

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.6103/Del/2014  
Assessment Year: 2011-12

Shalini Gupta 43/1, Raipur Road, Civil Lines, New Delhi -110054 PAN AEUPG2620J	Vs	DCIT Central Circle -04 New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Sh. R. S. Singhvi, Advocate
Department by	Sh. S. S. Rana, CIT DR

ITA No.5938/Del/2014  
Assessment Year: 2011-12

DCIT Central Circle -04 New Delhi	Vs	Shalini Gupta 43/1, Raipur Road, Civil Lines, New Delhi -110054 PAN AEUPG2620J
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by	Sh. S. S. Rana, CIT DR
Assessee by	Sh. R. S. Singhvi, Advocate

Date of hearing:	18/06/2018
Date of Pronouncement:	28/06/2018

**ORDER****PER R.K. PANDA, AM:**

These are cross appeals. The first one is filed by the revenue and the second one filed by the assessee and are directed against the order dated 02.07.2014 of the CIT (A) – XXXIII, New Delhi relating to A. Y. 2011-12. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that a search and seizure operation u/s 132 of the IT Act was carried out on 21.01.2011 in DS Group of Cases. M/s. Dharampal Satyapal Group of cases is engaged in manufacturing and trading of Chewing Tobacco and premium pan masala besides other businesses. The group is also involved in Food Products, Packing, Hospitality, Rubber, Steel and Education business.

3. In response to notice u/s 153 A of the IT Act 1961, the assessee filed her return of income on 29.09.2011 declaring total income of Rs.1,37,950/-. During the course of assessment proceedings the Assessing Officer observed that during the course of search and seizure proceedings u/s 132 (1) of the IT Act at the residence of the assessee at 43/1, Rajpur Road, New Delhi the following jewellery as per the valuation made by the government registered valuer was found.

Description	Residence	Weight
Jewellery found	Rs.95,60,586/- (48 items)	4514.084 grams precious metal & 129.58 grams stones
Jewellery seized	Rs.62,65,670/-	

4. On being questioned by the Assessing Officer to explain the sources of acquisition of the said jewellery, the assessee filed the following reply which has been reproduced by the Assessing Officer at page 2 and 3 of the assessment order.

*“Smt. Vinod Kumari and Smt. Shalini Gupta are wealth tax assessee and they have been filing wealth tax return, entirely declaring jewellery purchased by them in their respective wealth tax return regularly.*

*At the time of search following jewellery was found which has been valued by the Income Tax Department valuer from the room of Smt. Vinod Kumari Gupta valued at Rs.53.03 lacs and from the room of Smt. Shalini Gupta valued at Rs.95 lacs. Thus total jewellery found from them jointly at the time of search was valued for Rs.148.90 lacs.*

*It is submitted that Wealth tax return filed for A. Y. 2010-11 by Smt. Vinod Kumari Gupta and Smt. Shalini Gupta have declared total jewellery at Rs.124.48 lacs (Rs.73.20 + 51.30 lacs). Copies of Wealth tax returns filed by them are enclosed. Thus the total difference in the jewellery found is Rs.24.07 lacs (Rs.148.90 lacs – Rs. 124.48 lacs).*

*It is submitted that the joint family consists of other family member i.e. Shri Ajay Kumar Gupta and his children Ms. Prachi Gupta and master Amogh Gupta. As per instruction of CBDT credit for jewellery is required to be given to unmarried female 250 gms and for married and \ unmarried male member @ 100 gms of gold jewellery. Since no Wealth Tax return has been filed in the case of Sh. Ajay Kumar Gupta and their children and as per hindu custom and culture jewellery is received by the children and male member at the time of marriage, at the time of birth and at the time of other customs etc. Accordingly, in case of jewellery found during the search from these joint family members the due credit to extent of amount 450 gms of gold jewellery to be given to Shri Ajay Kumar and their children the approximate value of such jewellery is at*

Rs. 12 lacs.

*There are various court decision wherein it has been held that source of the investment of jewellery to the extent not required to be seized as per limit explained as above, may be treated as explained and no addition for undisclosed investment is called for. Further, for balance difference of amount of Rs.12 lacs (Rs.24.07 lacs-Rs.12 lacs) is to attributed for inflation/increase in the value of jewellery from 31.03.2010 i.e. the date of Wealth Tax valuation up to the date of search i.e. 21.01.2011 having a gap of 10 months. ”*

5. However, the Assessing Officer was not satisfied the above explanation given by the assessee. According to him the items noted in the valuation report did not tally with the jewellery seized during the course of search for which jewellery valued at Rs.62,65,670/- were seized. According to him the assessee has made only general submission and did not furnish any explanation regarding source of acquisition of the specific jewellery items which were not tallying with the Government valuer's report for which those were seized during the course of proceedings u/s 132 (1) of the IT Act. The Assessing Officer further noted that during the course of search at her residence the assessee failed to offer any satisfactory explanation with regard to the jewellery items not matching in description with the items disclosed in the wealth tax return. He, therefore, held that the investment in the jewellery items which were not tallying in description as well as in weight of precious metals and stones with the valuation report of the assessee and which were seized during the course of search and seizure proceedings, value of which as per the valuation report comes to Rs.62,65,670/-, as unexplained investment u/s. 69 A of the IT Act. He accordingly made addition of Rs.62,65,670/- to the total income of the assessee u/s 69A of the IT ACT, 1961.

6. Before the CIT (A) it was submitted that wealth tax return for A. Y. 2009-10 was filed much before the date of search declaring the jewellery at Rs.32,08,705/-. It was this very jewellery which was available in A. Y. 2010-11 but was shown at the value prevalent as on 31.03.2010 at Rs.51,63,153.54/-. Therefore, wealth tax return for A. Y. 2010-11, even if filed after the date of search, does not cast any adverse effect as the quantity of jewellery declared prior to the search remains the same in the return filed after the date of search. Moreover, assessment for A. Y. 2010-11 has been done u/s 16 (3) of Wealth Tax Act, 1957, and there is no adverse observations as to the quantum/ value of the jewellery possessed by the assessee as on 31.03.2010. Therefore, this objection of the Assessing Officer does not mean anything adverse. As regards the observation of the Assessing Officer that the addition is in respect of those jewellery items which were not part of jewellery items declared in wealth tax returns is concerned, it was submitted that certain items of jewellery were remade according to charge in fashion and passage of time. However, the gross weight is almost matching. Therefore, a holistic view should be taken. It was submitted that this position has been accepted by CIT (A) in the case of Smt Sunita Gupta and Smt Rita kumari.

7. It was reiterated that the total value of jewellery declared in wealth tax return of the assessee and Smt. Vinod Kumari Gupta for A. Y. 2010-11 were to the tune of Rs. 1,24,83,198,126/- (Rs 51,63,153.54 + Rs.73,20,044.72) and after giving credit of jewellery as per CBDT Instruction No.1916 dated 11.05.1994, being 100 grams each for Shri Ajay Kumar Gupta and Master Amogh Gupta and 250 grams for Ms. Prachi Gupta there will not be any unexplained jewellery. Relying on various decisions it was submitted that the addition made by the Assessing Officer is uncalled for. The assessee also challenged the validity of 153A proceedings in absence any search.

8. Based on the arguments advanced by the assessee, the Ld. CIT (A) sustained an amount of Rs.6,26,567/- and deleted the remaining amount. He also upheld the assessment made u/s. 153 A/143 (3). The relevant observation of Ld. CIT (A) reads as under :-

*3.4 I have considered the assessment order, written submission and arguments of Ld. AR. Ld. AR has argued that the Ld. Assessing Officer has made general remarks that search & seizure action was carried out against D. S. Group of cases. There is no search against the appellant. Therefore, section 153 A has been wrongly invoked. I have considered these arguments. These arguments are not applicable to the facts of the case. In the present case, there is a search & seizure action u/s 132 at the residence at 43/1, Rajpur Road, Delhi of the appellant who is a member of D. S. Group & Jewellery was found & seized as mentioned in para 3 of the assessment order in appellant's hand. Therefore, it is proved beyond doubt that there was a search action u/s 132 against the appellant. Further, date of search is 21.01.2011. Therefore, the present assessment year 2011-12 is the search assessment year. Hence the assessment has been made u/s. 143 (3) & not u/s 153 A of I. T. Act, 1961. Hence this argument is not based on facts of the case.*

*On merits I have carefully considered the assessment order, written submission and oral arguments of Ld. AR. It is fact that the appellant and her mother in-law Smt. Vinod Kumari Gupta are wealth tax assessee. I do not agree with the arguments of ld. AR that the assessing officer has not considered the claim of the appellant for declaration of jewellery item in wealth tax return, as Ld. assessing officer has made addition only for the items of jewellery which are not tallied in the valuation report filed before the authorized officer & the*

*same were seized*

*During the appellate proceedings Ld. AR argued that the appellant has explained the source of total jewellery found and valued at Rs.148.90 lacs. Total jewellery declared in wealth tax return in the appellant's hand and her mother in-law Smt. Vinod Kumari Gupta as per wealth tax return for A.Y. 10-11 was Rs. 124.48 lacs. The appellant has claimed that jewellery as per CBDT's instruction no.1916 for non seizure of jewellery has been held as explained to the extent of 100 g.m. in male member & 250 grams for unmarried woman for non wealth tax assessee. In this family, there are two male members Sh. Ajay Kumar Gupta & his son Amogh Gupta & one unmarried woman his daughter Ms. Prachi Gupta. Therefore, the appellant contended that total jewellery for these three individual who are non wealth tax assessee should be treated as 450gm explained valued at approximately Rs.12 lacs. For the balance Rs.12 lacs worth jewellery, the appellant explained enhancement of cost of jewellery declared in wealth tax from valuation date relevant to A.Y. 10-11 in case of wealth tax prayers in the family which is approximately 10% of valuation of jewellery as on valuation date for A.Y. 10-11.*

*I have considered this explanation of the appellant which is reproduced in the assessment order itself. Ld assessing officer has not adversely commented on this argument. He made addition on the basis of statement u/s 132(4), where the appellant could not tally certain jewellery items in the valuation report.*

*Considering the entire facts & circumstance of the case, I agree that value & total quantity of the jewellery has reasonably been explained. However, particular items of jewellery seized and addition made is not tallying with the valuation report. Therefore, these*

*jewellery items found &. seized are remade or altered.*

*Under similar facts I have decided the appeals in D.S. Group in the ease of Mrs. Rita Kumari in IT A No. 117/13-14/1268 for A.Y. 2011-12 where I have held that the jewellery has been remanufactured or alteration has been done by the assessee. That is why the items are not tallying with the valuation report. I have sustained 10% of value of such jewellery as unexplained investment on account of alteration /remanufacturing. In present ease also, I hereby sustain 10% of jewellery addition amounting to Rs. 6,26,567/- & balance addition is deleted. Accordingly this ground of appeal is partly allowed.”*

9. Aggrieved with such part relief by Ld. CIT(A) the revenue as well as the assessee are in appeal before the Tribunal by raising the following grounds :-  
ITA No. 6103/Del/2014 (Assessee)

1. That on the facts and circumstances of the case, the Ld. CIT (A) has erred in holding 10% value of jewellery i.e. Rs.6,26,567/- as unexplained jewellery in view of the explanation given and documentary evidence submitted. Therefore, the same is liable to be deleted.
2. The appellant craves leave for addition, modification, alteration, amendment of any of the ground of appeal.

ITA No.5938/Del/2014 (Revenue)

1. *On the facts and in the circumstances of the case, the CIT (A) has erred in restricting the addition of Rs. 62,65,670/- made by the AO on account of unexplained investment to Rs. 6,26,567/- and directing the AO to delete 90% of the investment made by the assessee when it was clearly established that the assessee could not substantiate the source of investment.*
2. *On the facts and in the circumstances of the case, the CIT (A) has erred in not appreciating the evidence gathered during the course of search and seizure operation which very clearly pointed out that investment in jewellery was from*

*undisclosed source.*

3. *The order of the CIT (A) is erroneous and is not tenable on facts and in law.*

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

10. The Ld. DR heavily relied on the order of the Assessing Officer. He submitted that the assessee could not explain the source of acquisition of the jewellery found during the course of search which were not tallying with the items of jewellery mentioned in the wealth tax return. Therefore, the Ld. CIT (A) was not justified in giving substantial relief to the assessee. So far as the reliance on CBDT instruction no.1916 is concerned, he submitted that the same is for non seizure of jewellery and not for explaining the source of such jewellery. The Ld. DR further relied on the following decisions :

1. R. Malika Vs CIT (2017) 79 taxman.com 117 Hon'ble Supreme Court
2. CIT Vs R. Malika (2013) 36 taxmann.com 231 (Madras) / (2013) 219 Taxman 244 (Madras)
3. Sukh Ram Vs ACIT 159 Taxman 385 (Delhi) [2006] 285 ITR 256 (Delhi )/[2006] 204 CTR 336
4. Kahan Udyog Vs CIT [2-13] 38 taxmann.com 261 (Delhi)/[2013] 219 Taxman 23 ( Delhi) (MAG.)
5. S. Rudramuniyappa Vs CIT ( 75 taxmann.com 241) (Hon'ble Supreme Court)
6. Kishore Kumar Vs CIT (62 taxmann.com 215, 234 Taxman 771)
7. Bhagirath Aggarwal Vs CIT ( 31 taxmann.com 274, 215 Taxman 229, 351 ITR 143 )
8. Smt. Dayawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi) / [2017] 245 Taxman 293 (Delhi)/[2-17] 390 ITR 496 (Delhi)/ [ 2016] 290 CTR 361 (Delhi)

11. The Ld. Counsel for the assessee on the other hand supported the order of the CIT (A) to the extent, he has granted the relief. Referring to the decision of the coordinate Bench of the Tribunal in the case of Smt. Sunita Gupta Vs. DCIT vide ITA No. 5295/Del /2013 and 5370/Del/2013 order dated 17.03.2016 for A. Y. 2011-12, he submitted that under identical circumstances the Tribunal has deleted the entire addition. Referring to the decision of the coordinate bench of the Tribunal in the case of Rita Kumari Vs. DCIT and vice versa vide ITA No. 5296/Del/2013 and 5369/Del/2013 order dated 12.02.2016, he submitted that the Tribunal has deleted the entire addition by dismissing the appeal filed by the revenue and allowing the appeal filed by the assessee. He submitted that both the above assesseees belong to the same group. Therefore, following the decisions of the Tribunal the entire addition made by the Assessing Officer should be deleted and the appeal filed by the revenue should be dismissed. He also filed the jewellery reconciliation statement.

12. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find during the course of search u/s 132 of the IT Act on 21.01.2011, jewellery valued at Rs.95,60586/- were found out of which jewellery valued at Rs.62,65,670/- were seized. We find during the course of assessment proceedings, the Assessing Officer asked the assessee to explain the sources of jewellery which were seized during the course of search. The explanation of the assessee that jewellery valued at Rs.124.48 lacs was declared in the wealth tax return filed for A. Y. 2010-11 by Smt. Vinod Kumari and Smt. Shalini Gupta was rejected by the Assessing Officer on the ground that such wealth tax returns were filed after more than one year after the date of search. Further the jewellery found during the course of search did not tally with items of jewellery

mentioned in the Departmental valuer's report which were prepared after the search for which jewellery valued at Rs.62,65,670/- was seized. We find Ld. CIT (A) sustained a part of the addition, the reasons of which are already reproduced in the preceding paragraphs. We find identical issue had come up in the case of other related persons of the assessee before the Tribunal. We find the Tribunal while deciding an identical issue in the case of Smt. Sunita Gupta (supra) has deleted the entire addition made by the Assessing Officer and thereby dismissed the appeal filed by the revenue and allowed appeal by the assessee by observing as under :-

*9. Now the assessee is in appeal against the sustenance of addition while the grievance of the department relates to the relief allowed to the assessee. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee and her husband were regularly filing their wealth tax returns wherein the jewellery was duly disclosed and the jewellery was got valued once in every 5 years, the said valuation as shown in the wealth tax returns by adding the estimated appreciation in the value of the jewellery. It was submitted that value of the jewellery declared in the wealth tax return was as under :-*

Sh. Rajiv Kumar		Rs.	
			1,71,23,672.00
Smt. Sunita Gupta	Rs.		5,33,58,446.00
Total	Rs.		7,04,82,118.00

*It was stated that the jewellery found during the course of search and seizure proceedings was worth Rs.6,05,33,471/-, therefore, the value declared by the assessee was more in the wealth tax return than found at the time of search. It was further submitted that for the year under consideration the assessee has shown the jewellery acquired for Rs.53,28,760/-, therefore, the addition sustained by the Id. CIT(A) to the extent of Rs.33,49,840/- was not justified.*

*10. In his rival submissions the Id. DR reiterated the observations made by the AO in the assessment order dated 21.03.2013 and further submitted that the jewellery found during the course of search did not match with the jewellery declared in the wealth tax return. Therefore, the*

*Id. CIT(A) was not justified in allowing the relief to the assessee. It was further submitted that the assessee failed to offer any satisfactory explanation with regard to the acquisition of jewellery items not matching in description with the items disclosed in the wealth tax return. Therefore, the addition was rightly made by the AO and the Id. CIT(A) was not justified in allowing the relief to the assessee.*

*11. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the jewellery valuing Rs.6,05,33,471/- was found during the course of search, out of the said jewellery, the department seized the jewellery valuing Rs.3,34,98,409/- weighting 3825.166 gms and the remaining jewellery weighting 5124.612 gms valued at Rs.2,70,35,062/- had been given back on the spot to the assessee and her husband Sh. Rajiv Kumar in whose name the valuation report was made. In the instant case, the assessee and her husband were regularly filing their wealth tax returns where in the jewellery declared was worth Rs.7,04,82,118/-. The assessee also declared the acquisition of jewellery since 01.04.2010 till date of search i.e. upto 21.01.2011 amounting to Rs.53,28,760/-. The said jewellery has been accepted by the department, therefore, the total value of the jewellery declared by the assessee till the date of search came to Rs.7,58,10,878/- (Rs.7,04,82,118 + Rs.53,28,760) which was more than the total value of jewellery found during the course of search & seizure operation. Therefore, the addition made by the AO*

*only on this basis that the jewellery found during the course of search and declared in the wealth tax return was not matching, was not justified, particularly when the assessee explained during the course of search itself in her statement recorded u/s 132(4) of the Act as under:*

*“Description of the items as per your seizure and also their weight could not tally pie to pie (gram to gram) because of make/remake of the concerned items. However, the concerned items and value thereof are reflected in our wealth tax return filed and on record. ”*

*12. The aforesaid explanation of the assessee appears to be plausible because in the society to which the assessee belongs the jewellery got remade with the passage of time/ and in accordance with the change in fashion/occasion. In the present case, it is undisputed fact that the AO nowhere stated that the jewellery found during the course of search was more than what was declared by the assessee in the regular wealth tax return furnished much earlier to the search. As regards to the addition sustained by the Id. CIT(A) by presuming that the assessee might have incurred certain expenses for making the jewellery is concerned, it is noticed that nothing is brought on record to substantiate that all the jewellery was got remade during the year under consideration. In this regard, the explanation of the assessee was that the source of remaking in the earlier years was from household withdrawals. In our opinion, the Id. CIT(A) sustained the addition only on the basis of presumption which is not tenable particularly when no evidence was brought on record to disprove this contention of the assessee that the remaking charges were incurred out of household withdrawals made from time to time in earlier*

*years. We, therefore, do not see any justification on the part of the Id. CIT(A) in sustaining the addition which was made on the basis of surmises and conjecture. Accordingly, the addition sustained by the Id. CIT(A) is deleted. We, therefore, do not see any merit in the appeal of the department and the appeal of the assessee is allowed.*

13. Similarly in the case of Rita Kumari (Supra) the Tribunal also deleted the entire addition made by the Assessing Officer and thereby dismissed the appeal filed by the revenue and allowed the appeal filed by the assessee. The relevant observations of the Tribunal from para 8 onwards read as under :-

8. *We have perused the submissions and the wealth-tax returns filed by the assessee in the paper book placed before us. The addition in dispute has been made on account of variation in description of jewellery disclosed in the reports filed with the Revenue authorities*

8.1 *It is observed that the Id. AO has made the addition without considering the latest report. In our view, the assessee is entitled to the benefit of weight of jewellery disclosed in the return, as it is a well known fact that Indian ladies keep changing the design of jewellery from time to time. Simply because the assessee could not lead any evidence for conversion or remaking of the jewellery, the possession of which was otherwise accepted, it could not be said that holding of the jewellery to that*

*extent could not be accepted.*

8.2. *It is further submitted that the assessee her husband and their daughter-in-law have been possessing jewellery in the preceding and subsequent years and have been always assessed to wealth tax. The fact remains that the jewellery found was much less than the jewellery disclosed in the wealth tax returns accepted by the Department and hence no addition can be made in the hands of the assessee. In the present case, the Id. CIT(A) sustained the addition on account of making charges of the jewellery without bringing any cogent material on record. The Id. CIT(A) presumed that all the jewellery was remade and sustained the addition to the extent of 10% of the value of jewellery without any basis which in our opinion is not sustainable. Even otherwise, addition made on the basis of suspicion alone is not sustainable. Suspicion however strong it may be, cannot take place of evidence This ground of appeal, therefore, stands allowed.*

**Ground Nos.4 to 7** *are on the validity of the jurisdiction of the search action which has been conducted by the Id. AO without proper requisite approval. As these grounds have not been argued before us, we are not inclined to adjudicate the same.*

9. *The appeal, therefore, stands partly allowed.*

10. *Now, we take up the appeal filed by the Revenue;*

ITA no. 5369/D/13

*The issue raised by the Revenue is in relation to the deletion of the addition made by the Id.AO, to an extent of 90% on account of unexplained investments in jewellery.*

8.3. *We have dealt with this issue at length in the assessee's appeal. We are, therefore, of the considered opinion that the jewellery found by the assessee stands fully explained and no addition can be made in the hands of the assessee for undisclosed investment in jewellery. We accordingly hold that there cannot be any addition in respect of the jewellery u/s 69A of the Act.*

14. Since the facts of the present case are identical to the facts of the cases decided by the Tribunal in the case of other related persons, therefore, following the decisions of the co-ordinate Benches of the Tribunal the addition made by the Assessing Officer amounting to Rs.62,65,670/- u/s 69 Act of the IT Act is unsustainable. We, therefore, dismiss the grounds raised by the revenue and allow the appeal filed by the assessee.

15. In the result, the appeal filed by the assessee is allowed and appeal filed by the revenue is dismissed.

Pronounced in the open court on 28.06.2018.

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

*\*NEHA\**

*Date:- 28.06.2018*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	25.06.2018
Date on which the typed draft is placed before the dictating Member	28.06.2018
Date on which the typed draft is placed before the Other member	28.06.2018
Date on which the approved draft comes to the Sr.PS/PS	28.06.2018
Date on which the fair order is placed before the Dictating Member for Pronouncement	28.06.2018
Date on which the fair order comes back to the Sr. PS/ PS	28.06.2018
Date on which the final order is uploaded on the website of ITAT	29.06.2018
Date on which the file goes to the Bench Clerk	29.06.2018
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

