

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 2349/DEL/2019 (A.Y. 2015-16)  
A/w Stay Application No. 636/DEL/2019**

Bina Aggarwal 2 <sup>nd</sup> Floor, 19 Local Shopping Complex, Near Pushpa Bhawan, Madangir New Delhi <b>PAN : ADBPA1417B</b> <b>(APPELLANT)</b>	Vs.	ACIT Central circle-08 New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Ved Jain, Adv. &amp; sh. Himanshu Aggarwal, C.A</b>
<b>Respondent by</b>	<b>Sh. Sanjay Goyal, CIT,DR</b>

<b>Date of Hearing</b>	<b>05.09.2019</b>
<b>Date of Pronouncement</b>	<b>30.10.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 21.02.2019 passed by CIT(A)-24, New Delhi for Assessment Year 2015-16.

2. The grounds of appeal are as under:

*“1. That on facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)- XXIV, New Delhi [‘the Ld. CIT(A)’], has erred in upholding the order of the Assistant Commission of Income tax, Central Circle-08, New Delhi (‘the Ld. Assessing Officer’) in upholding the addition of Rs. 1,33,61,901 made on account of alleged Long-term capital gain on jewellery.*

*2. That on facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)- XXIV, New Delhi [“the Ld. CIT(A)”], has erred in upholding the order of the Assistant Commission of Income tax, Central Circle-08, New Delhi (“the Ld. Assessing Officer”) in upholding the addition of Rs. 8,59,018 made under section 69A on account of alleged unexplained investment in jewellery.*

*The appellant craves for leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal or add any of the aforesaid ground of appeal(s) at any time before or at the time of hearing of the appeal.”*

3. A search and seizure operation u/s 132 of the Act was conducted in the case of Priyagold Group of cases on 16.12.2014 by Investigation Wing, New Delhi. The assessee’s case was also covered in search operation u/s 132 of the Act. Consequent upon search action, search assessment proceedings were taken up and statutory notices were issued. Subsequent to the aforesaid search action, information was received from Investigation Wing, Kolkata that a search & seizure operation u/s 132 of the Act was conducted upon the assessee on 19.11.2015. In view of the subsequent search on 19.11.2015, assessment proceedings initiated in consequence to search operation conducted on the assessee on 16.12.2014 were abated. The Assessing Officer thereafter issued notice u/s 153A of the Act dated 01.06.2017 & 06.06.2017 and in response thereto, the assessee filed a reply stating that the return originally filed u/s 139(1) be treated as return in response to the notice issued u/s 153A of the Act. The Assessing Officer observed that the assessee filed return of income u/s 139(4) of the Act on 20<sup>th</sup> January, 2016 declaring total income of Rs. 23,26,080/-. During the course of the search operation on 16.12.2014 at the residential premises of the assessee and her husband, jewellery (Gold, Diamond, Silver) amounting to Rs. 18,74,303/- was found in possession of the assessee and her husband. Further, during the operation of the locker no. DD-22, maintained with Oriental Bank of Commerce, Noida in the name of the assessee and her husband, jewellery amounting to Rs. 35,96,263/- was found. Hence, total jewellery found from the possession of the

assessee and her husband was Rs. 54,70,566/-. However, on verification, the Assessing Officer found that as per the Wealth Tax Return of the assessee for the Assessment Year 2013-14, the assessee declared jewellery amounting to Rs. 1,93,05,359/-. The Assessing Officer further observed that the husband of the assessee had not filed any Wealth Tax Return. However, the total jewellery in their possession was found to be Rs. 43,17,442/- only. The assessee and her husband in their respective statements, recorded during the search operation stated that apart from the jewellery found during the search, the rest of the jewellery was kept with the relatives or valuer. The Assessing Officer observed that they were not sure where the valuable jewellery was kept. They could not furnish the name and address of the relatives. They were unable to furnish any valuer's receipt or confirmation from the relatives. During the post search proceedings / assessment proceedings, neither the particulars of the relatives nor the confirmation from any valuer was provided. As per the Assessing Officer, the assessee and her husband could not substantiate the statements recorded during the search action by providing details of custody of the valuable jewellery or details regarding relatives & valuer where jewellery was kept. During the course of the assessment proceedings, the Assessing Officer issued show cause notice dated 20.11.2017 mentioning that the assessee did not produce any document or produced any person in support of the fact that jewellery found short was available with the assessee and hence why the same should not be treated as sold and accordingly capital gain on the sale of the jewellery be brought to tax. In reply, the assessee stated that she had not sold/parted with any jewellery till the time of search and furnished the details of jewellery. The assessee also offered to file an affidavit. The Assessing Officer was not satisfied with the reply of the assessee. The Assessing Officer once again on 29.11.2017 confronted to the assessee. The assessee reiterated that the complete jewellery is with the family and is used by the family members. The Assessing Officer held that the assessee and her husband could not substantiate the status of short jewellery and hence it was held that they have sold the short gold jewellery of 6267.39 grams in the previous year relevant to

the assessment year under consideration. Accordingly, the Assessing Officer adopted year-1997 as the year of purchase of the jewellery where the assessee declared the jewellery under VDIS and sale price of the jewellery was adopted, the same was taken by the assessee in the Wealth Tax Return for the Assessment Year 2013-14 and computed the long term capital gain at Rs. 1,33,61,901/- and brought to tax in the hands of the assessee. The Assessing Officer noticed that during the course of the search at the premises of the assessee and her husband, diamond jewellery amounting to Rs. 3,19,250/- was found from the residential premises whereas diamond jewellery amounting to Rs. 6,67,700/- was found from the locker of the assessee and her husband, which was seized during the search as the same was not declared in their last filed Wealth Tax Returns. Husband of the assessee had never filed the Wealth Tax Return and stated that the explanation with regard to the jewellery / articles found during search can be given by his wife only as it belongs to her. The assessee has taken a stand that since the jewellery was found short than declared in the Wealth Tax Return, as such, the same cannot be treated as undeclared jewellery. The Assessing Officer observed that the diamond jewellery found from the residence and from locker of the assessee and her husband never disclosed this aspect in their Wealth Tax Return. Hence, the Assessing Officer held that the diamond jewellery found in their possession during the search operation on 16.12.2014 and during operation of locker on 30.01.2015, the same has been acquired by the assessee and her husband from undisclosed income and it is an unexplained investment of the assessee and her husband during the year i.e. 2014-15 as they could not produce any purchase bill/voucher. The value of the said diamond jewellery was taken as per the valuation done during the search proceedings which amounted to Rs. 8,59,018/-. Hence, the diamond jewellery of Rs. 8,59,018/- was added to the income of the assessee as her unexplained investment u/s 69A of the Act. The assessment was completed u/s 153A/ 143(3) of the Act at total income of Rs. 1,65,47,000/- on 31.12.2017 after making the additions.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that as regards to Ground No. 1 relating to additions on account of long term capital gain on sale of jewellery of Rs. 1,33,61,901/- during A.Y. 2015-16, the assessee filed her return of income on 20.01.2016 declaring total income of Rs. 23,26,080/-. The assessee received salary from M/s. Surya Food & Agro Ltd and interest income from various personal investments. A search and seizure operation u/s 132(1) of the Act was conducted at the business and residential premises of the Priyagold group of companies, its directors & family members on December 16, 2014. During the Search Operations the details of jewellery found in the possession of the applicant/ assessee and her husband are as under :-

Sr. No.	Particulars	Jewellery (value in Rs.)
1.	Residential premises : B-14, Sector-14, Noida	18,74,303 (332.4gm)
2.	Bank Locker No. DD-22, Oriental Bank of Commerce, Sector-27, Noida	35,96,263 (1115.03gm)

The Assessing Officer observed that as per wealth tax return for A.Y. 2013-14, the assessee declared the amount of jewellery amounting to Rs. 1,93,05,539/- and the husband of the assessee has not filed any wealth tax return. The Assessing Officer thereafter issued show cause notice u/s 142(1) to explain the difference between the jewellery found in the possession and the jewellery declared in the wealth tax returns. The assessee in response to the same submitted reply dated 08.12.2017. The Ld. AR submitted that she lives in a joint family and has not parted with or sold any of the jewellery and submitted the details of the jewellery. The Ld. AR further submitted that the affidavit to this effect that she has not sold or parted of with any jewellery was also placed before the Assessing Officer. The details of the jewellery of whole family was also submitted before the Assessing Officer. The Ld. AR pointed out

that the Assessing Officer has accepted the fact at para 7 into (IB) at page 6 of the assessment order that the jewellery items found during the search are same as what declared in wealth tax returns. Thereafter, the Assessing Officer at page 7 para 7 (a)(i) of the assessment order calculated long term capital gains on the presumption and without any material on record that the balance jewellery of 6267.3 grams have been sold for which capital gain has not been offered and imposed tax thereon. On appeal before the CIT(A), the CIT(A) confirmed the addition made by the Assessing Officer despite there being no material with the Assessing Officer that such jewellery was sold by the assessee. The Ld. AR submitted that the additions made by the Assessing Officer and confirmed by the CIT(A) is purely based on surmises only and sans any material found during the search that the assessee has sold any jewellery. The Assessing Officer adopted arbitrary approach of determining the capital gains on the alleged sales by calculating the long term capital in the following manner without any document on record:

- i. The Assessing Officer took the cost of acquisition of the jewellery to be the amount in VDIS valuation of Rs. 2,14,680/- assuming the purchases were made in FY 1997-98.
- ii. The Assessing Officer took the sales consideration at the price of the jewellery to be the amount declared in wealth tax return for AY 2013-14 of Rs. 2237.46/- per gram.
- iii. Thereafter applying the indexation for FY 2013-14 and FY 1997-98 the Assessing Officer calculated long term capital gains on alleged sales.

The Ld. AR submitted that the Assessing Officer himself accepted the quantity / weight of gold for AY 2014-15. Thus, the above additions are merely on suspicions only. The Ld. AR further submitted that the assessee at the time of assessment proceedings submitted the following documents stating that she has not sold or parted with any jewellery:

- Summary of jewellery of whole family
- Affidavit confirming that no part of jewellery is sold
- Details of jewellery of Smt. Bina Agarwal and Manoj Agarwal
- Copy of Wealth Tax Return of the family members :-
  - BINA AGARWAL for AY 2014-15 and AY 2015-16
  - B.P.AGARWAL for AY 2014-15 and AY 2015-16
  - USHA DEVI AGARWAL for AY 2014-15 and AY 2015-16
  - SHEKHAR AGARWAL for AY 2015-16

The Ld. AR further submitted that it is a settled position in law that the additions cannot be made in the absence of any material on record merely on surmises and conjectures. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram Vs. CIT [1959] 37 ITR 288 (SC). The Ld. AR submitted that without prejudice to the earlier submissions it is prayed that the value of gold jewellery relating to AY 1987-1988 was Rs. 14.10.624/-. Thus, the value of Rs. 2,14,860/- and the rate of indexation for FY 1997-98 i.e. 305, adopted by the Assessing Officer is arbitrary and cannot be adopted. The CIT(A) observed that the affidavit filed by the assessee is self-serving document and the facts stated therein cannot be accepted as evidence. It is the settled principle of law that the decision must rest not on suspicion but on legal testimony. The Ld. AR relied upon the decision of Mehta Parikh & Co. vs. CIT reported in 30 ITR 181 (SC). Thus, the Ld. AR submitted that it is well established by the assessee during the assessment proceedings that the assessee has not sold any part of the jewellery and accordingly the allegations made by the Assessing Officer and the CIT(A) are merely on the basis of surmises and are without any cogent evidence. The Ld. AR prayed that the additions be deleted.

6. The Ld. DR submitted that the fact remains that jewellery was short as regards the details filed in the Wealth Tax Returns. The Ld. DR further relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that as regards Ground no. 1, the assessee has given the explanation that the short of the jewellery found during the search was due to the reason that in a recent time the assessee's daughter got married and some of the jewellery is either with the relatives or with the valuer. These facts were brought on record during the search and in the statement of the assessee taken during the search has given details of the relatives of assessee with whom she has kept the jewellery. It is the fact that the assessee has not filed any confirmation of these relatives but it is also pertinent to note that the Revenue has not issued 133(6) notice for obtaining the real picture of assessee's submissions. There is no mechanism under the provisions of Income Tax Act, if there is short of the jewellery declared by the assessee then the same should be treated as sold and the capital gain is attracted. In the present case the Assessing Officer as merely suspected that the jewellery was sold, but has not brought any material on record. Therefore the Assessing Officer as well as CIT(A) overlooked the practical aspect that the jewellery is with relatives / valuer. Hence, Ground No. 1 of the assessee's appeal is allowed.

8. As regards Ground No. 2 relating to addition on account of investment on jewellery u/s 69A of Rs. 8,59,018/-, the Ld. AR submitted that the Assessing Officer observed that during the search operation of bank locker in Oriental Bank of Commerce, diamond jewellery of Rs. 8,59,018/- was found and the same was not declared in the wealth tax returns. At the time of hearing, the Ld. AR submitted that if it is the case of the Revenue that the jewellery is found short then there can be a case where there is an undisclosed jewellery. No loose diamonds were found during the search proceedings and all the jewellery was studded in the gold jewellery. Thus, no additions can be made on such count. The additions made are purely on surmises and sans any material on record found during the search that the assessee has made investment in the diamond jewellery. The Ld. AR further submitted that the additions cannot be

made merely on the basis of suspicion. The Ld. AR relied upon the decision of Umacharan Shaw & Bros. vs. CIT reported in 37 ITR 271 (SC). Ld. AR submitted that the assessee made full disclosure and has submitted the details of the jewellery. The Assessing Officer and the CIT(A) accepted the details submitted by the assessee. Thus, in the absence of any tangible material on record the additions made cannot be sustained. The Ld. AR further relied upon the decision of the Hon'ble Delhi ITAT in the case of Shri Raj Kumar Kalrania v. DCIT in ITA 1397/Del/2015 order dated 30.05.2018. The Ld. AR further submitted that the diamonds are precious stones and are part of the jewellery. The assessee seeks support from the definition of jewellery under Wealth tax Act. Further, reliance is placed on the decision of the Delhi ITAT in the case of Kumkum Kanodia vs. DCIT in ITA no. 5260/Del/2014 . Ld. AR submitted that merely because the jewellery is studded with the diamond of 47.18 carat in the instant case, the same cannot be added in the hands of the assessee when such jewellery formed part of the gross weight of the jewellery found from the premises of the assessee. On the basis of above facts and circumstance of the case, the assessee has not purchased any diamond jewellery and accordingly the allegations made by the Assessing Officer and the CIT(A), the Ld. AR prayed that the same should be deleted.

9. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the diamond jewellery is always studded with gold and it is not a case of revenue that separate diamonds were found during the search operation. Merely because the jewellery is studded with the diamond of 47.18 carat in the instant case, the same cannot be added in the hands of the assessee when such jewellery formed part of the gross weight of the jewellery found from the premises of the assessee. The assessee made full disclosure and has submitted the details of the jewellery which were

accepted by both the authorities and was never questioned. Thus, this addition does not sustained. Hence, Ground No. 2 of the assessee is allowed.

10. Since the appeal is decided on merit, the stay application does not survive, hence dismissed.

11. In result appeal of the assessee is allowed and the stay application is dismissed.

**Order pronounced in the Open Court on 30<sup>th</sup> October, 2019.**

Sd/-

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 30/10/2019

*\*Binita\**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	05.09.2019
Date on which the typed draft is placed before the dictating Member	05.09.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	