

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**Before Shri L. P. Sahu, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 525/Asr./2019
(Assessment Year: 2017-18)**

Smt. Sudha Aggarwal,
99, Choti Baradari, Part-I
Jalandhar.

Vs.

ACIT, Central Circle-2,
Jalandhar.

PAN- ADHPA7332D

(Appellant)

(Respondent)

Appellant by: Shri S.K.Gupta (C.A.)

Respondent by: Shri Charan Dass, (D.R.)

Date of Hearing: 06.02.2020

Date of Pronouncement: 30.06.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-5, Ludhiana, dated 30.05.2019, which in turn arises from the order passed by the Assessing Officer u/s 153A/143(3) of the Income Tax Act, 1961 (for short 'IT Act'), dated 19.12.2018 for A.Y. 2017-18.

2. The assessee has assailed the impugned order on the following grounds of appeal before us:

- "1. That the Learned CIT(A) has grossly erred in law and on facts in upholding the assessment order made by Learned ACIT under section 153A/143(3) instead of only 143(3) of the Income Tax Act without considering the provisions of section 153A(l)(b) of the Income Tax Act, the assessment or reassessment can only be made for six assessment years and this assessment year is the seventh assessment year

for which no notice under section 153A can be issued which is mandatory for assessment under section 153A of the Act, due to which assessment becomes void.

2. That the judicial pronouncements relied upon by the assessee, have not been considered by the Ld. CIT(A).
3. That the Ld.CIT(A) has grossly erred in law and on facts of the case in sustaining the assessment order under section 153A of the Act instead of section 153C of the Act made by ACIT when there was no search authorization under section 132 of the Act in the name of the assessee without verifying the record of the revenue.
4. That the Ld. CIT(A) has erred in directing the assessee to file affidavit regarding her claim that no search authorization was in her name instead of verifying the facts from the record of revenue.
5. That the Ld. CIT(A) has grossly erred in not considering the judicial pronouncements relied upon by the assessee in case of joint operation of bank lockers and no search warrant was issued in the name of assessee then the assessing officer can not invoke the provision of section 153A of the Income Tax Act.
6. That the Ld. CIT(A) has grossly erred in law and facts of the case in sustaining the addition of Rs. 13,95,900/- on account of jewellery found at the time of search as made by the Ld ACIT under section 69B without verifying the veracity of the affidavit given by the brother of the assessee that jewellery weighing 950 gram was given to the assessee in her marriage.
7. That the Ld. CIT(A) has grossly failed to consider the judicial pronouncements relied upon by the assessee in regard to affidavit given by the assessee's brother.
8. That the Ld. CIT(A) has misconstrued the provision of section 69B of the Income Tax Act under which addition of Rs. 13,95,900/- has been made by Ld. ACIT and failed to verify the existence of three circumstances which are necessary for invoking section 69B of the Income Tax Act.
9. That the Ld. CIT(A) has misdirected himself in sustaining the valuation of Jewellery under section 69B of the Act at market price ruling on the date of search which should have been at the cost price of the jewellery.
10. That the Learned CIT(A) has grossly failed to give fair consideration on the judicial pronouncement relied upon by the assessee in regard to valuation of jewellery under section 69B of the Act.
11. That the Learned CIT(A) has misconstrued the provisions of section 292C of the Act under which presumption is raised which is rebuttable and the assessee has duly rebutted by submitting affidavit of her brother which has been accepted by the department.
12. That the assessee reserves the right to amend, alter or raise an additional grounds of appeal before the disposal of this appeal."

3. As is discernible from the assessment order, search and seizure proceedings under Sec. 132 of the Act were conducted at the residential/business premises of the assessee on 08.09.2016. The assessee had e-filed her return of income for AY 2017-18 on 26.07.2017, declaring a total income of Rs.3,16,130/-. Subsequently, the case of the assessee was selected for scrutiny assessment and a notice u/s 143(2) of the Act, dated 12.09.2018 was served upon her.

4. During the course of assessment proceedings it was observed by the A.O that certain jewellery i.e. 2272.30 grams of gold jewellery and 10.16 carat of diamond valuing Rs.

70,71,627/- were found from the residence/bank lockers in the course of the search proceedings conducted on the assessee and her family members under Sec. 132(1) of the Act. On being queried as regards the source of acquisition of the aforesaid jewellery, the assessee owned 950 grams (approx.) of gold jewellery. It was the claim of the assessee that 950 grams of jewellery (including diamond) was received by her at the time of her marriage from her father (since deceased). In order to substantiate her aforesaid claim, the assessee filed with the A.O a duly attested 'affidavit' of her brother i.e. Sh. Inderjit. However, the A.O was not inclined to accept the aforesaid claim of the assessee. It was noticed by the A.O that neither the assessee had ever filed her wealth tax returns in the earlier years nor furnished any evidence in respect of acquisition of the aforesaid jewellery. Accordingly, in the backdrop of his aforesaid observations, the A.O after giving benefit of 500 grams of gold jewellery as having been received by her as gifts over the years from relatives, therein treated the balance 450 grams of gold jewellery as unexplained. Observing, that the value of jewellery weighing 450 grams (24 carat) as on the date of search was Rs. 3,102/- per gram, the A.O valued the same at Rs. 13,95,900/-, which was held by him as the unexplained investment of the assessee under Sec. 69B of the Act. On the basis of his aforesaid observations the A.O made an addition of Rs. 13,95,900/- under Sec. 69B of the Act and brought the same to tax under Sec. 115BBE of the Act.

4.1. After inter alia making the aforesaid additions, the A.O assessed the income of the assessee at Rs. 18,44,110/-, which thereafter was subjected to tax by him under Sec. 115BBE of the Act.

5. Aggrieved, the assessee assailed the assessment order before the CIT(A). In the course of the appellate proceedings the assessee assailed the validity of the assessment framed by the A.O under Sec 153A/143(3) of the Act. It was the claim of the assessee that as the assessment for the year under consideration i.e. the year in which the search was conducted under Sec. 132(1) of the Act could have been framed only under Sec. 143(3) of the Act, therefore, the assessment order passed by the A.O under Sec. 153A/143(3) was invalid, and therein liable to be struck down as non-est in the eyes of law. In support of her aforesaid contention the assessee had relied on Sec. 153A(1), and claimed, that issuance of a notice

therein contemplated was a condition precedent for framing of an assessment under Sec. 153A of the Act. As such, it was the claim of the assessee that in absence of issuance of the statutory notice an assessment framed under Sec. 153A was to be treated as illegal and void. Apart from that, it was the claim of the assessee that assessment for the year of search could only be framed either under Sec. 143(3) or Sec. 144 of the Act. Alternatively, it was the claim of the assessee that as no search authorization under Sec. 132 of the Act was issued in the name of the assessee, therefore, the income in her case could have only be assessed under Sec. 153C of the Act, and not under Sec. 153A. On the basis of her aforesaid contentions, it was the claim of the assessee that the assessment framed by the A.O under Sec. 153A/143(3) of the Act, dated 19.12.2018 was invalid and therein liable to be struck down on the said count itself. Also, the assessee assailed the treating of 450 grams of gold jewellery (out of 950 grams) owned by the assessee as an unexplained investment under Sec. 69B of the Act. However, the CIT(A) after deliberating on the contentions advanced by the assessee, for the reasons elaborated by him in his order declined to accept the same. Observing, that the assessment framed by the A.O was pursuant to the notices issued by him u/s 143(2) and Sec. 142(1) of the Act, and the assessee had duly participated in the course of the proceedings before the A.O, the CIT(A) was not persuaded to subscribe to the claim of the assessee that as the A.O had made a mention of Sec. 153A along with Sec. 143(3), therefore, the assessment was liable to be held as invalid and void ab initio. It was observed by the CIT(A), that the Hon'ble Supreme Court in the case of Isha Beevi Vs. TRO (1975) 101 ITR 449 (SC), had held that a mere wrong reference to a section under which an order is made would not vitiate the assessment order, but in fact the validity of the same has to be determined by seeking as to whether or not the A.O had any power to pass such an order. It was noticed by the CIT(A) that the Hon'ble Apex Court had observed that if the power was otherwise available with the A.O, the fact that the source of the power had incorrectly been described would not vitiate the order. Accordingly, on the basis of his aforesaid observation, the CIT(A) was of the view that as the A.O had was duly vested with the power to make an assessment in the case of the assessee under Sec. 143(3), therefore, merely for the reason that the source of such power had incorrectly been described in the order as 153A/143(3) would not vitiate the same. Also, the CIT(A) declined to accept the claim of the assessee that as no authorization for search under Sec. 132 of the Act was issued in the name of the assessee, therefore, the A.O was in error in framing the assessment under Sec. 153A

instead of Sec. 153C of the Act. In the backdrop of the aforesaid claim of the assessee, the CIT(A) had directed the counsel for the assessee to file an 'affidavit' in support of his claim that no authorization under Sec. 132 was issued in the name of the assessee. However, the counsel for the assessee expressed his inability to file the 'affidavit', on the basis of which the CIT(A) rejected the aforesaid claim of the assessee that no search warrant under Sec. 132 of the Act was issued in her case. While concluding as hereinabove, it was observed by the CIT(A) that as per the information gathered from the office of the ADIT(Inv.), Jalandhar, it stood revealed that a restrain order in respect of operation of certain lockers in the name of the assessee was passed. Observing, that a restrain order is passed only after a warrant under Sec. 132 of the Act is issued, the CIT(A) rejected the aforesaid claim of the assessee. As such, the CIT(A) dismissed the claim of the assessee that the assessment framed by the A.O was invalid and void ab initio in the eyes of law.

5.2 As regards the treating of the value of the gold jewellery of 450 grams (out of 950 grams) of Rs. 13,95,900/- as an unexplained investment of the assessee under Sec. 69B of the Act by the A.O, the assessee had inter alia assailed the addition on the ground that no such addition could have been validly made under the aforesaid statutory provision i.e. 69B of the Act. Alternatively, on merits, it was submitted by the assessee that as 950 grams of jewellery was received by her at the time of her marriage in the year 1972 from her father (since deceased), and the said fact was admitted by her brother Sh. Inderjit on the basis of an 'affidavit' that was filed in the course of the assessment proceedings, therefore, no part of the aforesaid jewellery could have been held as an unexplained investment in her hands. As regards the observations of the A.O that the assessee had not filed any wealth tax returns, failing which her aforesaid claim that the jewellery was gifted to her at the time of marriage could not be accepted, it was submitted by the assessee before the CIT(A) that as her net wealth was below the exemption limit over the years under the Wealth Tax Act, 1957, therefore, there was no obligation for her to file her wealth tax returns. However, the CIT(A) after deliberating on the aforesaid contention of the assessee was not persuaded to subscribe to the same. Observing, that as the assessee had failed to show that the said jewellery was declared to the income tax department either by her or by her father, the CIT(A) was of the view that no infirmity did emerge from the order of the A.O, who in all fairness after allowing the benefit of

500 grams of gold jewellery as having been received by the assessee as gifts from her relatives over the years, had rightly treated the balance gold jewellery of 450 grams as an unexplained investment within the meaning of Sec. 69B of the Act. Accordingly, the CIT(A) sustained the addition of Rs.13,95,900/- made by the A.O under Sec. 69B of the Act.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, and also the judicial pronouncements relied upon them. We shall first advert to the validity of the assessment which had been assailed by the assessee before us. As observed by us hereinabove, the assessee had assailed the assessment framed by the A.O for two fold reasons viz. (i) that, as the assessment for the year of search could only be framed under Sec. 143(3) or Sec. 144 of the Act, therefore, the assessment framed by the A.O in the present case under Sec. 153A/143(3), dated 19.12.2018 was invalid, and thus liable to be struck down on the said count itself; and (ii) that, as no notice which is mandatorily required to be issued under Sec. 153A of the Act was issued to the assessee, therefore the assessment framed under Sec. 153A/143(3), dated 19.12.2018 could not be sustained and was liable to be vacated. We have given a thoughtful consideration to the aforesaid claim of the assessee and are unable to persuade ourselves to accept the same. Admittedly, the A.O had issued notice under Sec. 143(2), dated 12.09.2018 (which was served on the assessee on 13.09.2018). Also, notice under Sec. 142(1), dated 03.10.2018 was issued to the assessee (which was served upon her on 13.09.2018). In compliance to the aforesaid notices, the assessee had duly participated in the course of the assessment proceedings and had furnished the requisite replies to the queries which were raised by the A.O. On the basis of the aforesaid facts, we find that the A.O was duly vested with the jurisdiction to frame the assessment under Sec. 143(3) of the Act. We are in agreement with the view taken by the CIT(A), that as held by the Hon'ble Apex Court in the case of Isha Beevi Vs. TRO (1975) 101 ITR 449 (SC), a wrong reference to a section under which an order is made would not on such standalone basis vitiate the assessment order, but in order to see as to whether an order is valid or not has to be determined by verifying as to whether the A.O had any power at all to make such assessment. As observed by the Hon'ble Supreme Court, if the power is otherwise available with the A.O, the fact that source of such power had been

incorrectly described would not vitiate the order passed by him. Now, in the case before us, we find that the A.O who was duly vested with the jurisdiction to frame the assesment under Sec. 143(3), had inadvertently made a mention of Sec. 153A along with Sec. 143(3) of the Act. In our considered view, the aforesaid mistake cannot be stretched to the extent for rendering the assessment framed by the A.O under Sec. 143(3), as invalid and void ab-initio on the said count. Accordinly, finding no substance in the aforesaid claim of the assesee, we decline to accept the same and uphold the view taken by the CIT(A) who had rightly dismissed the same. Also, we are in agreement with the view taken by the CIT(A), that as a restraint order as regards operation of the bank lockers of the assesee was issued by the ADIT(Inv.), Jalandhar, therefore it could safely be concluded that a search warrant under Sec. 132 was issued in the name of the assesee. The **Ground of Appeal No.1 to 5** are dismissed.

7. We shall now advert to the claim of the assessee that the lower authorities had erred in treating 450 grams of gold jewellery (out of 950 grams) as an unexplained investment under Sec. 69B of the Act, resulting to an addition of its impugned value of Rs. 13,95,900/- to the returned income of the assessee. As observed by us hereinabove, in the course of the search and seizure proceedings conducted on the assessee and her family members, gold jewellery (weighing 2272.30 grams) and 10.16 carat of diamond was found, as under :

S.No.	Name of the Bank	Locker No.	Net weight of Jewellery & Diamond found in grams	Value as per valuation report	Remarks
1.	Bank of Maharashtra Garha Road, Jalandhar	175	757.020	23,55,846/-	Whole of Jewellery was seized
2.	Bank of Maharashtra Garha Road, Jalandhar	178	502.720	15,64,464/-	Out of this 170.600 grams Jewellery was seized
3.	ICICI Bank, Chotti Baradari Branch, Jalandhar	09	924.400	28,76,962/-	
	Total Net weight of Jewellery & Diamond found from lockers		2184.14	67,97,273/-	
4.	Residence 99, Chotti Baradary, Jalandhar		88.160 (Approximately)	2,74,354/-	
	Grand Total		2272.30	70,71,627/-	

As can be gathered from the aforesaid details, ownership of no specific part of the gold jewellery and diamond found in the course of the search proceedings could be conclusively and irrefutably related to the assessee i.e. Smt. Sudha Aggarwal. However, it was stated by the assessee that 950 grams of gold jewellery (including diamond) was received by her at the time of her marriage from her father (since deceased). In support of her aforesaid claim, the assessee had also filed with the A.O a duly attested 'affidavit' of her brother Sh. Inderjit. As observed by us hereinabove, the A.O allowed a benefit of 500 grams of gold jewellery on the ground that the same could safely be held to have been received by her as gifts from her relatives over the years, while for he treated the balance gold jewellery of 450 grams as her unexplained investment. Adopting the value of the aforesaid gold jewellery as on the date of search i.e. Rs. 3,102/- per gram, the A.O valued the aforesaid 450 grams of gold jewellery at Rs. 13,95,900/-, which was added by him as an unexplained investment under Sec. 69B of the Act. On appeal, the CIT(A) finding no infirmity in the view taken by the A.O upheld the addition of Rs. 13,95,900/- made by him under Sec. 69B of the Act.

8. We have deliberated at length on the issue under consideration and find substantial force in the claim of the Ld. A.R. As observed by us hereinabove, it is a matter of fact borne from the records that no part of gold jewellery weighing 2272.30 grams that was found in the course of the search proceedings from the residence/bank lockers of the assessee and her family members could be specifically related to the assessee. In fact, it was only pursuant to the claim of the assessee that she had received 950 grams of gold jewellery (including diamond) at the time of her marriage from her father(since deceased), that the A.O on the basis of such standalone statement of her had related the ownership of 950 grams of gold jewellery (out of 2272.30 grams) to the assessee. In sum and substance, the basis for holding the assessee as the owner of 950 grams of gold jewellery (including diamond) was her claim filed before the A.O. In our considered view, if the claim of the assessee which she had supported on the basis of an 'affidavit' of her brother Sh. Inderjit, that she was the owner of 950 grams of gold jewellery (out of 2272.30 grams) was to be accepted, then we find no reason that as to why the source of her ownership forming part of the same statement was not to be accepted. Apart from that, we find that now when the assessee had explained the source of acquisition of 950 grams of gold jewellery on the basis of the 'affidavit' of her brother Sh. Inderjit, therein it was obligatory on the

part of the A.O to have verified the said factual position by calling for the requisite details from the deponent i.e. Sh. Inderjit. We are unable to persuade ourselves to subscribe to the summarily rejection by the lower authorities of the aforesaid explanation of the assessee as regards the source of acquisition of the aforesaid 950 grams of gold jewellery. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Rajasthan in the case of Smt. Huma Hussain Vs. CIT (2007) 291 ITR 475 (Raj). In the aforesaid case, the assessee explaining the source of certain investments had claimed the same to have been received by her as gifts at the time of her marriage, and also subsequently from time to time every year on her marriage anniversary. In support of her aforesaid claim she had filed an affidavit of her father, which however was rejected by the A.O who framed the assessment on the same day without affording any opportunity of being heard to the assessee or calling upon the deponent to clarify the deficiency in the affidavit, if any, and asking the assessee for any corroborative material in support of the statement of her father. In the backdrop of the aforesaid facts, the Hon'ble High Court had set aside the assessment and had directed the A.O to hold a proper enquiry into the source of the investment. On the basis of the aforesaid facts, we are of the considered view that the summarily discarding of the aforesaid claim of the assessee as regards the source of acquisition of the aforesaid 950 grams of gold jewellery (including diamond) cannot be accepted on our part. As regards the observations of the A.O that the aforesaid claim of the assessee of having received 950 grams of gold jewellery at the time of her marriage way back in the year 1972 could not be accepted, for the reason that no wealth tax returns had been filed by the assessee reflecting the said gold jewellery as an 'asset' under Sec. 2(ea) of the Wealth Tax Act, 1957, we find that the same had been rebutted by the assessee, on the ground that as her 'net wealth' had remained below the exemption limit contemplated in the Wealth Tax Act, 1957, therefore, she was under no obligation to file the returns for the said years. In order to fortify her aforesaid claim, the assessee had furnished the details as regards the value of the 950 grams of gold jewellery, as against the basic exemption limit as was available over the years under the Wealth Tax Act, 1957, as under :-

Assessment Year	Weight of Jewellery in gram	Value of Jewellery at the Market rate of respective Assessment Year and as per method of valuation of Gold Ornaments	Initial exemption limit
1993-94	950 GRAMS	3,10,707/-	15,00,000/
1994-95	950 GRAMS	3,45,980/-	15,00,000/

1995-96	950 GRAMS	3,51,234/-	15,00,000/
1996-97	950 GRAMS	3,90,260/-	15,00,000/
1997-98	950 GRAMS	3,60,240/-	15,00,000/
1998-99	950 GRAMS	3,03,577/-	15,00,000/
1999-00	950 GRAMS	3,20,839/-	15,00,000/
2000-01	950 GRAMS	3,27,969/-	15,00,000/
2001-02	950 GRAMS	3,06,579/-	15,00,000/
2002-03	950 GRAMS	3,79,753/-	15,00,000/
2003-04	950 GRAMS	3,94,763/-	15,00,000/
2004-05	950 GRAMS	4,54,053/-	15,00,000/
2005-06	950 GRAMS	4,63,809/-	15,00,000/
2006-07	950 GRAMS	6,29,069/-	15,00,000/
2007-08	950 GRAMS	6,97,965/-	15,00,000/
2008-09	950 GRAMS	8,94,596/-	15,00,000/
2009-10	950 GRAMS	11,35,657/-	15,00,000/
2010-11	950 GRAMS	12,29,319/-	30,00,000/-
2011-12	950 GRAMS	15,84,906/-	30,00,000/
2012-13	950 GRAMS	21,11,081/-	30,00,000/
2013-14	950 GRAMS	22,22,230/-	30,00,000/
2014-15	950 GRAMS	21,36,673/-	30,00,000/
2015-16	950 GRAMS	19,88,825/-	30,00,000/

On a perusal of the aforesaid details, we find ourselves to be in agreement with the claim of the assessee that as her 'net wealth' over the years had remained below the basic exemption limit, therefore, she was not obligated to file her wealth tax returns for the said years. In fact, we find that the Hon'ble High Court of Rajasthan in the case of CIT Vs. Satya Narain Patni (2014) 366 ITR 325 (Raj), has held, that pursuant to limiting of the assets falling with the definition of "assets" under Sec. 2(ea) of the Wealth Tax Act, 1957, along with raising of the basic exemption limit from A.Y. 1993-94 onwards to an amount to Rs. 15 lacs, assesses who were prior to 01.04.1992 furnishing their wealth tax return, had chosen not to file the same as their 'net wealth' remained below the basic exemption limit. On the basis of the aforesaid observations it was concluded by the Hon'ble High Court that it would not mean that the assets held by an assessee were to be treated as undisclosed, simply for the reason that they had not been reflected under the Wealth Tax Act, 1957. In the backdrop of our aforesaid deliberations, we are unable to subscribe to the adverse inferences drawn by the lower authorities as regards the aforesaid source of acquisition of 950 grams of gold jewellery by the assessee, for the reason, that the same was not backed by supporting wealth tax returns. Accordingly, on the basis of our aforesaid observations, we are of a strong conviction that in the totality of the facts of the case the explanation of the assessee as regards the source of acquisition of 950 grams of gold jewellery (including diamond) merits acceptance. We thus vacate the addition of Rs. 13,95,900/- made by the A.O under Sec. 69B of the Act.

9. Alternatively, we are also inclined to accept the claim of the Ld. A.R that in the totality of the facts of the case the value of 450 grams of gold jewellery (out of 950 grams) could not have been brought to tax under Sec. 69B of the Act. Before proceeding any further, it would be relevant to cull out Sec. 69B of the Act, which reads as under :

“69B. Where in any financial year the assessee had made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year”.

On a perusal of the aforesaid statutory provision, we find that the same can be invoked only where the assessee had made investment or is found to be the owner of any bullion, jewellery or other valuable article and the A.O finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the A.O, satisfactory, then the excess amount may be deemed to be the income of the assessee for such financial year. As such, for the purpose of making an addition under Sec. 69B, certain conditions therein envisaged are required to be satisfied viz. (i) that, the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article; (ii) that, the A.O finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source or income; and (iii) that, the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the A.O, satisfactory. Accordingly, as per the mandate of Sec. 69B of the Act, it is inter alia required that the amount expended in making of the investment by the assessee towards acquiring of bullion, jewellery or other valuable article of which the assessee is found to be the owner, exceeds the amount recorded in the books of account maintained by the assessee for any source of income. Also, the addition under Sec. 69B is confined to the extent the amount expended by the assessee in making of the aforesaid investments is found to be in excess of the amount recorded in his books of accounts. Now, in the case before us, it is an admitted fact that the

assessee had not maintained any books of account for the year under consideration. Apart from that, though an addition under Sec. 69B is liable to be restricted to the extent the amount expended in making of the investment by the assessee towards acquiring of the bullion, jewellery or other valuable article is found to be in excess of the amount recorded in the books of account, but we find that in the case before us the entire value of the 450 grams of gold jewellery which have been held by the A.O as an unexplained investment within the meaning of Sec. 69B of the Act, had been added to the income of the assessee. In our considered view, the very basis for invoking the provisions of Sec. 69B in the case of the assessee before us are found to be seriously amiss viz. (i) that, as the assessee was not maintaining any books of account, therefore, the issue of recording of the investment in the 450 grams of gold jewellery cannot be comprehended; and (ii) that, in the absence of recording of the investment in 450 grams of gold jewellery in the books of account, there could have been no occasion for making of an addition of the excess unrecorded value of such investment under Sec. 69B of the Act. On the basis of our aforesaid deliberations, we are of a strong conviction that in the totality of the facts of the case the A.O could not have made the addition as regards the impugned value of the 450 grams of gold jewellery under Sec. 69B of the Act. As such, we are in agreement with the contention advanced by the Ld. A.R that the impugned addition could not have been made by the A.O under Sec. 69B of the Act. In the backdrop of our aforesaid observations, we herein conclude that the impugned addition of Rs. 13,95,900/- made by the A.O as regards the 450 grams of gold jewellery under Sec. 69B of the Act cannot also be sustained for want of jurisdiction. The **Grounds of Appeal No. 6 to 11** are allowed in terms of our aforesaid observations.

10. The **Ground of Appeal No. 12** being general is dismissed as not pressed.

11. Before parting, we may herein deal with a procedural issue that though the hearing of the captioned appeal was concluded on 06/02/2020, however, this order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income-tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement of orders, provides as follows: (5) The pronouncement may be in any of the following manners :— (a) The Bench may pronounce the order immediately upon the conclusion of the hearing. (b) In case where the order is not pronounced immediately on the

conclusion of the hearing, the Bench shall give a date for pronouncement. In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board. As such, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein it was inter alia, observed as under:

“We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment”.

In the rule so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether or not the passing of this order, beyond a period of ninety days in the case before us was necessitated by any “extraordinary” circumstances.

12. We find that the aforesaid issue after exhaustive deliberations had been answered by a coordinate bench of the Tribunal viz. ITAT, Mumbai ‘F’ Bench in DCIT, Central Circle-3(2), Mumbai Vs. JSW Limited & Ors. [ITA No. 6264/Mum/18; dated 14/05/2020, wherein it was observed as under:

“Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon’ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. The epidemic situation being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial work all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon’ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated

6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that "In case the limitation expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure...". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to be interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of *Otters Club Vs DIT* [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by the Hon'ble High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to be excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case."

We have given a thoughtful consideration to the aforesaid observations of the tribunal and finding ourselves to be in agreement with the same, therein respectfully follow the same. As such, we are of the considered view that the period during which the lockout was in force shall stand excluded for the purpose of working out the time limit for pronouncement orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.

13. Resultantly, the appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
(L. P. Sahu)
ACCOUNTANT MEMBER
Date 30.06.2020

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. **अपीलार्थी / The Appellant**
2. **प्रत्यर्थी / The Respondent.**
3. **आयकर आयुक्त(अपील) / The CIT(A)-**
4. **आयकर आयुक्त / CIT**
5. **DR, ITAT, Amritsar Bench, Amritsar**
6. **गार्ड फाईल / Guard file.**

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ITAT, Amritsar. Bench,
Amritsar.