

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

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

ITA No. 7285/DEL/2017
[A.Y 2015-16]

Smt. Bhawna Babbar
C - 1/19, Safdarjung Development Area
Hauz Khas, New Delhi

Vs. The A.C.I.T
Central Circle - 2
New Delhi

PAN: AAGPB 7978 N

(Applicant)

(Respondent)

Assessee By : Shri Salil Agarwal, Adv

Department By : Shri Surendra Pal, Sr. DR

Date of Hearing : 06.11.2019

Date of Pronouncement : 07.11.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] - 23, New Delhi dated
30.08.2017 pertaining to assessment year 2015-16.

2. The grievance raised by the assessee in this appeal is two fold - firstly, the assessee is aggrieved by the confirmation of addition of Rs. 1,02,800/- in respect of cash found during the course of search and, secondly, the assessee is aggrieved by the confirmation of addition of Rs. 19,48,159/- in respect of jewellery found during the course of search.

3. Briefly stated, the facts of the case are that search operation u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] was conducted at the residence of the assessee on 10.03.2015. During the course of search operation, in Locker No, 323 in Canara Bank, New Delhi, cash amounting to Rs. 5,42,800/- was found. The assessee was asked to explain the source of cash in the locker.

4. In her reply, the assessee explained that the cash so found in the locker was received as gifts on the occasion of marriage and subsequent ceremonies of her younger daughter Ms. Ankita Goyal. During the course of assessment proceedings, the assessee submitted copy of cash book. After considering the contents of the cash book, the Assessing Officer was not satisfied with the source of opening cash balance of Rs. 15,93,300/-. The Assessing Officer refused to entertain

the claim of gifts on ceremonial functions. However, considering the status of the assessee, the Assessing Officer made addition of Rs. 5,42,800/- as unexplained cash.

5. The assessee agitated the matter before the ld. CIT(A) and reiterated her claim of having received gifts at the time of various ceremonial functions.

7. After considering the facts and submissions, and the custom prevailing in an Indian Hindu family and also considering the status of the assessee's family, the ld. CIT(A) observed that a part of the cash found can be treated as explained, being gifts. However, the ld. CIT(A) concluded by holding that looking at the status of the family, Rs. 4,40,000/- being round figure of 16% of income declared by the appellant and her husband, is treated as explained being gift received at the time of marriage and subsequent ceremonies of appellant's daughter, confirmed the balance addition of Rs. 1,02,800/-.

8. Before us, the ld. AR vehemently stated that there is no logical reasoning given by the ld. CIT(A) in confirming the balance addition of Rs. 1,02,800/-. It is the say of the ld. counsel for the assessee that

application of 15% of the declared income of the assessee and husband is not only illogical but also do not find any place in the law of Income tax.

9. Per contra, the ld. DR supported the findings of the lower authorities.

10. We have carefully perused the orders of the authorities below. It is true that the findings of the ld. CIT(A) are not only illogical but also do not find any place in the law of Income tax. It is equally true that the onus is upon the assessee to explain the possession of cash found at the time of search. In our considered opinion, the burden of proof is more when cash is found in the locker of a bank and not found deposited in the bank account. Considering the status of the appellant's family, her life style and standard of living, vis a vis returned income, we are of the considered opinion that the lower authorities have already given substantial relief in respect of cash found from the locker. Therefore, the findings of the ld. CIT(A) upholding the addition of a paltry sum of Rs. 1,02,800/- does not call for any interference. Ground No. 1 is dismissed.

11. Coming to the second grievance which relates to the addition of Rs. 19,48,159/- in respect of jewellery found during the course of search proceedings, the facts on record show that the following jewellery was found :

Name of premise	Weight/equivalent weight of gold Jewellery	Value of jewellery
Locker No. 32.3 in Canara Bank, SDA Branch, New Delhi	2300.45 gms.	Rs. 77,83,778/-
C-1/9, Safdurjung Development Area, Hauz Khas, New Delhi	464.75 gms	Rs. 11,26,561/-

12. The assessee was asked to explain the possession of jewellery so found. In her reply to the statement recorded u/s 132(4) of the Act, the assessee stated as under:

"Statement of Smt. Bhawana Babbar w/o Sh. Rakesh Babbar recorded on during operation of Locker No. 323 Canara Bank, SDA Branch, New Delhi:

Q. No. 7 Upon operation of locker jewellery valued at Rs. 77,83,778/- weighing 2300.45 gm gold and 142.18 cts diamond has been found. Kindly explain the source of acquisition of the same?

Ans. The jewellery so found from the locker belongs to myself, my mother in law Smt. Janak Dulari and my married daughters Mrs. Ashima Behai and Ankita Goyal. The Jewellery have been acquired by us on various occasions as gifts received from relatives and friends as well as acquired/purchased by us for various purposes.

Q. No. 8 Why the jewellery of your married daughters kept in your locker? Are they residing with you?

Ans. Since my younger daughter Smt. Ankita Goyal is not maintain any locker in her name or in joint name with anyone, she had kept her own jewellery in my locker. Moreover, she was married in 2012 only and her in laws are based in Delhi. Further, some of the jewellery belonging to my elder daughter is also kept in my locker as she had interested that to me in good faith. No, they are not residing with me.

Q. No. 9 Are your daughters wealth tax assessees?

Ans. No, they are not wealth tax assessees."

13. After perusing the reply of the assessee, the Assessing Officer was of the opinion that the assessee has not given any satisfactory reply/documentary evidences in respect of source of acquisition of jewellery of Rs. 11,26,561/-. The Assessing Officer further observed

that considering the statement of the assessee and CBDT's Instruction No. 1916 of 1994 dated 11.05.1994, all the four married ladies of the family are allowed 500 gms. of gold jewellery as Streedhan and 100 gms. of gold jewellery is allowed for Shri Rakesh Babbar, the husband of the assessee. Accordingly, the Assessing Officer gave relief of gold jewellery weighing 2100 gms. and treated the balance as unexplained and made addition of Rs. 32,87,039/-.

14. The assessee strongly agitated the matter before the Id. CIT(A) and contended that the appellant has been married for more than 25 to 30 years and the possession of gold jewellery in married life of 25-30 years is not abnormal. It was further contended that it is customary in an Indian Hindu family to receive jewellery in the form of Stridhan on various occasions and considering the status of the assessee's family, possession of jewellery should be accepted.

15. After considering the facts and submissions, the Id. CIT(A) observed as under:

"I have considered the case law cited by the appellant. There is no doubt that of family has to be kept in mind while deciding the allowance in respect of explanation of jewellery found in case of family members. However, there cannot be

any straight jacketed formulae for the same, It is seen that the AO has disregarded the affidavits filed by Smt. Janak Dulari and Smt. Ankita Goel without assigning any reason for the same. It is also a fact that during the course of statement u/s 132(4) at the time of search of the locker, the appellant had stated that the jewellery belongs to her, her mother-in-law (Smt. Janak Dulari) and her two married daughter (Smt. Ashima Behai and Smt. Ankita Goel). Moreover, the AO has applied straight jacketed formulae and given allowance of 500.00 gms. in respect of each married lady, without looking the period for which a lady is married. From perusal of the returns of income filed by the appellant (she filed return of income declaring income of Rs. 9,11,090/- for the AY 2015-16) and her husband (Sh. Rakesh Babbar who filed return of income declaring income of Rs. 20,40,000/- for AY 2015-16), the status of the family can be gauged looking at the fact that the appellant and her mother-in-law were married for a much longer period, further allowance of 200.00 gms. of the gold in case of the appellant and Rs.300 gms of gold in case of mother-in-law of the appellant are allowed. Taking rate of gold as taken by the AO i.e. (₹ Rs.2677.76 per gms. (AO has taken value of jewellery weighing at 2100.00 gms. at Rs. 56,23,300/-), the appellant gets relief of Rs.13,38,880/- and balance amount of addition i.e. Rs.19,48,159/- is confirmed."

16. Before us, the ld. counsel for the assessee once again reiterated that considering the status of the assessee's family and also the fact that the appellant has been married for more than 25, the possession of jewellery should be accepted. Strong reliance was placed on the decision of the coordinate bench in the case of Vibhu Aggarwal 93 Taxmann.com 275.

17. Per contra, the ld. DR strongly supported the findings of the ld. CIT(A).

18. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the jewellery weighing 2300.45 gms was found from Locker No. 323 in Canara Bank, SDA Branch, New Delhi and jewellery weighing 464.75 gms jewellery was found from the residence of the appellant. We find that the Assessing Officer has followed Instruction No. 1916 of 1994 of CBDT in giving relief of 500 gms. per married lady in the family and has further allowed relief of 100 gms in respect of the husband of the appellant.

19. The ld. CIT(A) further considering the status of the assessee's family, vis a vis the returned income of the appellant and her husband and after considering the fact that the appellant has been married for more than 25 years, further gave relief of 200 gms of gold jewellery in the case of mother in law of the assessee. After considering the complete status, relief has been granted and addition of Rs. 19.48 lakhs was confirmed by the ld. CIT(A).

20. Even before us, the ld. counsel for the assessee has been constantly harping upon the status of the family of the appellant and returned income of the appellant and her husband. We are of the considered opinion that the first appellate authority has very judiciously considered all the aspects of the appellant and has given substantial relief.

21. Reliance placed on the decision of the coordinate bench [supra] appears to be misplaced, in as much as, in that case the coordinate bench has followed the decision of the Hon'ble High Court of Delhi in the case of Ashok Chaddha 14 Taxmann.com 57 wherein the Hon'ble High Court has held that the status of the family cannot be lost sight of. We are of the view that the first appellate authority has very

judiciously considered the status of the family and after considering the status has already given substantial relief to the assessee.

22. Further, we are of the considered view that the status of the family would not justify unexplained possession of jewellery. Even if a family has the highest status in the society, still the family is accountable for the possession of gold/jewellery/cash in hand and cannot take the shelter behind its status without explaining the source of possession.

23. Before parting, the ld. counsel for the assessee had taken an alternative plea that the valuation as per the gms. of gold jewellery adopted by the Assessing Officer should be taken as basis for making the addition of balance unexplained jewellery. We find that this has also been discussed by the ld. CIT(A) at para 7.11 of his order on page 12 wherein the ld. CIT(A) has given a categorical finding that this plea of the appellant cannot be accepted because the entire jewellery is not gold only. It has items of diamond also. Therefore, the act of the Assessing Officer in taking the rate as per rates of valuation of gold in valuation report cannot be stated to be erroneous. We do not find any

error or infirmity in this finding of the ld. CIT(A). The alternative plea is dismissed.

24. In the result, the appeal of the assessee in ITA No. 7285/DEL/2017 is dismissed

The order is pronounced in the open court on 07.11.2019.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: **07th** November, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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