

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI
BEFORE Mr. R.S. SYAL, VICE PRESIDENT**

**ITA No. 7543/Del/2017
Assessment Year: 2009-10**

Mrs. Kusum Sharma, Flat No. 207, 2 nd Floor, Mahagun Maestro, Plot No. 21A, Block-F, Sector-50, Noida-201301 PAN : ASNPS6250R	Vs.	ITO, Ward-2(1), Noida
(Appellant)		(Respondent)

Appellant by	Sh. Ashwani Kumar Gautam, CA
Respondent by	Sh. Atiq Ahmed, Sr. DR
Date of hearing	25.7.2018
Date of pronouncement	26.7.2018

ORDER

PER R.S.SYAL, V.P.:

This appeal by the assessee is directed against the order passed by the CIT(A) on 25.9.2017 in relation to the A.Y. 2009-10.

2. The assessee is aggrieved against the addition of Rs. 14,99,750/- made by the Assessing Officer on account of sale proceeds of jewellery.

3. Briefly stated the facts of the case are that during the year under consideration the assessee purchased residential flat for a sum of Rs. 68.25 lac and submitted the sources of such investment, the details of which have

been enumerated on page 2 of the assessment order. One of such sources is a sum of Rs.14,99,750/-, being, 'Sale of jewellery'. The AO did not dispute the genuineness of other sources. He required the assessee to furnish the details of the party to whom such jewellery amounting to Rs. 14.99 lac was sold. The assessee submitted that the jewellery was sold to M/s Brij Mukund Prem Prakash Saraf vide purchase bill nos. 20/22 dated 22/29.3.2009. Photocopies of the purchase bills were also filed. In order to buy peace, the assessee surrendered the amount of sale proceeds of jewellery with a request to allow the benefit of indexation on the same as per the provisions of the Act. The AO made the addition of Rs.14,99,750/- under section 69 of the Act. The learned CIT(A) upheld the assessment order on this count.

4. I have heard both the sides and perused the relevant material on record. It is observed that the assessee gave explanation about the sale of jewellery amounting to Rs.14.99 lac in terms of purchase bills of M/s Brij Mukund Prem Prakash Saraf. The assessee agreed to addition on this count 'with a request to allow the benefit of indexation on the same as per the Income Tax Act'. The AO did not dispute the factum of sale having been made by the assessee. Nor did he carry out any investigation to falsify the assessee's claim of having actually sold the jewellery to M/s Brij Mukund Prem

Prakash Saraf. When the assessee came out with a conditional surrender, it was the discretion of the AO to accept or reject the same in totality. Having accepted the same, it became obligatory on the part of the AO to add the amount of capital gains arising from the sale of jewellery after allowing indexation and not treat the gross amount of receipt as chargeable to tax. I, therefore, set aside the impugned order and remit the matter to the file of the AO for calculating the amount on capital gain on sale of jewellery as per the provisions of Chapter IV-E of the Act after allowing a reasonable opportunity of being heard to the assessee.

5. In the result, the appeal is partly allowed.

(Order pronounced in the open court on 26.07.2018.)

Sd/-
(R.S. SYAL)
VICE PRESIDENT

Dt.26.07.2018

SH

Copy forwarded to:

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

ASSISTANT REGISTRAR,
ITAT NEW DELHI

		Date	
1.	Draft dictated on	26.7.2018	PS
2.	Draft placed before author		PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	7.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	7.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		
11.	Date of Uploading	7.2018	

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