आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A.No.2320 & 2290/AHD/2016
निर्धारणवर्ष/Assessment Years: 2013-14

1. The Deputy Commissioner of Income Tax, Central Circle-2, Surat. 2. Ramesh Laljibhai Polra, 11, Haridarshan Society, Gajera School Circle, Surat. **[PAN: ADLPP 8395 D]**	**Vs.**	1. Ramesh Laljibhai Polra, 11, Haridarshan Society, Gajera School Circle, Surat. **[PAN: ADLPP 8395 D]** 2. The Deputy Commissioner of Income Tax,Central Circle-2, Surat.
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

निर्धारितीकीओरसे /**Assessee by**	Shri P.M.Jagasheth – CA
राजस्वकीओरसे /**Revenue by**	Shri Srinivas T.Bidari – CIT(DR)

सुनवाईकीतारीख/ Date of hearing:	25.07.2019
उद्घोषणाकीतारीख/**Pronouncement on:**	27.08.2019

आदेश /O R D E R

PER O.P.MEENA, AM:

1. These cross appeal filed by the Assessee and Revenue are directed against the order of Learned Commissioner of Income Tax (Appeals)-2, Surat dated 28.06.2016 for assessment year 2013-14.

2. The grounds raised by the Revenue in ITA No.2320/Ahd/2016 read as under :

> *"[1] On the facts and in the circumstances of the case and in law, the Ld.CIT(A) as erred in deleting the addition made u/s 54B of Rs.6,72,86,287/- by relying on the decision of Hon'ble ITAT in the case of Kantibhai Revabhai Prajapati and other in ITA No.376/Ahd/2014 dated 02.03.2016 and Bhagwanbhai Revabhai Prajapati in ITA No.377/Ahd/2014 dated 24.06.2015, even though the assessee has not fulfilled the condition for claiming deduction u/s 54B of the Act wherein the assessee or his parents must have carried out agriculture activities for two years immediately preceding the date on which the transfer of asset took place. In the instant case the assessee or his parents has not carried out any agriculture activity and the agriculture activity was carried out by hiring labours and through third parties.*
>
> *[2] On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition to the extent of Rs.14,97,900/- made u/s.69A on account of unexplained investment in diamond jewellery by relying on the instruction no.1916 dated 11.05.1994 which prescribes the limits for the purpose of seizure. Since source of investment was not explained, the addition was justified.*

3. The grounds of appeal(revised) raised by the Assessee in ITA No.2290/Ahd/2016 read as under :

> *"1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of Income Tax (Appeals) has erred in confirming the action of the AO in making addition of Rs.3,00,000/- on account of alleged unexplained jewellery u/s.69 of the I. T. Act, 1961.*
>
> *2. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of Income Tax(Appeals) has erred in confirming the action of the AO in not allowing deduction of Rs.29,44,871/- u/s.54B of the Act, 1961 on sale of agriculture land Block No.1264 Variyav.*

ITA No.2320/Ahd/2016 (by Revenue):

4. Ground No.1 relates to deleting the disallowance made u/s.54B of Rs.6,72,86,287/- by relying on the decision of ITAT in the case of Kantibhai Revabhai Prajapati and other in ITA No.376/Ahd/2014 dated 02.03.2016 and Bhagwanbhai Revabhai Prajapati in ITA No.377/Ahd/2014 dated 24.06.2015, even though the assessee has not fulfilled the condition for claiming deduction u/s.54B of the Act.

5. Facts apropos of this ground are that the assessee has claimed deduction of Rs.7,02,31,158/- u/s.54B of the Act on account of long term capital gain on sale of agricultural land, subsequently the said amount was invested in purchase of another agricultural land. On perusal of the details, submitted by the assessee, in respect of claim of deduction u/s.54B of the Act, it is seen that all the three lands which were sold during the year were handed over by the assessee to the other farmers for farming purposes from F.Y. 2009-10 to F.Y. 2012-13. The assessee has received only rent /Ganot from the lands. The perusal of 7/12 document in respect of land at Block No.1264

Variyav shows that the no agricultural activities carried out by any person on the said land as reported by the Deputy Mamlatdar. Therefore, the assessee was asked to show-cause as to why his claim of deduction u/s.54B should not be disallowed and subjected to capital gain tax. In response to which, the assessee stated that he fulfilled all the conditions of section 54B of the Act i.e. land should be agricultural land, agricultural land was used by the assessee or his parents for agricultural purpose over a period of two years immediately preceding the date of transfer and the assessee has purchased another agricultural land within a period of two years. It was further stated that the rent /Ganot received from agricultural land is covered under agricultural income. However, the AO views of the view that assessee has not fulfilled the conditions laid down in section 54B of the Act and was therefore not eligible for claim of deduction under the said section. According to the AO, merely a person has agricultural land and he has shown agricultural land in his return of income is not sufficient to prove that agricultural activity were done by him. Accordingly, the claim of deduction u/s.54B of the Act on the

amount of Rs.7,02,31,158/- was disallowed and added back to the total income of the assessee.

6. Being aggrieved, the assessee filed appeal before the ld.CIT(A). The ld. CIT (A) observed that the facts of the case are not in dispute. The agricultural activity has been under taken on the land which has been supported by 7/12 documents etc., It is established that it was in the possession of the appellant and AO has not disputed this part. So far other facts are concerned, the AO is correct in observing that the assessee has given the land to third parties for doing the agricultural activity, and taken rent on it. The 7/12 document also shows crop grown, but for land with Block No.1264 at Variyav are correct as the land has not been used for agricultural purposes being the said land as barren land. The ld.CIT(A), therefore, deleted the major addition to the extent of Rs.6,72,86,287/- by relying on the decision of ITAT Ahmedabad in the case of Shree Kantibhai Revabhai Prajapati and others in ITA No.376/Ahd/2014 dated 02.03.2016 and Shree Bhagwanbhai Revabhai Prajapati in ITA No.377/Ahd/2014 dated 24.06.2015.

The relevant portion of the decision in the case of Shree Kantibhai Revabhai Prajapati (supra) was quoted by the ld.CIT(A) as under:

> *"On due consideration of both these analogies, we are of the view that a bare perusal of section 54B would indicate that the land ought to be used for the purpose of agriculture activities. It can be used by the assessee being an individual or his parents or HUF. Assessees have been using this land to carry out agriculture operations through third persons* ***either on crop sharing pattern or on receiving lumpsum amount*** *(emphasis supplied). They can carry out such activity through hired labour. In form No.7/12 in the column of cultivation, self-cultivation has been written. That means, the land was under the occupation of the assessee. They have put some labourers or some persons for carrying out the agriculture operation that would not mean that they did not use land for agriculture purpose. Therefore, as far as the appeals of the Revenue are concerned, we do not find any merit in these appeals. The assessees are entitled for exemption u/s.54B of the IT Act."*

7. In view of the above, the ld.CIT (A) observed that these lands have been given on rent for farming through different persons in the last few years and rental income has been disclosed as agricultural income in the income tax returns. Not only this, the same rental income from land given for agricultural activities, which is to be taxed as agricultural income as per section 2(1A)(a) of the Act has been offered as such by the appellant in his income tax return and has been taxed as such by the AO. Therefore, respectfully following the decision the jurisdiction of ITAT, the ld.CIT(A) held that except

the land with Block No.1264 in Variyav are held to have been used for agricultural purpose by the assessee, and are held eligible for exemption u/s.54B of the Act. As far as, the land situated at Variyav for the Block No.1264 is concerned, the same is barren and according to Form No.7/12, no agricultural activities have been carried on. Therefore, the rent portion received on it, would not be an agricultural income and it has not been put for agricultural use, therefore the capital gain on sale of this land would not be eligible for deduction u/s.54B of the Act. Accordingly, out of total long term capital of Rs.7,42,97,330/- baring the long term capital gain of Rs.29,44,871/- for Block No.1264 held to be eligible for deduction u/s.54B of the Act which was worked out to Rs.6,72,86,287/- as against which the new agricultural land costing worth Rs.7,02,31,158/- has been purchased. Accordingly, LTCG the LTCG amounting to Rs.29,44,871/- was subjected to tax and balance long term capital gains of Rs.6,72,86,287/- was deleted.

8. Being aggrieved, the Revenue filed this appeal before this Tribunal. The Ld. CIT (DR) vehemently supporting the order of the AO contended that ld.CIT (A) was not justified in allowing the claim in respect of land situated at Block No.348, 1239. It was submitted that the AO has clearly brought out a case that the assessee has received only rent/ganot from these lands. The assessee was not doing any agricultural activity himself on these lands; hence, the ld.CIT (A) was not right in allowing deduction u/s.54B of the Act in respect of aforesaid two lands. With regard to confirmation of disallowance of Rs.29,44,871/- pertaining to land at Block No.1264, the Ld. CIT (DR) supported the order of the CIT (A).

9. On the other hand, the ld.Counsel supported the order of CIT (A) in respect of deduction of addition of Rs.6,2,86,287/-. The ld.Counsel for the assessee further submitted that the assessee is eligible for deduction u/s.54B of the Act as the assessee fulfils all the conditions laid down therein i.e. the land should be an agricultural land, all the land i.e. Block No.348, 1239 and 1264 are agricultural land. The agricultural land was

used by the assessee and his possession or agricultural purpose for a period of two years immediately preceding the date of transfer which is supported by copy of 7/12 extract filed before the Lower Authorities. The assessee has purchased another agricultural land within a period of two years. It was submitted that agricultural land situated at Block No.348, 1239 are fully utilised for agricultural purposes on which juar, grass, sugar, mango trees and vegetable etc., are grown. Further, the land situated at Block No.1264 was utilised for fodder crop, as it was a barren land and could not be utilised to grow anything else, but the assessee did the induction of fodder crop. The ld. Counsel further referred the sale deed in the land situated at Block No.1264 dated 08.11.2012 in which stamp duty Authorised have mentioned Page No.2 giving description of the property as DIST.SURT, S.DIST-SURAT CITY-VARIYAV GAM BLK NO-1264 OLD TENUR AGRI.LAND.SUDA NO D.T.P.-36, F.P.15 which support the contention of the assessee that land situated at Block No.1264 at Variyav was an agricultural land. The ld.Counsel further referred Question No.2 of statement of the assessee recorded u/s. 132(4) dated 17.07.2012 wherein

the assessee has clearly stated that his main source of income is from Embroidery business, Dalali from land purchase and sale and agricultural income. The ld. Counsel further referred copies of Return of Income and computation of income for A.Y. 2007-08 to 2013-14 which are placed at paper book page no.8 to 37 and contended that the assessee has shown net agricultural income for rate purpose at Rs.4,95,000/- for A.Y. 2012-13 (PB-15) Rs.5,43,903/- for A.Y. 2011-12 (PB-20) and agricultural income of Rs.6, 45,800/- for A.Y. 2010-11 (PB-26). The assessee has also shown agricultural income at Rs.25, 000/- for A.Y. 2007-08 (PB-37), thus, it was contended that the assessee was earning agricultural income from the land sold by him. Therefore, the assessee is eligible for deduction u/s.54B of the Act in respect of long-term capital gain earned by the assessee.

10. In support of his contentions, the ld.Counsel has placed reliance on the decision of Co-ordinate Bench of ITAT Indore in the case of Shri Suresh Agarwal Vs. ITO, Ward-5(3), Indore in ITA No.251/Ahd/2016 dated 17.01.2017 [PB-38] wherein it was

stated that the assessee has demonstrated with ample documentary evidence on record that the mentioned land were used for agricultural purpose before the sale and the assessee had regularly offered agricultural income in his return of income as reflected at page 7/12 of the appellate order. It was further observed that for claiming the deduction u/s.54B, it is the use of land for agricultural purpose irrespective of type of land holding. In support of this the ld. Authorised Representative has relied in the case of Shree Bhagwanbhai Revabhai Prajapati Vs. ACIT [2015] 60 taxmann.com 219 ITAT Ahmedabad wherein it was held that once it is established that land owned by the assessee has been used for agricultural purpose, he becomes entitled for claim u/s.54B on the sale of land even if he is not a cultivator but gets its cultivated the land under his supervision. The ld.Counsel further placed reliance on the decision of Shree Bhagwanbhai Revabhai Prajapati (supra) placed at Paper Book, Page No.50 of Ahmedabad Tribunal. The ld.Counsel further placed reliance in the case of Shree Kantibhai Revabhai Prajapati in ITA No.376/Ahd/2014 of ITAT Ahmedabad for A.Y. 2011-12 dated 02.03.2016 wherein it

was observed that in From No.7/12 in the column of cultivation, self-cultivation has been written that means, the land was under the occupation of the assessee. They have put some labourers or some persons for carrying out the agricultural operations that would not mean that land was not used by them for agricultural purposes. The ld.Counsel further placed reliance on the decision of Co-ordinate bench of Hyderabad Tribunal in the case of ACTI Vs. N.Raghu Varma [2013] 142 ITD 0421 (ITAT Hyd. Trib.) wherein para 10 the Tribunal held as under :

> *"10. It was argued on behalf of the revenue that this section imposed a further condition that the land should be used by the assessee for agricultural purposes within a period of two years prior to the sale and it would not be sufficient that if the lands are found to be agricultural lands, though remaining fallow. We do not think that Parliament could have intended to impose such a restriction on the relief Under Section 54B. As pointed out by the Supreme Court, one of the objects of the exemption is to encourage cultivation. Therefore, it makes sense that an assessee, who is unable to cultivate the land in his possession, should be encouraged to replace it with land, which he can cultivate. That is why the Finance Act, 1971, while bringing to tax agricultural lands within the limits of a municipality, simultaneously granted relief Under Section 54B for reinvestment of the proceeds. The expression "used for agricultural purposes" in this section could only be the description of the agricultural land, which is the subject of the transfer and not a condition precedent for granting the relief under section 54B. Even if we take it to be so, on the fact of the present case, we find that the assessee had in fact cultivated a part of its lands according to the Adangal Register and no further cultivation was possible because of lack of water. The use referred to in the section can only be regarded as such use as the lands are capable of with the aid of facilities available and the assessee cannot be denied the relief because he was actually unable to put the land to*

use due to vagaries of nature and non-availability of resources. It can hardly be the fault of the assessee if rained lands are not actually put to use during the drought. We are, therefore, convinced that the assessee was entitled to relief under section 54B of the Act."

11. In view of the above facts and circumstances, the ld.Counsel contended that the ld.CIT (A) has rightly allowed the deduction in respect of agricultural land situated in Block No.348, 1239, but not justified in rejecting the claim of agricultural land in respect of Block No.1264 Variyav as the same was being used for fodder crop, whereas was in the nature of agricultural land, on which grass was being grown and used for fodder to cattle's.

12. We have heard the rival submissions and perused the material available on record. We find that the provisions of section 54B of the Act prescribed the condition that land should be agricultural land, the assessee or his parents should use it for agricultural purpose for a period of two years immediately preceding the date of transfer and the assessee should have purchased another agricultural land within a period of two years. Ongoing through the orders of authorities below, we find that the land under consideration were in the nature of

agricultural land and the assessee has purchased another agricultural land within a period of two years. Therefore, the condition that land should be agricultural land and the assessee should purchase another agricultural land within a period of two years are satisfied. However, there is a dispute with regard to use of agricultural land by the assessee. According to the AO, the assessee personally himself was not using the land, but it was given as ganot / rental to the farmers. However, it is a fact that form no.7/12 shows that crops are grown on the land bearing Block No.348, 1239. The ld.CIT(A) has allowed the deduction u/s.54B by following the ratio laid down by the Co-ordinate Bench of Tribunal in the case of Shree Kantibhai Revabhai Prajapati (supra) in ITA No.376/Ahd/2014 wherein the Tribunal has held as under :

> *"On due consideration of both these analogies, we are of the view that a bare perusal of section 54B would indicate that the land ought to be used for the purpose of agriculture activities. It can be used by the assessee being an individual or his parents or HUF. Assessees have been using this land to carry out agriculture operations through third persons* ***either on crop sharing pattern or on receiving lumpsum amount*** *(emphasis supplied). They can carry out such activity through hired labour. In form No.7/12 in the column of cultivation, self-cultivation has been written. That means, the land was under the occupation of the assessee. They have put some labourers or some persons for carrying out the agriculture operation that would not mean that they did not use land for agriculture purpose. Therefore, as far as the appeals of the Revenue are concerned, we do not find any*

merit in these appeals. The assessees are entitled for exemption u/s.54B of the IT Act."

13. We further find that it is the use of the land or agricultural purpose irrespective of type of land. We find that the Co-ordinate Bench of Ahmedabad Tribunal in the case of Shree Bhagwanbhai Revabhai Prajapati [2015] 60 Taxman 219 (Ahmedabad Tribunal) held that once it is established that land owned by the assessee has been used for agricultural purpose, he becomes entitled for claim of deduction u/s.54B on land, even if it is not cultivated but gets it cultivated under his supervision. The Hon'ble Kerala High Court in the case of Asha George vs. ITO [2013] 351 ITR 123 also expresses similar view. We further observe that the assessee has been earning agricultural income from these lands from the A.Y. 2007-08 to 2013-14, which is evident from the copy of return filed by the assessee, which are placed at paper book, page 8 to 37. In view of these facts and circumstances, we are of the considered opinion that the ld.CIT (A) has rightly allowed deduction u/s.54B of the Act.

14. We further note that the AO has denied deduction u/s.54B in respect of Block No.1264, which is stated to be barren land. This fact is also reported by the Deputy Mamltadar, that no agricultural activity are being carried on this land. Therefore, it is the use of land, which is material for claiming of deduction u/s.54B of the Act. The nature of land does not make entitle the claim unless some agricultural activities are being carried on for the last two years immediately preceding sale of land. The copy of sale deed in respect of said land filed giving description as tenure agricultural land, which means the land was very much agricultural land. However, that does not help the case of the assessee. Therefore, where the assessee the expression used for agricultural purpose in the section 54B of the Act could only be the description of the agricultural land, which is not sufficient for granting the relief u/s.54B of the Act. Since in the present case the Block No.1264 has been described as barren land in Revenue record. Hence, we do not find any infirmity in the order of CIT (A), accordingly, same is upheld. In view of above discussion, the appeal in Ground No.1 of the Revenue is

dismissed and appeal of the assessee in Ground No. 2 is also dismissed.

15. Ground No.2 relates to the ld.CIT(A) has erred in deleting the addition to the extent of Rs.14,97,900/- made u/s.69A on account of unexplained investment in diamond jewellery by relying on the Instruction No.1916 dated 11.05.1994.

16. Briefly, stated facts of the case are that a search u/s.132 of the Act was carried on 17.07.2012 in the group cases of Dalia (Badshah) Babariya group of Surat in which assessee was also covered. During the course of assessment proceedings search at the residential premises/locker of the assessee, diamond jewellery of Rs.17,97,900/- was found. During the course of assessment proceedings on being asked to show cause as to why the jewellery found on the residential premises / locker should not be treated as unexplained investment and added to his total income. The assessee vide his submissions dated 30.03.2015 submitted that during the search proceedings gold ornaments of 637.600 gms along with diamonds of 26.35 carats were found from residential premises and locker of the family.

The assessee is living in a joint family. It was further stated that the family members received the jewellery over a period of various religious and social functions. It was stated that gold ornaments belongs to ladies as their "streedhan" received on the occasion of marriage as well as social and other religious occasions. It was further stated that most of the jewellery was gifted at the time of marriage of women in the family. The assessee further cited the instruction no.1916 dated 11.05.1994, according to which the jewellery if found less than the limited prescribed by the Board cannot be seized as detailed below:

Sr. No.	*Name*	*Relation*	*Limit as per CBDT*
1	*Ramesh L. Polra*	*Self*	*100*
2	*Manjulaben*	*Wife*	*500*
3	*Sunil R. Polra*	*Son*	*100*
4	*Payal R Polra*	*Daughter*	*120*
			950

17. As the jewellery of 100gms could be considered in the case of Ramesh L. Polra, the assessee, jewellery of 500 gms could be considered in the case of Manjulaben, (Wife of the assessee) and jewellery of 100 gms could be considered in the case of Sunil R. Polra, (Son of the assessee) and jewellery of 120 gms could be considered in the case of Payal R. Polra, (Daughter of assessee).

Thus, it was explained that above 950 gms jewellery found during the search can be considered as explained in the light of CBDT instruction no.1916 dated 11.05.1994. However, the submission of the assessee was not accepted on the ground that instruction no.1916 is applicable in respect of gold jewellery and not in respect of diamond jewellery. Accordingly, the AO treated the amount of Rs.17,97,900/- of jewellery u/s.69 of the Act.

18. Being aggrieved, the assessee carried the matter before the ld.CIT (A). The same submissions were reiterated and claimed that the quantity of gold and diamond jewellery is within the reasonable limit looking to the status and number of family members. An alternative plea was also made that unexplained investment in jewellery if required may be treated to be invested from the additional undisclosed income of Rs.51,36,000/- as disclosed from land brokerage income, agriculture etc., and offered for taxation. However, the ld.CIT(A) observed that the value of gold ornaments would be around Rs.17,53,400/- and diamond would be around Rs.5,12,000/- there were four

members in the family, therefore he found that the gold jewellery can be reasonably accepted. However, with regard to diamond jewellery worth Rs.5,12,000/- only jewellery of worth of Rs.3,00,000/- can be held as purchased out of undisclosed sources, accordingly the balance addition was directed to be deleted.

19. Being aggrieved, the Revenue filed this appeal before this Tribunal. The ld.CIT-DR vehemently supported the order of the AO.

20. On the other hand, the ld.Counsel for the assessee submitted that gold jewellery of 637.600 gms including diamond jewellery found in the course of search can be reasonably accepted as covered by the CBDT Instruction No.1916 dated 11.05.21994. According to which the total family holding of jewellery of four persons in the family comes to 950 Gms as against 637.600 Gms along with diamonds 26.35 carats found during the search. The ld.Counsel also supported his view by placing reliance in the decision of Hon Gujarat High Court in the case of CIT Vs. Ratanlal Vyaparilal Jain [2011] 339

ITR 351 (Gujarat) wherein it was held that though the said circular has been issued for the purpose of laying down guidelines for seizure of jewellery, unless anything contrary shown it can be safely presumed that the source to the extent of jewellery stated in the circular stands explained, hence, Tribunal committed no legal error in treating the extent of jewellery specified in the said circular to be reasonable quantity and in deleting addition on that basis. It was further submitted that the assessee has made disclosure of undisclosed income of Rs.51,00,000/-, hence if any unexplained investment would be covered by that disclosure. The ld.Counsel further cited decision of Co-ordinate Bench of Chandigarh Tribunal in the case of Smt. Aditi Agarwal vs. ACIT in ITA No.588/CHD/2015 dated 14.09.2016.

21. We have heard the rival submissions and perused the material available on record, we find that during the course of search proceedings, gold ornaments of 637.600 Gms along with diamonds of 26.35 carats worth Rs.17, 97, 900/- were found which were considered by the AO as unexplained. However, the

assessee has claimed that the ornaments/jewellery was received by the family members over a period of time on various occasions like social functions, religious and marriage and belongs to women as their “streedhan”. Further, CBDT Instruction No.1916 dated 11.05.1994 provides that no seizure should be made in the search for the jewellery held by the ladies at 500gms girls at 250 gms and males at 100 gms each, thus, by considering these instructions, the assessee has claimed that about 950 gms of jewellery is covered by the said Board Instruction which is within the reasonable limit as against the 637.600 gms of gold ornaments and diamond jewellery found. Though the instructions relates to seizure of the same, but the extended meaning of the same shows the intention of the legislature and jewellery is to be treated as explained one and not to be treated as unexplained for the purpose of Income Tax Act. This Instruction came to be considered by several Benches all over India including the Hon’ble Gujarat High Court in the case of Ratanlal Vyapari Jain (supra) and also by the Hon’ble Rajasthan High Court in the case of CIT Vs. Kailash Chand

Sharma 147 Taxman 376 (Rajasthan) and the Chandigarh Bench in the case of Smt. Aditi Aggarwal (supra) if this instruction is applied to the facts of the case, observed that the possession of gold jewellery of 637.600 gms the jewellery found during the search at 950 gam is far less, therefore, it cannot be held as unexplained. We further note that the assessee in his statement-recorded u/s.132 (4) on 17.07.2012 in reply to question no.16 has clearly stated that the 600 gms gold and 26.35 carats diamond jewellery found during the course of search is received by his family from his father and father-in-law's on various occasions. We further note that the Hon'ble Gujarat High Court in the case of Ratanlal Vyapari Jain held that Instruction no.1916 dated 11.05.1994 which lays down guidelines for seizure of jewellery 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 jewellery stated in the circular stands explained. Such view was taken by the Hon'ble High

Court in the case of Smt.Pati Devi Vs. ITO 240 ITR 727. However, the AO has not granted any benefit to the assessee on the proposition of the above Board Instruction, however, the ld.CIT(A) has considered the same but considered Rs.3 lakhs of diamond jewellery as unexplained whereas diamond jewellery is part of gold jewellery, hence following the Board Instruction No.1916, we are of the considered opinion that the assessee has been able to explain the source of acquisition of jewellery on various occasions i.e. on the marriage and other social functions. The case of the assessee is therefore covered by Board Instruction. Therefore, the addition sustained by the ld.CIT (A) at Rs.3 lakhs is not tenable in law; accordingly, it is directed to be deleted. Therefore, Ground No.2 of the appeal of the Revenue is dismissed and Ground No.2 of the Assessee is allowed.

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

ITA No.2290/Ahd/2016 (by Assessee):

23. Ground No.1 relates to sustaining addition of Rs.3,00,000/- on account of alleged unexplained jewellery u/s.69A of the Income Tax Act, 1961.

24. We have heard the rival submissions and we find that this ground is covered by our decision in respect of Ground No.2 in the above Revenue appeal. Therefore, we find that the ld.CIT (A) by placing reliance on the Board Instruction has correctly allowed the relief to the assessee, accordingly, this ground of appeal filed by the assessee is allowed.

25. Revised Ground No.2 states that the ld.CIT (A) has erred in confirming the action of the AO in not allowing deduction of Rs.29, 44,871/- u/s. 54B of the Act on sale of Agricultural Land, Block No.1264 Variyav.

26. We have heard the parties and we find that this ground is covered by our decision in respect of Ground No.1 of the above Revenue appeal, therefore, in the light of our finding given in

therein, this grounds of appeal of the assessee is therefore, dismissed.

27. In the result, appeal of the Revenue in ITA No.2320/Ahd/2016 is dismissed and appeal of the Assessee in ITA No.2290/Ahd/2016 is partly allowed.

28. The order is pronounced by listing the case on the Notice Board under Rule 34(4) of Income Tax Appellate Tribunal Rules 1963.

Sd/-	**Sd/-**
(BHAVNESH SAINI)	**(O.P.MEENA)**
(JUDICIAL MEMBER)	**(ACCOUNTANT MEMBER)**

सुरत/ **Surat,** दिनांक **Dated**: 27th August, 2019/*S.Gangadhara Rao, Sr.PS*
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat