IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA. No.3734/DEL/2017
Assessment Years 2014-15

Mr. Miten Garg, A-2/105, Milan Vihar Apartments, Plot No.72, I.P. Extn. Delhi-110092	v.	ACIT, Central Circle-1, New Delhi
TAN/PAN: AAECD1246J		
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Singhvi, CA Shri Satyajit Goel, CA		
Respondent by:	Ms. Pramila M. Biswas		
Date of hearing:	09	01	2020
Date of pronouncement:	20	03	2020

O R D E R

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 28.02.2017, passed by Ld. CIT (Appeals)-25, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2014-15. In the grounds of appeal, the Assessee has raised following grounds:-

1) *It is contended that determination and inclusion of income of Rs.93,800/- as Unexplained Cash is wrong, perverse, not based on evidences, opposed to evidences on records, based on surmise and conjecture.*
2) *It is contended that determination and inclusion in income ofRs.25,59,449/- on account of Undisclosed investment in*

jewellery is wrong, perverse, not based on evidences, opposed to evidences on records, based on surmise and conjecture.

3) *It is contended that determination and inclusion in income of Rs.14,00,000/- on account of Undisclosed Business income is wrong, perverse, not based on evidences, opposed to evidences on records, based on surmises and conjecture.*

4) *That upon the facts and circumstances of the case, the Ld. ao is not justified to compute the total income at Rs.1,21,78,340/- against income of Rs.81,24,990/- shown in the surmises and conjecture totally disregarding the facts of the case."*

2. The facts in brief are that, search and seizure operation u/s. 132 of the Act was carried out on 07.08.2013 in the case of Amrapali Group and assessee was also covered in the same search. During the course of search, a cash amounting to Rs.66,93,800/- was found, out of which Rs.61,00,000/- was seized. As per the Assessing Officer in statement recorded u/s. 131 on 28.11.2013 during post search proceedings, the assessee had surrendered the cash found as business income for the Assessment Year 2014-15. The assessee in his return of income had declared Rs.66 Lakhs in the profit & Loss account and showed it under the head undisclosed income. However, The Assessing Officer held that amount of Rs.93,800/- which has not been declared in the return of income still remained unexplained and the same was added as unexplained cash.

3. Further, during the course of search operation, jewellery amounting to Rs.25,59,449/- was found which has been

added to the income of the assessee. Further, during the course of post search proceedings in the statement, the assessee surrendered an adhoc amount of Rs.14 lakhs under the head undisclosed business, as cash receipts from purchase/sale of flats, which too has been added by the Assessing Officer that same was not offered in the return of income.

4. The Ld. CIT (A) has confirmed the all the additions. In so far as, addition of Rs,93,800/-, he held that since the total cash found from the residence and locker aggregated to Rs.66,93,800/-, out of which only Rs.66 Lakhs has been surrendered, the balance Rs.93,800/- has not been explained with evidence and therefore, has rightly been added to the income as unexplained cash. Similarly, with regard to the jewellery, amounting to Rs.25,59,449/- also, he has confirmed the said addition on the ground that the assessee has failed to explain the source of jewellery. Lastly, on the issue of declaration of Rs.14 Lakhs towards income from purchase/sale of flats, he observed that that the assessee had not submitted complete details/documents regarding sale/ purchase, consideration, names, persons, etc. and therefore, in absence of any proper explanation, such addition has rightly been made by the Assessing Officer.

5. Before us, the ld. Counsel for the assessee, Mr. R.S. Singhvi, submitted that though the total amount found at the time of search was Rs.66,93,800, the assessee only

surrendered Rs.66 lakhs which is evident from copy of the return of income and Profit & Loss account. If sum of Rs.93,800/- has not been offered that doesn't mean, it is unexplained cash and Assessing Officer has wrongly presumed it to be unexplained cash. The assessee has independent income and had been regularly filing the return of income as a regular assessee showing substantial income from house property, business income, income from other sources and capital gains, etc. Thus, the amount of Rs.93,800/- cannot be said to be unexplained looking to the huge sources of income of the assessee. Accordingly, such addition cannot be made.

6. On the other hand, the Ld. DR submitted that the entire cash found during the course of search and during the post search proceedings, the assessee has surrendered the entire cash and therefore, now the assessee cannot take stand that out of Rs.66,93,800/-, Rs.93,800/- stand explained and hence such an addition is justified.

7. After considering the rival submissions and on perusal of the facts and records, it is seen that amount of Rs.61,93,800/- was found from the residence of the assessee and Rs.5 lakhs was found from the bank locker. Out of the total amount, sum of Rs.61 lakhs was seized. During the course of post search proceedings, the assessee in his statement recorded u/s 131 had surrendered the cash found. However, the assessee declared Rs.66 Lakhs in the Profit &

Loss Account and filed the return of income under the head undisclosed income. The Revenue's case is that since during the course of post search proceedings in his statement u/s 131, the assessee has surrendered the entire cash and therefore, there is no reason for the assessee not to include Rs.93,800/- also. First of all, if the assessee has offered or declared cash amounting to Rs.66 Lakhs in the return of income that doesn't mean that balance amount of Rs.93,800/- also stood surrendered and there is no specific question and answer with regard to the breakup or for balance amount of Rs.93,800/-. The assessee has only state that whatsoever cash has been found will be offered to tax. If the assessee has offered Rs.66,00,000/- out of 66,93,800/-, but that doesn't *ipso facto* means that the balance amount stands unexplained. Further, assessee has been showing huge income in his return of income and is having various source of income. If a petty amount of Rs.93,800/- is found from the residence of a assessee who is showing huge income, then it cannot be held to be unexplained and in such kind of facts and circumstances it is too myopic a view when there is no other facts and material found during course of search that such a petty amount is actually from undisclosed sources. Thus, we do not find any justification to treat the amount of Rs.93,800/- unexplained when assessee has already offered huge amount of Rs.66 Lakhs to tax. Thus, the addition of Rs.93,800/- is directed to be deleted.

8. In so far as the addition of Rs.25,59,449/- on account of

unexplained jewellery, the Ld. Counsel for the assessee submitted that the total jewellery found during the course of search on 07.08.2013 was 804.500 grams and assessee's family consist of himself, wife, daughter, and son. If benefit of CBDT Circular No.1916 dated 11.05.1994 is to be given then no amount of jewellery can be treated as unexplained. He has been given following reconciliation in line with CBDT Circular:-

"Reconciliation of jewellery found with CBDT Circular No.1916 dated 11.05.1994

A. Permissible Jewellery as per CBDT Circular

I.	*Assessee*	*100 gms*
II.	*Wife*	*100 gms*
III.	*Daughter*	*100 gms*
IV.	*Son*	*100 gms*
	Total	***950 gms***

B. Jewellery found from Locker during search on 07.08.2013+804.50 gms."

9. He further relied upon the various judgment of ITAT in the case of Rakesh Mahajan vs DCIT in ITA No.1810/Del /2015 and Iftikhar Ahmed vs DCIT in ITA No.7086/Del/2014, Wherein, the Tribunal, following the judgment of Hon'ble Gujarat High Court in the case of **CIT vs Ratan Lal Vyapari Lal Jain, 339 ITR 351 (Guj.)** has allowed the said addition based on CBDT Circular limit.

10. Lastly on account of Rs.14 Lakhs, he submitted that firstly it is not based on evidence and already ITAT in the case of Shri Subhash Chandra has allowed on the ground that if surrender is not backed by any incriminating material found or evidence, then mere adhoc surrender cannot justify addition.

11. The Ld. DR strongly relied upon the findings and observations of the Ld. CIT (A).

12. In so far as, the addition on account of jewellery is concerned, it is an admitted fact that the total jewellery found from the locker during the course of search aggregated to 804.50 gms. Looking to the family members and if the benefit of CBDT guideline and limit laid down in Circular No.1916 (supra), is to be given then the aggregate weight of the gold jewellery of the assessee and his family comes to 950 gms., which as per the Ld. Counsel is much below the prescribed limit as per the chart incorporated above. Under these facts and circumstances, the benefit of the said circular had come up for consideration before various courts. This Tribunal in the case of Rakesh Mahajan vs DCIT and Iftikhar Ahmed vs DCIT (supra) relying upon the ratio of Hon'ble Gujarat High Court in the case of Ratan Lal Vyapari(supra) has dealt this issue in detail. The relevant observations and finding reads as under:-

> *"Admittedly the assessee could not give any evidence in the form of purchase vouchers or bills for acquisition of jewellery. However, the assessee's contention has been that*

these jewelleries have been acquired over the period of time and also received at the time of marriages and various social functions. The AO has given part benefit of CBDT instruction No.1916 dated 11thMay, 1994 which lays down the guidelines for seizure of jewellery and ornaments in the course of search. The Ld. CIT (A) has held that the said circular is not meant for proving the source of acquisition but it is merely lays down guidelines for seizure of the jewellery and in support he has also refereed to judgment of Hon'ble Madras High Court. On the contrary, we find that Hon'ble Gujarat High Court in the case of CIT vs. Ratan Lal Vyapari Lal Jain, 339 ITR 351 (Guj.), while interpreting the same CBDT No.1916 (supra) the Hon'ble High Court observed and held as under:-

> *"10. Though it is true that the CBDT Circular No. 1916, dated 11th May, 1994 lays down guidelines for seizure of jewellery and ornaments in the course of search, the same takes into account the quantity of jewellery which would generally be held by family members of an assessee belonging to an ordinary Hindu household. The approach adopted by the Tribunal in following the said circular and giving benefit to the assessee, even for explaining the source in respect of the jewellery being held by the family is in consonance with the general practice in Hindu families whereby jewellery is gifted by the relatives and friends at the time of social functions, viz. marriages, birthdays, marriage anniversary and other festivals. These gifts are customary and customs prevailing in a society cannot be ignored. Thus although the circular had been issued for the purpose of non-seizure of jewellery during the course of search, the basis for the same recognizes customs prevailing in Hindu society. In the circumstances, unless the Revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery stated in the circular stands explained. Thus, the approach adopted by the Tribunal in considering the extent of jewellery specified under the said circular to be a reasonable quantity, cannot be faulted with. In the circumstances, it*

is not possible to state that the Tribunal has committed any legal error so as to give rise to a question of law."

15. Applying the ratio of the aforesaid judgement on the facts of the present case and looking to the assessee's family consisting of assessee himself, his wife, his mother, one major unmarried daughter, one minor daughter and one minor son and the status of the assessee being owner and director of various companies then it has to be presumed that certain amount of jewellery would be available. If the availability of jewellery especially in the concept of Indian tradition and general practice in Hindu families whereby jewellery is gifted by the relatives and friends at the time of social functions, viz. marriages, birthdays, marriage anniversary and other festivals, such gifts in the form of jewellery are customary and such practice prevailing in our society cannot be ignored. It was for this prevalent norm and practice in the Indian families where jewelleries are gifted at time of marriage and birth of children and the married ladies receiving 'stridhan' from both side of the family, it is presumed that family having certain status will have some jewellery. That is why, CBDT vide it aforesaid instruction, has laid down a criteria of availability of jewellery with various category of family members. Here in this case total jewellery weighing of 1236.24 grams was found and if one goes by the quantity laid/ prescribed per category of family members by the CBDT Instruction, then it works out to 1700 grams, which is lower than the total jewellery found. We therefore, following the ratio laid down by the Hon'ble Gujarat High Court hold that the jewellery of 1236.24 cannot be treated as unexplained. This judgment of Hon'ble Gujarat High Court has also been followed by this bench in catena of cases. Thus, we hold that the jewellery treated to unexplained jewellery of Rs. 10,52,124/- is directed to be deleted."

13. Thus, the amount of jewellery cannot be held to be unexplained in light of the CBDT Circular and same is directed to be deleted.

14. Lastly, in so far as addition of Rs.14 lakhs is concerned, from the perusal of the assessment order as well as the appellate order, we find that this addition is not based on any specific evidence or material found during the course of search, *albeit* it is based on statement given by the assessee on 28.11.2013 u/s. 131 which was during the course of post search proceedings. The assessee has made an adhoc surrender on account of undisclosed business income. During the course of assessment proceedings, the assessee had submitted that in fact there is no such income of Rs.14 lakhs earned by the assessee and there is no record or evidence found that assessee had any kind of undisclosed income of Rs.14 lakhs. He has mainly made an adhoc surrender even though there was no corroborative evidence or material. We agree with the contention of the Ld. Counsel that in absence of any corroborative evidence, such adhoc surrender cannot be the basis of addition. Apart from that we find that in the case of Subhash Chandra (Supra), the Tribunal has held that if there is no material or corroborative evidence to support the statement made u/s 132(4), then no addition could be made. The relevant observation of the Tribunal reads as under:-

> *"2.8. These factual findings have not been denied by the Revenue. In the grounds also, the Revenue has agitated the only issue that the additions have been deleted by the learned Commissioner of Income-tax(Appeals) despite the assessee had admitted the undisclosed income in the statement recorded under section 132(4) of the Act. It is clear that there is no material or corroborative evidence to support the*

statement made under section 132(4) of the Act in respect of the addition of Rs. 30 lakh against unexplained investment in stock and Rs. 23.20 Lacs against the unexplained expenditure. The assessee did not admit the addition, which means, he retracted the said surrender in the return of income filed. We find that the Tribunal in the case of best infrastructure (India) Private Limited (supra) and the Hon'ble Jurisdictional High Court in the case of Harjeev Aggarwal (supra) have in the similar facts and circumstances, held that no addition can be made merely on the statement recorded under search and seizure proceedings on a standalone basis without any supporting or corroborative material. Thus, respectfully following the findings of the Tribunal in the case of Best Infrastructure (India) Private Limited (supra) and Hon'ble Jurisdictional High Court in the case of Harjeev Aggarwal (supra), we hold that order passed by the learned Commissioner of Income-tax(Appeals) on the issue in dispute is well reasoned and no interference on our part is required, accordingly, we uphold the finding of the learned Commissioner of Income-tax(Appeals) on the issue in dispute. Thus, ground No. 1 and 2 of the appeal are dismissed."

15. Here in this case, though there is no such surrender in the statement recorded at the time of search u/s 132(4) albeit it was u/s 131, but even during extensive search no evidence or material has been found that assessee has earned any kind of undisclosed income from business. Secondly, there is no basis of Rs.14 lakhs which is just an adhoc estimate. Thus, we hold that this addition is not based on any material or corroborative evidence and therefore, no addition can be made merely on the statement recorded. This has been held so by the Hon'ble jurisdictional Delhi High Court in the case of **CIT vs. Harjeev Agrawal ITA No.8/2004** also, which has been referred and relied upon by the Tribunal in the aforesaid

case. Accordingly, the addition of Rs.14 lakhs is directed to be deleted.

16. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20th March, 2020.

Sd/-	Sd/-
[O. P. KANT]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 20th March, 2020

Shekhar, Sr. PS

Copy forwarded to:

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

Assistant Registrar