

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

IT(SS) No.43/Ind/2015 & ITA No.130/Ind/2015
Assessment Years 2010-11 & 2012-13

Smt. Charu Gupta, A-12, Padmanabh Nagar, Bhopal (Appellant)	Vs.	DCIT (Central), Bhopal (Respondent)
PAN No.ABCPG1206D		

IT(SS) No.47/Ind/2017 & ITA No.163/Ind/2017
Assessment Years 2010-11& 2011-12

Smt. Laxmi Gupta, A-12, Padmanabh Nagar, Bhopal (Appellant)	Vs.	DCIT (Central), Bhopal (Respondent)
PAN No.ADYPG7511R		

IT(SS) No.65/Ind/2017 & ITA No.160/Ind/2017
Assessment Years 2011-12 & 2012-13

Smt. Alka Gupta, B-253, Shahpura, Bhopal (Appellant)	Vs.	DCIT (Central), Bhopal (Respondent)
PAN No.ADYPG7575P		

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	Shri S.S. Despande, CA
Date of Hearing	13.08.2019
Date of Pronouncement	27.09.2019

ORDER

PER MANISH BORAD, AM

The above captioned bunches of appeals filed at the instance of the assessee's pertaining to Assessment Years 2010-11 to 2012- are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-II & III (in short 'Ld.CIT(A)'), Bhopal dated 14.11.2017 & 18.01.2017 respectively which are arising out of the order u/s 143(3) & 153A r.w.s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 31.01.2014, 27.01.2014 & 05.03.2014 framed by DCIT(Central), Bhopal.

2. As most of the issues raised are common and relating to the same group of cases these cases were heard together and are being disposed off by this common order for sake of convenience and brevity.

3. We will first take up appeals No. IT(SS)43/Ind/2015 & ITA No.130/Ind/2015 in the case of Smt. Charu Gupta where following grounds are raised;

ITA (SS)No 43/Ind/2015
Assessment Year 2010-11

1. *That the addition of Rs.2,25,000/- (out of total addition of Rs.14,27,000/-) confirmed by the learned CIT (Appeal)-2 as investment on purchase of land at Khajuri-kalan be held to be unjustified on the facts of the case and be deleted.*
2. *That it be held that the learned CIT(Appeals) having found the contentions of the AO for making the addition for investment on purchase of land at Khajuri-Kalan as not correct and having accepted the contention of the appellant as correct, has erred in conforming the addition of Rs.2,25,000/-. The said addition may therefore be deleted from the income of the appellant for the relevant year.*
3. *The appellant craves lead to add or amend any Ground of Appeal.*

ITA No.130/Ind/2015
Assessment Year 2012-13

1. *That the addition for Gold Jewellery 204.869 Gms. (out of total Gold jewellery found at 1154.869 Gms.) sustained by the learned CIT (Appeal) be held to be unjustified on the facts and in the circumstances of the case and be deleted.*
2. *That the addition for Silver Articles 3.944 Kgs valued at Rs.1,58,760/- sustained by the learned CIT(Appeal) be held to be unjustified on the facts and in the circumstances of the case and be deleted.*
3. *That the addition of Rs.27,000/- for Diamond Jewellery sustained by the learned CIT(Appeal) be held to be unjustified on the facts and in the circumstances of the case and be deleted.*

4. The appellant craves lead to add or amend any Ground of Appeal.

4. Briefly stated facts as culled out from the records are that the assessee is an artist (painter) and derives income from salary, sale of paintings and bank interest. Her husband Dr. Niraj Kumar is a medical practitioner. A search was conducted u/s 132 of the Act on 02.06.2011 at the residential premises of the appellant and her family along with business premises of her husband. Simultaneous search and survey operations were also carried out on 02.06.2011 at various business and residential premises of Shri Sunil Bansal and Shri Anil Bansal who are engaged in the business of civil construction, real estate, manufacturing and export of soya oil, manufacturing of steel etc. Proceedings u/s 153A of the IT Act initiated against the appellant for Assessment Years 2006-07 to 2011-12. Returns of income filed in response to notice u/s 153A on 17.9.013 which were subsequently revised on 28.01.2014 for Assessment Years 2006-07 to 2010-11. Return for Assessment Year 2012-13 has been filed belatedly on 24.09.2013.

5. Income for Assessment Year 2010-11 assessed at Rs.16,72,250/- against declared income of Rs.2,55,250/- and for

Assessment Year 2012-13 income assessed at Rs.32,17,780/- as against return income of Rs.3,73,300/-. Aggrieved assessee preferred appeal before Ld.CIT(A) and partly succeeded.

6. Now the assessee is in appeal before the Tribunal.

Smt. Charu Gupta Appeal No. ITA (SS)No 43/Ind/2015 for Assessment Year 2010-11

7. The sole grievance raised in this appeal relates to the addition of 2,25,000/- sustained by the Ld. CIT(A) on account of undisclosed investment in purchase of land at Khajuri Kalan.

8. Brief facts relating to this are that the assessee in co-ownership with Smt. Laxmi Gupta acquired agriculture land measuring 0.24 24 acre situated at Khajuri Kalan vide registered deed executed on 25.3.2010. The cost of the land disclosed by the assessee which has been jointly paid with Smt. Laxmi Gupta was stood as Rs.5,50,000/- paid at the time of purchase of land during the financial year 2007-08 and registration fees and stamp duty charges at Rs.2,30,000/- paid during the financial year 2009-10. In the registered sale deed value of the property adopted by Sub-registrar was Rs.26,24,000/-. Ld. A.O after adding the stamp duty of Rs.2,30,000/- computed the investment in the said property at

Rs.28,54,000/- and without considering the cost of purchase of land alleged to have been incurred by the assessee during Financial Year 2007-08 computed the undisclosed investment at 50% at Rs.28,54,000/- in the hands of the assessee at Rs.14,27,000/-. Aggrieved with the addition assessee preferred appeal before Ld. CIT(A) who after considering the submissions of the assessee and perusal of records sustained the addition of Rs.2,25,000/- as against Rs.14,20,000/- made by the Ld. A.O.

9. Now the assessee is in appeal before the Tribunal.

10. Ld. Counsel for the assessee apart from referring to the submission made before Ld. CIT(A) also submitted that the actual purchase of the land happened during Financial Year 2007-08 when the sale consideration was paid and possession was taken. During Financial Year 2009-10 only the formality of getting the property registered in their name was carried for which registration fee of Rs.2,30,000/- was incurred. Assessee has duly disclosed this investment in the property purchased during the Financial Year 2007-08 and therefore no addition for unaccounted investment should have been made.

11. Per contra Ld. Departmental Representative vehemently argued supporting the order of Ld. A.O.

12. We have heard rival contentions and perused the records placed before us. Assessee's sole grievance is against the finding of Ld. CIT(A) confirming the addition of Rs.2,25,000/- for undisclosed investment in immovable property. We observe that the immovable property measuring 0.24 acre land situated at village Khajuri Kalan was purchased by the assessee in co-ownership with Smt. Laxmi Gupta vide registered sale deed executed on 25.3.2010. Ld. Counsel for the assessee has contended that the actual purchase of the land took place in Financial Year 2007-08 when the consideration of Rs.5,50,000/- was jointly paid to the seller and possession was taken. During Financial Year 2009-10 the property was registered and stamp duty and registration fees of Rs.2,30,000/- was incurred. It is not disputed that the value adopted by the Sub Registrar for the purpose of stamp duty was at Rs.26,24,000/-.

13. It was also contended on behalf of the assessee that the seller of the land Smt. Rehana Parveen was summoned by Ld. A.O in response to which her husband Shri M.A. Khan attended before the

Ld. A.O and statements were recorded, however the assessment is silent regarding this information. Reference was also made to the agreement executed on 24.7.2007 for an amount of Rs.5,50,000/- by the assessee for the purchase of land. All these documents stands impounded during the course of search.

14. We also observe that Ld. CIT(A) sustained the addition of Rs.2,25,000/- observing as follows;

3.2.1 Thus, AO's contention that no evidence been submitted to substantiate her claim that the above land been purchased in July, 2007 is not found correct and not borne out from records since the relevant documents are in the possession of the A.O. himself.

3.3 A.O. has also submitted that seller has not been produced for examination nor any affidavit or confirmation filed from them. It is seen that the appellant, while explaining all seized documents and giving other required details, has submitted before the A.O. that Smt Rehana Praveen is not personally known to her. Since her address is already available in LPS-3(pg 1-32), she may be summoned for examination. On perusal of assessment records, in one volume, as submitted by the A.O. to this office, no action appears to be taken by the A.O. in this regard. However on the basis of appellant's submissions made in appeal, A.O. has been called for hearing during appeal proceedings and asked to give his comments. In response, A.O. has submitted copy of his dispatch register whereby summons u/s 131 have been issued to Smt. Rehana Praveen on 13.12.2013 as per SI No.2284 along with other witnesses. In response thereto, letter along with various enclosures including her bank

statement, detailing these transactions been filed by Smt. Rehana Praveen on 17.12.2013 requesting for exemption on date fixed of 19.12.2013 for her personal appearance' have also been submitted by the A.O. to this office. As per the submissions of the AO, the said letter has been placed in a separate folder along with other details for reference for any future necessary action. These details, as submitted by the A.O. in appeal, have been placed on records of this office also as well as assessment records of the A.G. Thus, AO's observation that the seller has not been produced nor any confirmation filed is not found correct. Also A.O. has made no further enquiry nor brought on any 'adverse material on record before rejecting these submissions, as made before him, in this regard.

3.4 Now coming to LPS-3, Pg No 42 and statement of Shri Neeraj Kumar-appellant's husband. It is seen that while filling up proformas for initial/preliminary statement at the commencement of search operations, Neeraj Kumar has mentioned that his wife and mother jointly own approx 10500 sq ft land at Khajuri Kalan, Bhopal bought about 4 years ago for Rs.10 lakhs. Further LPS-3 Pg 42 (backside), as reproduced and relied on by the AO, has been found and seized from office premises of Dr. Nerraj Kumar. It is found written in two different hand writings and none of them belongs to the appellant or the other eo-owner. The said document is undated and unsigned. Neither the name of the appellant or any details of the property in question appear on the said document. It merely mentions the amount of Rs.10 Lakhs and below remaining actions required like signatures, personal presence, taking possession etc are mentioned. However these jottings appear on the backside of Khata Bahi of the land involved in question. A.O. has also failed to bring on record any material to show that the appellant has, indeed, paid more amount than mentioned. The amount of Rs. 26,24,000/- pertains to market value of the said land in the year 2009-10

for stamp duty purposes only and is relevant for deeming provisions u/s SOC of the IT Act for calculation of capital gains purposes.

3.5 Keeping in view facts of the case and after perusal of entire material on record, total investment in the said property, including stamp duty and other registration charges of Rs.2,30,000/-, is assessed at Rs.12,30,000/-. The appellant's 1/2 share comes to Rs.6,15,000/-. The appellant has declared her investment at Rs.3,90,000/-. Accordingly addition of Rs.2,25,000/- is found sustainable out of Rs.14,27,000/- made by the A.O. Addition of Rs.2,25,000/- is, hereby, confirmed for A.Y.2010-11.

15. From perusal of the above finding of Ld. CIT(A), we find that reference has been made to the seized document LPS-3 page No.42 wherein the statement of assessee's husband Mr. Neeraj Kumar is placed. In this statement it was stated that the property measuring 10500 sq.ft at Khajuri Kalan was purchased about 4 years ago in the joint name of wife and her mother for Rs.10,00,000/-. So assessee has claimed the purchase cost at Rs.5,50,000/-, Ld. A.O has adopted the purchase cost at Rs.28,54,000/- and Ld. CIT(A) computed it at Rs.12,30,000/- (Rs.10,00,000/- as stated by the assessee's husband + registration fees paid). Perusal of the paper books shows that apart from the sale deed dated 25.03.2007 assessee has filed following documents in support of its claim that actual purchase took place during Financial Year 2007-08:-

1. Copy of agreement dated 24.07.2007 between Syed Hanif and assessee – Page 15-18

2. Copy of agreement dated 02.06.2007 between Rehana Parveen and Syed Hanif – Page 19-22

3. Copy of Kabza-nama dated 02.06.2007 executed by Rehana Parveen and Syed Hanif – Page 23-24

4. Copy of Mukhtar-Nama dated 02.06.2007 between Rehana Parveen – Page 25-29

5. Copy of Vasiyat-Nama dated 02.06.2007 executed by Rehana Parveen – Page 30-31

16. The above stated documents which relates to Financial Year 2007-08 stands uncontroverted by revenue authorities at any stage. Genuineness of these documents is not doubted. Even in the registered sale deed dated 25.03.2010 the reference to the consideration of Rs.5,50,000/- is mentioned which relates to the date of agreement 24.7.2007 when the seller received the sale consideration of Rs.5,50,000/- from the assessee. All these set of documents are ascertaining the fact that the transaction of purchase took place during Financial Year 2007-08 when the

consideration of Rs.5,50,000/- was paid by the assessee with the joint owner to the seller. Though the assessee's husband has given a statement of having purchased the said land of around Rs.10,00,000/- before 4 years but as contended by the Ld. Counsel for the assessee this was a preliminary statement which was recorded before the start of actual search therefore cannot be accepted as a statement u/s 132(4) of the Act. Even otherwise the written submissions are better evidence over the oral statements.

17. We therefore in the given facts and circumstances of the case are of the considered view that the alleged transaction of purchase of land during Financial Year 2007-08 for consideration of Rs.5,50,000/- and possession was taken during Financial Year 2007-08 only. Since the assessee has already declared her investment at the said land at Rs.3,90,000/- (being 50% of Rs.7,80,000/-), we find no reason to sustain the addition of Rs.2,25,000/- in the hands of the assessee. Therefore the addition of Rs.2,25,000/- sustained by the Ld. CIT(A) stands deleted.

18. In the result appeal for the assessee for Assessment Year 2010-11 is allowed.

19. Now we take up ITANo.130/Ind/2015 of Smt. Charu Gupta for Assessment Year 2012-13.

20. From perusal of the above ground observe that the issue relates to addition of Gold Jewellery 204.869 Gms. Brief facts relating to this issue are that during the course of search gold jewellery (gross 122.950 grams) and silver article gross weight 3.944 kgs was found at the assessee's residence. Further gold jewellery weighing 1031.919 grams 1.5 carot loose diamond was found from the locker. Assessee lives with her husband Mr. Neeraj Kumar and two unmarried children Ms. Shivangi Gupta and Siddharth Gupta. During the course of assessment proceedings assessee submitted that the gold jewellery found was mostly acquired by her during her marriage and at various ceremonial occasions. Ld. A.O did not considered the submissions and made the additions for unexplained gold jewellery and diamond at Rs.25,01,704/- and addition for silver articles and diamond at Rs.3,78,780/-, thereby assessing the income at Rs.32,17,780/- as against Rs.3,37,300/- shown by the assessee. Aggrieved assessee preferred appeal before Ld. CIT(A) and got part relief.

21. Now the assessee is in appeal before the Tribunal.

22. The Ld. Departmental Representative vehemently argued and supported the order of Ld. A.O.

23. We have heard rival contentions and perused the records placed before us. Assessee is aggrieved with the additions sustained by Ld. CIT(A) for the undisclosed investment in gold jewellery of 204.869 gms as against 1154.869 gms of gold jewellery found during the course of search. In Ground No.2 assessee aggrieved that the additions sustained for unaccounted investment in silver articles weighing 3.944 kgs valued at Rs.1,58,760/- and Ground No.3 for addition of Rs.27,000/- for diamond jewellery. We observe that the assessee is wife of a Doctor and married around 15 years ago. On the date of search assessee has two unmarried children. Ld. CIT(A) after considering the CBDT Circular No.1916 dated 11.5.1974 partly deleted the addition for unaccounted investment in gold jewellery observing as follows:-

4.2 Appellant's submissions along with assessment order have been considered carefully. Assessment records of the A.O. have also been perused. Total jewellery of Rs.28,80,484/- been found in the appellant's case. It consists of gold jewellery of 122.950 gms found from her residence and of 1031.919 gms from the locker besides 3944 gms of silver articles and 1.5 carats of loose diamonds. Both the appellant and her husband have all along stated the said jewellery to be belonging to

herself and her family members consisting of her unmarried children (Ms. Shivangi Gupta and Siddharth Gupta) and her husband. The source of its acquisition is stated to be received at time of her marriage in 1986 and on various occasions thereafter. The same fact has been corroborated by her husband also during locker search operations. A.O. has added the entire amount of jewellery found from appellant's residence and joint locker assessing it to be her unexplained investment on the ground that no item wise details nor any confirmation for gift and other family members been given in her support. However, no adverse material been brought on record by the A.O. before rejecting appellant's submissions. This is despite the fact that extensive search operations and post search investigations been carried out in the case of the appellant and her family members. Even CBDT in Instruction No.1916 dtd 11.05.1994 has accepted the fact that gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male members of the family need not be seized. The fact of receiving of jewellery and other items at the time of marriage, birth of children and other numerous occasions cannot be ruled out altogether.

4.1.2 Keeping in view above and the fact that Dr. Neeraj Kumar has admitted and voluntarily disclosed income of RS.1.45 crores on account of his share in sale of Ayushman Medical Diagnostic Pvt Ltd of which he is the Director and the appellant is . declaring salary income received therefrom, giving credit for jewellery, in the absence of Wealth Tax returns, as per above mentioned Board's Instruction No. 1916 is found reasonable and justified. Accordingly gold jewellery and ornaments weighing 950 gms for appellant's family consisting of one married lady, two male members and one unmarried daughter are treated as explained. Since total gold jewellery weighing 1154.869 gms has been found in case of the appellant, accordingly addition for 204.869 gms of

gold jewellery and ornaments is found sustainable on this account. Further, addition made for 3944 gms silver, valued at Rs. 1,58,760/- and 1.5 carats of diamonds (Rs.27,000/-) is, also hereby, confirmed in absence of any satisfactory explanation in this regard during the entire course of assessment as well as appeal proceedings. A.O. is directed to value unexplained gold jewellery of 204.869 gms as per valuation report on his records along with silver and diamonds at Rs.1,58,760/and Rs.27,000/- respectively while giving effect to this appeal order.

24. As regards the addition confirmed for gold jewellery 204.869 Gms is concerned we find no inconsistency in the order of Ld. CIT(A) who had given the benefit of 950 grams of gold (500 gms per married lady, 250 grams for unmarked lady (daughter) and 100 grams for male member (husband and son). We therefore in the given facts and circumstances of the case dismiss Ground No.1 of the assessee for Assessment Year 2012-13.

25. As regards Ground No.2 & 3 are concerned wherein one of the addition for silver articles weighing 3.944 kg valued at Rs. 1,58,760/-, we are of the considered view that in the Indian customs at the time of marriage along with gold jewellery silver utensils/articles are also gifted which are given with the object for use during the normal course of life and not considered in the category of gold jewellery or ornaments. The CBDT Circular No.1196 dated 11.5.1994 only refers to gold jewellery and

ornaments. Therefore making the addition for such gifted articles only on the premise of the CBDT Instruction No.1916 dated 11.5.1994 which only talks about golden jewellery and ornaments is uncalled for however authorities should not be denied the claim as such silver articles were gifted at the time of her marriage which was around 15 years before the date of search.

26. We therefore in the given facts and circumstances of the case and looking to the family living standard are of the considered view that the silver weighing 3.944 kg and diamond jewellery valued at Rs.27,000/- cannot be treated as unexplained in the given fact that the assessee possess 1154.869 grams of gold jewellery. Therefore the addition of unaccounted amount of Rs.1,58,760/- for silver articles and addition of Rs.27,000/- for diamond jewellery stands deleted.

27. In the result Ground No.2 & 3 of the assessee's appeal are allowed.

28. Now we take up the appeals in the case of Smt. Laxmi Gupta for Assessment Year 2010-11 & 2012-13 vide Appeal No.ITA(SS) No. 47/Ind/2017 & ITA No.163/Ind/2017. For Assessment Year 2010-11 assessee raised following grounds of appeal;

1. *That the assessment made u/s 153A r.w.s. 143(3) of the Income Tax Act be held to be bad in law and on facts and be quashed.*
2. *That the addition of Rs.14,27,000/- as on-money payment for purchase of land at Khajuri Kalan be held to be bad and unjustified on the facts and circumstances of the case and be quashed and deleted.*
3. *That in the alternative and without prejudice to the Grounds stated above the additions made be held to be highly unreasonable and excessive and be reduced.*
4. *The appellant craves leave to add or amend any ground of appeal before or during the course of hearing of the case.*

29. At the outset Ld. Counsel for the assessee requested not to press Ground No.1, therefore Ground No.1 is dismissed as not pressed.

30. Apropos Ground No. 2 Ld. Counsel for the assessee submitted that similar issue was raised in the case of Smt. Charu Gupta for Assessment Year 2010-11 for the alleged unaccounted investment in purchase of land at Khajuri Khalan jointly with Smt. Charu Gupta. The assessee has claimed that she along with Smt. Charu Gupta purchased the land at Rs.5,50,000/- during the financial year 2007-08 incurred Rs.2,30,000/- for registration charges. Total amount of Rs.7,90,000/- was invested and 50% of this amount comes to Rs. 3,90,000/- stands duly disclosed as investment. Ld.

A.O made the addition on the basis of value adopted by Stamp Valuation Authority. Ld. CIT(A) sustained the addition to Rs.14,27,000/-.

31. We however find that similar issue stands adjudicated by us in the case of co-owner Smt. Charu Gupta in para 26 above wherein we after considering documentary evidences placed before us ascertained the fact that actual transaction took place during Financial Year 2007-08 only and allowed assessee's ground and deleted the addition sustained by the Ld. CIT(A). Since there is no dispute at the end of both the parties that the issue raised and facts in this appeal are the same as were adjudicated by us in the case of Smt. Charu Gupta for Assessment Year 2010-11 vide ITA (SS) No.43/Ind/2015, we apply the decision *mutandis mutandis* on the grounds raised in this appeal and set aside the order of lower authorities and deleted the addition of Rs.14,27,000/- for the alleged money payment for purchase of land. Accordingly Ground No. 2 & 3 are allowed.

32. Ground No.4 is general in nature which needs no adjudication.

33. In the result appeal of the assessee is partly allowed.

33. Now we take up the appeal of Smt. Laxmi Gupta vide Appeal No.ITA/163/Ind/2017 for Assessment Year 2012-13 raising following grounds of appeal;

1. *That the assessment made u/s 153A r.w.s. 143(3) of the Income Tax Act be held to be bad in law and on facts and be quashed.*
2. *That the addition of 428.947 Grms. Gold ornaments (Gross weight) and silver articles 470 Gms found from Locker No.137 at Allahabad Bank, Mata Mandir, Bhopal maintained and confirmed by CIT(A) be held to be bad and unjustified on the facts and in the circumstances of the case and be quashed and deleted..*
3. *That in the alternative and without prejudice to the Grounds stated above the additions made be held to be highly unreasonable and excessive and be reduced.*
4. *The appellant craves leave to add or amend any ground of appeal before or during the course of hearing of the case.*

34. At the outset Ld. Counsel for the assessee requested not to press Ground No.1, therefore Ground No.1 is dismissed as not pressed.

35. Ground No.3 & 4 are general in nature, Ground No.2 is the sole substantial ground which relates to the alleged addition for value of 428.94 grams gold ornaments and silver articles weighing 470 grams.

36. Brief facts are that during the course of search gold jewellery weighing 448.947 grams and silver article weighting 470 grams was found in the locker jointly owned by the assessee Smt. Laxmi Gupta and her son Pankaj Gupta. Ld. A.O made the addition for Rs.20,33,378/- without specifying the separate amount for gold jewellery and silver articles. When the matter came up before Ld. CIT(A) he gave the benefit of CBDT Instruction No.1196 dated 11.5.94 to the extent of 500 gram per married lady and confirmed the addition for un explained gold jewellery of 428.947 grams and 470 grams of silver articles.

37. Now the assessee is in appeal before the Tribunal.

38. Ld. Counsel for the assessee submitted that the locker is in the joint name of assessee and her son Shri Pankaj Gupta who lives with his family out of India and the gold jewellery found in the locker belongs to assessee, her son, daughter-in-law and children which received on marriages and auspicious occasions. Request was made of giving benefit of the CBDT Instruction No.1196 dated 11.5.1994 for the gold jewellery owned by Shri Pankaj Gupta and his wife Smt. Shailie Gupta.

39. Per contra Ld. Departmental Representative vehemently argued and supported the order of lower authorities.

40. We have heard rival contentions and perused the records placed before us. The sole substantive ground No.2 relates to the addition for value of gold jewellery weighing 428.947 grams and silver articles weighing 470 grams. As far as silver articles weighing 470 grams we find no basis in the order of Ld. A.O making the addition for small quantity of silver article of 470 grams which are normally found in the locker since such items are usually received as gift at the time of marriage as per the Indian customs.

41. As regards the addition for 428.947 grams of gold ornaments we observe that the locker was in the joint name of the assessee and her son. It is not disputed that Shri Pankaj Gupta, son of the assessee who lives out of India with his wife Smt. Shailie Gupta is joint owner of the locker. Both the lower authorities have not given the benefit of CBDT Instruction No.1196 dated 11.5.1994 to the married lady Smt. Shailie Gupta wife of Shri Pankaj Gupta as well as Shri Pankaj Gupta. The CBDT instructions provides for a cap of 500 gram gold jewellery for married lady and 250 grams of gold jewellery for unmarried lady and 100 gram gold jewellery for male

member. As per the Circular benefit should have been provided for 600 grams for Shri Pankaj Gupta and Smt. Shailie Gupta. Both the lower authorities have also not considered the fact that the assessee Smt. Laxmi Gupta is a widow and her husband was also a Doctor. One cannot ignore the possibility that there must be some jewellery of her husband.

42. Looking to these facts as well as the fact that 600 grams of gold ornaments, 500 grams for Smt. Shailie Gupta and 100 grams for Shri Pankaj Gupta have not been considered by the Ld. CIT(A), we are of the considered view that no addition is called for 428.947 grams of gold jewellery which is less than 600 grams of gold jewellery for which the assessee's son and daughter in law were eligible to get the benefit from CBDT Instruction No.1196 dated 11.5.1994. Ground No.2 stands allowed.

43. Ground No. 3 & 4 are general in nature which needs no adjudication.

44. The appeal of the assessee is partly allowed.

45. Now we take up the appeals in the case of Smt. Alka Gupta vide ITA (SS) 65/Ind/2007 & ITA No.160/Ind/2017 for Assessment

Years 2011-12 & 2012-13. For Assessment Year 2011-12 following grounds have been raised;

1. That the assessment made u/s 153A r.w.s. 143(3) of the Income Tax Act be held to be bad in law and on facts and be quashed.

2. That the addition of Rs.98,000/- as undisclosed cash deposits in Bank be held to be bad and unjustified on the facts and in the circumstances of the case. The addition made be quashed.

3. That the addition of Rs.2,00,000/- as undisclosed on-money payment to Shri Shardendu Mishra be held to be bad and unjustified specially when there was no evidence to corroborate the statement of the said person. The addition made is requested to be quashed and deleted.

4. That in the alternative and without prejudice to the Grounds stated above the additions made be held to be highly unreasonable and excessive and be reduced.

5. The appellant craves leave to add or amend any ground of appeal before or during the course of hearing of the case.

46. At the outset Ld. Counsel for the assessee requested not to press Ground No.1, therefore Ground No.1 is dismissed as not pressed.

47. Apropos Ground No.2 for the addition of Rs.98,000/- as undisclosed cash deposit. Brief facts are that during the course of assessment proceedings assessee failed to explain the source of deposit of cash of Rs.98,000/- in her bank account held with HDFC

Bank. It was contended that this amount was deposited by assessee's father at Satna, Madhya Pradesh and immediately thereafter on 12.4.2010 cheque was given to assessee's mother Smt. Sudha Jain. Ld. A.O did not find any merit in this contention and made addition for Rs.98,000/- for unexplained cash deposit. When the matter came up before Ld. CIT(A) assessee could not get any relief and the addition of Rs.98,000/- confirmed observing as follows;

"I have carefully considered the facts of the case the material placed on record and the findings of A.O. and also perused the case record. I have also considered the written submissions put forward before the A.O. The plea taken by the appellant assessee that the amount of Rs. 98,000/- deposited in cash on 12.04.2010 was deposited by her father at HDFC bank Satna branch and the same was returned back to assessee's mother Smt Sudha Jain through cheque on 12.04.2010. The contention of the appellant appears unconvincing as no cogent reason or exceptional situation or circumstance requiring the money to be deposited in cash in Satna and to return the same amount Rs. 98,000/- through cheque to her mother Smt Sudha Jain. No material evidence in this regard was filed before the A.O and nor at the appellate stage. As the amount of Rs. 98,000/- has been paid back by the appellant to her mother on the same day through cheque shows that Smt Sudha Jain is having a bank account. The proper course of action could have been to deposit the amount of Rs. 98,000/- directly in the bank account of Smt. Sudha Jain.

In view of the above there is no reason to interfere with the finding

of the A.O and the addition of Rs.98,000/- as undisclosed cash deposited in bank account is upheld. The ground of appeal is dismissed.”

48. Aggrieved assessee is now in appeal before the Tribunal.

44. Ld. Counsel for the assessee referred to the written submissions contended that the amount was transferred by assessee's father for the renovation of duplex house in the name of assessee's mother Smt. Sudha Jain. This amount was received by her father from sale of agriculture land. Before Ld. CIT(A) an affidavit and bank account of the mother was filed under Rule 46A. He humbly prayed that the source of Rs.98,000/- is duly explained therefore the addition may be deleted.

49. Per contra Ld. Departmental Representative vehemently argued and supporting the order of lower authorities.

50. We have heard rival contentions and perused the records placed before us. The issue for adjudication is whether the Ld. CIT(A) was justified in sustaining the addition for Rs.98,000/-. From perusal of the record, we find that the cash of Rs.98,000/- in the assessee's bank account in two parts at Rs.49,000/- each was deposited on 10.4.2010 and 12.4.2010. The address of the assessee

in the bank account is shown at Bhopal. Cash of Rs.98,000/- is deposited at Satna, Madhya Pradesh. The claim of the assessee that the cash was received from sale of agriculture land at Satna is verifiable from the documentary evidence placed at page 16-26 of the paper book showing the details of agriculture land situated at village Satna in the name of assessee's mother Smt. Sudha Jain. Further it is claimed that the amount was immediately transferred to Smt. Sudha Jain is also verifiable from the bank statement. Smt. Sudha Jain has used the amount for renovation of residential duplex house which is also supported by the documentary evidence placed at paper book page 27-43. In this given facts and circumstances of the case the assessee's submission before the Ld. A.O and Ld. CIT(A) in order to explain the source of Rs.98,000/- is duly backed by documentary evidence and cannot be treated as a cooked story. Therefore since the source of Rs.98,000/- is duly explained, we find no justification in the action of the Ld. A.O making the addition of Rs.98,000/- stands deleted. Ground No.2 of the assessee is allowed.

51. Apropos Ground No.3 for the addition of Rs.2,00,000/- for undisclosed 'on money payment' to Mr. Shardendu Mishra.

52. Brief facts are that the assessee purchased the land on 7.6.10 measuring 4674 sq.ft plot situated at Gram Borda, Bhopal. Registration value was stood at Rs.2,44,000/-. However when the seller of the property Mr. Shardendu Mishra was summoned he was stated to have received Rs.2,00,000/- as 'on money' in cash over and above the consideration of Rs.2,44,000/-. Basis of the addition by the Ld. A.O was the statement of Mr. Shardendu Mishra as well as the fair market value adopted by the Stamp Valuation Authority at Rs.4,78,000/-.

53. Against the impugned addition of Rs.2,00,000/- assessee preferred appeal before Ld. CIT9A) but failed to succeed.

54. Now the assessee is in appeal before the Tribunal.

55. Ld. Counsel for the assessee submitted that in the registered document sale consideration is specifically mentioned at Rs.2,44,000/-. Statement of Mr. Shardendu Mishra of having received on money cannot be relied since they were recorded behind the back of the assessee without affording an opportunity of cross examination. Without prejudice to this contention it was also submitted that the assessee had already offered an amount of Rs.2,00,000/- as other income in cash as telescoping benefit has to

be given to the income otherwise this amount would be double taxation one as income and consequently as investment.

56. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

57. We have heard rival contentions and perused the records placed before us. The issue before us raised by the assessee in Ground No.3 relates to addition of Rs.2 lakhs for undisclosed 'on money' payment. The land at Gram Borda was purchased on 7.6.2010 at a consideration of Rs.2,44,000/- and was paid through cheque. Fair market value of Rs.4,78,000/- was adopted by Stamp Valuation Authority. The seller Mr. Shardendu Kumar Mishra was summoned and on oath stated to have received 'on money' of Rs.2,00,000/- from the assessee. Ld. CIT(A) confirmed the addition of Rs.2,00,000/- observing as follows;

"I have carefully considered the facts of the case the material placed on record and the findings of A.O. and also perused the case record. I have also considered the written submissions put forward before the A.O. The registered value of the property is Rs. 2,44,000/- and the breakup of the payment as claimed appellant is:

RS. 1,50,000/-- by cheque on 24.12.2010

Rs. 94,000/-- by cheque on 03.05.2011

However, the seller of the said property Shri Shardendu Mishra has admitted to have received Rs. 2,00,000/-- on money in cash on the sale of the above plot at gram Borda, .Bhopal. Shri Shardendu Mishra also admitted that he has used the above sum of Rs. 2,00,000/- received in cash from the appellant for the payment of outstanding loan of UCO bank, Lalghati branch, Bhopal.

4.2 *From the above it is evident that the Plot situated at gram Borda, Bhopal was purchased by the appellant from shri Shardendu Mishra for a total consideration of Rs. 4,44,000/- out of which Rs. 2,44,000/- have been paid by cheque and balance of Rs. 2,00,000/- has been paid in cash. The registered value of the property is shown at Rs. 2,44,000/- only. The amount of Rs. 2,00,000/- paid in cash as on money to Shri Shardendu Mishra is confirmed as undisclosed on money in the hands of the appellant . **The ground of appeal is dismissed.***

58. We observe that the statement given by Mr. Shardendu Mishra is supported with the fair market value of Rs.4,78,000/- adopted by the Stamp Valuation Authority. We therefore find force in the finding of Ld. A.O and Ld. CIT(A) who has rightly made the addition of Rs.2,00,000/- for the 'on money' payment for purchase of land.

59. However, with regard to alternate claim of the assessee that Rs.2,00,000/- has been offered to tax in the computation of income under other income and telescoping benefit should be given for the alleged addition for 'on money' payment. This claim was never made

before the Ld. A.O nor before Ld. CIT(A). This is not a legal ground which can be taken at any stage by the assessee. During the course of appeal also no such specific ground has been taken for providing telescoping. We find no force in the contention of the Ld. Counsel for the assessee and are inclined to confirm the view taken by Ld. CIT(A). Accordingly addition of Rs.2,00,000/- for 'on money' payments stands confirmed.

60. As regards Grounds 4 &5 same are general in nature which needs no adjudication.

61. In the result appeal of the assessee is partly allowed.

62. Now we take up the case of Smt Alka Gupta for Assessment Year 2012-13 vide ITA No.160/Ind/2017 through which following grounds are raised;

1. That the assessment made u/s 153A r.w.s. 143(3) of the Income Tax Act be held to be bad in law and on facts and be quashed.

2. That the addition of Rs.1,70,288/- for silver articles 2.936 Kgs found from the residence of the assessee be held to be bad and unjustified on the facts and in the circumstances of the case. The addition made be quashed.

3. That the addition of Rs.67,310/- for silver articles 1.270 Kgs found from Locker No.S-223 at State Bank of India, Arera Colony, Bhopal be held to be bad and unjustified on the facts and in the circumstances of the case. The addition made is requested to be quashed and deleted.

4. That the addition of Rs.1,15,640/- for silver articles 2.065 Kgs found from Locker No.153 at Kotak Mahindra Bank, M.P. Nagar, Bhopal be held to be bad and unjustified on the facts and in the circumstances of the case. The addition made is requested to be quashed and deleted.

5. That in the alternative and without prejudice to the Grounds stated above the additions made be held to be highly unreasonable and excessive and be reduced.

6. The appellant craves leave to add or amend any ground of appeal before or during the course of hearing of the case.

63. At the outset Ld. Counsel for the assessee requested not to press Ground No.1, therefore Ground No.1 is dismissed as not pressed.

64. Ground No.2 & 3 relates to addition for silver article weighing 2.936 Kg valued at Rs.1,70,288/- found from the residence, silver articles weighing 1.270 kg found from locker valuing Rs.67,310/- and silver article weighing 2.065 kgs found from another locker valuing Rs.1,15,640/-. These silver articles were found in the locker as well as in the residence of the assessee. The addition for the value of silver articles/utensils found in the locker and in the assessee's residence made by the Ld. A.O was confirmed by Ld. CIT(A) against which the assessee is in appeal before the Tribunal.

65. Ld. Counsel for the assessee reiterated the submissions made before the Ld. CIT(A).

66. We have heard rival contentions and perused the records placed before us.

67. Ground No. 2 & 3 of the assessee's appeal challenges the addition for silver articles weighing 6.271 Kg which valued at Rs.3,53,238/-. In the other connected cases of the group, we have dealt with this issue and allowed the benefit of silver articles/utensils keeping in view of the Indian customs that such items are received on marriages and other auspicious occasions. However in the instant case the quantity of silver articles is 6.271 Kg is likely on higher side. We therefore in the given facts and circumstances of the case and without setting a precedence for other cases and being fair to both the parties and in the interest of justice direct the revenue authorities to allow claim of 3 kg of silver articles/silver utensils to be a reasonable quantity of silver and thus delete the addition of Rs.1,68,986/- for 3 kg of silver articles. Thus Ground No.2,3 & 4 are partly allowed.

68. In the result the appeal of the assessee is partly allowed.

69. In the result the appeals of Smt. Charu Gupta, Smt. Laxmi Gupta and Smt. Alka Gupta are partly allowed.

The order pronounced in the open Court on 27.09.2019

Sd/-

Sd/-

(KUL BHARAT)

(MANISH BORAD)

JUDICIAL MEMBER

ACCOUNTANT MEMBER

दिनांक /Dated : September, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

Charu Gupta & others

IT(SS)No.43/Ind/15, 47/Ind/17 & 65/Ind/17,ITA No.130/Ind/15,ITANo.160&163/2017

By Order,
Asstt.Registrar, I.T.A.T., Indore