

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3612 & 3613/Del/2014
(Assessment Year: 2007-08 and 2012-13)

ACIT, Circle-13, New Delhi	Vs.	Ms. Padmarani kapala, F-58, 1 st Floor, Green Park Main, New Delhi PAN: ASOPK2345J
(Appellant)		(Respondent)

CO No. 56/Del/2015
(In ITA No. 3612 /Del/2014)
(Assessment Year: 2007-08)

Ms Padmarani kapala, F-58, 1 st Floor, Green Park Main, New Delhi PAN: ASOPK2345J	Vs.	ACIT, Circle-13, New Delhi
(Appellant)		(Respondent)

ITA No. 7084 & 7085/Del/2014
(Assessment Year: 2007-08 and 2012-13)

ACIT, Circle-3, New Delhi	Vs.	Padmarani kapala, F-58, 1 st Floor, Green Park Main, New Delhi PAN: ASOPK2345J
(Appellant)		(Respondent)

ITA No. 4207/Del/2014
(Assessment Year: 2010-11)

ACIT, Central Circle-13, New Delhi	Vs.	Late Dr. MV Rao Through, L/H & Wife Smt M. Swarnlata, F-58, 1 st Floor, Green Park Main, New Delhi PAN: AAAPR1666H
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(Appellant)		(Respondent)
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Revenue by :	Ms. Meeta Singh, CIT DR
Assessee by:	Shri Anil Kumar Goel, CA
Date of Hearing	14/06/2018
Date of pronouncement	30/08/2018

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the bunch of six appeals in case of Ms padmarani Kapala and late Dr. M V Rao. All these appeals of both the assessee are emanating out of same search and therefore, at the request of the parties these are heard together and disposed off by this common order.

2. In case of Ms Padmarani Kapala for AY 2007-08 appeal is filed by the Id ACIT , Circle 3, New Delhi in ITA No 3612/Del/2014 against the order of the Id CIT (A)- I, New Delhi dated 13/10/2014 wherein addition of Rs 1.70 Crores on account of cash found in the locker in the name of the assessee and addition on account of unaccounted jewelry found of Rs 4777010/- out of addition of Rs. 4924152/- from the locker was deleted. Further Assessee has filed cross objection no. 56/Del/2015 against the order of the Id CIT (A) where he has confirmed the addition of Rs. 147142/- on account of balance unaccounted jewelry found from locker in her name. Further for the same year Id AO has filed appeal in ITA No 7084/ Del/2014 against the order of the Id CIT (A) dated 13/10/214 wherein the Id CIT (A) has deleted the penalty of Rs. 7281540/- out

of the penalty levied of Rs. 7325683/- u/s 271 (1) (c) by ld AO order dated 14/3/2014.

3. In case of Ms Padmarani Kapala for AY 2012-13 appeal is filed by the ld ACIT , Circle 13, New Delhi in ITA No 3613/Del/2014 against the order of the ld CIT (A)- I, New Delhi dated 10/4/2014 wherein addition of Rs 5.99 Crores on account of cash found in the locker in the name of the assessee was deleted. Further for the same year ld AO has filed appeal against the order of the ld CIT (A) dated 13/10/214 wherein the ld CIT (A) has deleted the penalty of Rs. 1,83,69,266/- levied u/s 271 (1) (c) by ld AO order dated 14/3/2014.
4. ITA NO 4207/del/214 for AY 2010-11 The Ld ACIT CC -13, New Delhi has filed an appeal against the order of The d CIT (A)-1, New Delhi where in the ld CIT (A) has held that an addition of Rs 35,00,000/- on account of cash found from the locker in the name of Ms Padmarani Kapala be made in the hands of DR M V Rao on substantive basis and in the hands of Ms Padmarani kappa on protective basis where the ld Ld AO vide order dated 28/3/2013 u/s 143(3) of the act has held that impugned amount is chargeable to tax in the hands of Dr. M V Rao on protective basis.

Assessment Year 2007-08

Ms Padmarani Kapala

5. For Assessment Year 2007-08 there are three appeals out of which two appeals are filed by the revenue i.e. one against the order of the ld CIT(A)-I, New Delhi

dated 10.04.2014 in the quantum proceedings and second one is against the order of the Id CIT(A) dated 13.10.2014 for same assessment year, wherein, penalty levied by the Id AO is deleted partly. Assessee has also filed a cross objection on the small addition of Rs. 1,47,142/- confirmed by the Id CIT(A) on account on unexplained jewellery.

6. First, we take up the appeal no. 3612/Del/2014 of the Id AO .
7. The first ground of appeal of the Id AO is general in nature and therefore, it is dismissed.
8. The second ground of appeal is with respect to deletion of the addition of Rs. 1.70 crores on account of unexplained cash treated as undisclosed income found and seized from lockers in the name of the assessee during the course of search and seizure.
9. The brief facts of the issue are that a search u/s 132 was conducted on 24.02.2012 at the premises of Shri Suresh Nanda and Dr. M. V. Rao . During the course of search 10 lockers keys were found from his premises. Initially, Out of 10 lockers, two lockers are found in the name of M. Padmarani Kapala (assessee) one in the name of Smt M Swaranlata. Subsequently other keys were also traced and income tax department noticed that those locker keys also belong to the lockers in the name of the assessee. Therefore, notice u/s 153A was issued on 28.02.2013. In response to which the assessee filed her return of income on 12.06.2013 for Rs. 17,943/-. Subsequently, the revenue could locate the ownership of all the lockers belongs to the assessee and which were also admitted by the assessee in her affidavit dated 12.04.2012. In the post search

proceedings, the assessee was confronted on 30.04.2012 and her statement was recorded. In question No. 11 it was asked to the assessee that in Locker No. 5333 a cash of Rs. 1.70 crores was found and seized and also jewellery of Rs. 49,24,152/- lacs out of which jewellery of Rs. 28 lacs was seized. In answer to that question, it was stated that she has already replied in her affidavit dated 12.04.2012. Based on this statement of Smt Padmarani Kapala, statement of wife of Dr. MV Rao , Mrs. M Swarnlata was also recorded on 31.05.2012. Vide answer to question No. 4 it was stated by her that there was old balance of Rs. 70 lacs and the cash of Rs. 1 crore was deposited by the assessee. It was further stated that she might have deposited Rs. 80 lacs in cash, which was given to her by her husband.

10. During the course of assessment proceedings vide letter dated 29.11.2013, the Id AO issued show cause notice to the assessee stating that in the four lockers a cash of Rs. 7.69 crores were found out of which Rs. 7.60 crores have been seized and why Rs. 7.69 crores should not be added to her income. The assessee submitted her reply on 09.12.2013. It was stated that as the declaration of Rs. 4.5 crores have already been made by Dr. MV Rao and further the money does not belong to her therefore no addition should be made in her hands. The Id AO rejected the contention of the assessee and stated that locker No. 5333 with NDV Ltd was in the name of the assessee and her mother. A sum of Rs. 1.70 crores is found from that locker and therefore sum of Rs. 1.70 crores with the jewellery of Rs. 49.24 lacs belong to the assessee. Further, cash found of Rs.

5.90 crores pertains to Assessment Year 20012-13 and therefore for this year above addition was made.

11. Against the above addition, the assessee preferred the appeal before the Id CIT(A). The Id CIT(A) held that as the assessee was not having any substantial source of income and contrary to that Dr. M. V. Rao has been alleged by the revenue itself to have generated substantial income by way of commission on supplies to Indian defense establishment and an amount of Rs. 2.70 was deposited by the assessee in the bank account during the life time of Dr. MV Rao and further sum of Rs. 4.99 crores within a month after the death of Dr. Rao on 10.10.2011, same is not chargeable to tax in her hands. He further held that If the above income were taxed in the hands of the assessee then it would go against the stand of the revenue in the case of Dr. Rao and Suresh Nanda who owned such large cash are to be taxed on their commission out of supplies to the Indian defense establishment. He further stated that receipt of commission is also still to be verified through the government of Israel as the reference is still pending. Therefore, he held that income-representing cash in the locker is belonging to Dr. M. V. Rao and assessable in his hands. He therefore, directed the Id AO to tax the same in the hands of the Dr. Rao on substantive basis and protective basis in the hands of the assessee. Therefore, aggrieved, the Id AO is in appeal on this ground.
12. The Id DR submitted that the Id CIT(A) has deleted the addition despite the same was found in the locker of the assessee. He therefore, submitted that the reasons given by the Id CIT(A) in his order vide para No. 5.3 and 5.4 are not in

consonance to the Income Tax Act. He therefore, submitted that when the assessee is found to be the owner of cash then she should be taxed.

13. The Id AR vehemently supported the order of the Id CIT(A). He further stated that out of Rs. 1.70 crores previously assessed in the hands of the assessee are offered by Dr. M. V. Rao in his hands for Assessment Year 2007-08 in proceedings u/s 148 of the Act and are assessed in his hands by order dated 05.03.2015 for Assessment Year 2007-08. He subsequently referred to para No. 5 of the assessment order wherein, a sum of Rs. 1 crores being cash deposited in locker No. 5333 belonging to the assessee were offered by Dr. M. V. Rao and he was assessed thereon. Therefore, he submitted that Rs. 1 crores has already been taxed in the hands of Dr. M. V. Rao and therefore sustenance of addition once again in the hands of the assessee, will tantamount to double addition. With respect to balance of Rs. 70 lacs cash, he submitted that it were deposited in the locker prior to the block period and therefore, cannot be taxed in the hands of the assessee in the block period.
14. We have carefully considered the rival contentions and also perused the orders of the lower authorities. In the present case Rs. 1.70 crores were found in the locker belonging to the assessee. Out of this Rs. 1 crores is already assessed in the hands of the Dr. M.V. Rao for the same assessment year, which is evident from the assessment order passed on 05.03.2015 u/s 148 of the Act, wherein, the sum of Rs. 1 crore found from locker No. 5333 is offered for taxation. It is also accepted by revenue by passing the above order without a hiss. Apparently, as the cash has been owned by Dr. MV Rao to the extent of Rs. 1

crores and already the income is assessed in his hands it cannot be once again charged to tax in the hands of the assessee. Therefore, the addition of Rs. 1 crores out of Rs. 1.70 crores of cash found in the locker deserves to be deleted. However, with respect to Rs. 70 lacs the Id AR submitted that it has deposited in the locker prior to block period and therefore, cannot be taxed in the block assessment year. This argument does not merit any consideration as there is no evidence to show that the above sum was deposited prior to the block period. In fact, according to provision of section 69A of the act the income is charged to tax in the year in which the assessee is found to be owner of the money. As the sum was found to be owned by the assessee for Assessment Year 2007-08, it is correctly charged by the Id AO as income of the assessee for this year. We are not in agreement with the Id CIT (A) that as the report from the Govt of Israel is pending, it should not be taxed in the hands of the assessee but in the hands of Dr. M V Rao as it is alleged that he has earned commission on defense supplies. We state that those cases are not covered under the Income tax act but under the different laws altogether. Merely because the income is taxed u/s 69A of the Act in the hands of the assessee in the Income tax proceedings does not have any impact on proceedings under the other laws against Dr M. V. Rao and Mr. Suresh Nanda. In view of this, ground No. 2 of the appeal of the revenue is partly allowed.

15. Ground NO. 3 of the appeal of the revenue is that the Id CIT(A) has deleted the addition of Rs. 4924152/- on account of unexplained jewellery found from locker No. 5333 weighing 1748.80 out of which 999.10 grams was seized.

Therefore, as the locker was last operated on 31.03.2007 the ld AO directed the assessee to explain the ownership of the jewellery amounting to Rs. 4924152/-. The assessee submitted that this jewellery belongs to her. In alternative, it was submitted that out of jewellery weighing 1748.80 gms jewellery directly related to her as per valuation report of 1993 is 826.80 gms and further 378 belongs to the mother of the assessee, the balance jewellery of 544 gms belongs to Dr MV Rao, which has been accumulated by the assessee from 1993 to 2007 for 14 years. The ld AO rejected the contention of the assessee and held that jewellery belongs to the assessee and therefore, made an addition of Rs. 4924152/-. The assessee challenged the same before the ld CIT(A).

16. The ld CIT(A) held that out of jewellery found, jewelry weighing 833.10 gms found during the search is almost identical to description and weight to the items disclosed in the probate case records of Dr. M.V. Rao, therefore, he held that it is proved beyond doubt that these items were acquired long ago and cannot be brought to tax for this year in the hands of assessee. He further held that four items weighing 749.70 gms were released as they were also found in the Probate Case recorded on Dr. Rao. He further held that as per CBDT instruction gold ornaments weighing of 500 gms per married woman and 250 gms per unmarried woman are to be treated as customary and not seized. Therefore, he gave credit of another 750 gms of gold. Thus, out of 1748.80 gms he treated ornaments weighing 1583.10 gms as explained. The balance of 165.70 gms he upheld the addition taking the value @888/ gms of gold jewellery. Therefore, he upheld the addition of Rs. 147142/-. On this issue the

revenue is in appeal before us and simultaneously the assessee has preferred Cross objection No. 56/Del/2015.

17. The Id DR vehemently supported the order of the Id AO and submitted that when the assessee is found to be owner of the jewellery there is no reasons to look at jewellery disclosed by Dr. MV Rao.
18. The Id AR submitted that total jewellery found at 1748.80 gms as bifurcated into 200 gms into 477 gms belonging to the assessee, as well as mother of the assessee. Further 819.40 gms and 288.40 gms both belong to Dr. MV Rao and it has been disclosed in the wealth tax return of Dr. MV Rao. He specifically referred to Wealth Tax assessment order u/s 17 of the Wealth Tax Act for Assessment Year 2008-09 in case of Dr. MV Rao to support that the jewellery of Rs. 1320488/- was already included in the hands of Dr. MV Rao. Therefore, according to that 1293.43 gms has already been taxed in the hands of Dr. MV Rao. By reverse calculation, he submitted that total of 819.4 plus 282.4 gms is belonging to Dr. MV Rao, charged in his wealth tax and therefore, it cannot be included in the income of the assessee. He therefore submitted that jewelry found is not owned by the assessee and not chargeable to tax in her hands.
19. The Id Dr vehemently contested that there is no reason that above quantum of jewellery if shown in the wealth tax return for Assessment Year 2008-09 , it cannot be taxed as income in Assessment Year 2007-08.
20. We have carefully considered the rival contentions. We found that the Id CIT(A) has categorically held that ornaments weighing to 833.10 gms are appearing in the case of probate as per the order of the District Judge Delhi,

which are owned by Dr. MV Rao. In view of this, we do not find any infirmity in the order of the Id CIT(A) in holding that jewellery to that extent is owned by Dr. MV Rao. Further, merely because Dr. MV Rao has shown certain valuation of jewellery in his wealth tax return for AY 2008-09 which was found in the locker owned by the assessee is belonging to Dr. MV Rao and cannot be taxed as income u/s 69A in the hands of the assessee for AY 2007-08. We are not concerned with the wealth tax matters but Income tax matters. If the jewelry is from tax paid money of the assessee, then irrespective of whether same is shown in wealth tax return or not, it cannot be charges to tax under the Income tax Act. Conversely, if the same is shown in the wealth tax return, it cannot be excluded from the income tax computation if assessee fails to show that same was acquired out of tax paid money. Hence, we reject the contention of the Id AR that total of 819.4 and 288.4 gms of different purity of gold is owned by Dr. MV Rao. We also do not find any infirmity in his order to allow 750 gms to the mother and assessee as per CBDT Instructions. The balance jewellery of 165.70 gms is remaining unexplained and therefore, addition to that extent is correctly confirmed by the Id CIT(A). In view this we find no infirmity in the order of the Id CIT(A) therefore, ground No. 3 the appeal of the revenue and cross objection of the assessee are dismissed.

21. Accordingly, ITA No. 3612/Del/2014 filed by the revenue is partly allowed and CO No. 56/Del/2016 filed by the assessee is dismissed.

ITA No. 7084/Del/2014
(Assessment Year 2007-08)

22. ITA No. 7084/Del/2014 is filed by the revenue against the order of the Id CIT(A)-I, New Delhi dated 13.10.2014 wherein, the penalty levied by the Id AO u/s 271(1)(c) of the Act vide order dated 14.03.2014 was deleted.
23. The revenue is aggrieved that out of total penalty levied by the Id AO Rs. 7325683/- the Id CIT(A) has restricted it to only Rs. 44143/-.
24. The Id AO made an addition on Rs. 17000000/- and on account of unexplained jewellery of Rs. 4924152/- and issued show cause notice to the assessee to show the reasons for not levying the penalty. Assessee submitted that as the appeal on quantum addition is pending before the Id CIT(A) , penalty proceedings may be kept in abeyance. The Id AO disagreed with the request of the assessee and levied penalty u/s 271(1)(c) of the Act for concealment of income on addition of Rs. 21924152/-. Accordingly, penalty of Rs. 7325683/- was imposed.
25. On appeal before the Id CIT(A), he deleted the penalty on the cash found of Rs. 1.70 crores holding that the cash is belonging to Dr. MV Rao as his income and same is required to be taxed on protective basis in the hands of the assessee and substantive basis in the hands of Dr M V Rao. He has held that question for imposition of any penalty for concealment with regard to cash belonging to Dr. MV Rao does not arise in the hands of the assessee. He therefore, did not confirm the penalty of cash found of Rs. 1.70 crores. He further held that the Id AO should have waited for the appellate order before imposing any penalty. With respect to jewellery taxed in the hands of the assessee of Rs. 147142/- he

upheld the penalty of Rs. 44143/-. Therefore, aggrieved with the order of the Id CIT(A), Id AO has preferred this appeal.

26. The Id DR vehemently submitted that the Id CIT(A) should not have held that penalty is premature in the hands of the assessee on account of cash found. He submitted that when the assessee is found owned of Rs. 1.70 cores which is never denied by the assessee herself that same were found from the locker in her name. There was no reason to be tax the above amount in the hands of the assessee on protective basis. Further, with respect to the jewellery found he submitted that revenue has contested the quantum addition in toto and therefore, the Id CIT(A) should have upheld the penalty on the jewellery found in locker owned by the assessee.
27. The Id AR vehemently submitted that the Id CIT(A) has deleted the addition of cash found of Rs. 1.70 cores in the hands of the assessee and therefore, when the addition itself is deleted there are no reasons for upholding the penalty on that addition. He therefore, submitted that to that extent no infirmity exists in the order of the Id CIT(A). With respect to jewellery found, he submitted that out of jewellery of Rs. 25 lacs the assessee could not explain the minor portion of 165.70 gms which addition is upheld by the Id CIT(A). He therefore, submitted that despite the confirmation of the addition by the Id CIT(A) the penalty u/s 271(1)(c) cannot be levied.
28. We have carefully considered the rival contentions as well as the orders of the lower authorities. On the quantum issue, we have held that out of the sum of Rs 1.70 Crores, Rs 1 Crore is already offered by the Dr M. V. Rao in his

hands, which is also taxed by the ld AO of Dr M.V Rao in his hands. Therefore to that extent there is no reason to sustain penalty u/s 271 (1) © of the act. With respect to balance Rs 70 Lakhs addition in quantum appeal of the revenue, the assessee could not explain the source from which the sum was found in the locker. In the quantum appeal , we have confirmed the addition to that extent. In absence of any plausible explanation with respect to the above sum , we confirm the penalty on addition of Rs 70 lakhs found in the locker in the name of the assessee , which is held to be the income of the assessee u/s 69A of the act, thereby the assessee has concealed her income to that extent. We direct the ld AO to re-compute the penalty on the addition of Rs. 70 lacs as concealed income. Further with respect to the addition on account of jewelry, we have confirmed the order of the ld CIT (A) in quantum appeal where in the most of the addition on account of jewelry is deleted. The ld CIT (A) has also deleted the penalty to that extent only. Therefore, we do not find any infirmity in the order of the ld CIT (A) in deleting the penalty on addition on account of undisclosed jewelry. Accordingly, we confirm the action of the ld AO in levying penalty u/s 271(1) (c) of the act on account of undisclosed income of cash found in the locker in the name of the assessee to the extent of Rs 70 Lakhs only. Accordingly, the appeal of the ld AO is partly allowed.

ITA No. 3613/Del.2014

Assessment Year 2012-13

Ms. Padmarani Kapala

29. This appeal is preferred by the revenue in ITA NO. 3613/Del/2014 for the Assessment Year 2012-13 against the order of the Id CIT(A) dated 10.04.2013, wherein, he has deleted the addition of Rs. 5.99 crores on account of unexplained cash treated as undisclosed income found and seized from the lockers in the name of the assessee during the search.
30. The brief facts of the case shows that a sum of Rs. 5.99 crores was found from locker No. 1012 and 1013 at Axis Bank, New Delhi and Locker No. 3090 at New Delhi Vaults Ltd in the name of the assessee. The said lockers were in the name of assessee and were operated in presence of her brother and Power of attorney holder. In affidavit dated 12.04.2012 it was stated by the assessee that said locker contained cash of Rs. 4 crores approximately and the same is owned by the assessee. In the same affidavit appellant also stated that the cash was given to her by late Dr. MV Rao as gift in contemplation of his death and became her property on his death on 10.10.2011. She further submitted that whether Dr. MV Rao has paid taxes thereon or not she is not aware and also undertook to pay the tax thereon. The assessee also stated that Rs. 65 lacs was deposited by Smt. M Swarnlata on 28.01.2009, Rs. 10 lacs by her on 05.10.2009 and Rs. 25 lacs on 12.11.2009. After the death of Dr. MV Rao Rs. 1.91 crores and Rs. 3.08 crores were deposited by her on 24.10.2011 and 25.10.2011 respectively. Subsequent to the search on 05.03.2012 Smt Swaranlata, wife of Dr. MV Rao surrendered Rs. 6.5 crores in the hands of her husband. This disclosure was rejected and amount was taxed in the hands of the assessee. The assessee preferred the appeal before the Id CIT(A) who for

similar reasons given by him in his order for Assessment Year 2007-08 also deleted the addition for this year. Therefore, the revenue is in appeal.

31. The Id DR also raised the similar argument stating that when the cash was found from the locker owned by the assessee there is no reason to delete the addition.
32. The Id AR submitted the paper book and also filed the copies of the return filed in case of Dr. MV Rao along with copies of the assessment orders. He submitted that Rs. 65 lacs were owned by Dr. MV Rao for Assessment Year 2009-10, Rs. 35 lacs for Assessment Year 2010-11 and Rs. 4.5 crores for Assessment Year 2012-13. He submitted that all these transactions have been accepted by revenue in the hands of Dr. MV Rao and therefore there cannot be any reason to tax it in the hands of the assessee.
33. We have carefully considered the rival contentions and also perused the order of the lower authorities. We have also perused the copies of the return filed by Dr. MV Rao for respective years. For Assessment Year 2009-10 the assessee has offered Rs. 65 lacs and it was assessed in the hands of Dr. MV Rao vide order dated 05.03.2015 u/s 148 of the Act. Similarly, Rs. 35 lacs were also taxed for Assessment Year 2010-11. The Id CIT(A) has also confirmed this addition vide order dated 16.15.2014 in the hands of Dr. MV Rao. The balance of sum of Rs. 4.5 crores was offered for Assessment Year 2012-13 by Dr. MV Rao. For Assessment Year 2012-13 the income of Rs. 4.5 cores were shown by Dr. MV Rao, which was, assessed u/s 143(1) of the act . The total of the above cash disclosed by Dr. MV Rao in the hands is Rs. 5.50 crores out of cash found

of Rs. 5.99 cores found from the lockers. The Id AO rejected the same stating that all these returns are filed only after post search investigation and therefore, it is an afterthought. However, the fact remained that these income to the extent of Rs. 5.5 cores has already been offered and taxed conclusively by the revenue in the hands of Dr. MV Rao. According to us, it cannot be taxed once again in the hands of the assessee. Therefore, we the Id CIT (A) is right in deleting the addition to the extent of Rs 5.50 Crores in the hands of the assessee. We confirm the order of the Id CIT (A) to the extent of this amount and also for the reason given by us in our order for AY 2007-08 in case of the assessee where similar addition of Rs 1 Crore is deleted. Further, with respect to the balance of sum of Rs. 49 lacs the assessee has explained that this amount was from explained source and cash withdrawal from the bank earlier. No evidence were placed before us to show the correlation between the sum of Rs. 49 lacs found in the locker with respect to respective dates of deposits of cash in the bank lockers vis a vis withdrawal from bank accounts. In view of this, we confirm the addition to that extent of Rs. 49 lacs as undisclosed income of the assessee u/s 69A of the act on account of cash found from various lockers in her name. Hence, addition to that extent of Rs. 49 lacs is confirmed. Accordingly, ground No. 1 of the appeal of the revenue for Assessment Year 2012-12 in ITA No. 3613/Del/2014 is partly allowed.

ITA No. 7085/Del/2014

Assessment Year 2012-13

34. This appeal is also filed by the revenue against the order of the Id CIT(A)-New Delhi dated 13.10.2014, wherein, penalty of Rs. 18369266/- u/s 271 (1)(c) of the Act levied by the Id AO is deleted. The Id AO has levied the penalty on the addition of Rs. 5.99 crores on account of unexplained cash in the hands of the assessee and levied the penalty of the above sum for concealment of income. Before the Id AO it was stated that as the appeal on the quantum additions are pending before the Id CIT(A) the penalty proceedings may be kept in abeyance. The Id AO rejected the contention of the assessee and levied the penalty. The order was challenged before the Id CIT(A). Ld CIT(A) has held that the addition is confirmed in the hands of the assessee on protective basis until it is assessed in the hands of Dr. MV Rao on substantive basis, no addition survives, and therefore penalty cannot be levied. The Id CIT(A) deleted the penalty holding that sum of Rs. 5.99 crores were to be taxed in the hands of Dr. MV Rao and further appellant was incapable of generating any substantial income therefore, it could not be concealed income of the assessee. Thus, the Id CIT(A) deleted the penalty. Ld AO aggrieved with that order is in appeal before us.
35. The Id DR vehemently supported the order of the Id AO and stated that when cash is found in the locker owned by the assessee then in absence of any plausible explanation the penalty is correctly levied in her hands.
36. The Id AR submitted that when there is no addition in the hands of the assessee to that extent of Rs. 5.5 cores, which have been offered by Dr. MV Rao and taxed by revenue there, is no reason for levy of penalty on the above sum. He

further submitted that when the balance of Rs. 50 lacs are explained by the assessee out of old cash withdrawal from the bank, the assessee has explained the source and penalty could not survive on that.

37. We have carefully considered the rival contentions as well as the orders of the lower authorities. On the quantum issue, we have held that out of the sum of Rs 5.99 Crores, Rs 5.50 Crore is already offered by the Dr M. V. Rao in his hands, which is also taxed by the ld AO of Dr M.V Rao in his hands. Therefore to that extent there is no reason to sustain penalty u/s 271 (1) © of the act. With respect to balance Rs 49 Lakhs addition in quantum appeal of the revenue, the assessee could not explain satisfactorily the source from which the sum was found in the locker. In the quantum appeal, we have confirmed the addition to that extent. Therefore, in absence of any plausible, satisfactory explanation with respect to the above sum, we confirm the penalty on addition of Rs 49 lakhs found in the locker in the name of the assessee, which is held to be the income of the assessee u/s 69A of the act, thereby the assessee has concealed her income to that extent. We direct the ld AO to re-compute the penalty on the addition of Rs. 49 lacs as concealed income. Accordingly, we confirm the action of the ld AO in levying penalty u/s 271 (1) (c) of the act on account of undisclosed income of cash found in the locker in the name of the assessee to the extent of Rs 49 Lakhs only. Accordingly, the appeal of the ld AO is partly allowed.
38. Accordingly, ITA NO. 7085/Del/2014 of the revenue for Assessment Year 2012-13 is partly allowed.

39. This appeal is filed by the ld AO against the against the order of the ld CIT(A)-1, New Delhi dated 16.05.2014 for the Assessment Year 2010-11, wherein, the ld CIT(A) has deleted addition of Rs. 35 lacs in the hands of the assessee and held that the same is required to be taxed in the hands of the assessee on substantive basis and protective basis in the hands of Smt Padmarani kapala.
40. The revenue has raised the following grounds of appeal:-
- “1. *The order of the ld CIT(A) is not correct in law and facts.*
 2. *On the facts and circumstances of the case the ld CIT(A) has erred in deleting the addition of Rs. 3500000/- on protective basis on account of unexplained cash found during the course of search and seizure operation.”*
41. The brief facts of the case shows that the ld AO has taxed a sum of Rs. 35 lacs found from the locker of Smt Padmarani Kapala on protective basis in the hands of the assessee, Dr. M V Rao. The ld CIT(A) has held it to be chargeable to tax in the hands of the assessee on substantive basis.
42. The ld DR could not show us that how the revenue is aggrieved by the order of the ld CIT(A). We have also verified the facts wherein, vide para No. 5.3 of the order he has held that above sum is chargeable to tax in the hands of the assessee on substantive basis. In view of this, we find no infirmity in the order

of the Id CIT(A) and therefore, ITA No. 4207/Del/2014 for Assessment Year 2010-11 filed by the revenue is dismissed.

43. Accordingly, five appeals in case of Ms Padmarani Kapala for Assessment Year 2007-08 and 2012-13 as well as one appeal in case of Dr. MV Rao for Assessment Year 2010-11 are disposed off accordingly.

Order pronounced in the open court on 30/08/2018.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:30/08/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi