

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.2237/Del/2015  
Assessment Year: 2011-12**

Sh. Harjeet Singh Arora, A-10, Antriksh Apartments, Sector – 14, Extension, Rohini, Delhi-110 085. (PAN : AISPS 5251 P) Applicant	Vs	DCIT, Central Circle-06, Erstwhile DCIT Central Circle – 11, New Delhi Respondent
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**Assessee by Shri Ved Jain, Adv.  
Revenue by Mr. Pramita M. Biswas, CIT- DR**

**Date of Hearing 20.11.2019  
Date of Pronouncement 27.11.2019**

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Aggrieved by the order dated 16/02/2015 in Appeal No. 298/13-14 passed by the learned Commissioner of Income Tax (Appeals)-24, Delhi (“Ld. CIT(A)”), Mr Harjeet Singh Arora (“the assessee”) filed this appeal.

2. Brief facts of the case are that there was a search and seizure operation under section 132 of the Income Tax Act, 1961 (for short “the Act”) at the business premises of M/s Best Group and also on the residential premises of the Directors and their family members on 28/03/2011. The said group has been carrying out the activities of Real Estate Development and related services. Thereafter the learned Assessing Officer issued a notice under section 142(1) of the Act on

15/10/2012 and a questionnaire on 23/10/2012. Assessee filed the return of income for assessment year 2011-12 declaring an income of Rs.23, 32, 076/- , and therefore he filed a copy of such return of income on 11/12/2012.

3. In the course of search of residential premises of the assessee, jewellery, gold weighing Rs. 1462.800 g and dime under of 157.05 ct worth Rs. 50,70,240/-was seized. Assessee furnished the person wise particulars as follows:-

<b>Particulars</b>	<b>Gold (grams)</b>	<b>Silver (kilograms)</b>
Harjit Singh Arora	280.500	0
Rupinder Kaur Arora	739.050	0
Harspreet Arora	104.250	0
Harmeen Arora	234.000	0
Harjit Singh Arora HUF	105.000	2.000
<b>Total</b>	<b>1462.8</b>	<b>2.000</b>

4. Learned Assessing Officer accepted the gold of 950 g while following the CBDT instruction No. 1916, dated 11/04/1994 according to which, in the case of a person not assessee to wealth tax can hold gold jewellery and document to the extent of 500 g per married Lady, 250 g per unmarried lady and 100 g per male member of the family was permissible. Assessee produced evidence showing purchase of gold weighing 41.7 g on 26/04/2008, and the learned Assessing Officer considered the same accepted it. Learned Assessing Officer, therefore, dated the gold of 387.0 g as unexplained jewellery and made an addition of Rs.9,18,255/-.

5. Assessee preferred appeal before the Ld. CIT(A). Ld. CIT(A) observed that the facts of this case are similar to those of the Partner/Co-Director of the assessee, by name, Mr Vibhav Aggarwal for the assessment year 2011-12 in Appeal No. 281/13-14, wherein similar arguments were taken up and was held that in the absence of any contrary material, the assessee would be entitled to get the benefit of instruction No. 1916 of CBDT to the extent of 500 g in the hands of a

married Lady, 250 g in the hands of an unmarried lady and hundred grams each in the hands of the male members of the family, while not allowing any separate benefit to the assessee's HUF. Ld. CIT(A) made an observation that in this particular case the assessing officer had already considered and given benefit of the instructions, and therefore while following the order passed in the case of Mr Vibhav Aggarwal, Ld. CIT(A) confirmed the addition of Rs. 9,18,255/-.

6. Felt aggrieved by such an order of the Ld. CIT(A), assessee filed this appeal stating that the assessee furnished the source of jewellery and silver items and the authorities below should not have invoked the presumption arises under section 132 (4) of the Act read with section 69A of the Act.

7. At the outset, Ld. AR submitted that in the impugned order itself the Ld. CIT(A) referred to and relied upon the orders passed in the case of Mr Vibhav Aggarwal and such an order was reversed by a coordinate Bench of this Tribunal in ITA No. 1540/Del/2015 by order dated 04/05/2018, and as rightly observed by the Ld. CIT(A) in the impugned order, the facts of these two cases are identical and the reasoning and conclusions reached by this Tribunal in the case of Vibhu Agarwal are very much applicable to the facts of this case also. He further submitted that in the case of Anu Aggarwal, another Co-Director, this Tribunal followed the decision in the case of Vibhav Aggarwal and deleted the addition in ITA No. 2064/Del/2015 by order dated 02/08/2018.

8. Ld. DR submitted that the benefit of CBDT instruction No. 1916 dated 11/04/1994 was already extended by the learned Assessing Officer to the assessee, the assessee had not furnished any evidence in respect of the balance quantity of jewellery, and therefore, such an excess quantity of jewellery has rightly been added by the learned Assessing Officer and rightly confirmed by the Ld. CIT(A).

9. We have gone through the record in the light of the submissions made on either side. On a perusal of the orders rendered by the

Coordinate Benches in the cases of Vibhav Aggarwal and Anu Aggarwal, we find that the Ld. CIT(A) rightly made an observation that the facts of this case are identical to the facts of Vibhav Aggarwal. Argument of the counsel on either side are identical to the one taken in the case of Anu Aggarwal. In these two cases, the Tribunal considered the circumstances in which the excess gold was found, in the light of the decisions of the Hon'ble jurisdictional High Court in the case of Ashok Chaddavs. ITO 14 taxmann.com 57, Shushil Devi in writ petition No. 7620 of 2011 by order dated 21/10/2016 and the ITAT Delhi decision in the case of Suneela Sony vs. DCIT in ITA No. 5259/Del/2017 by order dated 16/03/2018. On such consideration, it reached a conclusion that there is no scope for the Revenue to make addition on guesswork, conjectures on surmises. By recording a finding that these decisions are applicable to the facts of the case, the Tribunal deleted the addition made on account of additional jewellery which was accounted for in the hands of the HUF.

10. There is no dispute that the facts in the case of Harjit Singh Arora, Vibhav Aggarwal and Anu Agrawal are identical insofar as the excessive jewellery is concerned. In these circumstances, while respectfully following the decision of the Tribunal in the case of Vibhav Aggarwal and Anu Aggarwal, we find that looking at the overall status of the family and customary practices of the assessee, the amount of jewellery found cannot be said to be unexplained or excessive as explained by the Hon'ble jurisdictional High Court in the case of Ashok Chadda (supra). We accordingly set aside the orders of the authorities below and direct the learned Assessing Officer to delete the impugned addition.

11. In the result, appeal of the assessee is allowed.

**Order pronounced in the Open Court on 27<sup>th</sup> Nov, 2019.**

Sd/-

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

sd/-

**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

**Dated: 27<sup>th</sup> Nov, 2019**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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