IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I. T. A. No. 458/(Asr)/2017
Assessment Year: 2010-11

Kamal Gandhi, Bhatti Colony, Chandigarh Road, Nawanshahar [PAN: ADWPG 0708N]	Vs.	Asst. C.I.T., Central Circle-II, Jalandhar
(Appellant)		**(Respondent)**

Appellant by : Sh. M. R. Bhagat & Rajinder Kumar Chopra
Respondent by: Smt. Parwinder Kaur, CIT-DR

Date of Hearing: 07.08.2018
Date of Pronouncement: 28.08.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-5, Ludhiana ('CIT(A)' for short) dated 21.04.2017, confirming the levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 ('the Act' hereinafter), for Assessment Year (AY) 2010-11 by the Assessing Officer vide his Order dated 26.03.2014.

2. The facts of the case in brief are that the assessee was subject to search u/s. 132 of the Act at her residence (at Bhatti Colony, Nawanshahar) on 18.02.2010, whereat (gold & diamond) jewellery valued at Rs.19.29 lacs was found, and the assessee accordingly questioned about the source thereof in the ensuing assessment proceedings, initiated (as it appears) by issue of notice u/s. 142(1) on 23.02.2011.

The assessee explained the same to be her streedhan, for which a credit of Rs.6 lacs was allowed by the Assessing Officer (AO), making an addition for the balance Rs.13.29 lacs vide order u/s. 144 dated 28.12.2011. In appeal, the ld. CIT(A) allowed a further relief of Rs.8.29 lacs on the basis that there were, apart from the assessee, two other ladies in the house, residing as a part of the joint family, with no further jewellery having been found during search from the residence (or otherwise), sustaining an addition of Rs.5 lacs, which was not challenged further by the assessee. In penalty proceedings, initiated at the conclusion of the assessment proceedings, the assessee relied on the Board Instruction No. 1916 dated 11.05.1994, allowing 500 gm. (of gold jewellery) for each married lady. The same did not find favour with the AO as the said instruction was only for the purpose of regulating the seizure during search, and could not be interpreted to imply that jewellery to that extent is to be considered as explained. Penalty at 100% of the tax sought to be evaded working to Rs.60,293, penalty was levied at Rs.61,000/- which stood confirmed in first appeal, further adding that *Explanation 5* to section 271(1)(c) was attracted.

3. We have heard the parties, and perused the material on record.

The substantial relief allowed by the Revenue in quantum proceedings has been by accepting the assessee's contention of the jewellery seized to be a part of her streedhan, with there being in fact three ladies (of the joint family) residing at the residence searched and, admittedly, no further jewellery being found during search. That is, by regarding jewellery found as belonging to, apart from the assessee, two other ladies in the house, stated to be the assessee's mother-in-law and daughter-in-law.

'Streedhan' is the property acquired by a married lady out of the savings effected from the money she gets from her spouse (or any other male member, as

Karta of the HUF) for running the household or for her personal maintenance. Clearly, there could be no standardization with regard thereto, which would depend upon the amount provided to the lady for the purpose, and for the period for it is, viz., 5 years, 10 years, etc. Further, any other asset/s acquired out of streedhan after marriage would also need to be taken into account for the purpose, if one were to arrive at a reasonable estimate of how much jewellery could, in the facts and circumstances of the case, be ascribed to her streedhan and available with her at the relevant time. No information regarding any of these aspects has been furnished by the assessee while claiming the jewellery found during search to be her streedhan. The same could also include jewellery received as gift on the occasion of her marriage or other family festivals, on which again there is no information and, like-wise, exclude that gifted by her. In other words, the assessee's explanation, without any supporting material and, in fact, without any contention to that effect, is no more than a bald claim/statement. The Revenue therefore has been, as stated in the penalty order itself, liberal in allowing credit for streedhan at Rs.6 lacs.

At the same time, without doubt, there is nothing to show that the jewellery found was from the assessee's room, i.e., her possession, for which we have also perused the material on record. There are two more ladies in the house to whom therefore jewellery could therefore equally belong, i.e., as contended. No doubt the burden is on the assessee to show which of the specific items of jewellery belong to whom, i.e., amongst the three ladies, or even the gents, as further claimed. However, that could only be where the Revenue first discharges its' onus by showing that the jewellery belonged only to the assessee. At the cost of repetition, jewellery stands found from the assessee's residence, with there being nothing on record to show as to how much of it was from the assesseee's room or her possession, and that from other two ladies of the house. How could, then, *Explanation 5A* apply to the assessee *qua* the entire jewellery? We are conscious

that the 'control' and 'possession', only which would justify the inference of the jewellery found in search as belonging to the assessee, cannot be confined to mean only that recovered from the assessee's room or locker, etc.; the matter being factual, so that it has to be determined in the conspectus of the facts and circumstances of the case. The Revenue has, however, apart from presuming the jewellery found to be of the assessee, who appears to be the main lady of the house, done precious little to lead the presumption in law of the jewellery found being solely the assessee's, as by questioning her or other members of the household on the various aspects of the matter at the time of search or even later. It is this that therefore led it to allow her relief, i.e., on the assessee, even without specifying any particular jewellery, contending that found (and ascribed to her) as also including that belonging to the other two other ladies of the house.

Further, in this regard, we may clarify; the ld. counsel during hearing contending that *Explanation 5* to section 271(1)(c), alluded to by the ld. CIT(A), is not applicable as the search was after 31.05.2007, and even as observed during hearing, that would be wholly inconsequential as *Explanation 5A*, a *pari materia* provision, applicable to searches after 31.05.2007, would stand attracted, which in fact is more stringent than *Explanation 5*. Being a part of the provision, it need not be specifically invoked, as clarified in *K.P. Mathusudhanan v. CIT* [2001] 251 ITR 99 (SC); *Harish P. Mashruwala v. Asst. CIT* [2011] 9 ITR (Trib) 752 (Mum) (SB). Why, in the absence, i.e., assuming so, of *Explanation 5/5A*, it is *Explanation 1* read with *Explanation 4* that would stand attracted, to the same effect. The assessee does not refute the same; in fact, rendering an explanation as to the entire jewellery being her streedhan and as belonging to other two ladies, which stands accepted by the Revenue in part. The finding of the relevant asset (gold and diamond jewellery) in the present case, as being the assessee's property, could, u/s. 69B, however, be validly invoked by the Revenue only where the same stands found from her

possession, as from her room, locker, etc. or, even otherwise, shown to be under her control. An explanation could only follow a finding as to the relevant asset/s as belonging to the assessee. The issue, we may clarify, is not if the assessee owns any jewellery, which she admittedly does, but as to what extent? This is as, apart from other family members, there are two ladies in the house who could also have streedhan or otherwise own the jewellery found. The allowance of a part relief by the Revenue in quantum proceedings on that ground is, again, without any basis in facts, and merely a guess work. The primary onus on the Revenue being not discharged, while jewellery to some extent accepted as being the assessee's streedhan, no case for levy of penalty is, under the circumstances, made out.

We decide accordingly.

4. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on August 28, 2018

Sd/-	Sd/-
(N. K. Choudhry)	(Sanjay Arora)
Judicial Member	Accountant Member

Date: 28.08.2018
/GP/Sr. Ps.
Copy of the order forwarded to:

(1) The Appellant: Kamal Gandhi, Bhatti Colony, Chandigarh Road, Nawanshahar
(2) The Respondent: Asst. C.I.T., Central Circle-II, Jalandhar
(3) The CIT(Appeals)-5, Ludhiana
(4) The CIT concerned
(5) The Sr. DR, I.T.A.T.

True Copy

By Order