

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

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

आयकर अपील सं./ITA. No. 312/JP/2020
निर्धारण वर्ष/Assessment Years : 2016-17

Shri Subh Karan Pareek A-90, Ashok Vihar Alwar, Alwar-301001.	बनाम Vs.	The DCIT, Central Circle, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACJPP 7321 G		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri Ajay Chandra (CIT)

सुनवाई की तारीख/ Date of Hearing : 21/06/2021
उदघोषणा की तारीख/Date of Pronouncement : 20/07/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A), Jaipur dated 10.11.2020 for the assessment year 2016-17 wherein the assessee has taken the following grounds of appeal:-

"1. That the learned Assessing Officer has erred in law as well as on the facts and circumstances of the case in making an addition of Rs.12,85,536/- on account of unexplained jewellery u/s 69A of the Income tax Act, 1961 and added Back for the income of the assessee and Ld. CIT(A) has erred in sustaining the same.

2. That the learned Assessing Officer has erred in law as well as on the facts and circumstances of the case in making an addition of Rs.7,33,400/- on account of undisclosed receipt u/s 68 of the Income tax Act, 1961 and added back to the income of the assessee and the Ld. CIT(A) has erred in sustaining the same.

3. That the learned Assessing Officer has erred in law as well as on the facts and circumstances of the case in initiating the penalty proceedings under section 271AAB(1)(c) of the Income Tax Act, 1961 and the Ld. CIT(A) has erred in sustaining the same.”

2. Regarding ground no. 1, the Id AR submitted that the assessee filed his return of income on 27.09.2016 declaring total income of Rs.15,23,040/-. A search and seizure action u/s 132 of IT Act, 1961 was carried out on the residential premises of assessee on 14.10.2015. During the course of search gold jewellery weighing 1640.32 gms valued at Rs.42,16,575/- and silver articles weighing 10994 gms valued at Rs.3,64,672/- was found at the residence of assessee. The assessee vide letter dt. 29.09.2017 (reproduced at Pg 2-4 of the order) and vide letter dt. 08.12.2017 (reproduced at Pg 5-12 of the order) explained that 1300 gms of gold jewellery is a reasonable possession as per CBDT Instruction No.1916 dt. 11.05.1994. Further he has purchased 588.672 gms of gold jewellery between 2008 to 2015 which are supported with proper bills seized during the course of search annexed as Annexure N-3/2 and 119.554 gms of gold jewellery during AY 2012-13 whose invoices were furnished along with the reply of AY 2012-13. Thus, total explained jewellery comes to 2008.226 gms (1300+588.672+119.554) as against 1640.32 gms found at the time of search. Hence, no quantity/ amount of gold jewellery can be considered as unexplained.

3. It was submitted that the AO after considering the submission of assessee held that the limit for exemption of jewellery prescribed by CBDT circular also include the jewellery acquired/ purchased by assessee or received by it as gift in marriage/ any other family occasion. Considering the general/ routine phenomena of Indian marriages regarding gifting the jewellery and a routine holding of jewellery by Indian females, a reasonable exemption limit has been considered by CBDT itself but it doesn't lead to the presumption that the exemption limit is over and above the self purchase of jewellery. Further the assessee has simply stated that purchases have been made out of cash in hand/ cash withdrawal of his and his family members and nothing substantial has been produced in support of the same. In the Balance Sheet as on 31.03.2016 assessee has shown gold/silver of Rs.3,42,000, value of which is much below than the value of jewellery already held exempted in view of CBDT Instruction. In the absence of any proper supporting, the claim of assessee for its cash purchase is rejected. Thus, out of total gold jewellery of 1640.320 gms found, by giving benefit of CBDT Instruction, jewellery of 1300 gms is held as explained and balance 340.32 gms of gold jewellery valued at Rs.9,18,864/- is treated as unexplained. Regarding silver of 10994 gms valued at Rs.3,64,672/-, assessee has furnished no justification and thus, the same is also held unexplained. Accordingly, AO made addition of Rs.12,83,536/- on account of unexplained investment u/s 69A of the IT Act. The Ld. CIT(A) upheld the findings of AO and confirmed the addition made by him.

4. In the aforesaid factual background, the Id. AR submitted that the benefit of CBDT Instruction No. 1916 dt. 11.05.1994 is available to the assessee in respect of jewellery received by various family members on the occasion of marriages and other social & customary occasions. The said CBDT Instruction does not include the jewellery which is purchased by the assessee and family members from time to time which is supported by purchase bills. Hence, the quantity of jewellery which is otherwise explained by the assessee would not be treated as part of the quantity of reasonable possession as prescribed under the said CBDT Instruction No. 1916 dated 11-05-1994. Therefore, the benefit of CBDT Instruction will not take away the benefit of the explained jewellery acquired by the assessee. For this purpose, reliance is placed on the decision of Hon'ble ITAT, Jaipur Bench in case of Sh. Ram Prakash Mahawar vs. DCIT (*ITA No.918/JP/19 order dt. 20.02.2020*) where at Para 2.6, it was held as under:-

"We have considered the rival submissions as well as the relevant materials available on record. The first issue is regarding the addition sustained by the Id. CIT(A) to the tune of Rs.4,57,404/- on account of unexplained gold jewellery by rejecting the claim of the assessee being acquisition of the said jewellery by way of purchases made from time to time and also recorded in the books of account of the assessee. There is no dispute regarding the fact that jewellery to the extent 343.328 gms.represents the purchases made by the assessee from time to time which is duly supported by the purchase bills found during the search and seizure action. The said quantity of jewellery is duly recorded in the balance sheet/ books of account of the assessee and his family members. Once the AO has not disputed the purchases made by the assessee of the said quantity of jewellery then the same cannot be treated as unexplained jewellery of the assessee. The AO has denied the benefit of the said quantity of

jewellery on the ground that since the benefit of reasonable jewellery to the extent of 850 gms as per CBDT Instruction No. 1916 dated 11-05-1994 is already granted, therefore, to that extent, no further benefit can be granted. It is pertinent to note that CBDT Instruction No. 1916 dated 11-05-1994 has explained in case of gold jewellery found in the possession of the assessee during the course of search and seizure action and the assessee is not able to explain the same then the quantity prescribed under the said CBDT Instruction No. 1916 in respect of married female member, unmarried female member and male member of the assessee would be treated as a reasonable holding of jewellery on account of acquisition of that much jewellery on various occasions of marriages, other social & customary occasions as prevailing in the society. Therefore, reasonable possession of the jewellery as per the customs prevailing in the society is the basis for allowing the benefit of certain quantity of jewellery explained by the CBDT Instruction No. 1916 dated 11-05-1994 which means that the assessee need not to explain the source of jewellery found in his possession to the extent of specified quantity treated as reasonable possession by family members of the assessee. The said CBDT Instruction No. 1916 allowing the specific quantity as reasonable and need not to be explained, does not include the jewellery which is otherwise explained by proof of documents of acquisition as well as declared/recorded in the books of account of the assessee. Hence, the quantity of jewellery which is otherwise explained by the assessee by producing the purchase bills as well as recorded in the books of account of the assessee and the AO had not disputed the said explanation then the quantity which is explained otherwise by producing the purchase bills and books of account would not be treated as part of the quantity of reasonable possession as prescribed under the said CBDT Instruction No. 1916 dated 11-05-1994. Therefore, the benefit of CBDT Instruction No. 1916 dated 11-05-1994 will not take away the benefit of the explained jewellery acquired by the assessee. Accordingly, in the facts and circumstance of the case, the quantity of jewellery to the extent of 343.328

gms.has to be allowed separately as explained jewellery and no addition can be made to that extent."

5. It was further submitted that the assessee and his family members have purchased gold jewellery of 708.226 gms between 2008 to 2015. These purchases are duly supported with proper bills seized during the course of search annexed as Annexure N-3/2. A Chart showing the gold jewellery purchased is placed as page 1 of paperbook. It includes gold jewellery weighing 266.138 gms purchased on the occasion of marriage of assessee's son Sh. Shaurav Pareek on 05.12.2011. Thus, when the jewellery purchased are duly supported by bills, addition of 340.32 gms of gold jewellery valued at Rs.9,18,864/- made by the AO and confirmed by Ld. CIT(A) by treating it as unexplained is uncalled for and be deleted. Otherwise also, when it is a fact on record that gold jewellery were purchased in earlier years and there is no evidence that any gold ornament is purchased during the year, the addition for 340.32 gms of gold ornaments in the year under consideration is unjustified.

6. Regarding silver of 10994 gms found during the course of search, it was submitted that the assessee along with his family members has purchased silver weighing 3844.500 gms during the year 2009 & 2011. Copy of purchase bills which were seized during the course of search annexed as Annexure N-3/2 is at PB6, 13 & 14. Hence, silver articles to the extent of 3844.500 gms is fully explained. The remaining silver articles of 7149.50 gms is a reasonable possession in the hands of assessee and his family members as received on the occasion of marriages and other social & customary occasions. Thus, considering the status and standing of the family of assessee, addition of

Rs.3,64,672/- made by the AO and confirmed by Ld. CIT(A) by treating it as unexplained is uncalled for and be deleted. Regarding observation of lower authorities that in the Balance Sheet as on 31.03.2016 assessee has shown gold/ silver of Rs.3,42,000/-, it is submitted that assessee lived in a joint family and the gold and silver article found during the search belongs to all members of family. Since assessee was required to get his accounts audited, balance sheet of assessee was only furnished which shows gold/ silver holding of assessee only and did not show gold/ silver holding of other family members. Thus, when the balance sheet of assessee as on 31.03.2016 indicate the value of gold & silver jewellery which was acquired in earlier years, it all the more support the case of assessee that the gold jewellery purchased from time to time by various family members from their own sources for which bills are found in search needs to be considered explained. In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.

7. Per contra, the Id. DR/CIT relied on the finding of the lower authorities and our reference was drawn to the findings of the Id CIT(A) which read as under:

"2.3 I have perused the written submissions submitted by the Ld. A/R and the order of AO. I have also gone through various judgments cited.

In the present case, the jewellery found in the course of search was 1640.32 gms out of which due to CBDT instruction number 1916, jewellery to the tune of 1300 gms was considered as explained. The Ld. A/R has contended that there were certain

bills of jewellery which were presented before the AO which would make jewellery to the extent of 588.672 gms explained. In a nut shell the Ld. A/R contends that benefit of those bills should be over and above to the jewellery allowance as per CBDT instruction number 1916. The AO rejected this contention and held that jewellery considered as explained as per CBDT instruction number 1916 would cover such jewellery for which bills are available. Also admittedly the appellant and family members are not wealth tax assessees.

Thus, the AO stated that no further benefit of such bills can be allowed. The details and source of jewellery as per bills were stated by assessee as purchased/paid out of cash available with appellant and family which was withdrawn from time to time from bank accounts. However the nexus between withdrawal and purchase is not established. AO also observed that assessee's balance sheet only showed Rs. 3,42,000/- under the head jewellery. The case laws cited by appellant are also not applicable to this case. Under the facts and circumstances of the case the addition of Rs. 9,18,864/- made by the AO is upheld.

Regarding silver items of Rs. 3,64,672/- the AO has added the amount of entire silver articles found. Looking to the facts of the case and in absence of any supporting evidence, I am of the view that AO has rightly made the addition. In appeal also, assessee failed to establish the source of acquisition or justification of such silver articles. Therefore no relief regarding the addition of Rs. 3,64,672/- can be granted. Accordingly, the addition made by AO

of Rs. 12,83,536/- is hereby upheld. Ground of appeal is dismissed."

8. We have heard the rival contentions and perused the material available on record. The Coordinate Bench in case of Shri Ram Prakash Mahawar (supra) has held that the CBDT Instruction No. 1916 allowing the specific quantity of gold jewellery as reasonable and need not to be explained, does not include the jewellery which is otherwise explained by proof of documents of acquisition as well as declared/ recorded in the books of account of the assessee. In absence of any contrary authority brought to our notice or the fact that aforesaid decision of the Coordinate Bench has been stayed or reversed by the Hon'ble High Court, following the proposition laid down therein, what needs to be examined is whether the gold jewellery seized during the search from the residence of the assessee over and above treated as reasonable as per the CBDT circular has been duly explained by the assessee.

9. It has been contended by the Id AR that the assessee and his family members have purchased gold jewellery of 708.226 gms between 2008 to 2015. These purchases are duly supported with proper bills seized during the course of search annexed as Annexure N-3/2 and includes gold jewellery weighing 266.138 gms purchased on the occasion of marriage of assessee's son Sh. Shaurav Pareek on 05.12.2011. It has been further submitted that in the balance sheet of the assessee as on 31.03.2016, the assessee has also disclosed his individual gold jewellery worth Rs 3,42,000/- which has not been appreciated by the lower authorities. Per contra, the Id CIT/DR has contended that on perusal of purchase bills placed on record as per

assessee's own paperbook, most of the purchases have been made in cash and the assessee has failed to demonstrate the availability of cash at the relevant point in time and/or nexus between the withdrawals from the bank and the purchases so made out of such cash withdrawals. We find that out of total 708.226 grams of gold jewellery, 266.138 grams of gold jewellery has been purchased during the financial year relevant to A.Y 2012-13 and rest all jewellery has been purchased either prior or subsequent to A.Y 2012-13. Though these purchases are supported by the bills which are demonstrative of purchases made by the assessee, however, given the fact that most of these purchases have been made in cash, what is critical to determine is the source and the availability of cash in the hands of the assessee at the relevant point of time of purchase as for tax purposes, what is relevant to determine is nature and source of acquisition of such jewellery and not merely the acquisition of jewellery. In this regard, we find that in respect of 266.138 grams of gold jewellery purchased during the financial year relevant to A.Y 2012-13 amounting to Rs 782,233/-, the assessee has come forward with an explanation that these purchases have been made on the occasion of marriage of his son, Shaurav Pareek and source of such purchases has been stated to be cash payment of Rs 4,92,233/- and remaining through cheque. And we find that the source of cash payment has been reasonably explained by way of cash withdrawals by the assessee from his bank accounts around the same time when the marriage of his son was solemnized. Therefore, to the extent of Rs 782,233 worth of gold jewellery, the same is taken as explained by the assessee by way of purchase bills and withdrawals/payment from his bank account. Regarding the remaining

jewellery worth Rs 136,631/-, we find that no sufficient explanation is available on record in terms of source of cash payment towards purchase of such jewellery. The disclosure of gold jewellery in the balance sheet as on 31.03.2016 is demonstrate of purchases made during the financial year 2015-16 relevant to A.Y 2016-17 in absence of anything on record that such purchases were made in the earlier period and thus doesn't come to the aid of the assessee in terms of explanation of possession of the jewellery during the financial year relevant to impugned assessment year. Therefore, the addition to the extent of Rs 136,631/- towards unexplained gold jewellery is hereby confirmed.

10. Regarding silver articles, the AO has recorded a finding that assessee has furnished no explanation and the Id CIT(A) has recorded a finding that the assessee has failed to explain the source of acquisition of silver articles. Before us, it has been contended for the first time that the silver articles weighing 3844.50 grams are supported by purchase bills seized during the course of search. As we have held above, mere purchase bills are not sufficient to explain the source of purchase of silver items where such purchases are made in cash and in absence of any explanation on record in terms of availability of cash in the hands of the assessee at the relevant point of time of purchase, such purchases cannot be treated as explained by the assessee. In the result, the addition of Rs 3,64,672/- made by the AO is hereby confirmed.

11. In the result, the ground of appeal no. 1 is thus partly allowed.

12. In ground No. 2, the assessee has challenged the addition of Rs. 7,33,400/- on account of undisclosed receipt U/s 68 of the IT Act.

13. In this regard, the Id AR submitted that during the course of search a paper marked as Pg 30 of Exhibit-10 of Annexure AS was seized from the residential premises of assessee (Pg 14 of the assessment order). The paper shows receipt of Rs.25,000/- against trading margin and Rs.8,400/- received as interest on investment of Rs.7 lacs from Chintu on 25.05.2015. Further Rs.1,500/- is reduced with the narration Mom Ji and Rs.16,500/- with the narration drawn for expenses with date 28.08.2015. The AO accordingly required the assessee to explain the source of receipt of Rs.7,33,400/- (7,00,000+25,000+,8400). The assessee vide reply dt. 28.11.2017 (reproduced at Pg 15 of the order) submitted that the paper belongs to his son Sh. Shaurav Pareek. Sh. Shaurav Pareek carries the business of trading and broking in equity, derivative, commodity, currency and professional work including consultancy and service providers. This paper has no relevancy with the assessee. The AO, however, held that on the paper there is no reference of Sh. Shaurav Pareek to ascertain that to whom it pertains. The paper contains the details regarding share transactions. The assessee is also involved in the share trading and F&O business during the year under consideration as reflected from his balance sheet, P&L A/c, computation of income. Thus, the contention of assessee that the paper pertains to Sh. Shaurav Pareek and not to him doesn't have any strong footing. Accordingly, he made the addition of Rs.7,33,400/- as undisclosed receipt in the hands of assessee. The Ld.

CIT(A) upheld the findings of AO and confirmed the addition made by him.

14. It was submitted by the Id AR that the paper belongs to Sh. Shaurav Pareek, son of assessee is evident from the fact that it is in his handwriting and also that there is a noting of 'Momji' against the amount of Rs.1,500/- which indicate that Sh. Shaurav Pareek has given Rs.1,500/- to his mother. Therefore, both the lower authorities are not correct in considering this paper in the hands of assessee only for the reason that assessee is involved in the share trading and F&O business ignoring that Sh. Shaurav Pareek is also involved in share trading and F&O business.

15. It was submitted that after the assessment order passed in case of assessee, in course of assessment proceedings of the son of assessee Sh. Shaurav Pareek for AY 2015-16, his statement was recorded on 11.10.2018 where in reply to Q.No.11 & 12 he has admitted that the paper pertains to him and also explained the individual entry recorded on this paper. Thereafter in notice u/s 142(1) dt. 13.12.2018, in Query No.14, AO required him to explain each of the entry recorded on the said paper. The same was explained by him vide letter dt. 20.12.2018 where each of the amount is explained and where with reference to the amount of Rs.1,500/- he has stated that Momji refers to his mother. Thereafter, AO passed the order dt. 27.12.2018 in which no adverse inference is drawn against Sh. Shaurav Pareek on the basis of this paper. Thus, when the paper belongs to Sh. Shaurav Pareek and has also been considered in his case, addition made in the hands of

assessee is unjustified and be deleted. Otherwise also, Sh. Shaurav Pareek has explained each of the entry noted on this paper with supporting evidence, even the addition on merit is not sustainable. In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.

16. Per contra, the Id. DR/CIT relied on the finding of the lower authorities and our reference was drawn to the findings of the Id CIT(A) which read as under:

"3.3 I have perused the written submissions submitted by the Ld. A/R and the order of AO. I have also perused the scanned copy of seized document page 30/Exhibit 10 of Annexure AS 1. The Ld. A/R contended that transactions of the seized document pertain to Mr. Shaurav Pareek, son of appellant, as it has been owned up and incorporated in the return of income. The AO rejected the contention of the A/R.

I am of the view that the AO is right in rejecting the Ld. A/R's contention as there is no reference of name of Shaurav Pareek in the seized document found from the possession of the appellant. The contention that transactions have been incorporated by Shaurav Pareek is also without any basis as the Ld. A/R has not been able to demonstrate how transaction are incorporated in books and the amount offered for taxation by the Shaurav Pareek. Thus considering the facts and the circumstances of the case, the AO has rightly treated the amount of Rs. 7,33,400/- as undisclosed income of assessee. Ground No. 2 is dismissed."

17. We have heard the rival contentions and perused the material available on record. The seized document has been found from the residential premises of the assessee and during the course of assessment proceedings, the assessee has contended that the said document pertains to his son, shri Shaurav Pareek which was however not accepted and addition was made in the hands of the assessee. Post completion of the impugned assessment proceedings, basis the aforesaid submissions of the assessee that these and other documents seized from his premises are related to his son, shri Shaurav Pareek, proceedings in the hands of shri Shaurav Pareek were initiated u/s 153C of the Act and in terms of notice u/s 142(1) dated 13.12.2018, referring to seized document under consideration i.e, page no. 30 of exhibit 10 of annexure A, the AO has stated that since the said documents pertains to shri Shaurav Pareek, he was called upon to furnish his explanation and submissions before the AO. In response, shri Shaurav Pareek submitted that the said document pertains to him and given his explanation regarding the entries found in the said document. There is thus a clear finding by both the Revenue and the admission by shri Shaurav Pareek that the said documents pertains to him and in such a scenario, the contention of the assessee has to be accepted that the said document pertains to his son and we therefore find that the addition, if any, where required as per law needs to be made in the hands of shri Shaurav Pareek and there is no basis for making addition based on such seized documents in the hands of the assessee. In the result, the addition so made is directed to be deleted and the ground of appeal is allowed.

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

Order pronounced in the open Court on 20/07/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/07/2021.

*Ganesh Kumar

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

1. अपीलार्थी / The Appellant- Shri Subh Karan Pareek, Alwar.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle, Alwar.
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. 312/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar