

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER  
AND  
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.426/Ind/2017  
Assessment Year: 2012-13**

Late Smt. Kailash Agrawal Through LH Mr. Sudhir Kumar Agrawal, E-2/4, Arera Colony, Bhopal (Appellant)	<b><u>बनाम/</u></b> Vs.	DCIT-1 Bhopal (Revenue)
PAN: AARPA4436B		
Appellant by	Shri S.S. Deshpande, CA	
Revenue by	Smt. Ashima Gupta, CIT- DR	
<b>Date of Hearing:</b>	<b>23.01.2019</b>	
<b>Date of Pronouncement:</b>	<b>06.02.2019</b>	

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

This appeal by Assessee pertaining to A.Y. 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-3 Bhopal, (in short 'CIT(A)'), dated 28.02.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 31.01.2014 by DCIT(Central) Bhopal. The assessee has raised following grounds of appeal:

*“1. That on the facts and in the circumstances of the case, the order of the ld. CIT(A) is incorrect and bad in law.  
2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not deleting the complete addition made on account of Gold for 722.010 gms.”*

2. Brief facts as culled out from the records are that the assessee is an individual and wife of Sushil Kumar who is part of Sagar Group which is engaged in the business as builder, developer and contractor. A search u/s 132A of the Act was also conducted at the residential premises of the assessee. Assessment proceedings u/s 143(3) r.w.s 153A of the Act were completed on 31.01.2014 wherein Ld. assessing officer made an addition of Rs.16,99,560/- for unexplained gold jewellery weighing 722.010 gms (net) at Rs.16,71,400/- and silver coins & silver payals valuing at Rs.28,160/- found in the locker owned by the assessee treating them to be unexplained.

3. Against this addition, assessee preferred an appeal before the Ld. CIT(A) who after giving the benefit of CBDT Instructions No.1916 dated 11.05.1994 deleted addition for 600 grams of Gold jewellery treating them to be explained and sustained the remaining amount of addition.

4. Now, assessee is in appeal before the Tribunal against the sustained addition for alleged unexplained gold jewellery weighing 122.010 grams, silver coins/articles valuing of Rs.28,160/-.

5. Ld. Counsel for the assessee submitted that the assessee was aged about 73 years on the date of search and was married in the year 1958 and living in a joint family. She has been receiving gifts

on ceremonial occasions from her parents and close relatives and looking to the family status the alleged jewellery of 122.010 grams and silver coins/articles weighting 591 grams should not have been considered as an unexplained.

6. Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities.

7. We have heard the rival contentions and perused the record placed before us. The sole issue relates to the unexplained gold jewellery weighing 122.010 grams & Silver articles/coins weighing 591 grams. We find that Ld. CIT(A) deleted the addition of Rs. 600 grams gold jewellery observing as follows:

*"I have considered the facts of the case, the written submissions of the learned AR and various decision cited and also perused the assessment order. The appellant has stated that the total gold jewellery 748.61 grams was found during the course of the search and this includes stri-dhan of the assessee.*

*Reliance is placed on instruction no. 1916 of CBDT:  
"Instruction No. 1916 (F.No. 286/63/93-IT(INV.I/), dated 11-5-1994, issued by the Central Board of Direct Taxes ('CBDT') directs the income tax authorities, conducting a search, to not seize jewellery and ornaments found during the course of search of varying quantities specified in the instructions, depending upon the marital status and the gender of a person searched. The guidelines are issued to address the instances of seizure of jewellery of small quantity in the course of search operations u/s. 132 that have been noticed by the CBDT A common approach is suggested in situations where search parties come across items of jewellery for strict compliance by the authorities. The CBDT directed that in the case of a person not assessed to wealth-tax, gold jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100*

*gms. per male member of the family, need not be seized. "*

*4.2 The law with respect to quantity of jewellery and ornaments which would generally be held by the family members of an assessee has gone through huge litigations.*

*Boards' instruction no 1916 dated 11 " mat 1994 which lays down guidelines for seizure of jewellery and ornaments has also been interpreted by various courts and tribunals.*

*•In the case Commissioner of Income Tax vs Ratanlal VyaparilaJ Jain [(2010) 235 CTR 0568: (2010) 45 DTR 0290; (2011) 339 ITR 0351J it has been that:*

*"Instruction no. 1916, dt 11 til may 1994 which lays down guidelines for seizure of jewe II ery in the course of search takes into account the quantity of jewellery which would generally be held by the family members of an assessee and, therefore unless anything contrary is shown, it can be safely presumed that the source to the extent of the jewellery stted in the circular stands explained".*

*•In the case Commissioner of Income Tax vs M.S Agrawal (HUF) [(2008) 76 CCH 0802 MPHC: (2008) 11 DTR 0169 (MP)J it has been held that:*

*"In the absence of any material found during search having nexus with undisclosed income, no addition could be made in block assessment under chapter XIV-B; further Tribunal was justified in deleting addition on account of jewellery having regard to CBDT Instruction No. 1916 dt. 11 may 1994."*

*• In the case Ashok Cbaddba vs ITO (2011) 202 Taxman 395 it has been held that:*

*"Section 69A of the income-tax Act, 1961 - Unexplained moneys - Assessment year 2006-07 During a search at assessee's residential premises, 906.900 gms jewellery was found from assessee - Assessee explained that he was married 25 years back and jewellery was received by his wife in form ofstree dhan' or on other occasions such as birth of a child, etc. - Assessing Officer accepted only 400 gms of jewellery as explained and treated 506.900 gms of jewellery as unexplained and, accordingly, made addition under section 69A - Whether collecting jewellery of 906.900 gms by a woman in a married life of 25 years inform ofstree dhan or on other occasions is abnormal - Held, no - Whether therefore, Assessing Officer was*

*unjustified in treating only 400 gms as 'reasonable' and treating remaining jewellery as 'unexplained' - Held. yes - Whether, therefore, addition made was to be deleted - Held, yes [In favour of assessee]".*

*In the case Smt Pati Devi vs Income Tax Officer and others Reported in 240 ITR -727 (Karnataka High Court) it has been held that:*

*"by referring to instruction no 1916 it was held that it is not the value which is considered but it is the weight which is considered reasonable looking to the social circumstances prevailing in the country. "*

*4.3 Considering the aforesaid facts and circumstances of the case and the various decisions cited above the findings on this issue are as below:*

- i). The appellant assessee is married for more than 55 years. For a married lady, collecting jewellery in the form of stri-dhan or buying jewellery on other important occasions is very normal and common in Hindu families. This depends to a large extent on the status and income of the family. In this case the appellant's status is reflected from the regular returns of income filed and status of the family.*
- ii). The A. O' s findings has no merit that the appellant assessee has not submitted any material evidence to substantiate her claim regarding jewellery received as gift at the time of marriage. At the time of marriage jewellery is given as gift by close relatives and friends and a person giving a gift of jewellery does not attach the bill of purchase.*
- iii). During the last 7 to 8 years the prices of gold have gone up many folds. The valuation of jewellery was done at the time of search. It would be proper to consider the weight of the jewellery rather than the valuation on the date of search. The jewellery which is part of stri-dhan and also acquired at an earlier date would have been acquired at a price much lower than the value arrived at the time of search on account of valuation.*
- iv). The A.O has not mentioned any specific material found during the course of search which would show that the investment in jewellery found in the locker on account of undisclosed sources. The A.O has not been able to connect*

*acquisition of jewellery with any undisclosed income. The A.O has proceeded with the onus being on the assessee to prove the genuineness of the source of acquisition of jewellery. But, the A.O has not been able to establish any nexus with any document or evidence collected during the search. Merely, if an evidence IS not filled regarding receiving of jewellery at the time of marriage, it cannot be presumed that it has been acquired out of undisclosed investments.*

*In the case of Commissioner of Income Tax vs Ratanlal Vyaparilal Jain [(2010) 235 CTR 0568: (2010) 45 DTR 0290: (2011) 339 ITR 03511- where it has been held:-*

*"The Tribunal found that the jewellery held by the assessee and his family members was well within the limit laid down under the CBDT circular and accordingly, deleted the whole addition on the ground that the jewellery held by each of the family members was below the limits specified in the said circular. Though it is true that the CBDT Instruction No. 1916, dt. 11<sup>th</sup> May, J 994 lays down guidelines for seizure of jewellery and ornaments in the course of search, the same takes into account the quantity of jewellery which would generally be held by family members of an assessee belonging to an ordinary Hindu household. The approach adopted by the Tribunal in following the said circular and giving benefit to the assessee, even for explaining the source in respect of the jewellery being held by the family is in consonance with the general practice in Hindu families whereby jewellery is gifted by the relatives and friends at the time of social functions, viz., marriages, birthdays, marriage anniversary and other festivals. These gifts are customary and customs prevailing in a society cannot be ignored. Thus although the circular had been issued for the purpose of non-seizure of jewellery during the 'course of search, the basis for [he same recognizes customs prevailing in Hindu Society. In the circumstances, unless the Revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery stated in the circular stands explained. Thus, the approach adopted by the Tribunal in considering the extent of jewellery specified under the said circular to be a reasonable quantity, cannot be faulted with. In the circumstances, it is not possible to state that the Tribunal*

*has committed any legal error so as to give rise to a question of law. ..*

*In the case Commissioner of Income Tax vs M.S Agrawal (HUF) [(2008) 76 CCH 080J MPHC: (2008) 11 DTR 0169 (MP)] where it has been held;*

*"In the case at hand, the AO has not connected any undisclosed income with anything that has come in search and seizure. The AO has himself recorded with regard to the NRI gifts that the assessee had denied of having made any compensatory payments. He has also found that the statements recorded of the donor were not dear and he has not specifically mentioned anything about the gifts made to the assessee. The AO has proceeded with regard to the OIIS on the assessee to prove the genuineness of the transaction and on that basis, he has held it to be non-genuine. But the fact remains that no nexus has been established with any document or evidence collected during search and seizure with regard to the gifts made. There is no finding as to how the gifts are not genuine except stating about the onus. Be that as it may, in the absence of any document during search or seizure, it is difficult to accept the submission of the counsel for the Revenue that the conclusion arrived at by the Tribunal to the effect that the proceedings could not have been initiated under Chapter XIV-B is erroneous or perverse. The CBDT instruction which relate to guidelines for seizure of jewellery and ornaments in the course of search provides that in the case of a wealth-tax-assessee, gold jewellery and ornaments found in excess of the gross weight declared in the WT returns only need be seized, the officer having regard to the status of the family and the custom and practices of the community to which the family belongs and other circumstances of the case. "*

*In the case Ashok kumar Jain vs DCIT- ITA No. 211IndJ2003 reported in (2004) 32 ITC 527 (Ind) where it has been held;*

*.... the CBDT instruction be taken as yard stick to arrive at reasonableness of holding of gold ornaments in a middle class Hindu family, prevailing customs also to give gifts to minor children's on festive occasions "*

*4.4 The appellant assessee has been filing regular returns of income. Thus, looking into the income and status of family of*

*the appellant assessee and in view of the decisions cited above, the gold jewellery in possession of the appellant late Smt. Kailash Agarwal along with her husband Shri Sushil Agarwal to the extent of 600 grams is reasonable. Keeping in view Board' circular 1916, the breakup of jewellery to the extent of 600 grams taken as reasonable is given as under;*

	<i>In grams</i>
<i>Kailash Agarwal (Appellant Assessee)</i>	<i>500</i>
<i>Sushil Agarwal (Appellant Assessee's husband)</i>	<i>100</i>
<i>Total</i>	<i>600</i>

*It is, therefore, held that out of the total gold jewellery found in possession, as claimed by the appellant late Smt. Kailash Agarwal through legal heir Shri Sushil Agarwal, only 600 grams is treated as reasonable.*

*Addition on account of 600 grams of gold jewellery out of the total gold jewellery found in possession of late Smt. Kailash Agarwal through legal heir Shri Sushil Agrawal is hereby, deleted.*

*The assessing officer may recomputed the addition and allow appropriate relief to the appellant.”*

8. We further find that the assessee was aged about 75 years (Approx) on the date of search and has later expired on 18.05.2014. Subsequently, legal heir of the assessee, husband Sushil Agrawal has also expired on 04.01.2018 and now the son of the assessee Mr. Sudhir Kumar Agrawal is representing the case. Looking to these facts and circumstances as well as the old age of the assessee being married for so many years and living in a joint family consisting of her two sons and daughter-in-law, one cannot deny the possibility that some of the jewellery of other family members

were in the bank locker held by the assessee we are of the view that no addition should have been sustained by the Ld. CIT(A). We accordingly delete the addition for unexplained gold jewellery at Rs.2,82,444/- for 122.0 grams(net ) and also delete minor addition of Rs.28160/- for silver coins and silver payals. However, our this decision is purely on the facts of the present case and should not be treated as precedence in other cases. Accordingly, we allow the grounds raised by the assessee.

9. In the result, appeal of the assessee is allowed.

*Order was pronounced in the open court on 06.02.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 06/02/2019

*Patel, P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar**