

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6536/Del/2018 : Asstt. Year : 2014-15

Surpreet Singh Suri, C/o Sanjiv Sapra & Associates LLP, Chartered Accountants, C-763, New Friends Colony, New Delhi-110025	Vs	Asstt. Commissioner of Income Tax, Central Circle-6, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AOHPS9046K		

**Assessee by : Sh. Sanjiv Sapra, FCA
Revenue by : Sh. S. S. Rana, CIT DR**

Date of Hearing: 21.08.2019

Date of Pronouncement: 24.09.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-24, New Delhi dated 31.08.2018.

2. Following grounds have been raised by the assessee:

"1. That there was no justification to make an addition of Rs.2,94,000 on account of deemed/assumed rental income as against the fact that the property in question remained vacant throughout the year under appeal because no tenant could be found.

2. That the authorities below had erred on facts and under the law in making an addition of Rs.2,37,08,076 on account of cash and jewellery found from the residence of the Appellant and bank lockers in the names of family members of the Appellant during search and seizure operations.

3. That without prejudice to Ground No. 1 & 2 above, the additions as made by the AO and confirmed Id. CIT (A) are very excessive.

Various observations made by the authorities below in their respective orders are either incorrect or legally untenable. Detailed written submissions as made by the Appellant supported by documentary evidence and the case laws have either been ignored or had not been properly appreciated.

4. That the levy of interest u/s 234A, 234B, 234C is illegal and at any rate, without prejudice, the interest as charged is very excessive. This ground was duly argued before the Id. CIT (A) but the same has not been disposed off."

3. The assessee has got 1/3rd share in the residential house in Sainik Farms which was being treated as self occupied property. Further, the assessee had acquired another property at Aurobindo Marg on which no rental income has been offered under the provisions of Section 23 of the Income Tax Act, 1961. Hence, the Assessing Officer estimated letting value @ Rs.35,000/- per month and added an amount of Rs.294,000/- to the total income on providing for deductions u/s 24 of the Act. The Id. CIT (A) held that the benefit of the vacancy allowance u/s 23(1)(c) of the Act is not available to the assessee as a property was not let out anytime, at least once.

4. Before us, during the arguments, the Id. AR submitted that in spite of the best efforts, the assessee could not get a right tenant in spite of the having best intention to let out the same. Hence, the ALV of the property was taken as Nil. The assessee has quoted the following case laws in support of his arguments:

- *Premisudha Exports P. Ltd. Vs ACIT 110 ITD 158 (ITAT Mumbai)*
- *Smt. Indu Chandra Vs DCIT in ITA No. 96/Lkw/2011*

- *Smt. Shankuntala Devi Vs DCIT in ITA No. 1524/Bang/2010*
- *ACIT Vs Dr. Prabha Sanghi 139 ITD 504 (ITAT Delhi)*

5. He argued that the Id. CIT (A) has not been able to distinguish these judgments and has merely denied the vacancy allowance as available u/s 23(1)(c) of the Act on the ground that the same is only available if the property is let out at least once. No condition of such nature as alleged by the Id. CIT (A) is specified in Section 23(1)(c) of the Act for allowing vacancy allowance as also clarified by Mumbai ITAT in Premsudha Export's case as cited above.

6. Heard the arguments of both the parties and perused the material available on record. Section 23(1)(c) of the Act pertaining to determination of annual value or determined vacancy allowance reads as under:

"Section 23(1)(c)

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable."

7. Having regard to the clear provisions of the Act, and harmonious reading of Section 23(1)(a) and 23(1)(c) of the Act, were hereby hold that the rent received by the assessee has to be treated as the annual value of the house and liable to tax under income from house property. The action of the Id. CIT (A) on this ground is hereby upheld.

8. During the search, the warrant was issued in the name of the assessee. The Assessing Officer held in page no. 2 of the

assessment order that the jewellery in the name of the assessee and other members of the family as found at the residence as well as in bank lockers was as under:

<i>Sl. No.</i>	<i>Name S/Sh/Smt</i>	<i>Premises</i>	<i>Jewellery fund (in Rs.)</i>	<i>Jewellery found (in Wt.)</i>
1.	<i>SS Suri & Kinty Suri (Wife)</i>	<i>192-B, Sainik Farm, M B Road, New Delhi</i>	<i>26380346</i>	<i>2539.486</i>
2.	<i>Kinty Suri</i>	<i>501, HDFC Bank, Saket, New Delhi</i>	<i>4230938</i>	<i>786.930</i>
3.	<i>Kinty Suri</i>	<i>20, Standard Chartered Bank, E-26, Saket, New Delhi</i>	<i>2635061</i>	<i>651.86</i>
4.	<i>Mehru Suri (Married Sister)</i>	<i>694, HDFC Bank, Saket, New Delhi</i>	<i>2359042</i>	<i>875.79</i>
5.	<i>Kinty Suri</i>	<i>500, HDFC Bank, Saket, New Delhi</i>	<i>8435039</i>	<i>1031.41</i>
6.	<i>PP Suri & Narender Kaur Suri (Father & Mother)</i>	<i>578, UCO Bank, Defence Colony, New Delhi</i>	<i>812676</i>	<i>268.50</i>
7.	<i>Narender Kaur Suri (Father & Mother)</i>	<i>401, HDFC Bank, E-143, Saket, New Delhi</i>	<i>2839425</i>	<i>947.30</i>
		Total	47692527	7101.279

9. During the assessment, the assessee submitted that jewellery weighting 875.79 gms belongs to Nehru Suri the married sister of the assessee who is living abroad which was accepted by the Assessing Officer.

10. The jewellery held by the family members as per the Wealth Tax return is as under:

<i>Sh. Surpreet Singh Suri</i>	<i>394.860 gms</i>
<i>Smt. Kinty Suri</i>	<i>2086.812 gms</i>
<i>Smt. Narender Kaur Suri</i>	<i>1354.146 gms</i>
<i>Sh. Pritpal Singh Suri</i>	<i>742.840 gms</i>

11. The Assessing Officer held that the assessee and his wife Smt. Kinty Suri filed the returns of Wealth Tax on 13.09.2013 declaring total jewellery of 2481 gms(394.8+2086.8) as against the 5009 gms found and inventoried at the premises during the

search and treated the excess jewellery weighting 2528 gms as unexplained investment.

12. During the arguments, before us, the Id. AR submitted that the assessee has purchased jewellery out of the impressed money given by the company. He submitted that the bills of Swaran Shree Jewels wherein the jewellery has been purchased in cash and argued that the jewellery purchased by the assessee with the money of the company should be considered and the jewellery found be treated as explained.

13. The Id. DR argued that the explanation of the Id. AR pertaining to the remaining jewellery cannot be accepted and filed his written arguments which are as under:

"1. During the course of search, jewellery weighing 5009.686 gms belonging to the assessee and his wife was found valued at Rs. 4,16,81,384. Out of this jewellery weighing 394.860 gms was reflected in their wealth tax returns. Thus, jewelry weighing 2528.014 valued at Rs. 2,10,33,076 remained explained.

2. The assessee claimed that jewellery weighing 1645.548 gms was purchased from 1.04.2013 to 29.10.2013. Some bills were produced but they did not contain name of the assessee. Moreover, mode of payment was cash, source of which the assessee could not explain. Some bills for purchase of jewellery were found during search and credit of these bills has been allowed to the assessee. The bills for jewellery weighing 1645.548 gms were not found during course of search.

3. Reliance is placed upon findings of AO on pages 2 to 4 of assessment order.

4. Reliance is placed upon findings of Ld.CIT(A) on pages 38 to 43 of his order in para 5.1 to para 5.10.

"....."

5.6 In case of the appellant, total jewellery weighing 5009.686 Gms {(2539.486 Gms from residence) + (786.930 Gms from locker no. 501 in HDFC Bank, Saket, New Delhi) + (651.86 Gms from locker no. 20 in Standard Chartered Bank, New Delhi) +(1031.41 Gms from locker no. 500 in HDFC Bank, Saket, New Delhi)} was found. All the three lockers were in the name of appellant's wife (Smt. Kinty Suri). The appellant furnished copies of wealth tax returns for assessment year 2013-14 of himself and his wife in which weight of declared jewellery was shown at 394.860 respectively. The AO granted credit for the same weight of the jewellery. The appellant also submitted certain bills from Swarn Shree Jewels (Prop. Vihaan Eximis Company Pvt. Ltd.) showing purchases, of jewellery in cash from 01.04.2013 to 29.10.2013 (date of search) totaling to 1645.548 Gms. The Assessing Officer did not give any credit in respect of these bills because i) the purchases were claimed in cash, ii) the bills mentioned 'cash' in place of the name of the Purchasing party (did not have name of the appellant or his wife as purchaser) and iii) source of this cash was stated to be imprest received from the companies i.e. M/s Vistar Construction Pvt. Ltd. and M/s Three C Universal Developers Pvt. Ltd.

During the appellant proceedings, it was the argument of the AR that the AO was not right in ignoring the purchase bills submitted by the appellant. The appellant also submitted that credit was not given as per CBDT'S instructions no. 1916 dated 11.01.1994.

5.8 During the course of appellate proceedings, the AR was asked to produce original of the bills as there was certain doubts about authenticity of these bills, however, in spite of sufficient opportunities, the originals were not produced. I have made got independent enquiry and found that certified copies certain bills were not identical of the corresponding photocopies submitted by the AR (as received from the seller, directly). In any case, the AR could not controvert the observations of the AO that these bills mentioned 'cash' in place of the name of the purchasing party (did not have name of the or his wife as purchaser) and source of this cash was stated to be

imprest received from the companies which is not possible because company will not provide imprest for purchasing personal affects.

5.9 Regarding credit of jewellery as per CBDT's instructions no. 1916 dated 11.01.1994, it is noted that once appellant and his wife filed wealth tax returns and full credit of jewellery shown in these (wealth tax) returns were allowed there is no occasion 10r allowing any further benefit as per the said CRDT Instructions.

5.10 In view of the above discussion, this ground (no. 3) of appeal is dismissed and consequently the addition (of Rs.2,37,08,076/-) is confirmed."

5. In view of above facts, assessee has failed to discharge the onus of proving the source of investment in above jewellery.

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to addition made u/s 69 & 69A of I.T. Act:

1. R. Mallika Vs CIT [2017] 79 taxmann.com 117 (SC) (Copy Enclosed)

where Hon'ble Supreme Court dismissed SLP against Madras High Court's ruling that where assessee had not discharged burden as regards source from which investment had been made, investment in property was an unexplained investment and same was rightly added to income of assessed.

CIT Vs R. Mallika [2013] 36 taxmann.com 231 (Madras)/[2013] 219 Taxman 244 (Madras) (Copy Enclosed)

where Hon'ble Madras High Court held that where assessee had purchased a property for Rs. 22 lakhs and she had not discharged burden as regards source from which investment had been made, investment in property was an unexplained investment and same was rightly added to income of assessee.

2. Ashokbhai H Jariwala Vs ACIT [2017] 84 taxmann.com 196 (SC/20171 250 Taxman 14 (SC), 2017-TIOL-236-SC-IT (Copy Enclosed)

where Hon'ble Supreme Court held that Where there was nothing on record to show that sister of assessee was in exclusive possession of bedroom in assessee's house from where cash was seized and further, there was contradiction in statement of assessee and his sister with respect to ownership of actual amount in cash, seized cash would be included as unexplained income in hand of assessee under section 69A, SLP dismissed

3. Sukh Ram Vs ACIT 159 Taxman 385 (Delhi/[2006] 285 ITR 256 (Delhi)/[2006] 204 CTR 336 (Copy Enclosed)

where Hon'ble Delhi High Court held that where pursuant to a search conducted at residential premises of assessee, huge sum of cash was found, for which assessee explained that said cash belonged to certain organization but did not bring any material on record to substantiate his explanation and, moreover, verification of books of account of said organization showed no connection with cash recovered from assessee, in said circumstances assessee was to be treated as owner of said cash, and same was to be added to income of assessed under section 69A.

4. Mahabeer Prasad Jain Vs ACIT [2017] 88 taxmann.com 9 (Allahabad)/[2018] 253 Taxman 152(Allahabad)/[2017] 399 ITR 600 (Allahabad) Copy Enclosed)

where Hon'ble Allahabad High Court held that where assessee had purchased drafts by depositing cash but failed to provide source of said cash utilized to make such investment, additions made under section 69 was justified.

5. Amita Kochar Vs ACIT [2017] 79 taxmann.com 432 (Patna)/2016 389 ITR 345 (Patna) (Copy Enclosed)

where Hon'ble Allahabad High Court upheld addition where assessee, in block return, did not disclose total gold found during search nor did it give any reasonable explanation therefor and even figures given in belated explanation did not match with gold jewellery actually found in assessee's possession.

6. *Vijay Kumar Saraf Vs ITAT [1996] 85 Taxman 465 (Madhya Pradesh)/[1997] 226 ITR 860 (Madhya Pradesh) (Copy Enclosed)*

Certain jewellery and ornaments seized during raid on business premises of assessee were claimed to be assets of ancestral business of assessee's father. Assessee's aforesaid plea having not been pressed before tax authorities nor substantiated by any material evidence. Hon'ble MP High Court held that Tribunal had rightly upheld assessment by treating value of seized assets as also purchase of scooter as unexplained investments of assessee within meaning of section 69.

7. *Karun Dutt Singh Vs CIT [2017] 85 taxmann.com 177 (Kerala) (Copy Enclosed)*

where Hon'ble Kerala High Court held that where AO made addition to assessee's income in respect of gold ornaments recovered from him after rejecting his explanation that it belonged to his employer company, in view of fact that director of employer company in his statement recorded under sec. 131 denied to have given ornaments to assessee for sale or as samples, impugned addition was to be confirmed."

14. Heard the arguments of both the parties and perused the material available on record. We are unable to appreciate the argument of the Id. AR that the jewellery was purchased with the imprest money of the company available with the assessee.

15. On examination of the material filed before us and from the reading of the panchnamas in the table mentioned in the assessment order at page no. 2, the following facts arises regarding the jewellery of the family members which is as under:

Sl. No.	Name of the owner as per panchnama	Relation with the assessee	Premises	Net weight	Remarks
1.	Narender Kaur and Preet Pal Suri	Parents	Locker No. 578, UCO Bank, Defence	268.500	Considered by AO

			<i>Colony, New Delhi</i>		
2.	<i>Narender Kaur and Preet Pal Suri</i>	<i>Parents</i>	<i>192 B, Sainik Farm, New Delhi</i>	<i>1388.390</i>	<i>Considered by AO in the hands of the assessee</i>
3.	<i>Narender Kaur and Preet Pal Suri</i>	<i>Parents</i>	<i>Locker No.401, HDFC Bank, New Delhi</i>	<i>947.300</i>	<i>Considered by AO</i>
4.	<i>Kinty Suri and Surpreet Suri</i>	<i>Wife</i>	<i>192 B, Sainik Farm, New Delhi</i>	<i>1151.096</i>	<i>Considered by AO</i>
5.	<i>Kinty Suri</i>	<i>Wife</i>	<i>Locker No. 500, HDFC Bank, Saket, New Delhi</i>	<i>1031.410</i>	<i>Considered by AO</i>
6.	<i>Kinty Suri</i>	<i>Wife</i>	<i>Locker No. 501, HDFC Bank, Saket, New Delhi</i>	<i>786.900</i>	<i>Considered by AO</i>
7.	<i>Kinty Suri</i>	<i>Wife</i>	<i>Locker No. 20, Standard Chartered Bank, New Delhi</i>	<i>651.86</i>	<i>Considered by AO</i>
8.	<i>Mehru Suri</i>	<i>Sister</i>	<i>Locker No. 694, HDFC Bank, Saket, New Delhi</i>	<i>875.79</i>	<i>No dispute</i>

Kinty Suri + Surpreet Suri - 1151.096

Kinty Suri - 2470.19

Narender Kaur + Preet Pal Suri - 2604.19

Mehru Suri - 875.79

Total 7101.266

16. The Wealth Tax Return of Surpreet Suri and Kinty Suri shown a total amount of 2481.672 gms whereas the total jewellery found and recorded as per the panchanama pertaining to Surpreet Suri and Kinty Suri was 3622.15 gms. Since, the

assessee has got two sons and no provision has been given by the revenue regarding the jewellery possessed by them in view of the Instruction No. 1916 dated 11.05.1994 in para (ii) and (iii), keeping in view the return income of the assessee which is 4.5 crores for the assessment year 2013-14, we hereby consider it fair to allow 200 gms of jewellery per person and thus, an amount of 740 gms can be treated as unexplained excess jewellery in the hands of the assessee against 2528 gms determined by the revenue. This was due to the fact that the amount of jewellery of 1388 gms belonging to Narender Kaur Suri and Preet Pal Suri parents of the assessee, found at the residence of the assessee were treated in the hands of the assessee wrongly, even though the panchnama reveals clearly that the jewellery belongs to the parents of the assessee. The appeal of the assessee on this ground is treated as partly allowed. Application of Sections 234A, 234B and 234C of the Act is consequential.

17. In the result, the appeal of the assessee is partly allowed.
(Order Pronounced in the Open Court on 24/09/2019).

Sd/-

(Amit Shukla)
Judicial Member

Dated: 24/09/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR