

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 918/JP/2019  
निर्धारण वर्ष/Assessment Year : 2016-17

Shri Ram Prakash Mahawar C-543, Budh Vihar Alwar (Raj)	बनाम Vs.	The DCIT Central Circle Alwar (Raj)
स्थायी लेखा सं./जीआईआर सं./	PAN/GIR No.: ABYPM 2469 C	
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal, CA  
राजस्व की ओर से/ Revenue by : Shri B.K. Gupta, CIT-DR

सुनवाई की तारीख/ Date of Hearing : 19/02/2020  
घोषणा की तारीख/ Date of Pronouncement : 20 /02/2020

आदेश/ ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order of ld.  
CIT(A) -4, Jaipur dated 25-04-2019 for the Assessment Year 2016-17.

The assessee has raised the following ground.

“1. That the AO has erred in law as well as on the facts and circumstances of the case in making an addition of Rs. 9,76,895/- on account of unexplained jewellery found at the time of search and the ld. CIT(A) has erred in sustaining the sum of Rs. 4,57,404/- out of the same whereas the

assessee is having every reason and justification for deletion of the same.’’

2.1 The assessee is an individual and derives income from salary and other sources. Search and seizure action u/s 132 of the Act was carried out on 14-10-2015 in the case of Data Group and the assessee was also covered by the said search and seizure action. During the course of search, gold and silver jewellery valued at Rs. 32,71,895/- were found from the residential premises of the assessee. The bifurcations of gold and silver jewellery value are as under:-

Gold jewellery items	Rs. 31,38,245/-
Silver jewellery items	<u>Rs. 1,33,650/-</u>
Total	<u>Rs. 32,71,895/-</u>

In the course of assessment proceeding, the assessee claimed benefit of CBDT Instruction No. 1916 dated 11-05-1994 to the extent of 850 gms. of jewellery in the hands of his wife, daughter and himself. The AO accepted the said claim and allowed the benefit to the extent of 850 gms. of jewellery. The assessee also claimed that gold jewellery of 343.328 gms. were purchased from time to time and recorded in the books of account and balance sheet of the assessee and his family members. The purchases of the said jewellery are also supported by purchase bills

found during the course of search. However, the AO denied the said claim of the assessee in giving the benefit of purchases made on the ground that this quantity of 343.328 gms.of gold jewellery is already the part of 850 gms. jewellery allowed as per CBDT Instruction No. 1916 dated 11-05-1994. The assessee challenged the action of the AO before the Id. CIT(A) and the Id. CIT(A) in principle confirmed the order of the AO to the extent of not granting the benefit of jewellery of 343.328 gms. explained by the assessee vide purchase bills and the same were recorded in the books of account of the assessee. However, the Id. CIT(A) has held that valuation of the said jewellery would be the cost of jewellery as reflected in the purchase bills and thereby Rs. 4,57,404/- was upheld as against the addition made by the AO by taking prevailing rate of gold at Rs. 2700/- per gram. The Id. CIT(A) has also granted part relief in respect of the addition made by the AO on account of unexplained silver items by holding that 50% of silver items found during the course of search is a reasonable holding of the assessee family by considering the status and standing of the family. Aggrieved by the impugned order of the Id. CIT(A), the assessee has filed the present appeal.

2.2 Before us, the Id.AR of the assessee submitted that the assessee during the course of search has explained the jewellery to the extent of 343.328 gms. purchased by him alongwith bills and vouchers which are also recorded in the books of account of the assessee and his family members. The Id.AR further submitted that the benefit of CBDT Instruction No. 1916 is available to the assessee in respect of jewellery received by various family members on the occasions of marriages and other social & customary occasions. Therefore, the purchases made by the assessee would not form part of the said quantity of 850 gms. of jewellery allowed by the AO as per CBDT Instruction No. 1916 dated 11-05-1994. The Id.AR of the assessee thus submitted that the quantity of jewellery which is purchased by the assessee and family members from time to time and duly recorded in the books of account as well as supported by purchase bills shall be allowed over and above the quantity of jewellery as per CBDT Instruction No. 1916 dated 11-05-1994. Thus the Id.AR of the assessee submitted that the purchases made by the assessee and shown in the books of account should be considered over and above the reasonable possession as per customs and as allowed by the CBDT Instruction No. 1916 dated 11-05-1994. Therefore, the addition

sustained by the ld. CIT(A) to the extent of 343.328 gms. of gold jewellery is liable to be deleted.

2.3 As regards 50% addition sustained by the ld. CIT(A) on account of silver items, the ld.AR of the assessee submitted that silver jewellery items of Rs. 1,33,650/- found during the search and seizure action is reasonable possession by considering the status and standing of the family of the assessee. Therefore, sustaining the addition to the extent of 50% of the value of silver items is not justified.

2.4 On the other hand, the ld. DR submitted that once the AO has granted the benefit of 850 gms. of jewellery by considering the same as reasonable in view of the CBDT Instruction No. 1916 dated 11-05-1994 then the jewellery purchased by the assessee within the said limit of 850 gms. cannot be separately allowed as explained jewellery. Thus the reasonable possession of jewellery as explained in the CBDT Instruction No. 1916 dated 11-05-1994 includes all kinds of acquisition by family/ members of the family and it does not distinguish the mode of acquisition. The ld. DR thus relied on the orders of the lower authorities. Further, the ld. DR submitted that the AO has made total addition of Rs. 9,76,895/- on account of unexplained gold jewellery and silver items.

However, the ld. CIT(A) has sustained the addition of Rs. 4,57,404/- on account of unexplained jewellery and 50% value of the silver items which is factually incorrect.

2.5 In rejoinder, the ld.AR of the assessee has pointed out that the AO has made addition by taking the value of jewellery @ 2700/- per gram being prevailing rate as on the date of search whereas the ld. CIT(A) has accepted the value of jewellery to the extent of 343.328 gms. as per cost of acquisition shown in the purchase bills as well as recorded in the books of account of the assessee and his family members. Therefore, the difference in the value of the jewellery is due to incorrect valuation adopted by the AO.

2.6 We have considered the rival submissions as well as the relevant materials available on record. The first issue is regarding the addition sustained by the ld. CIT(A) to the tune of Rs. 4,57,404/- on account of unexplained gold jewellery by rejecting the claim of the assessee being acquisition of the said jewellery by way of purchases made from time to time and also recorded in the books of account of the assessee. There is no dispute regarding the fact that jewellery to the extent 343.328 gms. represents the purchases made by the assessee from time to time which is

duly supported by the purchase bills found during the search and seizure action. The said quantity of jewellery is duly recorded in the balance sheet/ books of account of the assessee and his family members. Once the AO has not disputed the purchases made by the assessee of the said quantity of jewellery then the same cannot be treated as unexplained jewellery of the assessee. The AO has denied the benefit of the said quantity of jewellery on the ground that since the benefit of reasonable jewellery to the extent of 850 gms. as per CBDT Instruction No. 1916 dated 11-05-1994 is already granted, therefore, to that extent, no further benefit can be granted. It is pertinent to note that CBDT Instruction No. 1916 dated 11-05-1994 has explained in case of gold jewellery found in the possession of the assessee during the course of search and seizure action and the assessee is not able to explain the same then the quantity prescribed under the said CBDT Instruction No. 1916 in respect of married female member, unmarried female member and male member of the assessee would be treated as a reasonable holding of jewellery on account of acquisition of that much jewellery on various occasions of marriages, other social & customary occasions as prevailing in the society. Therefore, reasonable possession of the jewellery as per the

customs prevailing in the society is the basis for allowing the benefit of certain quantity of jewellery explained by the CBDT Instruction No. 1916 dated 11-05-1994 which means that the assessee need not to explain the source of jewellery found in his possession to the extent of specified quantity treated as reasonable possession by family members of the assessee. The said CBDT Instruction No. 1916 allowing the specific quantity as reasonable and need not to be explained, does not include the jewellery which is otherwise explained by proof of documents of acquisition as well as declared/ recorded in the books of account of the assessee. Hence, the quantity of jewellery which is otherwise explained by the assessee by producing the purchase bills as well as recorded in the books of account of the assessee and the AO had not disputed the said explanation then the quantity which is explained otherwise by producing the purchase bills and books of account would not be treated as part of the quantity of reasonable possession as prescribed under the said CBDT Instruction No. 1916 dated 11-05-1994. Therefore, the benefit of CBDT Instruction No. 1916 dated 11-05-1994 will not take away the benefit of the explained jewellery acquired by the assessee. Accordingly, in the facts and circumstance of the case, the quantity of jewellery to the extent

of 343.328 gms. has to be allowed separately as explained jewellery and no addition can be made to that extent.

2.6.1 As regards the valuation of gold jewellery, we find that the AO has valued the entire jewellery by applying the prevailing rate of 2700/- per gram and by ignoring the fact of actual cost of acquisition to the extent of 343.328 gms. at Rs. 4,57,404/- as reflected in the purchase bills as well as in the books of account of the assessee. Therefore, we do not find any error or illegality to the extent of value of said jewellery accepted by the Id. CIT(A). Hence, the addition sustained by the Id. CIT(A) on account of unexplained jewellery is deleted.

2.6.2 As regards 50% of the addition on account of silver items sustained by the Id. CIT(A), we find that silver items of Rs. 1,33,650/- were found at the time of search out of which the Id. CIT(A) has considered 50% of the same as reasonable holding of silver items by the assessee, considering the status and standing of the assessee family. Therefore, in the absence of any other material or facts brought before us, we do not find any error or illegality in the order of the Id. CIT(A) by considering 50% of silver items as reasonable and to the extent the order of the Id. CIT(A) is upheld.

3.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 20 /02/2020.

Sd/-  
( विक्रम सिंह यादव )  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 20 /02/ 2020

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ram Prakash Mahawar, Alwar
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle, Alwar
3. आयकर आयुक्त(अपील ) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 918/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar