

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.829/Ind/2017  
Assessment Year:2014-15**

Shri Vivek Chouhan 25-26, Walmi Road New Friends Colony Chuna Bhatti Bhopal	<u>बनाम/</u> Vs.	ACIT (Central)-II Bhopal
(Appellant)		(Revenue )
P.A. No.ACWPC4065B		
Appellant by	Shri S.S. Deshpande, CA	
Revenue by	Smt. Ashima Gupta, CIT-DR	
<b>Date of Hearing:</b>	<b>20.08.2020</b>	
<b>Date of Pronouncement:</b>	<b>05.10.2020</b>	

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This appeal by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)(in short 'Ld. CIT(A)', Bhopal-3 dated 27.07.2017 pertaining to assessment year 2014-15.

The assessee has raised following grounds of appeal:

*“1 That on the facts and in the circumstances of the case of the assessee the Ld. CIT(A) was not justified in holding that the AO was justified in making addition of Rs.8000000/- towards unrecorded expenses incurred on foreign tour u/s 69C.*

*2. That on the facts and in the circumstances of the case of the assessee the Ld. CIT(A) was not justified in holding that only 100 grams of gold jewellery found with the assessee is explained out of the addition of Rs.29,79,754/- made by the AO towards alleged unexplained investment in jewellery.*

*3. That on the facts and in the circumstances of the case of the assessee the Ld. CIT(A) was not justified in holding that the AO was justified in making addition of Rs. 2,95,333/- apportioning the treating the cash found during the course of the search with the family as unexplained.*

*4. That the assessee leave to add, alter, delete or modify any ground(s) of appeal during or before the hearing of the appeal.*

2. In this case, order was passed by this tribunal on 28.03.2019.

Thereafter, the assessee filed Misc. Application seeking recalling/modifying of the order as ground No.2 was not decided. After hearing the parties this tribunal was pleased to hold that ground no.2 of the assessee was partly decided and part of the amount was with regard the jewellery belonging to the mother of the assessee same to be decided. Therefore, appeal was fixed for this limited purpose. Ld. counsel for the assessee vehemently argued that the revenue was not justified in making the addition in respect of the jewellery belonging to the mother of the assessee. Ld. counsel for

the assessee also submitted that the assessing officer failed to appreciate that if the total family jewellery is considered than there would not be any surplus jewellery as per the Board's circular. It was further contended that assessing officer did not accept the contention of the assessee and made the addition of Rs.29,79,754/- being 50% of the jewellery found in the lockers held by the assessee and his wife Smt. Jyotsana Chouhan. The assessing Officer while deciding assessment of Shri Vipin Chouhan had accepted the purchase of jewellery of Rs.20,00,000/-. Ld. counsel submitted that while deciding the appeal no direction was issued in the case of jewellery of mother.

3. On the contrary Ld. Departmental Representative (DR) opposed the submissions of the Ld. counsel for the assessee and submitted that the authorities below have adjudicated the matter in accordance with Board Circular. It was incumbent upon the assessee to prove that the said jewellery belonging to the mother of the assessee.

4. We have heard rival submissions and perused the material available on record and gone through the orders of authorities below. The contention of the assessee is that the authorities below

failed to appreciate the fact that wife of the assessee had categorically stated that the jewellery found in her locker belonged to mother of the assessee i.e. mother in law of the assessee's wife. This fact is not accepted by the authorities below despite the specific statement made by the wife of the assessee.

5. Before Ld. CIT(A) also it was stated that the jewellery of 643 gram was found in the locker of the State Bank of Bikaner and Jaipur which was in the possession of the assessee, who is eldest brother of the family. The jewellery in the said locker belonged to the Late mother of all the brothers Smt. Asha Chouhan. The said jewellery was retained separately as the same was intended to be distributed to the daughters of the family at the time of their marriage. At the time of opening of the locker the assessee had specifically informed the search team that the jewellery in the locker belonged to the late mother and this fact is duly mentioned in the statement recorded u/s 132 of the Act. The Ld. CIT(A) has decided this issue by observing as under:

*“Jewellery found during search*

*During the search and seizure action, the following jewellery was found/seized at various premises of the assessee as per panchnama drawn: -*

Address of the premises covered u/s u/s 132 of Income tax Act, 1961	Jewellery	
	Found (In Rs.)	Seized (In Rs.)
Residence: 25-6, Walmi Road, New Friends Colony, Chhanna Bhatti Bhopal	Gold 2936 gm Rs 1,12,41,405/-	1000.80 gm Rs 27,24,335/-
	Silver 3733 gm Rs 1,46,393/-	-
Locker No. 14 at State Bank of Bikaner And Jaipur, Chhanna Bhatti, Kolar Road, Bhopal	Gold 643.30 Rs. -18,11,045/-	Gold 643.30 grams Rs. 18,11,045/-

During the course of assessment proceedings vide notice u/s 142(1) dated 30/09/2015 the assessee was required to explain the source of acquisition of jewellery found during the course of search along with documentary evidence. He was also required to show cause as to why an addition should not be made on this account. The query raised in this regard and assessee's reply is reproduced here under:

Query:

B-2. During the course of search and seizure operation u/s 132 carried out at your residential premise located at 25-6, Walmi Road, Chhanna Bhatti, Bhopal the Gold jewellery weighing 2.936 Kg worth Rs. 1,12,41,405/- and Silver jewellery weighing 3.733 Kg worth Rs. 1,46,393/- were found and Gold jewellery weighing 1000.80 gm net wt worth Rs. 27,24,335/- was seized. The copy of the inventory of Jewellery has already been provided to you. You are requested to go through this inventory and explain the source of said Jewellery and further explain how the same are recorded in your 1 year business concern's regular books of accounts and returns of income.

In this regard, you are requested to please explain the source of above jewellery along with the cash flow chart and regular books of accounts or other documents maintained in respect of the various concerns and personal capital account as on the date of search. Please also furnish a copy of reply filed, if any, before the Investigation Wing in this behalf. You are also requested to explain as to why additions should not be made on this account.

B-3. During the course of search operation at Locker No. 14 at State Bank of Bikaner and Jaipur, Chhanna Bhatti, Kolar Road, Bhopal the Gold jewellery weighing net weight 643.30 grams

valuing Rs. 18,11,045/- were found and seized. The copy of the inventory of Jewellery has already been provided to you. You are requested to go through this inventory and explain the source of said Jewellery and further explain how the same are recorded in your 1 your business concern's regular books of accounts and returns of income. In this regard, you are requested to please explain the source of above jewellery along with the cash flow chart and regular books of accounts or other documents maintained in respect of the various concerns and personal capital account as on the date of search. Please also furnish a copy of reply filed, if any, before the Investigation Wing in this behalf. You are also requested to explain as to why additions should not be made on this account. You are also required to furnish the last date of locker operation along with the certificate of bank.

**Assessee, Reply**

The assessee is living in a joint family at 25/6, New Friends Society, Walmi Road, Chuna Bhatti, Bhopal, along with his two brothers, their wives and children. The details of the various family members are enclosed. It would be appreciated that the family consists of 4 adult male members, 3 married ladies, 2 unmarried daughters and one unmarried son.

It may be mentioned that the total jewellery found with the family at the time of search was as under:

Assess	Location	Gold	Silver	Total
Vivek &	LockerSBBJ	643 gram		643
Vivek &	At residence	1045.20 Gm	3733 gm	
	Tilfal (A)	1688.20 Gm	3733 gm	
Vipin &	residence	642.20Gm		
	Total (B)	612.20 Gm		
Vineet	residence	1249.30Gm		
	Total (C)	1249.30 Gm		
	Total	3579.70 Gm	3733 Gm	

It may be mentioned that the assessee is living along with his father, brother and their families in a joint family. Jewellery of

643 gram was found in the locker with State Bank of Bikaner & Jaipur which was in the possession of Shri. Vivek Chouhan, the eldest brother of the family. The jewellery in the said locker belonged to the Late mother of all the brothers Smt. Asha Chouhan. The said jewellery was retained separately as the same was intended to be distributed to the daughters of the family at the time of their marriage. At the time of opening of the locker the assessee (Vivek Chouhan) had specifically informed the search team that the jewellery in the locker belongs to the late mother and this fact is duly mentioned in the statement recorded.

It may be mentioned that in Instruction No 1916 dated 11.05.1994 the board has issued guidelines that In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the/amity need not be seized.

By virtue of instruction of the CBDT the assessee the assessee family was entitled to hold jewellery of up to 1550 Gms as detailed below:

Name	Relationship	Status	Permissible Gold holding
V.P.S Chouhan	Father	male	100 Gms
Vivek Chouhan	Eldest	male	100 Gms
Jyotshna chouhan	Wife of	married	500 Gms
Vani	Daughter of	unmarried	250 Gms
Vipin Chouhan	Second	male	100 Gms
Smriti Chouhan	Wife of Vip	married	500 Gms
Varun Chouhan	Son of vip in	male	100 Gms
Vineet Chouhan	Youngest	male	100 Gms
Deepa Chouhan	Wife of	married	500 Gms
Vanshika Chouhan	Daughter of	unmarried	250 Gms
Total			2500Gms

In addition to the above the brother of the assessee Mr. Vipin Chouhan has also purchased jewellery from M/s. Sajawal for which

payment of Rs.5,00,000/- was made by him on 17.06.2013 vide cheque no.085361 and Rs.5,00,000/- on 22.07.2013 vide cheque No 000006 through his bank account with HDFC Bank. Copy of the bank account has been filed by the said brother with your good self with his reply. In addition to above the brother of the assessee Mr. Vipin Chouhan has withdrawn Rs. 10,00,000/- from M/s Signature Infrastructure which has been utilised by him for purchase of Jewellery. It may be mentioned that the assessment proceedings for the said firm is hi progress before your good self uls 153A and these details can be verified from their records. However if you feel that the assessee needs to file those papers again, the same may kindly be communicated to the assessee to enable him to do the need full.

Thus the jewellery found can be reconciled as below:

Jewellery as per CBDT Circular	2500 gms
Jewellery of the mother	643 gms
Jewellery purchased	450 gms (estimated)
Total Jewellery	3593 gms

Thus the family was found to be holding only 3579 grams of gold as against 3593 grams as detailed above.

It has further been held by various courts that the limits specified by CBDT are not only for the purpose of seizure but it can also be considered that up till such quantity the ornaments should be accepted as explained and no addition shall be made.

Reference in this regards may be made to the judgments reported at (2004) 90 TTJ (Jab)974, (2000) 159 CTR (Kar) 28, (2000)159 CTR (Kar) 28, (2010) 235 CTR (Guj) 568

In this regards reference can be made to the decision of Hon'ble Gujrat High Court in the case of Kialashben Manharlal Chokshi vs CIT (2010) 328ITR 411 (Guj) wherein it was held that the Boards instruction is also relevant in considering the assessee's explanation regarding the jewellery found during the course of search wherein it was held by the court that

" .. so far as the additiori on account of gold ornaments to the tune of Rs.1 lakh is concerned, the assessee has given the explanation that was reproduced by the Assessing Officer in his assessment order which says that during the course of search G1Td seizure proceedings, statement of the assessee's wife Smt Kailasben was recorded and according to which she had received about 25 tolas of gold each from her parents and from her parent-in-law side at the time of her marriage in the year 1960. She had given 15 tolas of gold ornaments to her daughter Ritaben at the time of her marriage in the month of March 1988. If the total jewellery found during the course of

search is taken into consideration, in the light of instruction issued by the Board, any middle class Indian family may be having jewellery and gold jewellery to that extent. Hence addition can be made on that count".

Similar view is also expressed by the Hon 'ble Karnataka High Court in the case of Smt. Pati Devi vs ITO (1999) 240 ITR 727(Kar).

**Conclusion:**

The explanation of the assessee has been considered and same is found to be not acceptable for the following reasons:-

I. The assessee has not submitted any item wise details of the above jewellery found from residence and locker in the name of assessee, his wife Smt Jyotsana Chouhan and other family members.

II. The assessee has also not submitted any evidence which could substantiate the assessee's claim that the jewellery belongs to the various family members as claimed in written submission.

III. The assessee has also not submitted any confirmation of other family members to prove that partial jewellery belongs to them.

IV. The contention of the assessee that jewellery found in the locker belongs to his mother Smt. Asha Chouhan is also not supported by any documentary evidences. Moreover the locker is in the name of assessee and his wife. Therefore the assessee's claim that the jewellery belongs to his mother, is not acceptable.

V. The assessee has referred the Instruction No. 1916 dated 11/05/1994 of the CBDT issuing guidelines regarding seizure of jewellery during the course of search action. On the basis of this Instruction the assessee has computed permissible gold holding in respect of assessee and her family member and claimed that the jewellery found during the course of search is less than the permissible gold holding as per the CBDT's above instruction. In support of her submission the assessee has relied upon the decision of Hon'ble Gujrat High Court in the case of Kialashaben Manharlal Chokshi Vs. CIT (2010) 322 ITR 411 . (Gujrat), wherein it was held that the Boards instruction is also relevant in considering the assessee's explanation regarding the jewellery found during the course of search.

The reliance placed by the assessee upon the CBDT Instruction No. 1916' dated 11/05/1994 is misplaced. The cited instruction is meant to be an administrative instruction for the guidance of the Authorized Officer' at the time of search and seizure action regarding non-seizure of jewellery up to 500 gms for married woman and 100 grns for male member etc., given their sentimental attachment to it. However, non-

*seizure of jewellery does not imply that the jewellery is to be treated as explained in the assessment proceedings by the A.O.*

*As regards the reliance on the above cited decision along with other citations, it is seen that the Hon'ble High Court has observed that any middle class Indian family may be having jewellery to that extent which was found in that case. It is seen that the addition on account of gold ornament was made in that case at Rs 1 lakh only. Therefore considering the quantum of jewellery and other aspects of the case the Hon'ble High Court has come to the conclusion that addition cannot be made on that count. In the present case the quantum of jewellery found is much more higher than the case cited above and also the facts of that case are different than the assessee's case. Therefore the decision cited are not applicable to the assessee's case. The assessee has failed to furnish any documentary evidence showing that the investment in the jewellery has been recorded either in the case of assessee or his family members. No wealth tax returns have also been furnished by the assessee and his family members which establish the holding of jewellery. Considering the above facts and circumstances, the source of above jewellery remains unexplained. The jewellery in respect of assessee and his wife found during the course of search action is as under:*

*Found at residence - 1045.20 gms gold Rs.40,02,070/- (Average rate per gm.)*

*3733.00 gms silver Rs.1,46,393/-*

*Found at locker -643.30 gms gold Rs.18,11,045/-*

*Total Rs.59,59,508/-*

*In absence of any details regarding exact ownership of the above jewellery, 50% of jewellery is treated as unexplained investment of the assessee and the remaining 50% of jewellery is treated as unexplained investment in the case of assessee's wife smt. Jyotsana Chouhan whose case is also covered u/s 153A. Therefore, the amount of Rs.29,79,754/- (50% of Rs.59,59,508/-) is added to the total income of assessee for the A.Y. 2014-15 as undisclosed investment in jewellery u/s 69B of IT Act 1961. As the condition laid down as per provisions of section 271AAB of the I.T. Act 1961 are satisfied, the penalty proceedings u/s 271AAB are initiated for A.Y. 2014-15.*

6. The contention of the assessee is that the jewellery belonging to mother of the assessee was erroneously treated as unexplained. Despite the assessee had offered explanation in this regard. Further, in para 6 of the Misc. Application the assessee has stated as under:

*“While deciding the appeal the Hon'ble Tribunal did not give any direction about the jewellery possessed by the mother which is claimed in the possession of the family. This aspect was orally argued and also submitted in writing the statement of the wife Smt. Jyotsana Chouhan before opening the locker clearly shows that the jewellery in the locker belong to the mother in law. The Hon'ble Tribunal further observed that the evidence of the purchase of the jewellery requires verification while the Ld. AO has already accepted the same in the case of Vipin Chouhan. The assessment order of Shri Vipin Chouhan is already placed in the paper book.”*

7. We find the contention of the assessee that the assessing officer has accepted purchase of jewellery in the case of Shri Vipin Chauhan brother of the assessee correct as the assessing officer has observed as under:-

*“The gold jewellery of 1249.30 gms valuing at Rs.47,83,340/-, in respect of assessee was found during the course of search action. Out of this, the assessee has explained the source of jewellery amounting to Rs.20,00,000/- as under:-  
Rs.5,00,000/- Cheque No.085361 dated 17.06.2013  
Rs.5,00,000/- Cheque No.00006 dated 22.07.2013  
Rs.10,00,000/- withdrawal from M/s. Signature Infrastructure  
Considering the above facts and circumstances, the source of*

*above jewellery amounting to Rs.27,83,340/- remains unexplained. The gold jewellery valuing at Rs.27,83,340/-, in respect of assessee found during the course of search action is therefore treated as unexplained investment of the assessee. Therefore, the amount of Rs.27,83,340/- is added to the total income of assessee for the A.Y.2014-15 as undisclosed investment in jewellery u/s 69B of IT Act 1961. As the condition laid down as per provisions of section 271AAB of the I.T. Act 1961 are satisfied, the penalty proceedings u/s 271AAB are initiated for A.Y.2014-15.*

8. In view of the above, we hereby direct the assessing officer to give set off jewellery purchased by brother of the assessee.

9. Now coming to the issue of jewellery possessed by wife of the assessee, it is contended on behalf of the assessee that it was stated that the jewellery found in locker belonged to mother of the assessee. It was also stated that the assessee was residing in joint family, therefore, mother of the assessee being an old women for safety and security of the jewellery was handed over to the wife of the assessee which was kept in her locker for safety purpose. Before the authorities below assessee had taken the same stand. Before the Ld. CIT(A) it was submitted that wife of the assessee being oldest daughter in law who would naturally hold the jewellery on behalf of other family members and this fact was duly confirmed by

the assessee to the search team before opening of the locker and the fact is duly confirmed by all the brothers and daughter in laws of the family through written submissions filed in their respective assessments. It was stated that none of the family members were maintaining any locker and the entire jewellery of the family members was found with them at their residence. There was only one locker with the entire family which was in the name of the eldest son and his wife in which 643 grams of gold was only retained as against over 3500 grams of gold found with the family. It was stated that these facts established that the jewellery kept in the locker did not belong to any specific member and was placed separately for specific purpose under specific instruction of the mother. It may also be mentioned that the locker did not contain anything other than the jewellery. Admittedly, except the statement made by the assessee and other family members, no other material is available on record in the form of any bill or declaration by the mother of the assessee. It is also correct that in the Indian Undivided Family, mother in law possessed certain jewellery which is distributed amongst other members of the family as per her wish. Under these peculiarity of the facts it would sub serve the interest

of justice, if we modify our order to the extent that assessing officer would give benefit of CBDT Circular in respect of the jewellery of mother of the assessee rest other additions related to this issue would remain sustained. This ground of the assessee is partly allowed.

10. In result, appeal filed by the assessee is partly allowed.

Order was pronounced in the open court on 05.10.2020.

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Indore; दिनांक Dated : 05/10/2020

*Patel/PS*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**