

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 2026/Bang/2018
Assessment Year: 2013-14

Amith Kumar Bethala No.815, 8 <sup>th</sup> Block, Near Koramangala Police Station Koramangala Bengaluru-560 095  <b>PAN NO : AECPB8659N</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Central Circle-1(4) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri G.S. Prashanth, A.R.
<b>Respondent by</b>	:	Shri Muzaffar Hussain, D.R.

<b>Date of Hearing</b>	:	12.01.2021
<b>Date of Pronouncement</b>	:	28.01.2021

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeal filed by the assessee is directed against the order dated 13-04-2018 passed by Ld CIT(A)-11, Bangalore and it relates to the assessment year 2013-14.

2. The grounds numbered as 1, 2, 7 to 11 are general in nature. At the time of hearing, the Ld A.R did not press ground no.6. The remaining ground relates to the following issues:-

Page 2 of 12

- (a) Addition of Rs.43,08,000/- relating to 1500 grams of bullion found during the course of search.
- (b) Addition of Rs.69,91,181/- relating to 2668.39 grams of jewellery found during the course of search.
- (c) Addition of Rs.38,19,960/- relating to 2308 grams relating to undisclosed investment in jewellery sustained by Ld CIT(A).

3. The facts relating to the above said issues are discussed in brief. The revenue carried out search and seizure operations u/s 132 of the Act in the hands of the assessee on 08-12-2013. During the course of search, the gold ornaments weighing 7442.30 grams was found, which included bullion of 1500 grams. After considering the explanations given by the assessee, the AO assessed value of following jewellery/bullion as unexplained investment in the hands of the assessee:-

Value of bullion (1500 grms x Rs.2872/- per gram) -	Rs. 43,08,000
Value of Ornaments (2668.390 gms x Rs.2620/gm) -	Rs. 69,91,181
Value of jewellery not seized(2308 gms xRs.2620/gm)-	Rs. 60,46,960
	-----
Total Value	Rs.1,73,46,141
	=====

4. The Ld CIT(A) confirmed the addition of Rs.43,08,000/- and Rs.69,91,181/- relating to first two items stated above. With regard to the third item, the Ld CIT(A) granted relief of Rs.22,27,000/-, being the value of 850 grams. In this regard, the Ld CIT(A) has given credit of 500 grams for married lady (wife of assessee), 250 grams for unmarried lady (daughter of assessee) and 100 grams (for the assessee) by considering the Instruction No.1916 dated 11.05.1994 issued by CBDT for not seizing the jewellery. Aggrieved by the order passed by Ld CIT(A), the assessee has filed this appeal before us.

Page 3 of 12

5. The first issue relates to the addition of Rs.43,08,000/-, being the value of gold bullion of 1500 grams. In this regard, the assessee explained that the bullion does not belong to him and it belongs to M/s B & B Jewellers and Finance Ltd, wherein the assessee is a director. It was submitted that the above said bullion was brought to his home prior to the date of search for safe custody. The assessee also furnished a copy of stock register of M/s B & B Jewellers and Finance Ltd before the AO in support his submissions. However, the AO noticed that the revenue had obtained a copy of stock register on the date of search and accordingly, the AO compared the same with the stock register furnished before him during the course of assessment proceedings. According to the AO, the stock register has been modified by inflating the purchase of gold on 20-6-2012 (100 grams), 14-09,2012 (1000 grams) and 25.09.2012 (179.89 grams). Thereafter the assessee has accounted for the 1500 grams seized by the department on the date of search in order to show that it belongs to the above said company. Since there was modification of stock register, the AO took the view that the stock register has been manipulated. Accordingly he rejected the explanations of the assessee and accordingly assessed the above said amount of Rs.43,08,000/- as unexplained investment of the assessee. The Ld CIT(A) also upheld the view taken by the AO on this issue.

6. The Ld A.R submitted that the assessee is a director of M/s B & B Jewellers and Finance Ltd along with his brother Shri Deepak Bethala. He submitted that the assessee has explained that he has brought 1500 grams of bullion to home for safe custody prior to the date of search. He submitted that a statement of Mr. Deepak Bethala was taken on the date of search and he has furnished stock statement on the date of search. However, he has clearly mentioned that the stock register has not been completed updated and further the copy of sales register as on 13.01.2013 was only furnished. He

Page 4 of 12

further submitted that M/s B & B Jewellers and Finance Ltd has duly disclosed the above said 1500 grams in its stock register as seizure made by the income tax department. The Ld A.R invited our attention to the copy of financial statements of M/s B & B Jewellers and Finance Ltd for the year ending 31-02-2013 placed at 47 – 99 of the paper, more particularly page 57 of the paper book, wherein it has been reported that the Closing stock of Gold Bullion includes 1500 grams held with the Income tax department. The Ld A.R submitted that the accounts of the above said company has been audited and the stock details has been accepted by VAT authorities also. Accordingly, he submitted that there is no reason to reject the explanations of the assessee that the gold bullion does not belong to him. Accordingly, the Ld A.R submitted that the AO was not justified in assessing the 1500 grams of gold bullion, since it does not belong to the assessee.

7. The Ld D.R, on the contrary, reiterated the opinion expressed by the AO by adverting our attention to the relevant pages of the assessment order.

8. We heard rival contentions on this issue and perused the record. We noticed that the assessee has disowned the gold bullion of 1500 grams and in support of the same, he has furnished a copy of stock register of M/s B & B Jewellers and Finance Ltd. The AO has rejected the said explanation on the reasoning that there is variation between the stock register obtained at the time of search and the stock register furnished during the course of assessment proceedings. It is the contention of the assessee that the stock register taken by the revenue during the course of search proceedings was not updated completed. Subsequently, it has been updated and furnished. It is the submission of the assessee all the purchases have been duly accounted for and they have been accepted by the VAT department

Page 5 of 12

also. It was also stated that the books of accounts of M/s B & B Jewellers and Finance Ltd have been audited. Further, the fact of seizure of bullion by income tax department has been duly mentioned in the Annual report of the above said company. Accordingly, it was contended by Ld A.R that the assessee has sufficiently proved that the gold bullion does not belong to him, but to M/s B & B Jewellers and Finance Ltd.

9. On the contrary, it is the case of the revenue that the stock register has been manipulated by M/s B & B Jewellers and Finance Ltd and hence the explanations of the assessee cannot be accepted.

10. However, the fact remains that M/s B & B Jewellers and Finance Ltd is a limited company and its accounts have been duly audited. It is also stated that the books of accounts have been accepted by the VAT department. These facts show that the entries made in the books of accounts and stock register have been accepted by the auditor and VAT department. When a specific query as to whether any adjustment was made by the AO in the assessment of M/s B & B Jewellers and Finance Ltd with regard to the impugned 1500 grams, the Ld A.R submitted that no adjustment has been made. In this view of the matter, normally, the explanations of the assessee should have been accepted. However, since there was variation between the copy of stock register taken during the course of search and the copy submitted during the course of search, the AO has rejected the above said explanations. In our view, before rejecting the explanations of the assessee, the AO should have conducted necessary with regard to the veracity of the suspected entries made in the stock register. However, the AO did not conduct any enquiry to find out the veracity of alleged modifications made in the stock register. Accordingly, we are of the view that the AO was

not justified in making this addition and the Ld CIT(A) was also not justified in confirming the same.

11. If the stock register of M/s B & B Jewellers and Finance Ltd has been accepted in its assessment by the concerned assessing officer and further, in the absence of any other credible material to support the view of the AO, we are of the opinion that there is no reason to take a different view in the hands of the assessee. However, since this fact requires verification, we restore this issue to the file of the AO for the limited purpose of examining the view taken by the AO in the hands of M/s B & B Jewellers and Finance Ltd. If the AO of the above said company has accepted the stock register, then we direct that the present addition should be deleted. Accordingly, the order passed by Ld CIT(A) on this issue stands set aside.

12. The next issue relates to the addition of Rs.69,91,181/- relating to 2668.390 grams of jewellery found during the course of search. With regard to these jewellery, the assessee explained that they belong to his wife Smt. Teena Bethala and they were purchased in 2004. In support of the same, the assessee furnished a copy of purchase bill dated 03-10-2004. The AO noticed that the above said purchase bill has been issued by M/s B B Jewellers & Finance (P) Ltd and it did not contain the descriptions of gold jewellery. Accordingly, the AO took the view that the same could be an accommodative entry given by B B Jewellers & Finance (P) Ltd, since it is their own family concern. The AO also noticed that Smt. Teena Bethala had declared income of around 1.08 lakhs in AY 2004-05 and she did not file return of income in subsequent years. Accordingly, the AO rejected the explanations of the assessee and assessed the above said sum of Rs.69,91,181/- in the hands of the assessee. The Ld CIT(A) also confirmed the same.

Page 7 of 12

13. The Ld A.R submitted that these jewellerys belong to the wife of the assessee and in support of the same, the assessee has produced a copy of purchase bills. The AO has scanned the same at page 14 of the assessment order. The jewellerys have been purchased by paying VAT also. Since the jewellerys were purchased from related concern, viz., M/s B B Jewellers & Finance (P) Ltd, the AO has rejected the explanations on surmises and conjectures. He submitted that the assessee has proved that the jewellerys were purchased by his wife and hence the AO/CIT(A) was not justified in making this addition in the hands of the assessee.

14. On the contrary, the Ld D.R submitted that the income of the wife of the assessee Smt Teena Bethala was not commensurate with the amount of investment made in the alleged purchases. Further, the bill has been given by the related concern, wherein the assessee is a director and hence it could be an accommodative entry.

15. We heard rival contentions on this issue and perused the record. The undisputed fact remains that the purchase bill dated 03-10-2004 issued by M/s B B Jewellers & Finance (P) Ltd was issued in the name of Smt. Teena Bethala and it shows that gold jewellerys weighing 3006.46 grams have been sold to Smt. Teena Bethala. We notice that the AO has rejected this evidence for the reasons that there was no description of the jewellerys and further it could be an accommodative entry, since the bill has been issued by a related concern. We have noticed earlier that the bill also shows that a VAT of Rs.51,350/- has been collected. There is no finding that this bill was a bogus bill and the same has not been accounted for by M/s B B Jewellers & Finance (P) Ltd. The facts are that

(a) the sales bill issued by the above said concern has not been proved to be bogus

(b) both the seller and buyer have accepted the transactions.

(c) the transaction is evidenced by the availability of jewellery

It is a known fact that in the case of bogus bills or accommodation entries, there will not be any actual transfer of goods/money. However, in the instant case, the jewellerys have been found during the course of search. Hence it cannot be considered as a case of accommodation entry, as presumed by the AO. In any case, as rightly pointed out by Ld A.R, the AO has entertained this presumption only on surmises and conjectures. The evidence furnished by the assessee proves the factum of purchase of jewellery. Absence of description of jewellerys, in our view, cannot be ground to suspect the nature of transaction, since the bill could have been prepared on the basis of understanding of the parties and further other factors support the genuineness of the transactions. We notice that the AO has not conducted any enquiry with Smt Teena Bethala and hence he could not have drawn any conclusion on the basis of return of income filed by her.

16. Accordingly, we are of the view that the AO has not brought on record any credible material to disprove the explanations of the assessee and accordingly we are of the view that this addition could not be made in the hands of the assessee. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this addition.

17. The last issue relates to the addition of Rs.38,19,960/- relating to 2308 grams relating to undisclosed investment in jewellery sustained by Ld CIT(A). The assessee submitted that these jewellerys belong to various members of the family. He submitted that the Instruction No.1916 dated 11.05.1994 issued by CBDT permits acceptance of 500 grams of jewellery in the case of married woman, 250 grams in the case of unmarried woman and 100 grams in the case of male member. Accordingly, it was submitted that the

no addition is warranted, if the credit is given for all the family members at the above rate. The AO, however, expressed the view that the above said instruction issued by CBDT gives certain discretionary power to the authorised officer not to seize jewellery and hence, it does not mean that the source of investment shall stand explained to that extent.

18. Before Ld CIT(A), the assessee placed his reliance on the decision rendered by Hon'ble Rajasthan High Court in the case of CIT vs. Satya Narain Patni (366 ITR 325), wherein it was held that when the jewellery found during the course of search were within the tolerable limits prescribed by the CBDT in its instructions, no addition was justifiable. Accordingly, the assessee pleaded that the credit @ quantity prescribed by the CBDT should be given to all the family members, i.e., parents, brother's family and assessee's family. The Ld CIT(A), however, partially accepted the contentions of the assessee, i.e., he restricted the credit to the members of assessee's family only and accordingly give relief to the extent of 850 grams. With regard to the claim for credit of parents and family members of his brother, the Ld CIT(A) did not accept the claim for the reason that the jewellery were found in the bed room of the assessee.

19. The Ld A.R submitted that the parents of the assessee, his brother and brother's wife are assessed to income tax. Their PAN details were given to the AO during the course of assessment proceedings. The letter furnished to the AO is placed at pages 39 to 46 of the paper book. At page 43, the assessee has stated that he has filed wealth tax computation and at page 44 the PAN details of all family members are given. The Ld A.R submitted that the assessee's family is carrying on jewellery business and the AO should not have presumed that the family members could not have possessed any jewellery. In any case, the limits of jewellery

prescribed in the CBDT instruction is the minimum amount of jewellery that should be left unseized and it does not mean that the entire jewellery found during the course of search should be considered as unexplained. He submitted that the AO should have made reasonable estimate of jewellery that should be belonging to each of the family members, by considering the status of the family of the assessee, if he is not accepting the explanations of the assessee.

20. On the contrary, the Ld D.R supported the order passed by Ld CIT(A).

21. We heard the parties on this issue and perused the record. There is no dispute with regard to the fact that the family of the assessee is engaged in jewellery business. Hence it is inconceivable that the family members could not have possessed any jewellery. The quantity of 500 grams, 250 grams and 100 grams mentioned in the CBDT instruction is not the upper limit for giving credit. Hence, as contended by the Ld A.R, a reasonable estimate should have been made considering the family status of the assessee. In any case, the Ld CIT(A) has given credit of 850 grams on the basis of CBDT instruction in respect of family members of the assessee only. When the assessee, his parents and brother are living in joint family, in our view, the credit should be given for all the members of the joint family. The Hon'ble Rajasthan High Court, in the case of Satya Narain Patni (supra) has expressed the following view with regard to the CBDT instruction (referred above):-

*“ It is true that the circular of the Central Board of Direct Taxes, referred to supra dated May 11, 1994, only refers to the jewellery to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100 gms. per male member of the family, need not be seized and it does not speak about the questioning of the said jewellery from the person who has been found with possession of the said jewellery. However, the Board, looking to the Indian customs and traditions, has fairly expressed that jewellery to the said extent*

*will not be seized and once the Board is also of the express opinion that the said jewellery cannot be seized, it should normally mean that any jewellery, found in possession of a married lady to the extent of 500 gms., 250 gms. per unmarried lady and 100 gms. per male member of the family will also not be questioned about its source and acquisition. We can take notice of the fact that at the time of wedding, the daughter/daughter-in-law receives gold ornaments jewellery and other goods not only from parental side but in-laws side as well at the time of "Vidai" (farewell) or/and at the time when the daughter-in-law enters the house of her husband. We can also take notice of the fact that thereafter also, she continues to receive some small items by various other close friends and relatives of both the sides as well as on the auspicious occasion of birth of a child whether male or female and the Central Board of Direct Taxes, looking to such customs prevailing throughout India, in one way or the another, came out with this Circular and we accordingly are of the firm opinion that it should also mean that to the extent of the aforesaid jewellery, found in possession of the various persons, even source cannot be questioned. It is certainly "Stridhan" of the woman and normally no question at least to the said extent can be made. However, if the authorized officers or/and the Assessing Officers, find jewellery beyond the said weight, then certainly they can question the source of acquisition of the jewellery and also in appropriate cases, if no proper explanation has been offered, can treat the jewellery beyond the said limit as unexplained investment of the person with whom the said jewellery has been found."*

Accordingly, we are of the view that the Ld CIT(A) should have given credit for all the family members (including parents and brother's family) as per the CBDT instructions. Accordingly, we direct the AO to give credit for the parents and family members of assessee's brother also. In case, any jewellery still remains, the AO may consider giving further credit on the basis of family status of the assessee. With these directions, we modify the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO to follow the discussions made supra.

Page 12 of 12

22. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 28<sup>th</sup> Jan, 2021

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 28<sup>th</sup> Jan, 2021.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**