal kumar & M Sanjay Kumar is extracted 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 male 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 assessee belonged to a marwari business family.

09. Vis-a-vis silver, circular does not mention anything about holding of silver or diamonds. Therefore, we are of the opinion that the maximum relief that could be given to the assessee is only on the value of gold jewellery to the extent of holding mentioned at para 8 above. Addition made for unexplained silver found at the time of search was in our opinion was justified. AO is directed to give relief to the assessee for 950 gms of gold jewellery and rework the addition accordingly. Appeal of the assessee is treated as partly allowed."

08. Considering all the above and following the above decision, the AO is directed to give relief to the assessee as under :

a) Self	100 Grams
b) Daughter (Apeksha)	250 Grams
c) Daughter (Aanchal - Minor)	200 Grams
e) Son (Shlok - Minor)	100 Grams
	650 Grams.

Thus, the maximum relief that could be given to the assessee in addition to what was given by the AO was 650 grams of gold only and accordingly, we direct the AO to give such relief alone.

09. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 28<sup>th</sup> day of March, 2017.

Sd/-  
(SUNIL KUMAR YADAV)  
JUDICIAL MEMBER

Sd/-  
(S. JAYARAMAN)  
ACCOUNTANT MEMBER

MCN\*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income Tax
4. The Commissioner of Income Tax (A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar