**IN THE INCOME TAX APPELLATE TRIBUNAL**
**(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER**
**and**
**SHRI A.T. VARKEY, JUDICIAL MEMBER**

**ITA Nos.3717 & 3718/Del./2011**
**(ASSESSMENT YEARS : 2001-02 & 2007-08)**

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| ACIT, CC – 13,<br>New Delhi. | vs. | Ms. Sonali Punj,<br>C – 21, Malcha Marg,<br>Chanakaya Puri,<br>New Delhi.<br><br>**(PAN : ABJPN1220F)** |
| (APPELLANT) | | (RESPONDENT) |

ASSESSEE BY : Shri Ajay Wadhwa, Advocate
REVENUE BY : Smt. Sunita Kejriwal, CIT DR

Date of Hearing : 23.09.2015
Date of Pronouncement : 18.12.2015

**ORDER**

**PER A.T. VARKEY, JUDICIAL MEMBER :**

These appeals, at the instance of the revenue, are directed against the orders of CIT (Appeals)-II, New Delhi both dated 30.05.2011 for the assessment years 2001-02 & 2007-08. Both the appeals are disposed off by this common order because the facts & circumstance and grounds in both the assessment years are similar and also belong to the same assessee.

2. The grounds of appeal for AY 2001-02 is as follows :-

> "1. The order of the ld. CIT (Appeals) is not correct in law and facts.
>
> 2. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that the addition made u/s 153A/143(3) appears to be legally untenable.
>
> 3. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law as well as in facts in deleting the addition of Rs.50,44,459/- made by the assessing officer on account of unexplained money received by the assessee from Shri Suresh Nanda.
>
> 4. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."

The revenue has taken the following grounds of appeal for the assessment year 2007-08 :-

> "1. The order of the ld. CIT (Appeals) is not correct in law and facts.
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> 2. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that the addition made u/s 153A/143(3) appears to be legally untenable.
>
> 3. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law as well as in facts in deleting the addition of Rs.1,00,00,000/- made by the assessing officer on account of unexplained money received by the assessee from Shri Suresh Nanda.
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> 4. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law as well as in facts in deleting the addition of Rs.53,98,050/- made by the assessing officer on account of unexplained jewellery found with the assessee.

5. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."

3. A search & seizure action under section 132 of the Income-tax Act, 1961 (hereinafter 'the Act') was carried out in the Suresh Nanda Group on 28.02.2007. The case of the assessee was centralized by the CIT, Delhi-XI, New Delhi vide order u/s 127 (2) of the Act dated 20.11.2007. Notice u/s 153A was issued and served to the assessee on 18.11.2008. In response, the assessee filed return of income declaring income of Rs.Nil on 21.01.2009. Notice u/s 143 (2) was issued on 22.012009 and a detailed questionnaire was issued on 23.09.2009. In response, the ld. AR on behalf of the assessee attended the proceedings from time to time and filed necessary details/clarifications.

3.1 During the course of assessment proceedings, the AO noticed that the assessee had received an amount of Rs.44,469/- on 21.06.2000 and Rs.50,00,000/- on 17.01.2001 in the saving –NRE account from her father Shri Suresh Nanda. The AO observed that it is a settled legal principal that the recipient of any sum of money has to prove the identity and creditworthiness of the giver; however, AO notes that Shri Suresh Nanda (Donor / father) on the pretext of being a non-resident had refused to disclose the sources of his income from abroad. Therefore, the AO held that the source of money from the bank account (of the Donor) it was given to

assessee remained unexplained. The AO further takes note that Shri Suresh Nanda (Donor / father) had been found to be a resident as against his claims of being non-resident for income-tax purposes. In view of the above, the AO added the said amount of Rs.50,44,469/- to the income of the assessee in the assessment year 2001-02 and completed the assessment u/s 143(3) of the Act.

3.2 Likewise, in the assessment year 2007-08, an amount of Rs.1 crore was received by the assessee in the saving-NRE account on 11.07.2006 from her father, Shri Suresh Nanda, which was added by the AO, on the same reasoning enunciated in AY 2001-02, to the income of the assessee. In addition to that, during the search, jewellery worth Rs.1,84,93,605 was found in the possession of the assessee and out of the total jewellery found, jewellery worth Rs.53,98,050/- was seized. The AO asked the assessee to furnish details of jewellery found during the search. After going through the reply and statement of the assessee, the AO concluded that in the absence of an item wise reconciliation and in view of assessee's own admission that the items seized during the course of search did not match with the items in the valuation report filed with her wealth tax return, the jewellery seized during the course of search was clearly unexplained and accordingly, the AO treated the jewellery worth Rs.53,98,050/- as unexplained and added to the taxable income of the assessee. The AO completed the assessment u/s 143(3) of the Act by making two additions i.e. amount received from assessee's father, Shri

Suresh Nanda to the tune of Rs.1 crore and unexplained jewellery worth Rs.53,98,050/- to the income of the assessee.

4. Aggrieved, the assessee went in appeal before the first appellate authority and the CIT (A) allowed the appeal of the assessee.

5. The revenue, being aggrieved, is in appeal for both the years before us.

6. Ground No.1 in both the years is general in nature requiring no adjudication. Ground No.4 in AY 2001-02 and Ground No.5 in AY 2007-08 are also general in nature requiring no adjudication.

7. Ground No.2 in AY 2001-02 is against the decision of the ld. CIT (A) in which he held that the addition made u/s 153A/143(3) appears to be legally untenable.

8. Ld. CIT (A) allowed this ground of the assessee by observing in A.Y 2001-02 as under:-

> "4. I have considered the facts of the case, the AO's order, the submission of the appellant and the position of law. It is observed that there is indeed no incriminating evidence found from the premises of the appellant during the impugned assessment year. The Assessing Officer has added a sum of Rs.50,44,469/- being amount received by the appellant from her father through account payee cheques in her account. The said amount has been held to be unexplained income of the appellant. There is no incriminating evidence found during the course of search. The original return of income for AY. 2001-02 was filed and till date, no notice u/s 143(2) or 148 of the Act has been issued. Hence, on the date of search, no proceedings in respect of AY. 2001-02 could be said to be pending. The appellant has cited the decision of the Hon'ble ITAT, Delhi in the case of Anil Kumar Bhatia reported in 1 ITR (AT) 0484 (Del). As per the said decision, section 153A does not authorize the making of the denovo assessment and the denovo assessment can only be made when the assessment is pending on the date of initiation of search. It has also been held that complete assessment on the date of search does not abate. The assessment can be said to be pending only if the Assessing Officer is statutorily required to do something further. The assessment in respect of

return proposed u/s 143(1) is not pending because Assessing Officer is not required to do anything further about such a return. It is further to be held that the power given by the first proviso to asses income for six assessment years has to be confined to the undisclosed income unearthed during search and cannot include items which are disclosed in the original assessment proceedings. In case of the appellant, the original return was filed and the same was processed u/s 143(1). Hence on the date of search, the assessment cannot be said to be pending and would not, therefore, abate for the purpose of making addition u/s 153A of the Act. A perusal of the assessment order clearly shows that there is no incriminating evidence found during the course of search. Hence, as per the decision of the Hon'ble IT AT, addition to income cannot be made in respect of items which are originally disclosed in the original assessment proceedings.

5. The appellant had received the funds from her father through account payee cheques. The interest income from her bank account has been disclosed in the original return of income. The bank statement of the appellant from which the computation for income for AY. 2001-02 has been drawn out cannot be said to be a document which has not been disclosed. Hence following the binding decision of the jurisdictional Tribunal, the order and the addition made in assessment u/s 153A/143(3) appears to be legally untenable. Grounds taken on this account are, therefore, allowed."

9. We have heard both the parties and perused the material on record. We find that the Hon'ble jurisdictional High Court in the case of CIT vs. Kabul Chawla in ITA 707, 709 & 713/2014 for AYs 2002-03, 2005-06 and 2006-07 vide judgment dated 28.08.2015 has settled the question before us and the Hon'ble High Court held as under :-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

We have perused the assessment order which clearly shows that there is no incriminating evidence found during the course of search. Hence, as per the binding decision of the Hon'ble jurisdictional High Court (supra), addition to income cannot be made in respect of items which are originally disclosed in

the original assessment proceedings. Therefore we do not find any merits in this ground of appeal of the Revenue, so it is dismissed.

10. The revenue has taken Ground No.2 in the assessment year 2007-08 as under :-

> "On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that the addition made u/s 153A/143(3) appears to be legally untenable."

However we find from the order of the ld. CIT (A) that he has decided this issue against the assessee as under :-

> "Ground No. 2 challenges the order u/s 153A on the ground that there was no evidence of undisclosed income found during the course of search. This ground has to be decided against the appellant. On the date of search, i.e. 28.02.2007, the return of income for A.Y. 2007-08 had not become due. After the return was filed, notice u/s 143(2) was issued picking the case for further scrutiny. Hence, it cannot be said that on the date of search, the assessment for A.Y. 2007-08 was not pending as no order u/s 143(1) or 143(3) had been passed in respect of the same. The decision of the Hon'ble Tribunal in the case of Anil Kumar Bhatia- ITA Nos. 2660 to 2665/Del/2009 (Del) decided on 01.01.2010 would not apply to the said assessment year. Hence this ground of the assessee is dismissed."

We have heard both the sides and find that the ground raised by the revenue is misconceived, so we dismiss this ground of appeal of the revenue.

11. Ground No.3 in both the years is common except the difference in amount and the same is reproduced below :-

> "3. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law as well as in facts in deleting the addition (Rs.50,44,459/- in AY 2001-02 and Rs.1 crores in AY 2007-08) made by the assessing officer on account of unexplained money received by the assessee from Shri Suresh Nanda.

12. As regards the aforesaid disallowance made by the AO, the facts leading to the disallowance has been already discussed so the same is not repeated for avoiding repetition and for the sake of brevity. Ld. CIT (A) deleted the disallowance. For the sake of clarity, it is relevant to reproduce the finding of the ld. CIT (A) and as the facts and circumstances in both the years are similar, therefore, we reproduce the order of the ld. CIT (A) for AY 2001-02 :-

> "7. I have gone through the AO's order, submission of the appellant. The remand report and the rejoinder of the appellant and have considered the position of law. According to the appellant, she has received the money through account payees cheque from her father who has confirmed having given her the said amount from time to time. The identity of the payer and the source of money i.e. Mr. Suresh Nanda is established beyond doubt as Mr. Suresh Nanda is an income tad assessee having his permanent account number. According to the Assessing Officer, Mr. Suresh Nanda has not disclosed the source of his funds abroad and therefore, the said funds have been treated as unexplained. As far as the appellant is concerned, she has received money from Mr. Suresh Nanda by account payee cheques and there was sufficient balance in the non-resident bank account of Mr. Suresh Nanda on the date when the cheques were issued to the appellant. Mr. Suresh Nanda is an income tax assessee and has been filing his return of income in India and has declared his income. The Assessing Officer is treating the income of the appellant as unexplained on the ground that the source of foreign income has not been disclosed by Mr. Suresh Nanda in his assessment. For holding this opinion that the funds in the hands of the appellant are to be treated as unexplained, nowhere has the Assessing Officer stated that it is the appellant's own money which has found its way back to the appellant through the account of Mr. Suresh Nanda. It is nobody's case that what has been received by the appellant is her undisclosed money. The identity and the genuineness of the transaction, i.e. money received from an income tax assessee through account pay cheques has remained unchallenged on the part of the A.O. So far as the creditworthiness is concerned, the appellant's father Mr. Suresh Nanda had sufficient money in his bank account on the date he issued cheques to her. The A.O. has not made out any case of cash deposit in his account. The A.R. of the appellant has filed a number of case laws for the proposition that for establishing the creditworthiness of the payer, the source of the source is not to be enquired into", On this issue, the Hon'ble Rajasthan High Court in the case of Aravali Trading Co. 220 CTR 622 held as under:-

> "Neither the provisions of s. 68 nor on general principle, it can be said that once the existence of persons in whose name credits are found in the books of the assessee is proved and such persons own such credits with the assessee still the assessee is to further prove the source from which the creditors could have acquired money to be deposited with him. The fact that the depositors' explanation about the sources where from they acquired the money is not acceptable to the AO, it cannot be presumed that the deposits made by the such creditors is the money of the assessee himself. There is no warrant for such presumption. In such event if the creditors' explanation is found to be not acceptable about such deposits, the investment owned by such persons may be subjected to the proceedings for inclusion of such investment as their income from undisclosed sources or if they have been found benami, he real owner can be brought to the tax net. But in order to fasten liability on the assessee by including such credits as his income from unexplained sources a nexus has to be established that the sources of creditors deposit flew from the assessee. In the absence of any such link, additions of cash credits found in the books of account of the assessee cannot be considered to be unexplained income of the assessee, where existence of depositors of such credits is established and such deposits/advance/loan is owned by such existing person. On such proof the assessee's onus is discharged",

8. Similarly, Hon'ble Assam High Court in the case of Tola Ram Oaga 59 ITR 632 held that the assessee cannot be attributed the knowledge of source of the amount u/s 106 of the Evidence Act merely because he happens to be the husband of the depositor. Similarly in the case of Nemi Chand Kothari 264 ITR 254 (Gau), it was held that it was not the burden of the assessee to show the source of his creditor or to prove the creditworthiness of the source of the sub-creditor. When the assessee had established the identity of the creditors and the amounts had been received by him by way of cheques, the said amount cannot be said to be the income from undisclosed source on mere failure on the part of the creditor to show that the sub-creditor had creditworthiness to advance the said loan amount. Reliance is also placed on the judgement of the Hon'ble Delhi High Court in the case of CIT v. Diamond Products Ltd 21 DTR 9. In the said case, the creditor confirmed having given a sum of Rs. 23 lacs as loan to the assessee. The source of Rs. 23 lacs in the hands of the creditor was sought to be enquired into by the Assessing Officer. The creditor stated that Rs. 23 lacs had been received in cash from MIs Punjab Tractors towards the repayment of the loan given earlier. According to the Assessing Officer, MIs Punjab Tractors was not traceable and therefore, Rs. 23 lacs was treated as unexplained income u/s 68 of the Act in the hands of the assessee. As per the Hon'ble High Court, the AO was seeking to examine the source of the source which was not traceable. The assessee had been able to establish that the transaction with the creditor was genuine and identity and the creditworthiness of the said creditor was

established. Hence, there was no need to enquire into the source of funds of the creditor for the purpose of making an addition u/s 68 of the Act.

9. In the case of the appellant also, the source is the deposits in the non-resident bank account of her father Mr. Suresh Nanda. Mr. Suresh Nanda is an income tax assessee declaring income in India before the Assessing Officer. Hence, there was no need for the Assessing Officer to enquire into the source of the source of Mr. Suresh Nanda for the purpose of applicability of section 68 of the Income-tax Act, 1961. Another judgment of the Hon'ble Rajasthan High Court in the case of Labh Chand Bohra v. ITO 219 CTR 571 is important. The relevant portion of the judgement of the Hon'ble Rajasthan High Court is reproduced herein under:-

> "7. Really speaking, the judgment in Daulat Ram's case (supra) is the authority, for the proposition, that assessee cannot be required to prove the source of the source. It was precisely held in Daulat Ram's case (supra), that the fact that lender has not been able to give satisfactory explanation regarding the source of the fund lent by him, would not be decisive, even of the matter, as to whether, the lender was the owner of that sum, even though the explanation furnished by him, regarding that source of money, is found to be not correct. From the simple fact, that the explanation regarding source of money, furnished by the lender, whose money is lying deposited, has been found to be false, it would be a remote and far-fetched conclusion to hold, that the money belongs to the assessee, and that, he would in such a case had any direct nexus between the facts and conclusions found therefrom. In our view, since Mangilal's case (supra) is the judgment of this Court, and proceeds on the basis of judgment of the Hon'ble Supreme Court, we need not multiply the other judgments, taking the same view, and thereby encumber the judgment. So far as the judgments cited by the learned counsel for the Revenue are concerned, in R. S. Rathore's case (supra), as a matter of fact, it has been noticed, that the assessee had not produced all the creditors, in spite of opportunity being given to him, and a number of other factors were taken into consideration by the ITO, to come to the conclusion about the explanation offered by the assessee being not satisfactory. In that background, it was found, that the burden was to be discharged by the assessee, and all creditors were not produced, their addresses were not given, therefore, the ITO made additions. The learned CIT(A) held the additions plausible and probable. In these circumstances, it was found, that if the Tribunal was of the opinion that the investment is not genuine, it should not have upheld the order of the CIT(A), and should have set it aside with the direction to allow such amounts, for which the assessee has been able to prove satisfactorily, by giving opportunity of explaining the investment. It was noticed, that the Tribunal itself doubted about the correctness of its own conclusions, thus, this

judgment is no authority for the proposition, that source of the source is required to be established by the assessee. Then, so far as judgment in Kishorilaf's case (supra) is concerned, six requirements noticed by this Court read as under:

(i) that there is no distinction between the cash credit entry existing in the books of the firm where it is of a partner or of a third party.

(ii) that the burden to prove the identity, capacity and genuineness has to be on the assessee.

(iii) if the cash credit is not satisfactorily explained the ITO is justified to treat it as income from "undisclosed sources".

(iv) the firm has to establish that the amount was actually given by the lender.

(v) the genuineness and regularity in the maintenance of the account have to be taken into consideration by the taxing authorities.

(vi) if the explanation is not supported by any documentary or other evidence, then the deeming fiction created by s. 68 can be invoked.

8. Examining the present case even on these parameters, first requirement is not relevant. So far as second requirement is concerned, there is no doubt about initial burden being on the assessee. So far as third requirement is concerned, obviously if the explanation is not satisfactory, then it is added. Then fourth requirement is, that the firm has to establish that the amount was actually given by the lender. Fifth requirement is about genuineness and regularity in maintenance of the accounts, obviously of the assessee, and it is not the finding, that the accounts were not regularly maintained. Then sixth requirement is that if the explanation is not supported by any documentary or other evidence, then the deeming fiction created by s. 68 can be invoked. In the present case, so far as 6th requirement is concerned, it is very much there in existence, inasmuch as the amount has been advanced by account payee cheques, through bank, and is duly supported by documentary evidence, as well as the evidence of the two lenders, and that satisfies the 2nd requirement also, about the discharge of burden on the part of
the assessee to prove identity and genuineness of the transaction. So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in Daulat Ram's case (supra), and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source.. In that view of the matter, since this part of the judgment runs

contrary to the judgment of the Hon'ble Supreme Court, in Daulat Ram's case (supra), while this Court in a subsequent judgment in Mangilal's case (supra) relying upon Daulat Ram's case (supra), has taken a contrary view, we stand better advised to follow the view, which has been taken in Mangilal's case (supra)".

10. As per the aforesaid judgement, the assessee was not required to establish the capacity of lender to advance money as that would amount to seeking to establish source of the source. The appellant's case falls fairly within the facts of the aforesaid judgement. The judgement by the Bombay High Court in the case of Orient Trading Co. 49 ITR 723 is also relevant. As per the said judgement, when the entry has been in the name of a third party and the assessee establishes the identity of the creditor and produces evidence showing that the entries are not fictitious, the initial burden lying on the assessee stands discharged. The burden shifts on the revenue to show that the entries represented assessee's suppressed income. This case also applies to the facts in case of the appellant. The burden is on the Department to show that the appellant's own funds have come back to her from Mr. Suresh Nanda. Hence, the judicial opinion as discussed above also leads to the conclusion that the cash credit received by account payee cheques from her father cannot be assessed as the appellant's undisclosed income. Another argument of the appellant is that the remittances of Mr. Suresh Nanda from his bank account abroad, have been held to be his undisclosed income and have been taxed in India accordingly. Hence, on this count also, no addition can be made in the hands of the appellant. In view of these facts and the legal pronouncement on the subject, it is held that the appellant has explained fully the origin of the source of money in her bank account and is not enjoined in law to explain the source of the source. It is also not the claim of the A.O. that it is her money which has found its way into her account from the account of her father, Mr. Suresh Nanda. Hence, the addition of Rs.50,44,469/- made is directed to be deleted."

13. Ld. DR relied on the order of the Assessing Officer and submitted that the AO rightly added the amount in question because the donor Shri Suresh Nanda refused to part with the information regarding his source of income claiming himself to be a non-resident. Therefore, the ld. CIT (A) erred in deleting the addition made by the AO, so he pleads that the order of the ld. CIT (A) may be reversed and the order of the AO be upheld.

14. On the other hand, the Ld. AR relied on the order of the ld. CIT (A) and reiterated the submissions made before the ld. CIT (A). Ld. AR further submitted that the issue regarding whether Shri Suresh Nanda is Non-Resident Indian or not has been decided by jurisdictional Hon'ble High Court. The jurisdictional Hon'ble High Court held that he is an NRI. Therefore, the amount/ gift given by father to daughter from his NRI account abroad cannot be added by the AO as unexplained in the hands of daughter (the assessee) in the instant case and so, he wants us not to interfere with the order of the ld. CIT (A) and pleaded to dismiss this ground.

15. We have heard both the sides on the issue and perused the material on record. The AO made the additions of Rs.50,44,459/- for AY 2001-02 and Rs.1 crore for AY 2007-08 taking note that the assessee has received the said amount from saving – NRE account of her father, Shri Suresh Nanda. According to the AO, the Donor, Shri Suresh Nanda on the pretext that he is an NRI has refused to disclose the source of his income from abroad. So the AO added the said amount received from her father as income in the hands of the daughter (assessee). On appeal, the ld. CIT (A) has deleted the said addition after examining the facts which could not be controverted by the Revenue before us. We find that the assessee is the daughter of Shri Suresh Nanda who has gifted her Rs.50 lakhs and Rs.1 crore through banking channel from his account in Singapore. The controversy as to whether Shri

Suresh Nanda is a Non-Resident Indian or not, is no more res integra after the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Suresh Nanda in ITA 85/2013 & ors. As per the said Judgment dated 25.02.2013 for the AYs 2001-02, 2002-03 and 2003-04 wherein the Hon'ble High Court has held that the Shri Suresh Nanda was not a resident in India in the years in question. The relevant finding of the Hon'ble Court is as under :-

> "13. In view of the fact that the Tribunal has correctly decided that the respondent/assessee was not a resident in India in the years in question, it is axiomatic that the addition of Rs.10,51,20,000/- under section 68 would have to be deleted because it was a transfer from the respondent / assessee's foreign account to the domestic account."

In view of the above, respectfully following the order of the Hon'ble jurisdictional High Court and going through the finding of the ld. CIT (A), we find that both the amounts added to the income of the assessee cannot be held to be unexplained income of the assessee, since it was a gift from the father who was the Donor and an NRI from his bank account at Singapore. So the ld. CIT (A) has rightly deleted the addition for both the years and so we uphold the order of the ld. CIT (A) and dismiss these ground of the revenue in both the assessment years.

16. Ground No.4 in assessment year 2007-08 is against the deletion of addition of Rs.53,98,050/- on account of unexplained jewellery found with the assessee.

17. During search on 28.02.2007, jewellery worth Rs.1,84,93,605/- was found in the possession of the assessee, out of which jewellery worth Rs.53,98,050/- was seized and after asking the assessee to reconcile itemwise jewellery found during the search and with that of her wealth tax return filed on 29.03.2006, the AO was of the opinion that the assessee failed to reconcile itemwise reconciliation with the jewellery shown in her wealth tax return, so he added the same as unexplained and added the same to the income of the assessee for AY 2007-08. Aggrieved, the assessee went in appeal before the first appellate authority and the ld. CIT (A) deleted the disallowance by observing as under :-

> "15. I have gone through the AO's order, submission of the appellant. The remand report and the rejoinder of the appellant and have considered the position of law. It is observed that the detailed reconciliation of the jewellery has been made by the appellant and was duly submitted before the Assessing Officer along with letter dated 21.12.2009. The assessee has made the reconciliation by identifying the rate of gold and caratage of diamonds in the valuation report filed by her and her mother Mrs. Renu Nanda along with their wealth tax return for AY. 2002-03. Similarly, the weight of gold and caratage of diamonds have been identified from the valuation report prepared by the departmental valuer during the course of search. To the weight of gold and caratage of diamonds identified by the valuation report filed with the wealth tax return, the weight of gold and caratage of diamond as per the purchase invoices after 01.04.2002 have been added. As per the reconciliation, the appellant has included the total weight of gold in grams of the jewellery found during the course of search on 28.02.2007. She has also computed the total caratages of diamonds in respect of the said jewellery found. The appellant has also computed the total weight of gold of jewellery 'returned in her wealth-tax returned along with her mother for AY. 2002-03. The total caratages of diamond in jewellery returned/declared by the appellant and her mother Mrs. Renu Nanda has also been computed as per the reconciliation statement. The appellant's contention that, both, she and her mother, were using their jewellery interchangeably cannot be ignored. The appellant's father Mr. Suresh Nanda has filed a confirmation before the Assessing Officer stating that his family had placed the jewellery in a common pool and used the same interchangeably. It is observed that the total weight of gold declared

by the appellant and her mother exceeds the weight of gold found with them on the date of search by 1577.446 grams. Similarly, the total caratages of diamonds declared in the wealth-tax return exceeds the total weight of diamonds found from both the family members by 26.500 cts. Hence the total weight of jewellery declared is in excess of the jewellery found during the course of search. In terms of the value, the value of declared jewellery taking the rate of gold at Rs. 900/- per gram in respect of the family comprising of appellant, Suresh Nanda and Renu Nanda works out to Rs. 7,55,72,939/- as against the total jewellery found of Rs. 4,12,24,097/-. Hence, the value of jewellery declared is far in excess of the value of jewellery found during the course of search. Even individually i.e. assessee wise, the value of jewellery declared taking the rate of gold at Rs. 900/- per gram is in excess of jewellery found during the course of search.

16. In the case of the appellant, according to the AO., the jewellery amounting to Rs. 53,98,050/- seized during the course of search, does not tally with the description of the jewellery declared by the appellant. The explanation of the appellant that there was large cash in hand to warrant expenditure on repair, renovation, alternation, modification of jewellery has not been examined a challenged by the AO. and is fairly evident from the details of withdrawals filed during the course of assessment proceedings and before me as well. It is not unusual for families to spend money on modification of their jewellery and very often, the bills evidencing the modification are not retained for a long period of time. However, since there was sufficient cash available with the appellant and her family, there is no reason to disbelieve her contention that the jewellery was remodeled, altered from time to time and hence the difference in description. The Assessing Officer in his assessment order and in the remand report has nowhere refuted the claim of the appellant that both in terms of value and quantity, the jewellery declared in the wealth tax return far exceed the jewellery found during the course of search. There is also no evidence that has been brought on record to prove that the jewellery seized was purchased out of undisclosed income. The reconciliation of jewellery is quite detailed and in the absence of any discrepancies found during the assessment proceedings and remand proceedings, it cannot be faulted with. Coming to the legal pronouncements on the issue, in the case of Amar Lal Natwarlal 57 TT J 454, the jewellery accounted for in the wealth tax return was more than jewellery found in the search. The addition was held to be unjustified. In the case of Smt. Krishna Wanti Batra v. ACIT (2004) 85 TT J (Del) 550, the addition made on account of variation in the description of jewellery disclosed in the report filed with the return and the report of the Departmental valuer prepared at the time of search was deleted. In the case of Rakesh R. Purohit v. ACIT 14 DTR (JP) 414 it was held as under:-

> "Smt. R has declared 60 tola gold in her WT return. The assessee claimed before the AO by filing an affidavit that Smt. R was living with the assessee and she expired on 8th June, 1998 and the

> assessee was her only surviving son at the time of her death and her gold jewellery was passed to the assessee on her death. The AO rejected the claim of the assessee on the ground that no narration regarding the description of jewellery has been given in the WT return and the assessee has not filed copy of the will. The AO has no material to rebut the claim of the assessee. The AO has not led any iota of evidence to prove that Smt. R might have given her jewellery to someone else. The jewellery disclosed in past cannot be lost sight in view of non-availability of item-wise tally. Further the claim of the assessee for 4,000 gms. silver items as ancestral is very reasonable. Therefore, in the circumstances and facts of the case, the AO was not justified in making addition on account of the jewellery and silver articles explained by the assessee as belonging to his late mother Smt. R and the CIT(A) has rightly deleted the addition".

> 17. At this stage, it is also pertinent to refer to the Instruction No. 1916 F.No. 286/63/93 - IT dtd. 11.05.1994 wherein it has been directed that in the case of wealth tax assessee only gold jewellery and ornament found in excess of the gross weight declared in the tax return is to be seized. It has already been factually found that the weight and also the value of gold and ornaments declared in the wealth tax return exceeded the gold and jewellery found during the course of search. Hence, in view of the aforesaid discussion and in the absence of any evidence to show that the jewellery seized was purchased out of the undisclosed income, the addition on account unexplained jewellery of Rs. 53,98,050/- stands deleted. The ground taken is, therefore, allowed."

18. Ld. DR relied on the order of the AO and submitted that during search on 28.02.2007, jewellery worth Rs.1,84,93,605/- was found in the possession of the assessee, out of which jewellery worth Rs.53,98,050/- was seized and after asking the assessee to reconcile itemwise jewellery found during the search and with that of her wealth tax return filed on 29.03.2006, the AO was of the opinion that the assessee failed to reconcile itemwise reconciliation with the jewellery shown in her wealth tax return, so he rightly added the same as unexplained and so, he added the same to the income of the assessee

for AY 2007-08. However, the ld. CIT (A) did not take into consideration the said facts on the basis of which the AO made the addition. Therefore, he prays that the order of the ld. CIT (A) be reversed and AO be upheld.

19. Ld. AR reiterated the submissions made before the ld. CIT (A) and submitted that Gold and Diamonds found during search was less than the jewellery declared before the search in her wealth tax return. He submitted that the ld. CIT (A) had rightly has appreciated the facts and reconciliation of the jewellery and has rightly deleted the addition, so he does not want us to interfere with the well reasoned order of the ld. CIT (A).

20. We have heard both the sides and perused the material on record. We find that the ld. CIT (A) has considered the remand report, rejoinder of the assessee to the remand report and has found that detailed reconciliation of the jewellery has been made by the assessee; and observed that the assessee had duly submitted the aforesaid details before the Assessing Officer along with letter dated 21.12.2009. The assessee has made the reconciliation by identifying the rate of gold and caratage of diamonds in the valuation report filed by her and her mother Mrs. Renu Nanda along with their wealth tax return for AY. 2002-03. Similarly, the weight of gold and caratage of diamonds have been identified from the valuation report prepared by the departmental valuer during the course of search. To the weight of gold and caratage of diamonds identified by the valuation report filed with the wealth

tax return, the weight of gold and caratage of diamond as per the purchase invoices after 01.04.2002 have been added. As per the reconciliation, the assessee has included the total weight of gold in grams of the jewellery found during the course of search on 28.02.2007. She has also computed the total caratages of diamonds in respect of the said jewellery found. The assessee has also computed the total weight of gold of jewellery returned in her wealth-tax returned along with her mother for AY. 2002-03. The total caratages of diamond in jewellery returned/declared by the assessee and her mother Mrs. Renu Nanda has also been computed as per the reconciliation statement. The assessee's contention that, both, she and her mother were using their jewellery interchangeably cannot be ignored and cannot be disbelieved in the absence of any evidence to counter it. The assessee's father Mr. Suresh Nanda has filed a confirmation before the Assessing Officer stating that his family had placed the jewellery in a common pool and used the same interchangeably. In the light of the aforesaid facts the ld CIT(A) has made the observation that the total weight of gold declared by the assessee and her mother exceeds the weight of gold found with them on the date of search by 1577.446 grams. Similarly, the total caratages of diamonds declared in the wealth-tax return exceeds the total weight of diamonds found from both the family members by 26.500 cts. Hence rightly the ld CIT(A) made a finding of fact that the total weight of jewellery declared is in excess of the jewellery found during the

course of search, which finding could not be controverted before us by the Revenue. The CIT(A) has noted in terms of the value also, that the value of declared jewellery taking the rate of gold at Rs. 900/- per gram in respect of the family comprising of assessee, Suresh Nanda and Renu Nanda works out to Rs. 7,55,72,939/- as against the total jewellery found of Rs. 4,12,24,097/-. Hence, the value of jewellery declared is far in excess of the value of jewellery found during the course of search, which finding also could not be controverted before us by the department. The ld CIT(A) has considered individually i.e. assessee wise, the value of jewellery declared taking the rate of gold at Rs. 900/- per gram is in excess of jewellery found during the course of search. The CIT(A) rightly observes that it is not unusual for families to spend money on modification of their jewellery and very often, the bills evidencing the modification are not retained for a long period of time. However, since there was sufficient cash available with the assessee and her family, there is no reason to disbelieve her contention that the jewellery was remodeled, altered from time to time and hence the difference in description. The Assessing Officer in his assessment order and in the remand report has nowhere refuted the claim of the assessee that both in terms of value and quantity, the jewellery declared in the wealth tax return far exceed the jewellery found during the course of search. There is also no evidence that has been brought on record to prove that the jewellery seized was purchased out

of undisclosed income. The reconciliation of jewellery is quite detailed and in the absence of any discrepancies found during the assessment proceedings and remand proceedings, it cannot be faulted with. In the light of the above, we do not find any infirmity in the detailed order of the ld. CIT (A) and so, we are inclined to dismiss this ground raised in AY 2007-08 under consideration before us.

21. In the result, both the appeals of the revenue are dismissed.

**Order pronounced in open court on this 18th day of December, 2015.**

| | |
|---|---|
| **Sd/-** | **sd/-** |
| **(N.K. SAINI)** | **(A.T. VARKEY)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

**Dated the 18th day of December, 2015**
**TS**

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)-II, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.