

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2928/Del/2017  
(Assessment Year: 2014-15)

Narinder Mohan Jain, KI-165, Daya Sadan, Kavi Nagar, Ghaziabad PAN: AEIPJ2908Q	Vs.	DCIT, Central Circle-5, New Delhi
(Appellant)		(Respondent)

ITA No. 2929/Del/2017  
(Assessment Year: 2014-15)

Meetu Jain, KI-165, Daya Sadan, Kavi Nagar, Ghaziabad PAN: AAEP7872Q	Vs.	DCIT, Central Circle-5, New Delhi
(Appellant)		(Respondent)

ITA No. 2930/Del/2017  
(Assessment Year: 2014-15)

Shakuntala Jain, KI-165, Daya Sadan, Kavi Nagar, Ghaziabad PAN: AAEP7872Q	Vs.	DCIT, Central Circle-5, New Delhi
(Appellant)		(Respondent)

ITA No. 2931/Del/2017  
(Assessment Year: 2014-15)

Vivek Jain, KI-165, Daya Sadan, Kavi Nagar, Ghaziabad PAN: AAEP7872Q	Vs.	DCIT, Central Circle-5, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri GS Grewal, CA Shri Tanpreet Kohily, CA
Revenue by:	Ms. Pramita M. Biswas, CIT DR
Date of Hearing	16/01/2019
Date of pronouncement	19/02/2019

## O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These four appeals pertaining to various family members of one family are related to single search u/s 132 of the income tax act, 1961 carried out on 30/09/2013 in NCML group where one of the family members was a director in those companies and therefore there was a search on Sri Narinder Mohan Jain along with his wife Mrs Shakuntala Jain, son Mr Vivek Jain and daughter in law Mrs. Meetu Jain, who are all appellants in these appeals. Therefore they were heard together and disposed of by this common order.
2. ITA No 2928/del/2017 is an appeal filed by the Shri Narinder Mohan Jain, assessee against the order of the Id CIT(A)-25, New Delhi dated 30.01.2017 for the Assessment Year 2014-15. The assessee has raised the following grounds of appeal:-
  - “1. *The Id CIT(A) has erred in upholding the addition of Rs. 1,70,000/- made by the Id Assessing Officer on account of unexplained income in the form of cash found from the locker of the appellant in Bank of India, Ghantaghar, Ghaziabad u/s 69A of the Income Tax Act, 1961.*”
3. Brief facts shows that search under section 132 of the income tax act was carried out an assessee on 30/09/2013. During the search cash of INR 1 03800/- was found belonging to the appellant son Mr Vivek Jain and INR 1 70000/- was found from the locker in the name of the assessee and his wife. Therefore the total cash found during the search was INR 2 73800. The learned assessing officer made the addition of INR 170,000 found from the locker of the appellant to the income of the appellant under section 69A of the income tax act which has been upheld by the learned CIT – A. Therefore assessee has challenged the above addition in this appeal.
4. Before the learned assessing officer the assessee tried to explain above sum of INR 170,000 stating various explanations which was found contradictory to each other. Vide letter dated 20/1/2016 the assessee submitted that the above Cash is out of savings from various family members and out of the gifts received. As per letter dated 10/3/2016 the assessee stated that major part of the case was out of the sale proceeds of car in cash by the son of the assessee. During the course of search at the time of operation of locker the

wife of the assessee stated that the above cash was kept in locker when she left India to visit her son on 1/8/2013 out of cash kept at home by assessee and her to meet any emergency medical expenses and while leaving India it was kept in the same locker. As the statement of the assessee at various times was contradictory to each other the learned assessing officer made the addition. The learned CIT (appeal) as per para number 8 of his order considered the whole issue and as per para number 8.3 of his order confirmed the above addition. The main reason for upholding the addition was that the assessee could not refute any of the allegation and observation of the assessing officer. On the argument of the assessee that the amount of cash found is fair, reasonable and justifiable considering that the same could have been saved by the various family members out of the gift received on various occasions such as birthday, anniversary, festival et cetera and the amounts remaining out of the withdrawals for meeting also expenses was also rejected. Therefore assessee is an appeal before us.

5. The learned authorised representative submitted that the lower authorities are confused themselves with the explanation given by the assessee for 2 different cash found at 2 different places. He submitted that a sum of INR 170,000 found from the locker number 588C with bank of India Ghaziabad belongs to the assessee who is a retired person working with some companies drawing good monthly salary. He submitted that the assessee is aged 74 years and before going to his son who is based in United Kingdom he placed the cash in the bank locker as he may need the same for medical treatment from time to time. He further referred to the statement of the wife of the assessee who also confirmed the above fact that the money was kept at home by them to meet any unforeseen emergencies. He further submitted that the appellant had submitted his bank statement with the ICICI bank wherein the assessee is regularly withdrawing the sum. He stated that from 5<sup>th</sup> January 2011 to 09/2013 the assessee has withdrawn more than INR 200,000 and deposited INR 80000/- and therefore the assessee was having this sum available to the extent of INR 120,000 in his hands. Therefore he submitted that the sum of INR 170,000 found from the locker is fully explained.

6. The learned departmental representative supported the order of the lower authorities and stated that the assessee is changing his stand and did not explain that the source of the money that has been found in the locker belongs to him and what is the source of the above sum. He therefore stated that the amount has rightly been added in the hands of the assessee.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. The only issue involved in this appeal is whether the amount of INR 170,000 found from the locker of the assessee are required to be taxed in the hands of the assessee as unexplained money. The assessee has submitted that the above amount has been generated out of his past savings. It is also not in dispute that the assessee was serving with some company for a very long time and his son is settled in United Kingdom. It is also not in dispute that appellant is aged 70 years and staying with his son who meet the household expenditure. The assessee has also submitted his bank statement with ICICI bank wherein it is found that he has regularly withdrawing a sum of INR 200,000 and out of which he deposited only INR 80,000/- and therefore it is apparent that at least to the extent of sum of INR 120,000 is available in his hands on the date of search. It is not the case of the revenue that the above amount has been withdrawn from the bank of the assessee by the assessee for spending for something else. In view of this, we are of the considered opinion that the assessee should be granted the credit of at least INR 120,000/- . Accordingly the learned assessing officer is directed to reduce the addition from INR 170,000 to INR 50,000 only. Accordingly ground number 1 of the appeal of the assessee is partly allowed.
8. Accordingly ITA number 2928/del/2017 for assessment year 2014-15 is partly allowed.
9. Now we come to the appeal of Miss Meetu Jain in ITA number 2929/del/2017 for assessment year 2014 – 15 filed by the assessee against the order of the learned Commissioner of income tax (appeals) – 25, New Delhi dated 30/1/2017. The assessee has raised the following grounds of appeal in ITA No. 2929/Del/2017 for the Assessment Year 2014-15:-
  - “1. *The ld CIT(A) has erred in upholding the addition of Rs. 19,60,439/- out of the total addition of Rs. 38,49,749/- made by the ld Assessing Officer*

*on account of unexplained jewellery found from the residence and locker of the appellant.”*

10. Brief facts of the case shows that in the same search the assessee was one of the assessee and therefore the return of income filed by the assessee was picked up for scrutiny. During the course of search the jewelry fitted with precious stones in some of the items and silver jewelry of Rs. 41310/- was found from the possession of the assessee which was valued at Rs. 2963213/- as per valuation report dated 30/9/2013 of M/s Amit jewellers, New Delhi. Further during the course of search on 7/10/2013 in the locker number 74 with the Oriental bank of commerce the Gold jewellery weighing 316.620 grams fitted with Moti was found it was valued at INR 8 86536 as per valuation report dated 7/10/2015. Thus total jewellery found was INR 3 849749 from the possession of the assessee which was questioned by the learned assessing officer the assessee submitted the reply relying upon the instructions issued vide circular number 1916 dated 11/5/1994 with respect to the maximum jewellery not to be seized. She further stated that the entire jewellery stands duly explained. The learned assessing officer considered the reply of the assessee and stated that instruction number 1916 is for the purpose of seizure and not for the purpose of not making an addition. He therefore made the addition of 3849749 as unexplained jewellery in assessment order passed u/s 143 (3) of the act on 14/3/2016. The assessee challenged the same before the learned CIT – A who passed an order on 30/1/2017. The learned CIT appeal noted that total 1314.834 g of the Gold jewellery was found and out of that he granted an allowance of 600 g and the balance jewellery was confirmed by considering the standard gold rate at the rate of INR 30800/- per 10 g. Accordingly he confirmed the balance addition of INR 1960439/- and deleted the balance addition. Assessee aggrieved with the order of the learned CIT – A has preferred an appeal before us.
11. The learned authorised representative submitted that the total jewellery was found at INR 3 849749 out of which the addition of INR 1 960439 has been upheld by the learned CIT appeal. The learned authorised representative submitted that the assessee is belonging to a business family and at the time of the marriage of the assessee she received approximately 450 g from

her family and 50 g from sister. She also received Gold jewellery from in-laws weighing approximately 450 g besides some other jewelry from close family members as per the tradition in the family. The learned authorised representative also referred to the several pictures of the marriage of the assessee to show that she was wearing huge jewellery at that particular time. It was further stated that the assessee received further jewellery on various occasions social as well as family as gifts to the appellant that would have weighed approximately 150 g in total. She also received jewelry on the birth of her daughters of approximately 30 g therefore it was stated that 1230 g have been received by the assessee on her wedding and other functions. To support its contention the learned authorised representative also referred to the affidavit from the appellant, her mother, her sister, her mother-in-law and father-in-law. It was further stated that some of the jewelry belonging to her brother-in-law Mr Sanjay Jain and his family was also in her possession which the family of Mr Sanjay Jain left before moving to United Kingdom. Therefore it was stated that the assessee has only 97.80 grams of jewellery in excess. The learned authorised representative also submitted that the total gold in form of ornaments of 2342.844 g and silver items weighing 6734 g have been found in possession of the family. Out of these 493.95 grams of gold and 23.918 grams of silver had already been declared in the voluntary disclosure of income scheme by the appellant's mother-in-law. The assessee also referred to the chart and stated that after the above jewellery is excluded only 1848.86 g of the Gold jewellery remains. He further stated that for calculating the exemption limit as per instruction number 1916 the amount disclosed by the assessee in voluntary disclosure income scheme should be excluded. The learned authorised representative further referred to the affidavit filed before the revenue authorities and submitted that unless they are proved to be false they cannot be ignored. Therefore he submitted that the addition made by the learned assessing officer and confirmed by the learned CIT – A deserves to be deleted.

12. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that when the assessee does not have evidence of the source of the jewelry owned by the assessee that

addition has been correctly made u/s 69A of the income tax act. He further submitted that the instruction number 1916 of the CBDT is only for the purpose of seizure and cannot be applied for the purpose of the taxation under section 69A of the act. He further stated that even otherwise no further deduction can be granted from the instruction number 1916 of the central board of direct taxes if it is applied. He therefore submitted that the addition made by the learned assessing officer and confirmed by the learned CIT – A deserves to be confirmed.

13. We have carefully considered the rival contentions and perused the orders of the lower authorities. During the course of search jewellery weighing 1314.83 g was found in the possession of the assessee. Out of that it was stated by the assessee that jewelry belonging to Sanjay Jain and his family is 87 g. The assessee submitted that the above jewellery belonging to her brother-in-law Mr Sanjay Jain and his family who kept this jewellery in her custody before moving to the United Kingdom. Therefore the balance jewellery of 1231.80 g was found in excess. Assessee has also submitted a composite charge of the jewelry found during the course of search. In case of Mrs Shakuntala Jain 7.08 g was found from her residence and 1020.90 g were found from the locker totalling to 1027.98 g. From the assessee 998.21 grams were found from her residence and 316.62 grams were found from Locker totalling to 1314.83 g. Therefore after granting benefit of 87 g of jewellery belonging to the other relative the net jewelry remains is of 2255.81 g. Assessee submitted a chart of her family members and stated that according to the instruction number 1916 the assessee must get the benefit of 2550 g of jewellery. The claim of the assessee is also supported by the decision of the honourable Gujarat High Court in case of 339 ITR 351 in CIT vs Ratanlal Veparilal Jain. Therefore we set aside the whole issue back to the file of the learned assessing officer with a direction to follow the decision of the honourable Gujarat High Court and grant assessee the benefit of instruction number 1916. Accordingly this ground of appeal of the assessee is partly allowed with above direction.
14. Accordingly appeal of the assessee is partly allowed for statistical purposes.
15. This appeal is preferred by Mrs Shakuntala Jain against the order of the Commissioner of income tax appeals – 25, New Delhi dated 30/1/2017 for

assessment year 2014 – 15 wherein the learned CIT – A has reduced the addition on account of unexplained jewellery of INR 1 7680122 only INR 12 2 4625. The assessee has raised the following grounds of appeal in ITA No. 2930/Del/2017 for the Assessment Year 2014-15:-

“1. *The ld CIT(A) has erred in upholding the addition of Rs. 12,24,625/- out of total addition of Rs. 17,68,012/- made by the ld Assessing Officer on account un explained jewellery found from the residence and locker of the appellant.*”

16. The facts of the case is identical to the facts of the case of Mrs Meetu Jain decided by us in ITA number 2929/del/2017 for the assessment year 2014 – 15 on account of the jewelry found during the course of same search from the same residence. We have given a direction to the learned assessing officer to grant benefit of instruction number 1916 of the central board of direct taxes to the assessee for taxation of the undisclosed jewellery taxed u/s 69 of the income tax act by following the decision of honourable Gujarat High Court in 339 ITR 351. Therefore for the similar direction we partly allow the appeal of the assessee.

17. Accordingly, ITA number 2930/del/2017 filed by the assessee is partly allowed with above direction for statistical purposes.

