

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

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. L.P. SAHU, ACCOUNTANT MEMBER**

ITA No.1667/Del/2017
Assessment Year: 2014-15

DCIT, CC-28, ROOM NO. 317, ARA CENTRE, JHANDEWALAN EXTENSION, NEW DELHI	Vs.	AYUSH AGARWAL, 135, BINDAL HOUSE, MISSION COMPOUND, PACHANDA ROAD, GANDHI COLONY, MUZAFFARNAGAR UP-251001 (PAN:AHWPA5924C)
(Appellant)		(Respondent)

Department by	Shri Sridhar Dora, Sr. DR.
Assessee by	Shri V.K. Agarwal, A.R.

ORDER

PER H.S. SIDHU, J.M.:

This appeal by the Revenue is directed against the order passed by the Ld. CIT(A)-29, New Delhi in relation to assessment year 2014-15 on the following grounds:-

- i) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 65,42,564/- made by the AO on account of unexplained investment u/s. 69A of the I.T. Act.
- ii) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the

addition of Rs. 65,42,564/- made by the AO on the basis of old valuation report which had no evidentiary value as the valuation report was not filed with the department with any wealth tax return.

- iii) That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.
- iv) That the grounds of appeal are without prejudice to each other.
- v) That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

2. The brief facts of the case are that assessee filed its return of income on 30.9.2014, declaring income at Rs. 10,48,690/-, which was subsequently revised through computation on 29.9.2015, disclosing income at Rs. 10,64,060/-. The assessee has disclosed income from salary, business income and income from other sources. A search under section 132 of the Income Tax Act, 1961 (in short "Act") has been carried out in Bindal group of cases including the assessee on 7.3.2014. Various books of accounts / documents etc. were found and seized. During the course of search, jewellery weighting aggregate to 4021.786 gms (net) valuing Rs. 1,66,07,862/- was found from the possession of the assessee and his family members namely Sh. Anil Kumar, Smt. Surabhi Rani and Mrs. Kaushalya Devi. This being the year of search, proceedings under section 143(3) of the Act was carried out and as mentioned in the

assessment order, notice under section 143(2) of the Act was issued on 11.9.2015. During the assessment proceedings, the assessee was asked to explain the source of such jewellery found during search and after considering the submissions of the assessee, an addition of Rs. 65,42,564/- was made by the AO as unexplained investment under section 69A of the Act in the hands of the assessee and assessed the income of the assessee at Rs. 76,06,624/- vide order dated 26.2.2016 passed u/s. 143(3) of the I.T. Act, 1961. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order 21.12.2016 has partly allowed the appeal of the assessee and deleted the addition amounting to Rs. 65,42,564/-. Aggrieved with the impugned order the Revenue is in appeal before the Tribunal.

3. Ld. DR relied upon the order of the AO. He submitted that the addition was deleted by the Ld. CIT(A) on the basis of old valuation report which had not evidentiary value as the valuation report was not filed with the Department with any wealth tax return. Hence, he requested to Allow the Revenue's Appeal.

4. On the other hand, Ld. AR for the assessee has relied upon the order of the Ld. CIT(A) and in support thereof he filed a Paper Book containing pages 1 to 39 in which he has attached the copy of written submission filed before the AO; Valuation Report dated 7.3.2014; Four valuation reports dated 7.6.2006; Purchase bill for jewellery dated 19.10.2011; chart bifurcating the jewellery found in the hands of the assessee and his wife; reconciliation chart; letter dated 29.4.2014 filed

before the Ld. ADI (Inv.); Statement of Sh. Satya Prakash, approved valuer; Affidavit of by Sh. Satya Prakash, approved valuer; Written submissions filed before the Ld. CIT(A) and order passed by the ITAT, Delhi in the case of Sh. Praveen Goel which was decided in favour of the assessee on similar facts. In view of above, he requested to uphold the impugned order and dismiss the appeal of the Revenue.

5. We have heard both the parties and perused the records, especially the impugned order. We find that Ld. CIT(A) has discussed the issue in dispute elaborately at page no. 9 to 12 vide para no. 8 to 9.8. For the sake of convenience, we are reproducing herewith the relevant findings of the Ld. CIT(A) as under:-

- "8. *In ground nos. 4 and 5 the appellant challenged the addition of Rs. 65,42,564/- on account of alleged unexplained investment under section 69A of the Act in jewellery found during the course of search at the residential premises of the appellant. The contention of the appellant, as reproduced earlier has been considered vis-à-vis the aversons in the assessment order and details submitted.*
9. *The addition has been made by the AO mainly due to the reason that the jewellery found during the search was not supported*

by any bills or document, except for some fresh purchases. The valuation report prepared by the approved valuer Sh. Sanjay Prakash was not found during search and the valuer could not produce the records or date etc. of preparation of such valuation report, no payments were charged for such valuation, and hence rejected by the AO as prepared after search. The appellant has not disclosed this jewellery in his wealth tax returns as no wealth tax returns were filed by appellant and his family members.

9.1 *It is a fact that during search on 07.03.2014, the said valuation report was not found, however in his statement recorded during search, the appellant has mentioned that these jewellery belongs to 5 family members namely late Smt. Kaushalya Devi (grandmother) Sh. Anil Kumar (father), Smt. Surabhi Rani (mother), Mrs. Disha Agarwal (wife) and the appellant himself. It is also mentioned that jewellery is ancestral and some jewellery is received during marriage and purchased at the time of*

marriage. Subsequently, before ADI, Investigation, valuation reports of four family members, as on 31.03.2006 was submitted on 29.04.2014, wherein all the jewellery found during the course of search was duly reflected/matched in terms of weight. A chart has been produced to show that the items reflected in the valuation in the report for the year ending 31.03.2006 are duly covered and matched with the items found during search on 07.03.2014. A further chart showing reconciliation is also submitted to corroborate the stated facts, which is annexed with this order. It is observed that all the items found during the search have been duly reflected in the said valuation report as on 31.03.2006.

9.2 *It is also observed that these jewellery belongs to four of the family members of appellant as also supported by the valuation report. However, all the jewellery found from the premises has been added in the hands of appellant only, where the benefit of CBDT instruction has been given in the hands of*

other family members too. The AO has not provided any reasoning for making such additions in the hands of appellant only, when the appellant and his family members have duly owned up the jewellery in their hands and a valuation report has been provided to corroborate the same. Therefore, jewellery belonging to four family members cannot be added in the hands of appellant alone.

9.3 The appellant has mentioned that no Wealth Tax returns have been submitted. This alone cannot be the basis to make addition in the hands of appellant only, as this matter is quite old and appellant also have provided evidences in the form of old valuation report and proof of purchase of some jewellery, subsequently. However, if it is found by the AO that there is violation of Wealth Tax provisions, he is free to take action under Wealth Tax Act, as per law.

9.4 The contention of AO that no bills and source of payment of jewellery found during the course of search is adequately addressed

by the appellant, mentioning that these are the ancestral jewellery and acquired before 31.03.2006, for which a valuation report has also been submitted as evidence.

9.5 *The AO has also raised doubts on the valuation report as on 31.03.2006 in the name of appellant, his father, his mother and his grandmother (since deceased). The statement of government approved valuer Sh. Sanjay Prakash Saraf was recorded during assessment proceedings, wherein he has confirmed of preparing such valuation report of the entire family members of Bindal group including the appellant. An affidavit in this regard has also been submitted. However, since no documentary evidence for such valuation report has been provided and no payments have been charged for preparation of said report, therefore the AO rejected the valuation report and the statement of affairs holding that the same is prepared after the search.*

9.6 *In this regard, it is undisputed that the approved valuer has stated on oath that he*

has prepared such valuation report and confirmed the veracity of the same. Further, an affidavit has also been provided to support his contention. It is not statutorily required to keep the periodic records of such valuation report, therefore the affidavit submitted by the appellant cannot be negated. Further, if approved valuer has not charged any amount for preparation of such report, it cannot be said that the valuation report was not prepared at that point of time. Here it is also to be mention that though during search no such valuation report .vas found but it was categorically stated by the appellant in his statement that it s the ancestral jewellery and after few days the said valuation report has been produced before the ADI, Investigation.

9.7 Therefore, the period and content of the valuation report cannot be considered as farce or prepared subsequently after search, looking to the submission by the approved valuer, supported by his affidavit.

9.8 *Looking to the facts and circumstances of the case where the jewellery found during the course of search has been duly explained through the valuation report, which is acquired earlier as ancestral jewellery, valuation report was submitted after few days of search before ADI, Investigation, where the seized jewellery has been duly matched with the valuation report, the veracity of valuation report could not be proved wrong by the AO and rejected only on surmises where the valuer himself has confirmed on oath for preparation of such valuation report and affidavit, the jewellery is claimed to be in the hands of 4 persons, whereas the addition has been made in the hands of appellant only, therefore in view of the discussions in the foregoing paragraphs, it is held that appellant has sufficiently explained the jewellery found during search and therefore no additions are called for. Therefore, addition amounting to Rs.65,42,564/- is directed to be deleted. These grounds of appeal are allowed."*

5.1 After perusing the aforesaid findings, we are of the considered view that Ld. CIT(A) has rightly held that assessee has sufficiently explained the jewellery found during search and therefore, no addition is called for and accordingly, correctly deleted the addition of Rs. 65,42,564/-, which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Revenue.

6. In the result, the appeal of the Revenue is dismissed.

The decision is pronounced on 20th December, 2018.

Sd/-

**(L.P. SAHU)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 20th December, 2018.

“SRBHATNAGAR”

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi