THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 6670/Mum/2019 (Assessment Year 2016-17)

Jiten Bhavanji Vora 402, Saral Apartment Marve Road, Malad W Mumbai-400 064. PAN : AAAPV3821G	Vs.	Dy. CIT CC-7(4) Room No. 655 6th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	Dr. K. Shivram & Mr. Rahul Hakani
Department by	Shri Somnath Wajale
Date of Hearing	06.10.2020
Date of Pronouncement	21.10.2020

O R D E R

This appeal by the assessee is directed against the order of Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 30.8.2019 and pertains to assessment year 2016-17.

2. The grounds of appeal read as under :-

1) The Ld CIT(A) erred in treating jewelry of Rs 27,05,934/- as income of the Assessee on the ground that same was offered in original Return Of income and said income was not withdrawn by filing Revised return of Income without appreciating that said jewelry did not belong to assessee but belonged to the family members and that there is no estoppel against statute and hence jewelry of Rs 27,05,934/- cannot be taxed in the hands of the Assessee.

2) The appellant craves leave to add, amend or modify all or any of the above grounds of appeal.

3. Brief facts of the case are as under :-

The assessee is an individual and during the course of search, jewellery worth Rs.27,05,934/- was found from four bank lockers. This was explained to be belonging to various lady members of the family but assessee had offered it

as his income and has also given a pay order for tax Rs.27,05,934/- equivalent to the value of the jewellery so found. None of this jewellery was seized. Subsequently, the assessee filed Return of income on 17.10.2016 disclosing this income as income from other sources. The Ld.AO accepted the income returned but has initiated penalty proceedings u/s.271AAB as the same was offered to tax consequent to search proceedings.

4. The assessee filed an appeal before the learned CIT(A). In the statement of facts before learned CIT(A) assessee stated as under :-

1. In this case there was a search on 09042015 to 11042015 at the assessees residential premises During the course of the search jewellery of Rs 2705934 was found from Room No 501 502 503 The said jewelry had been withdrawn from bank lockers listed below as under

LOCKER NO.	OWNER
375	Bhavanji M Vora and Kankuben B Vora
449	Kankuben B Vora Bhavanji M Vora and Jiten B Vora
499	Paresh B Vora Kankuben B Vora Arpita PVora
474	Jiten B Vora Kankuben Vora and Varsha J Vora

2. Statement of Mr Jiten Vora was recorded under Section 132 4 of the Income Tax Act 1961 on 10042015 In his answer to Question 7 he stated that the jewellery in question belongs to him and his family members The jewellery was released upon the assessee making payment of Rs 2705934 by demand draft.

3. A subsequent statement of Mr Jiten Vora was recorded under Section 132 (4) of the Income Tax Act 1961 on 06062015 In the course of this statement while answering Questions bearing Nos. 12 and 15 the assessee claimed that the jewellery was in the nature of streedhan received by his wife presents received at the birth of son and other occasions ancestral jewellery and gifts received from family & friends on the occasion of marriage jewellery inherited from grandparents etc.

4. The assessee filed return of income for Assessment Year 2016 17 on 17102016 In this return of income the assessee declared the aforesaid jewellery of Rs 2705934 Assessee vide letter dated 18102016 submitted that though the jewelry of Rs 2705934 did not belong to him he was offering the same as his income to buy peace and avoid litigation.

5. Assessee vide submission dated NIL explained the source of above jewelry found from lockers It was submitted that none of the jewelry belonged to assesse Assessee also gave details of family members to whom the said jewelry belonged

6. Though the Assessee had explained during the course of Assessment proceedings that the said jewelry did not belong to him the AO passed order us 143 3 dtd 29122017 and went ahead with the disclosure made by the appellant in his return of income and did not grant any relief to the Assessee

7. The appellant submits that at the time of filing return of income he offered the jewellery to tax out of abundant caution in order to buy peace of mind and believing no penalty would be levied upon him During the course of Assessment proceedings Assessee explained the ownership of jewelry However subsequently penalty has been levied upon the Assessee vide order dated 29062018 though there is no non-disclosure in the return of income Against the penalty order Assessee has filed appeal in time Moreover prosecution is also launched which has direct connection with the addition of said jewelry in the hands of the Assessee

8. At the time of passing of Assessment order Assessee was advised by the Chartered accountant not to challenge the same due to disclosure in return of Income After the passing of the penalty order Assessee was not advised to file appeal against the Assessment order At the time of hearing of penalty appeal in February 2019 Assessee was advised by the new tax counsel that it would be necessary to challenge the Assessment order on merits particularly in view of the fact that during Assessment proceedings Assessee had explained to the Assessing Officer that the said jewelry did not belong to him Thus Assessee decided to file the appeal as the truth is that the jewellery does not belong to him but it belongs to other family members The jewellery is within the limit prescribed by CBDT Instruction No 1916 dated 11051994

9. The appellant submits that merely since an item was wrongly offered in the return of income does not mean that it is certainly taxable in his hands The Income Tax-Department has the power to tax the income as per law and not as per the wrong disclosure made by the assesse in his return of income.

5. In the grounds of appeal assessee has raised following grounds before learned CIT(A) :-

1. The Ld Assessing Officer erred in taxing the undisclosed income being jewellery of Rs 2705934 though the same did not belong to Assessee

2. The Id Assessing Officer failed to appreciate that the appellant had offered to tax the jewellery of Rs 27.05 lakhs in his return of income out of abundant caution even though the jewellery related to his other family members and also explained to AO during the course of assessment proceedings that the jewelry did not belong to him

3. The Id Assessing Officer failed to appreciate that the jewellery found belonged to various family members and was within the CBDT limit as given in CBDT Instruction No 1916 dated 11.05.1994 and hence the same is not unexplained.

6. However, learned CIT(A) did not adjudicate the grounds raised before her. She held that the assessee should have filed a revised return and she proceeded to dismiss the assessee's appeal by observing as under :-

> However, the assessee filed an appeal against the assessment order wherein the Ld.AO did not make any addition but has merely accepted the Returned income. Even during the assessment proceedings, the assessee submitted to the Ld.AO to accept his voluntary disclosure of jewellery and has nowhere requested the Ld.AO to not to treat this as his income. Whether he offered the income to buy peace or end litigation is immaterial. The fact remains that he has offered this as income at the time of search and while filing the Return of income and also during the assessment proceedings. If the assessee felt he had wrongly admitted the income and had offered it in the Return of income, he had an option of filing a revised Return but no such thing has been done by the assessee. Therefore, the assessee should not be having any grievance against the assessment order. To file an appeal against the assessment order wherein the Assessing Officer had merely accepted the income returned by the assessee is not correct. Even in his submission, the assessee is saying that though the jewellery pertains to the family members, he had offered it as his income. It is also a fact that the jewellery belongs to his family and not to an outsider. When he himself accepted and offered the said amount of Rs.27,05,934/- as his income, there is no grievance which can be addressed by this office. Therefore, the appeal is dismissed.

7. Against this order the assessee is in appeal before the ITAT.

8. I have heard both the counsel and perused the record. Learned Senior Counsel, Dr. K. Shivram vehemently argued that the assessee has duly explained during the course of search itself that the jewellery was belonging to the family members. That it was solely to buy peace of mind that the assessee was forced to pay tax equal to 100% of the value of undisclosed jewellery found. Learned counsel submitted that the jewellery found during the course of search was belonging to the family members of the assessee and it was well within the limit jewellery holding prescribed by the CBDT. He further referred to the CBDT Circular No. 14(XL-35) of 1953 dated 11.4.1955 which states that officers of the Department must not take advantage of the ignorance of the assessee as to his rights. Further learned counsel gave detailed submissions by referring to the details in his paper book as under :-

"Issue
Addition of Jewellry of Rs 27,05,9347- under the head income from other sources as unexplained jewllary. AO Para 3 Pg 2 CIT(A)Para5.5Pg9&10
Facts

1. There was a search on 09.04.2015 to 11.04.2015 at the residential premises of the asseesse and other members of the Vora family .The total jewellery found was Rs 1974 [Gms]. Chart giving bifurcation of jewelry found from Lockers amongst various family members. [Pg .30]

2. During the course of the search, jewelry of Rs 27,05,934/- was found from Room Nos. 501,502,503. The said jewelry had been withdrawn from bank lockers, listed below, as under :

LOCKER NO.	OWNER
375	Bhavanji M Vora and Kankuben B Vora
449	Kankuben B Vora Bhavanji M Vora and Jiten B Vora
499	Paresh B Vora Kankuben B Vora Arpita PVora
474	Jiten B Vora Kankuben Vora and Varsha J Vora

3. Statement of Assesee was recorded under Section 132(4) of the Income Tax Act 1961 on 10.04.2015. [Pg.l3-15]In answer to Questions No 6, 7 assessee stated that the jewellery in question belongs to him and his family. - Q.No. 10. (Pg 15). The jewellery was released, upon the assessee making payment of Rs 27,05,934/- by demand draft.

4. A subsequent statement of Assessee was recorded under Section 132(4) of the Income Tax Act 1961 on 06.06.2015 during the course of search of his HUF.[Pg. 6-24] In the course of this statement, while answering Questions bearing Nos. 12 and 15,[Pg 21-22] the assessee claimed that the all the jewelry found during search was mostly in the nature of streedhan received by his wife, presents received at the birth of son and other occasions, ancestral jewelry and gifts received from family & friends on the occasion of marriage, jewelry inherited from grandparents etc.

5. The assessee filed return of income for Assessment Year 2016-17 on 17.10.2016. In this return of income, the assessee declared the aforesaid jewelry of Rs 27,05,934/-. [P. No 2]

6. Assessee vide letter dated 18/10/2016[Pg.25-26] submitted that the jewelry of Rs 27,05,934/-did not belong to him. Assessee gave the bifurcation of jewelry and also stated that the jewelry found during search was within the limits permitted by CBDT Instruction No 1994dtd 11.5.1994. [Pg. 51]

7. Assessee vide submission dated NIL [Pg.27-30] explained the source of above jewelry found from lockers. It was submitted that none of the jewelry belonged to assessee. Assessee gave the bifurcation of Diamond studded jewelry. Assessee also gave details of family members to whom the said jewelry belonged.

8. Though the Assessee had explained during the course of Assessment proceedings that the said jewelry did not belong to him, the AO passed order u/s 143(3) dtd29.12.2017 stating that as the assessee disclosed the jewelry in the return, hence the income cannot be reduced.

9. Affidavit of Mrs KankubenVora dt. 15-2-2019. [Pg. 31-37].

10. Affidavit of Mrs Arpita Paresh Vora dt. 15-2-2019. [Pg.38 -43]

11. Affidavit of Mrs Varsha JitenVora dt. 15-2-2019. [Pg.44-50]

12.CBDT instruction 1994 dt. 11-5-1994. [Pg. 51]

13. Written Submissions before CIT(A). [Pg. 52-57]

14. Written submission before CIT (A). [Pg. 58 -67]

15. CIT(A) vide order dated 30/8/2019 dismissed the appeal only on the ground that the assessee himself has shown undisclosed jewelry in the return and the assessee himself has offered income stating that jewelry belongs to family and the assessee has not filed the revised return withdrawing the income shown in the return.

Legal Submissions

1. At the time of recording of statement on oath u/s 132(4) the Assessee had not admitted that jewelry found from the lockers belonged to him. During the course of assessment proceedings, the assessee had submitted that the jewelry of Rs 27,05,9347 did not belong to him but belonged to other family members.

2. Without prejudice to above, there is no estopple against law. Hence, even though Assessee has purportedly admitted value of said jewelry as his income, if he can explain and demonstrate in the assessment proceedings that the jewelry admitted by him in the search proceedings do not belong to him.

3. Case Laws

(i) In CIT v Rakesh Ramani[2018] 94 taxmann.com 461 (Bom)(HC)/[2018] 256 Taxman 299 (Bom)(HC) it is held that "There is no requirement in law that evidence in support of its case must be produced only at the time when the seizure has been made and not during the assessment proceedings.".

(ii) In Balmukund Acharya v DCIT [2009] 310 ITR 310 (Bom)(HC) [Pg 68-74] Assessee had offered Long Term Capital gains on sale of Godown to tax. However, before CIT(A) for the first time, Assessee contended that the sale of Godown was not taxable.CIT(A) did not decide the claim of Assessee. ITAT confirmed the order of CIT(A). Order of ITAT was set-aside by the High Court.

It has been held by the High Court at Para 31 [Pg 74 of Paper Book II]as under

> "Having said so, we must observe that the Apex Court and the various High Courts have ruled that the authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If any assessee, under a mistake, misconceptions or on not being properly instructed is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected, (see S.R. Kosti v. CIT [2005] 276 ITR 165 (Guj.), CPA Yoosuf v. ITO [1970] 77 ITR 237 (Ker.), CIT v. Bharat General Reinsurance Co. Ltd. [1971] 81 ITR 303 (Delhi), CIT v. Archana R. Dhanwatey [1982] 136 ITR 355(Bom.).
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> 32. If particular levy is not permitted under the Act, tax cannot be levied applying the doctrine of estoppel. (See Dy. CST v. Sreeni Printers [1987] 67 SCC 279.
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> 33. This Court in the case of Nirmala L. Mehta v. A. Balasubramaniam, CIT [2004] 269 ITR l(Bom)(HC) has held that there cannot be any estoppel against the statute. Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law. In the case on hand, it was obligatory on the part of the Assessing Officer to apply his mind to the facts disclosed in the return and assess the assessee keeping in mind the law holding the field."

(iii) In CIT v. Mitesh Impex [2014] 225 Taxman 168 (Guj) (MAG.) (HC)[Pg 75-85 of P.Book II] the Gujarat High Court was considering the issue of new claim made before CIT(A) though such claim was not made either in Original Return of Income or by Filing Revised Return of Income during the course of assessment proceedings. The relevant extract [Pg 82 of the P.Book II] from the order is reproduced as under :

> "24. It would be useful to club Questions (3) and (4) for common consideration. Both questions pertain to Revenue's stand that the assessees could not have raised a new claim for the first time before CIT (Appeals) without revising return before the assessing officer.
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> 25. Question (3) pertains to such fresh claim under section 80-IB of the Act. Question No.(4) pertains to the assessees' claim under section 80HHC of the Act. Legal issue is, however, common.
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> 26. Brief facts are that in the return filed, the assessees did not raise any claims under section 80-IB or 80HHC of the Act. (In the case of Mitesh Implex Tax Appeal No.2562 of 2009, such claim was though initially made but later on dropped by filing revised return). In appeal before CIT(Appeals) such claims were made. In the case of Mitesh Implex, CIT(Appeals) entertained both the claims ignoring Revenue's

> objection. The assessing officer was granted opportunity to oppose the claims on merits. After examination of facts on record, he disallowed the assessee's claim under section 80-IB on the ground that the manufacturing activity had not commenced during the year under consideration to enable the assessee to make such a claim. He however, accepted the assessee's claim on merits under section 80HHC of the Act. In appeal, the Tribunal rejected the Revenue's contention that in view of the judgment of the Supreme Court in the case of Goetze (India) Ltd. v. CIT [2006] 284 ITR 323/157 Taxman 1, such claims could not have been made without filing revised return. There is some ambiguity whether the Tribunal had allowed the assessee's claim under section 80-IB of the Act on merits also or not. Counsel for the assessees, however, clarified that in the case of Mitesh Implex since CIT(Appeals) had rejected the claim on merits, the assessee would not contend that the judgment should be read as also granting such claim on merits."

The High Court after considering various case laws held that the claim though not made in Original Return of Income can be raised for first time before the CIT(A).

(iv) Following said decision, Gujarat High Court in Pr CIT v UTI Bank Ltd [2017] 398 ITR 514 (Guj.)(HC) [Pgl27 - 129] after considering Supreme Court in Goetze (India)Ltd v CIT(2006) 284 ITR 323(SC)held as under [Pg 128]:

> "6. Regarding a claim contrary to the disclosures in the return, the Tribunal relied on the decision of the Supreme Court in the case of National Thermal Power Co. Ltd. (supra) to observe that the purpose of assessment is to tax real income. This court taking note of the decisions of the Supreme Court in the case of Goetze (India) Ltd. v. CIT [2006] 284 ITR 323/157 Taxman 1 and National Thermal Power Co. Ltd. (supra) in the case of Miteshlmpex (supra) had observed as under (page 103 of 367 ITR):
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> "It thus becomes clear that the decision of the Supreme Court in the case of Goetze (India) Ltd, v. CIT (supra) is confined to the powers of the Assessing Officer and accepting a claim without revised return. This is what the Supreme Court observed in the said judgment while distinguishing the judgment in the case of National Thermal Power Co. Ltd. v. CIT (supra) and that is how various High Courts have viewed the dictum of the decision in the case of Goetze (India) Ltd. v. CIT (supra). When it comes to the power of the Appellate Commissioner or the Tribunal, the courts have recognized their jurisdiction to entertain a new ground or a legal contention. A ground would have a reference to an argument touching a question of fact or a question of law or mixed question of law or facts. A legal contention would ordinarily be a pure question of law without raising any dispute about the facts. Not only such additional ground or contention, the courts have also, as noted above, recognized the powers of the Appellate Commissioner and the Tribunal to entertain a new claim for the first time though not made before the Assessing Officer. Income-tax proceedings are not

strictly speaking adversarial in nature and the intention of the Revenue would be to tax real income.

This is primarily on the premise that if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the Assessing Officer.

Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor did they travel beyond the materials already on record, in order to examine the claims of the assessees for deductions under sections 80-IB and 80HHC of the Act."

(v) InCIT v Pruthvi Brokers & Shareholders [2012] 349 ITR 336 (Bom)(HC) [Pg 86-94] which held that an assessee is entitled to raise before appellate authorities additional grounds in terms of additional claims not made in return filed by it. It was held as under :

"10. A long line of authorities establish clearly that an assessee is entitled to raise additional grounds not merely in terms of legal submissions, but also additional claims not made in the return filed by it."

(vi) The Assessee further relies on Circular No. 14(XL-35), dated 11-4-1955[Pg 95] wherein it is held as under :

"V. Miscellaneous - Refund and reliefs due to assessees - Departmental attitude towards - The Board have issued instructions from time to time in regard to the attitude which the Officers of the Department should adopt in dealing with assessees in matters affecting their interest and convenience. It appears that these instructions are not being uniformly followed. 2. Complaints are still being received that while Income-tax Officers are prompt in making assessments likely to result into demands and in effecting their recovery, they are lethargic and indifferent in granting refunds and giving reliefs due to assessees under the Act. Dilatoriness or indifference in dealing with refund claims (either under section 48 or due to appellate, revisional, etc. orders) must be completely avoided so that the public may feel that the Government are actually prompt and careful in the matter of collecting taxes and granting refunds and giving reliefs.

3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessees on whom it is imposed by law, officers should :—

(a)draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;

(b)freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs;

(c)Public Relation Officers have been appointed at important centres, but by the very nature of their duties, their field of activity is bound to be limited."

Thus, it is incumbent upon the Income Tax Department to grant relief to the Assessee if any amount though offered to tax is not taxable.

(vii) The Hon'ble Andhra Pradesh High Court in the case of CIT v. Bakelite Hylam Ltd. [1999] 237 ITR 392(AP)(HC)[Pg 96-101 of P.Book II] as well Hon;ble Gujarat High Court in the case of Gujarat Gas Co. Ltd. v. Jt. CIT [2000] 245 ITR 84(Guj)(HC) [Pg 107-126 of P.Book II] has held after considering CBDT circular Circular No. 549, dated 31-10-1989 that Assessed income can fall below the returned income. In CIT v Bakelite Hylam Ltd (Supra) it was held as under :

".....we are inclined to hold that the assessing authority is entitled to determine the quantum of refund also in a regular assessment made under section 143(3)."

(viii) Mumbai Tribunal in Sajjan India Ltd. v ACIT [2018] 89 taxmann.com 21(Mum)(Trib.)[Pg 102-106] was dealing with legal issue whether disallowance u/s 14A can fall below disallowance suo motu voluntarily made by the assessee in the return of income filed with the Revenue. It was held as under :

"The last grievance under these appeal is of the assessee as to whether the disallowance u/s 14A can fall below disallowance suo motu voluntarily made by the assessee in the return of income filed with the Revenue. The assessee has claimed that if his several contentions are favourably considered by tribunal keeping in view legal position, the disallowance u/s 14A can fall below the voluntary disallowance made

by the assessee suo motu in return of income filed with the Revenue. The assessee has relied on decision of Hon'ble Gujarat High Court in the case of Pr. CIT v. UTI Bank Ltd. [2017] 398 ITR 514 and decision of ITAT, Mumbai in the case of Rupee Finance and Management (P.) Ltd. v. Dy. CIT [2017] 81 taxmann.com 249. We find merit in the contention of the assessee that once tribunal has adjudicated matter in assessee's favour then merely because disallowance was made in return of income voluntarily under a wrong belief, the assessee cannot resile from its position is not acceptable .The mandate of the 1961 Act is to tax real income and not an income which was never the income chargeable to tax in the hands of the assesseee but was declared under a wrong belief or notion . The mandate of the 1961 Act is to tax real income and tax can only be levied under the authority of law. Thus, if after verifications and following the ratio of law decided by the tribunal in the instant case, if the disallowance falls below the disallowance u/s 14A offered by the assessee in return of income, be it may the Revenue cannot charge tax on income which never was the income of the assessee chargeable to tax within the mandate and provisions of the 1961 Act as the tax can only be levied by the authority of law. The Hon'ble Andhra Pradesh High Court in the case of CIT v. Bakelite Hylam Ltd. [1999] 107 Taxman 429/237 ITR 392 as well Hon;ble Gujarat High Court in the case of Gujarat Gas Co. Ltd. v. Jt. CIT [2000] 111 Taxman 144/245 ITR 84 has taken a similar view. Hon'ble Gujarat High Court in the case of Gujarat Gas Co. Ltd. (supra) has arrived at the said decision after considering CBDT circular No. 549 dated 31-10-1989 (1990) 182 ITR (st) 1 while arriving at the said decision that assessed income can fall below returned income in proceedings u/s 143(3) r.w.s. 143(2)."

4. In view of the above legal position it is submitted that;;

(a) There is no estopple against law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law. [Balmukund Acharya v. DCIT (Supra)& CIT v Rakesh Ramani (Supra)]

(b) Assessee can make a fresh claim for the first time even before the CIT(A) even though Assessee did not make such claim in the original Return of Income or Revised Return of Income or during the course of Assessment proceedings. [See CIT v Miteshlmpex (Supra), Pr CIT v UTI Bank Ltd (Supra) & CIT v Pruthvi Brokers & Shareholders (Supra)].

(c) It is incumbent upon revenue authorities to grant relief to Assessee if Assessee wrongly offers any amount to tax in the Return of Income. [See Circular No. 14(XL-35), dated 11-4-1955]

(d) If after adjudication of New claim, the taxable income falls below the Returned Income, then same is legally permissible. [CIT v. Bakelite Hylam Ltd. (Supra) Gujarat Gas Co. Ltd. v. Jt. CIT (Supra) and Sajjan India Ltd v ACIT (Supra).]

5. Without prejudice to above on merits; the bulk of the jewellery found during search from various residential premises relates to Stridhan obtained at the time of marriage of the three lady members of the family ie Mrs. Kankuben Vora, Mrs. Arpita Vora and Mrs.Varsha Vora. The details of marriages are as follows:

Marriage	Year
Bhavanji and KankubenVora	1957
Jiten and VarshaVora	09.05.1995
Paresh and ArpitaVora	13.02.1994

The three lady members have also filed affidavit. [Pg 31-50]. Same were filed even before CIT(A) Though CIT(A) did not specifically comment on the Affidavits, she recorded that the jewelry belonged to the family members.

6. The jewellery found during the search from residential premises of various members of Vora family including the lockers was within the CBDT limit as given in CBDT Instruction No 1994 dated 11.05.1994. P. 51 During the search, the total jewellery found was Rs 64,64,8667- [1974 Gms]. Chart giving bifurcation of jewelry found from Lockers amongst various family members. [Pg .30] Chart giving bifurcation of entire jewelry found during search at various residential premises including jewelry found from the lockers amongst all the family members [Pg.30]. This chart clearly shows that all the family members are holding the jewelry within the limits prescribed by the CBDT.

7. The total jewellery allowable for his entire family as per CBDT Circular is 2,100 grams. A copy of the CBDT circular is enclosed herewith at page no.51 of the compilation. As per the CBDT Circular, the permissible limit of gold for family members is as follows:

Name	Age	Relationship with Jiten Vora	Permissible limit of gold jewellery
Mrs Kankuben Vora	72	Mother	500 g
Mrs Arpita Vora	45	Sister in law	500 g
Mrs Varsha Vora	42	Wife	500 g
Mr Paresh Vora	49	Brother	100g
Mr Jiten Vora	46	Self	100g
Mr Bhavanji Vora	78	Father	100g
Mr Vaibhav Vora	18	Son	100g
Mr Vinay Vora	19	Brother's son	100g
Mr Jay Vora	12	Brother's son	100g
Total			2,100g

8. In DCIT v Haroon Unni (ITA 463/Mum/2012) dated 31.01.2014. (Mum)(Trib) [Pg 130-133 of P.Book II) In that case, gold jewellery of Rs 20.71 lakhs and diamond jewellery of Rs 5.67 lakhs was found during a search.

The AO taxed the diamond jewellery and a portion of the gold jewellery. The CIT(A) deleted the addition on the ground that the jewellery found was within the CBDT limit. The order of the CIT(A) was upheld by the Mumbai ITAT.

9. In Ritu Bajaj v DCIT (ITA 4101/Del/2017) dated 09.03.2018 (Del)(Trib) [Pg 134-141 of P.Book II]. In that case, diamond studded jewellery of Rs 24.09 lakhs was found during a search and added to the total income by the AO. The CIT(A) partly confirmed the addition. The Hon'ble ITAT deleted the addition on the ground that the jewellery found was within the CBDT limit.

10. In CIT v Satya Narain Patni (2014) 46 taxmann.com 440(Raj)(HC) [Pg 142-148 of P.Book II] it is held that once jewelry is found within CBDT Circular limit then officers cannot question source and acquisition.

11. It may be mentioned that as per clause (iii) of CBDT Circular (Instruction No 1994) dated 11.05.1994, the Search Team may exclude a larger portion of jewellery having regard to the status of the family, the customs and practices of the community and other circumstances. In this case, the appellant is a Gujarati from the highest strata of society. His family has a high social status. Thus even if the jewellery found during the search slightly exceeds the limit, it ought to be overlooked given the status of the Vora family.

In view of the above the order of CIT(A) dismissing the appeal may be set aside and the AO may be directed to delete Rs .27, 05 934."

9. Per contra, learned Departmental Representative relied upon the orders of the authorities below. He reiterated that the assessee has paid tax equivalent to 100% of the undisclosed jewellery and has made claim without filing a revised return. He reiterated reliance upon the Supreme Court decision in the case of Goetz India Ltd. Vs. CIT (284 ITR 323).

10. Upon careful consideration I note that it is undisputed fact that during the statement on oath under section 132(4) of the IT Act the assessee has duly submitted that the jewellery found in their lockers belong to the family members. In course of assessment proceedings the assessee has duly given details about the jewellery found in the search belonging to other family members. The very fact that the assessee was made to pay tax equivalent to 100% value of undisclosed jewellery clearly shows that the Revenue authorities have taken advantage of the assessee not being aware of his rights properly. By no stretch of imagination if tax is at all due the same is equivalent to 100% value of the jewellery found. Furthermore, the Revenue authorities cannot also

show ignorance of the permissible limit of jewellery holdings as prescribed by the CBDT Instruction No. 1994. Learned Counsel of the assessee has duly brought on record affidavits of the family members owning jewellery. Just because the claim is made otherwise then by revised return the said claim does not seize to be a claim to be adjudicated as long as the claim is made. This exposition was duly expounded by Hon'ble Bombay High Court in the case of CIT Vs. Prithvi 349 ITR 336. Even Hon'ble Supreme Court decision in the case of Goetz (India) Ltd. Vs. CIT (284 ITR 323) has held that the said decision would not debar Tribunal from adjudicating a claim, that was raised otherwise then by revised return of income. Assessee's affidavits belonging to various family members, which were brought on record ought to have been considered in the light of the Hon'ble Bombay High Court decision in the case of CIT Vs. Rakesh Ramani (supra), which provides that there is no requirement in law that evidence in support of the case must be produced only at the time when seizure has been made and not during the course of assessment proceedings.

11. Learned Counsel of the assessee has further submitted that the assessee has duly submitted necessary affidavits from the family members as to the quantity of jewellery which belonged to them. He submitted that from the above sequence of events and evidences it is clear that the assessee has clearly demonstrated jewellery did not belonging to him but belongs to other family members. He further submitted that there is no estoppel against law. That the jewellery was belonging to other family members and if the assessee has erroneously or under compulsion offered the same as his own it does not bring upon any legal bar upon the assessee from claiming his rightful dues that the assessee should not be taxed for the same. In this regard reliance is placed upon the decision of Hon'ble Bombay High Court in the case of Balmukund Acharya (310 ITR 310) for the proposition that there is no estoppels against law. That acquisition cannot take away from party the relief that he is entitled to where the tax levied or collected without authority of law.

The various case laws relied upon by learned Counsel of the assessee in support of his various proposition which are germane are as under :-

- Balmukund Acharya Vs. DCIT (310 ITR 310)(Bom)
- CIT Vs. Mitesh Impex (225 Taxman 168) (Guj)(Mag)
- CIT Vs. UTI Bank Ltd. (398 ITR 514) (Guj)
- CIT Vs. Pruthvi Brokers & Share3holders (349 ITR 336)(Bom)
- CIT Vs. Bakelit4e Hylam Ltd. (237 ITR 392)(AP)
- Gujarat Gas Co.Ltd. Vs.Jt.CIT (245 ITR 84)(Guj)
- Sajjan India Ltd. Vs. ACIT (89 Taxmann.com 21)

12. The reliance by learned Counsel of the assessee upon the following Tribunal decisions where upon finding that jewellery found within CBDT limit, the addition was deleted is also relevant here :-

> *"In DCIT v Haroon Unni (ITA 463/Mum/2012) dated 31.01.2014.(Mum)(Trib) [Pg 130-133 of P.Book II) In that case, gold jewellery of Rs 20.71 lakhs and diamond jewellery of Rs 5.67 lakhs was found during a search. The AO taxed the diamond jewellery and a portion of the gold jewellery. The CIT(A) deleted the addition on the ground that the jewellery found was within the CBDT limit. The order of the CIT(A) was upheld by the Mumbai ITAT.*
>
> *In Ritu Bajaj v DCIT (ITA 4101/Del/2017) dated 09.03.2018 (Del)(Trib). In that case, diamond studded jewellery of Rs 24.09 lakhs was found during a search and added to the total income by the AO. The CIT(A) partly confirmed the addition. The Hon'ble ITAT deleted the addition on the ground that the jewellery found was within the CBDT limit.*
>
> *In CIT v Satya Narain Patni (2014) 46 taxmann.com 440(Raj)(HC) it is held that once jewelry is found within CBDT Circular limit then officers cannot question source and acquisition."*

13. I note that it is not the case of the revenue that any of the above decisions have been reversed by Hon'ble High Courts. It may not be out of place to mention here the Hon'ble Supreme Court decision in the case of CIT Vs. Mr. P. Firm (1965) 56 ITR 67 for the proposition that if a particular income is not taxable under the Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. The Hon'ble Supreme Court's decision in the case of Shelly Products (129 taxamn 271), supports the proposition that if the assessee has erroneously paid more tax than he was legally required to do, he is entitled to claim the refund, as otherwise it would be violative of Article 265.

14. In the background of the aforesaid discussion and precedent I hold that the jewellery found was within the limit fixed by CBDT as per Instruction No. 1994 dated 11.5.1994. The authorities below have erred in rejecting the assessee's claim on the touchstone of above Hon'ble Supreme Court and Hon'ble Bombay High Court decisions. Hence, I respectfully following the precedents as above set aside the orders of the authorities below and delete the addition and allow assessee's appeal.

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

Order pronounced under Rule 34(4) of the ITAT Rules on 21.10.2020.

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/10/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai

PS