18. ITA No 2931 del 2015 appeal is filed by Mr Vivek Jain against the order of the Commissioner of income tax appeals – 25, New Delhi dated 30/1/2017 wherein the addition of INR 1 03800 made by the learned assessing officer on account of unexplained income in the form of cash found from the residence of the assessee under section 69 of the income tax act 1961 was confirmed. The assessee has raised the following grounds of appeal in ITA No. 2931/Del/2017 for the Assessment Year 2014-15:-

“1. *The ld CIT(A) has erred in upholding the addition of Rs. 1,03,800/- made by the ld Assessing Officer on account of unexplained income in the form of cash found from the residence of the appellant u/s 69A of the Income Tax Act, 1961.*”

19. The brief facts of the case shows that during the course of search and seizure under section 132 of the income tax act on 30/9/2013 , Rs 103800 cash was found at his residence. Therefore the learned assessing officer questioned about the source of the above cash. The assessee explained that cash found that the residence is out of gifts received on various occasions by the family members of the assessee. The learned assessing officer

disbelieved the explanation of the assessee and held that there was no specific source of cash found from the residence of the assessee and his spouse. Therefore he confirmed the addition of INR 1 0 3800 under section 69 of the income tax act by passing an order under section 143 (3) of the income tax act on 11/3/2016. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A , he also confirmed the above addition vide para number 8 of his order.

20. The learned authorised representative submitted that out of the cash found of INR 1 03800/- , INR 30,000 belongs to the wife of the assessee which was her pin money. It was further stated that for the remaining amount it could be savings, from money withdrawn from bank or it could be taken from his partnership firms. Before us the assessee also stated that the total amount of INR 375,000 has been withdrawn from his bank account from 5/11/2012 to 7/10/2013 and only INR 195,000 has been deposited and therefore the sum of INR 1 03800/- is available with the assessee. He further raised an argument that even during the demonetization period the honourable Prime Minister has stated that deposit up to INR 250,000 no questions would be asked and therefore it supports the fact that cash in hand to the extent of Rs. 2.50 lakhs should not be treated as unexplained because it is normal for an individual to have that much cash at home. He therefore submitted that no addition should be made in the hands of the assessee on this count.
21. The learned departmental representative supported the order of the learned assessing officer and the learned CIT – A and stated that the assessee has miserably failed to give any explanation about INR 1 03800/- of cash found from his residence and therefore the addition is rightly been made. He further stated that whatever concession has been given by the honourable Prime Minister or the reserve bank of India during demonetization cannot be taken any benefit by the assessee because the search took place in the case of the assessee on 30/09/2013. He further stated that such concession was only given for the purpose of depositing old currency notes which were demonetized and not for holding of the currency.
22. We have carefully considered the rival contentions and perused the orders of the lower authorities. Apparently during the course of search assessee was

found to be in possession of INR 1 03800 at his residence and could not give proper explanation to the satisfaction of the learned assessing officer and therefore the addition has been made. On careful consideration of the explanation of the assessee that assessee has been withdrawing a sum of INR 395,000 and only deposited part of the sum which should be available for the set off against the above cash found. According to us this argument deserves to be rejected as the father of the assessee has stated that the expenditure for household is met by the assessee that is Mr Vivek Jain. In view of this no credit can be given to the assessee about the difference in the amount withdrawn from the bank and the amount deposited in the bank account. Further with respect to the argument of the learned authorised representative that during the course of the demonetisation the reserve bank of India has given a concession that a sum of Rs 250,000 deposited by any person would not be asked any question, therefore no addition can be made up to the above sum. The argument of the assessee deserves to be rejected at the threshold itself because such an exemption was given to the persons who are depositing already monetised currency notes in their bank account and not for any undisclosed income. Even otherwise there is no such provision in the income tax act to grant benefit of statement made by any other government agencies from the taxable income of the assessee u/s 69A of the act. Unless the law provides specific exemption, no such deduction can be taken from the statement or policy decision taken by any other government agencies. From the explanation submitted by the assessee, it is apparent that assessee has kept his stand changing over a period of time. The assessee first gave an explanation about savings made by the family members. It was merely an explanation without any supporting evidences. In view of this it is apparent that assessee has failed to explain the source of cash found during the course of search of INR 103800/-. Therefore we confirm the orders of the lower authorities in taxing the sum of INR 103800/- u/s 69A of the income tax act. Accordingly the ground raised in the appeal by the assessee is dismissed.

23. Accordingly ITA number 2931/del/2017 filed by the assessee for assessment year 2014 – 15 is dismissed.

24. Accordingly all the four appeals of the assessee are disposed off accordingly.  
Order pronounced in the open court on 19/02/2019.

-Sd/-

(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 19/02/2019  
Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi