IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI R.S. SYAL, AM & MS SUCHITRA KAMBLE, JM

ITA No.3763/Del/2012
Assessment Year : 2010-11

S.C. Verma, H.No.34, 1st Floor, Greater Kailash-I, New Delhi. PAN: AAEPV1937D	Vs.	ACIT, Cent. Circle 1, Faridabad.

ITA No.3757/Del/2012
Assessment Year : 2010-11

ACIT, Cent. Circle 1, Faridabad	Vs.	S.C. Verma, H.No.34, 1st Floor, Greater Kailash-I, New Delhi. PAN: AAEPV1937D
(Appellant)		(Respondent)

Assessee By : Shri Deepak Kapoor, Advocate
Department By : Shri Dev Jyoty Dass, CIT, DR

Date of Hearing : 18.05.2016
Date of Pronouncement : 18.05.2016

ORDER

PER R.S. SYAL, AM:

These two cross appeals – one by the assessee and the other by the Revenue – arise out of the order passed by the CIT(A) on 25.5.2012 in relation to the assessment year 2010-11.

2. Briefly stated, the facts of the case are that the assessee was subjected to a search action u/s 132(1) at his residential premises. During the course of search, certain cash, jewellery and other documents were found. Total jewellery weighing 2327.6 gms. valued at Rs.41,67,837/- was found from the assessee and his family members, detailed as under:-

i)	Jewellery belonging to Smt. Neelam Verma W/o Sh. Subash Chander Verma from the residence at N-34, 1st Floor, GK Part I, N Delhi.	Rs.13,87,056/-
ii)	Locker No.727 Alaknanda Vaults Pvt. Ltd., N Delhi belonging to Smt. Neelam Verma	Rs.8,22,520/-
iii)	Locker No.726 Alaknanda Vaults Pvt. Ltd., N Delhi belonging to Smt. Shilpa Verma w/o Sh. Sumit Verma	Rs.7,11,205/-
iv)	Bed room of Smt. Shilpa Verma w/o Sh. Sumit Verma	Rs.12,47,056/-
	Total	Rs.41,67,837/-

3. The AO noticed that the assessee in response to question no. 2 in the statement of recorded during the course of search, submitted that jewellery weighing 2327.6 gms. belonged to himself, his mother, his son, his wife and daughter-in-law. Since the assessee could not file any evidence about the jewellery belonging to his family members by means of any wealth tax

return, etc., the AO made addition for the entire value of jewellery found during the course of search at Rs.41,66,837/-. The ld. CIT(A) excluded from consideration the jewellery belonging to the assessee's son and daughter-in-law which was found from their exclusive bed room and locker. He took up the remaining amount of jewellery found from the assessee's bed room and locker belonging to his wife. Such jewellery totaled at 1236.80 gms. By allowing benefit of Instruction No.1916 dated 11.5.94, the ld. CIT(A) held that jewellery to the tune of 136.800 gms [1236.80 gms minus 1100 gms (500 gms each for the assessee's wife and mother and 100 gms for the assessee)] was unaccounted. That is how addition was restricted to 136.90 gms, which, as per the assessee's calculation, amounts to Rs.2,44,897/-. Both the sides are in appeal on their respective stands.

4. We have heard the rival submissions and perused the relevant material on record. The first issue taken up by the ld. DR is about the exclusion by ld. CIT(A) from consideration in the hands of the assessee, the jewellery found from the bed room of the assessee's son and locker of his daughter-in-law. We have noticed that total jewellery of 2327.600 gms

was found from the bed rooms of the assessee and his son and two lockers, viz., one in the name of the assessee's wife and the other in the name of the assessee's daughter-in-law. In response to question no. 3, during the course of statement recorded u/s 132(4), the assessee submitted that his wife was employed with National Insurance Company and his son Shri Sumit Verma was employed with M/s Religare Insurance group with annual income of Rs.7 lac. The assessee also submitted that his daughter-in-law, Mrs. Shilpa, was working with M/s Steria and drawing a salary of Rs.8 lac per annum. This shows that the assessee's son and daughter-in-law were having their separate sources of income. The search was conducted at the residential premises of the assessee in House No. 34, First Floor, Greater Kailash-I, New Delhi, wherein all the family members were living jointly, *albeit* in separate rooms. It is an admitted position that no separate assessments have been made for the other family members. It is further seen that the assessee at no stage admitted that the entire jewellery belonged to him alone. *Au contraire,* he specifically submitted that the jewellery belonged to all the family members. The factum of the assessee's daughter-in-law, a working woman, having her own separate

locker, amply goes to prove that she was keeping her jewellery separate from that of the larger family. Presently, we are dealing with the assessment of the assessee. It is, but, natural that the unexplained jewellery, if any, belonging to the assessee's son and daughter-in-law, both of whom are separately assessed to tax, cannot be taxed in the hands of the assessee. In our considered opinion, the ld. CIT(A) was fully justified in excluding from consideration the value of jewellery found in the bed room and locker of the assessee's daughter-in-law. The impugned order is, therefore, upheld *pro tanto*.

5. The next issue is about the applicability or otherwise of Instruction No.1916 dated 11.5.1994. As per this CBDT Instruction, no seizure of jewellery can be made upto 500 gms belonging to a married lady, 250 gms. belonging to unmarried girls and 100 gms belonging to males. The ld. CIT(A) deleted the addition to the extent of 1100 gms from the total jewellery belonging to the assessee by relying on this Instruction. The ld. DR vehemently contended that such an Instruction is relevant only for seizure at the time of search and hence cannot be applied in the context of addition. He tried to fortify his view by relying on the judgment of the

Hon'ble Madras High Court in the case of *VGP Ravidas vs. ACIT (2014) 51 Taxmann.com 16 (Mad).*

6. There is no dispute on the fact that the Hon'ble Madras High Court in the aforenoted case has held that the Instruction No.1916 issued by the Board cannot be considered for making addition on account of unexplained investment. However, we find that this Instruction has been held to be applicable in the context of making addition u/s 69A/69B by the Hon'ble Rajasthan High Court in *CIT vs. Satyanarain Patni (2014) 366 ITR 325 (Raj).* Similar view was earlier taken by the Hon'ble Rajasthan High Court in *CIT vs. Kailash Chand Sharma (2015) 146 Taxmann 376 (Raj).* The Hon'ble Karnataka High Court in *Smt. Pati Devi vs. ITO and Another (1999) 240 ITR 727 (Kar.)* has held that CBDT Instruction dated 11 May, 1994 directing the authorities not to seize specified quantities of gold jewellery applies *qua* the addition as well. The Hon'ble Gujarat High Court *CIT vs. Ratan Lal Vyapari Lal Jain (2011) 339 ITR 351 (Guj)* has also has held that Instruction No.1916 can be safely applied in presuming that the source to the extent of jewellery stated in the Circular stands explained. We do not directly fall under jurisdiction of any of the above

High Courts holding for or against the applicability of this Instruction in the context of making addition as well. Thus, it is apparent that the predominant view of the Hon'ble High Courts is in favour of applying the mandate of Instruction in treating the explanation of jewellery as justified. Going with the mandate of the Hon'ble Rajasthan High Court, Hon'ble Karnataka High Court and Hon'ble Gujarat High Court, we hold that the ld. CIT(A) was justified in treating the jewellery weighing 1100 gms as explained out of total jewellery of 1236.80 gms.

7. The ld. AR relied on the judgment dated 27.7.2011 of the Hon'ble Delhi High Court in *Ashok Chaddha vs. ITO* (a copy placed on record) to argue that the remaining addition be also deleted. In that case, jewellery weighing 906.900 gms was found and the AO accepted only 400 gms. as explained. Addition was made for the remaining jewellery to the extent of 506.900. The Hon'ble High Court treated the entire jewellery explained by considering that holding of such a jewellery could not be considered as excessive `*in the peculiar facts of this case'*. This judgment does not lay down a universal law that any weight of jewellery can be treated as explained in all the circumstances. We have noted that the judgment was

rendered only in the peculiar facts as were obtaining in that case. Morevoer, in that case, the AO did not apply the mandate of the Instruction for treating some jewellery as explained. He arbitrarily considered 400 gms as explained. We are unable to countenance the contention of the ld. AR for treating the remaining 136.90 gms jewellery as also explained because the assessee has not led any evidence to demonstrate the source of investment in jewellery to this extent. Moreover, when we apply the mandate of Instruction No.1916 and treat jewellery to the tune of 1100 gms. as explained without there being any positive evidence, any jewellery over and above that can be treated as explained only if the assessee leads some positive evidence about the declared source of such excess investment in gold jewellery. We, therefore, affirm the view taken by the ld. CIT(A) in treating jewellery to the extent of 136.800 gms as explained. In the ultimate analysis, the impugned order is upheld.

8. In the result, both the appeals are dismissed.

The order pronounced in the open court on 18.05.2016.

Sd/-	Sd/-
[SUCHITRA KAMBLE] JUDICIAL MEMBER	[R.S. SYAL] ACCOUNTANT MEMBER

Dated, 18th May, 2016.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.