

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSIAN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1241/JP/2019  
निर्धारण वर्ष / Assessment Year : 2017-18

Keshav Gupta, E-8, Kanti Chandra Road, Bani Park, Jaipur.	बनाम Vs.	A.C.I.T., Central Circle-3 Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ADJPG 6516 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Dileep Shivpuri (Adv)  
राजस्व की ओर से / Revenue by : Smt. Rooni Paul (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 16/12/2020  
उद्घोषणा की तारीख / Date of Pronouncement : 12/03/2021.

आदेश / ORDER

**PER: SANDEEP GOSIAN, J.M.**

This appeal by the assessee is directed against the order dated 03/09/2019 of Id. CIT (A)-4, Jaipur for the assessment year 2017-18. The assessee has raised following grounds of appeal :-

- “ 1. The CIT(A)-04, Jaipur erred in law and on facts in sustaining an addition of Rs. 9,29,858/- of Income Tax Act w.e.f. 01/04/2013.
2. The CIT(A)-04, Jaipur erred in law and on facts in giving additional credit of only 50 Gms of gold and stones per family member while agreeing that additional credit need to be given due to social status of the family.
3. The CIT(A)-04, Jaipur erred in law and on facts in not considering and adjudicating on the plea of the appellant that:
  - a) jewellery is normally owned and possessed by ladies, hence, if addition for excess jewellery had to be made, it would have to be made in the hands of the ladies of the family.

*b) alternatively, and without prejudice to the stand made above, if addition had to be made on account of excess jewellery, then it had to be made pro-rata in the hands of all the family members."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee derived income from salary and interest earned on deposits with bank. A search u/s 132 of the Income-Tax Act, 1961 (in short, the Act) was conducted on the business and residential premises of M/s Integral Urban Co-operative Bank Ltd. and persons associated with this entity on 11.12.2016. The house of the assessee was also searched since he draws salary from the bank as CEO. During the course of the search, no incriminating document was found. However, jewellery belonging to the assessee and his family members living under the same roof was found and seized. Assessee filed his return of income on 24.07.2017 declaring total income of Rs. 11,59,640/-. Assessment order was passed on 10.12.2018 and the only addition that was made, was because of alleged excess jewellery found in the residence during search and made the additions.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties as well as perusal of material placed on record, had given part relief to the assessee. Against the order of the Id. CIT(A), the assessee has preferred present appeal before the ITAT on the ground taken above.

5. All the grounds of appeal are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in giving part relief to the assessee. The Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and relied upon the written submissions filed before the Bench and the contents of the same is reproduced below:

*All the Grounds of Appeal revolve around the addition on account of jewellery and stones found during search.*

*It may be stated at the outset that the circular no. 1916 of the CBDT , which has been relied on by the Assessing Officer, also makes it clear that it was :*

*i) issued to nullify small quantity of jewellery being seized , it did not lay down the maximum amount to be credited to one family member;*

*ii) it differentiated between married females, unmarried females and males.*

*iii) it stated that the status and standing of the assessee had to be taken into account.*

*A copy of the said circular is annexed herewith and marked as **Annexure 1**. It is our submission that the Assessing Officer erred in interpreting the circular to mean that the maximum credit for jewellery was laid down therein. The worthy CIT(A) recognised this error of the AO and gave credit of a further 50 gms. per family member in his appellate order. He also gave credit for the stones embedded in the said jewellery. Therefore, he recognised the fact that the status and standing of the family was higher than the minimum recognised by the said circular.*

*This principle has also been recognised by the Hon'ble ITAT, Jaipur Bench in their judgment in the case of **Ram Prakash Mahawar v. Dy. CIT, Central Circle, Alwar [2020] 115 [taxmann.com](http://taxmann.com) 241 (Jaipur-trib.)** wherein it has*

been stated that an assessee can have jewellery **over and above** that credit for which has to be given as per circular 1916 of CBDT dated 11.05. 1994. Our case is also the same.

It is further submitted that the status of the family has not been fully appreciated. The following family members of the joint family were income-tax payers and were filing returns of income. Keshav Gupta, the Appellant, has declared the following income in his returns:

<b>S.No.</b>	<b>Assessment Year</b>	<b>Income returned</b>
1.	2017-18	11,59,640/-
2.	2016-17	12,13,460/-
3.	2015-16	9,96,590/-
4.	2014-15	8,72,640/-
5.	2013-14	7,79,360/-
6.	2012-13	6,71,600/-

It may also be submitted that the following members of the joint family are also filing returns of income:

<b>Name of family member</b>	<b>A.Y. 2016-17</b>	<b>A.Y. 2017-18</b>	<b>A.Y. 2018-19</b>
Munni Devi	2,48,169	2,63,523	1,45,494
Preeti Devi	2,66,706	2,73,067	84,061
Manphooli Devi	6,10,587	6,54,971	6,82,742
Suresh Kumar	1,26,000	2,87,055	2,99,197
Ojas Badaya	A.Y 2019-20 3,06,840/-		

Copies of the returns filed by Smt. Munni Devi, Manphooli devi, Preeti Devi. Suresh Kumar for A.Y. 2018-19 and that filed by Oj as Badaya for A.Y. 2019-20 are enclosed herewith and marked as **Annexure 2 (colly.)** It is submitted that the figures given above shows that the status of the family was much above average , which fact was not truly appreciated by both the AO and the CIT(A) . It is also submitted that the Appellant belongs to the Gupta(baniya ) or business family and by tradition they have lot of gold and gold ornaments in the family, brought down from generations, received from elders , friends, and relatives during festivals, marriages, social occasions etc. This is the custom and practice of the community to which the assessee belongs.

*It is worthwhile to note that the worthy CIT(A) has accepted this fact when he has given further credit of 50 Gms. to each member of the family in his appellate order. It is our submission that , keeping in mind the status and standing of the joint family, the AO and the CIT(A) should have accepted the total jewellery found during search as explained.*

*It is submitted further that **no incriminating document of any kind was found during search in the premises of the Appellant.** The assessee has only salary income and income from interest on deposits. He has no known source from which he can earn undisclosed income. The assessee is CEO of M/s Integral Urban Co-operative Bank Ltd.. He is also Secretary of St. Wilfred Educational Society from which he does not get any remuneration. Hence, to reiterate, the appellant has no means of earning any undisclosed income. It may be emphasised that the mother and grandmother of the Appellant had considerable family gold jewellery and giving credit of only 550(500+50) gms. to each by the authorities below is unfair and against reason. Much more credit should have been given in their hands.*

*Therefore, making the total addition in his hands, is against reason and should not be sustained.*

*Fourthly, it an established fact and part of Indian tradition that jewellery mainly belongs to the ladies of the house. Hence, if any addition had to be made on account of undisclosed investment, it had to be made in the hands of the ladies, and not of the Appellant since the e owned by him is very limited, and further, he has only income from salary and interest and so he cannot possibly have undisclosed income. Therefore, the AO as well as the worthy CIT(A) have erred in holding that whatever addition has to be made, will be made only in the hands of the Appellant. At best, the addition had to be restricted on pro-rata basis in the hands of the Appellant.*

*Fifthly, it is submitted that the worthy CIT(A) has given credit for an additional 50 gms. in all the 7 hands. But the fact remains that more credit had to be given in the hands of the married females, followed by unmarried females, then*

*the males. This fact has been recognised by the CBDT also in the circular mentioned supra wherein they have given credit of 500 gms., 250 gms., and 100 gms. respectively in the hands of the married females, unmarried females and males respectively. If the same ratio is adopted, then there are 3 married females, 1 unmarried female and 3 males in the joint family. If additional credit is given in the same ratio as given in the circular cited above, no addition results.*

*To sum up, in view of the facts of the case, and the law thereon , keeping in mind the status and standing of the family, and the Indian tradition in the baniya community, the jewellery found during search can be easily explained to have been acquired from ancestors, and on the occasion of festivals, marriages etc.*

*In view of the above, the addition of Rs. 9,29,858/- sustained by the worthy CIT(A) deserves to be deleted."*

6. On the other hand, the Id. DR has relied on the orders of the revenue authorities.

7. We have heard the rival contentions and carefully perused the material available on record. As per the facts of the present case, a search U/s 132 of Act was conducted on the business and residential premises of M/s Integral Urban Cooperative Bank Ltd. and the persons associated with it on 11/12/2016. Since the assessee was one such person who was subjected to search operation, therefore, proceedings U/s 153A r.w.s. 143(3) of the Act were initiated against the assessee. In consequence thereof, the assessee filed his return of income declaring total income of Rs. 11,59,640/-. The assessment order was passed and only addition made was on account of

excess jewellery found in the residence of the assessee during the search.

The total jewellery found during the search was as follows:

i)	On person on the assessee's wife Smt. Preeti	291.140 gms
ii)	in the bedroom of Smt. Munni Devi	133.200 gms
iii)	in the bedroom of Smt. Preeti and the assessee	150.300 gms
iv)	Locker No. 14 in M/s Integral Urban Cooperative Bank Ltd. in the name of the assessee and of his wife Smt. Preeti Gupta	1633.900 gms
v)	Locker No.139 in M/s Integral Urban cooperative Bank Ltd in the name of Smt. Preeti Gupta	488.100 gms
	Total	2696.640 gms
	Rounded off	2697.000

The A.O. while relying upon the CBDT's Circular no. 1916 dated 11.05.1994 allowed, as explained 500 gms. for every married lady, 250 gms. for every unmarried lady and 100 gms. for every male member of a family, thus treating 2050 gms as explained and balance 647 gms. of jewellery as unexplained itself making addition of Rs. 17,84,167/- on account of jewellery and Rs. 10,08,230/- on account of precious stones thereby making total addition of Rs. 27,92,397/-.

8. On further appeal, the Id. CIT(A) restricted the addition to Rs. 9,29,858/- by holding that the A.O. had not given any leverage for the stone which were found to be embedded in the jewellery and had also not given any weight age for the status and standing of the family. Thus, restricted the addition by holding that further 50 gms of gold may be considered as explained in the hands of each of the family members seeing the social

standing and status. Thus, in this way, unexplained gold was held to be only at 297 gms. Although, the Id AR has challenged the entire addition before us by referring to the CBDT circular No. 1916 and submitted that both the lower authorities have not fully appreciated the status and standing of the family of the assessee because the status and standing of the family of the assessee was higher than the minimum recognize by the said circular and as per the assessee, the assessee was living in a joint family and almost all members of the family were income tax payers and were filing their respective returns of income and in this respect, the assessee has also filed on record details of income tax paid by each member of the joint family and the details of the same are as under:

<b>S.No.</b>	<b>Assessment Year</b>	<b>Income returned</b>
1.	2017-18	11,59,640/-
2.	2016-17	12,13,460/-
3.	2015-16	9,96,590/-
4.	2014-15	8,72,640/-
5.	2013-14	7,79,360/-
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Ojas Badaya	A.Y 2019-20 3,06,840/-		

By referring to the above table, it was submitted by the Id AR that figures given in the above table shows status of the family was much average and therefore, no addition was called for in the hands of assessee. However, the

Id. DR has fully relied upon the order passed by the Id. CIT(A) and submitted that the Id. CIT(A) had passed a well reasoned order by appreciating the status and standing of each family members of the assessee and therefore, had rightly restricted the addition by giving further credit of 50 gms of gold to each of the family members of the assessee.

9. After considering the totality of the facts and circumstances of the case as mentioned above, we found that the Id. CIT(A) after appreciating the facts of the case with regard to standing and status of the assessee, has rightly granted further credit of 50 gms of gold to each member of the family of the assessee, therefore, to that extent, the order of the Id. CIT(A) needs no interference.

10. However, we have noticed that the entire addition in respect of excess jewellery were added exclusively in the hands of the assessee without giving any cogent reason as to why the addition has been made only in the hands of the assessee when it was established on the file that jewellery found from the premises belongs to all family members of the assessee. It is an admitted fact that the assessee had only salary income and income from interest in his hands. As per the records, the assessee is a CEO of M/s Integral Urban Co-operative Bank Ltd. and is getting salary. He also had income from interest on

his past savings. The assessee is not getting any remuneration of being an honorary Secretary of St. Wilfred Educational Society. Thus, he does not have any ostensible source of income which could generate unaccounted income. We further found from the records that no incriminating document was found during search of his residence to show or demonstrate that the assessee had unaccounted income of any sort from any source. No corroborative evidence has been placed on record by the revenue to show that the said excess jewellery found during search exclusively belonged to, or was purchased out of unaccounted income of the assessee. Further in our view, jewellery is something which primarily belongs to the ladies of the House. Moreover, in the present case, once it is accepted that these jewellery items belong to other members of the family and the assessee has given specific details regarding such items identified to other family members, therefore, in our view, the entire addition could not have been made in the hands of assessee alone and it should have been added on pro-rata basis in the hands of all the family members and not the assessee alone. It has already been brought on record that all the family members are income tax payee and are filing their respective income tax returns. Therefore, the addition so made in the hands of assessee needs to be reduced on this score. Hence, we direct the A.O. to make addition in respect of unexplained jewellery on pro-rata basis and restrict the additions in the hands of assessee of his share alone.

11. In the result, appeal of the assessee is allowed partly.

Order pronounced in the open court on 12/03/2021.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाइ)  
(SANDEEP GOSIAN )  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/03/2021.

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Keshav Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent-The A.C.I.T., Central Circle-3, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 1241/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar