

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH “DB”, ALLAHABAD**

(THROUGH VIRTUAL COURT),

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.492/ALLD/2014

Assessment Year: 2010-11

Mrs. Shanti Devi, Sahson, Uttar Pradesh	v.	Joint Commissioner of Income Tax, Central Circle, Allahabad
PAN: ABNPD4497N		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Godbole, C.A.
Respondent by:	Shri Shantanu Dhamija, CIT-DR
Date of hearing:	03.08. 2021
Date of pronouncement:	02.09. 2021

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee with Income Tax Appellate Tribunal, Allahabad, U.P.(hereinafter called “ the tribunal”) has arisen from the appellate order dated 27.06.2014 in appeal No. 399/JCIT/CC/Alld/11-12 passed by Ld. Commissioner of Income Tax (Appeals), Allahabad (for short ‘CIT(A)’) for assessment year(ay) 2010-11, the appellate proceedings has arisen before ld. CIT(A) from the assessment order dated 20.12.2011 passed by ld. Assessing

Officer(hereinafter called “ the AO”) u/s 143(3) of the Income-tax Act, 1961(hereinafter called “the Act”) , for ay: 2010-11 . This appeal was heard through video conferencing mode through Virtual Court by Division Bench of ITAT, Allahabad Bench, Allahabad, U.P. .

2. The assessee has raised following grounds of appeal in memo of appeal filed with the tribunal:

- “1. That in any view of the matter the income of Rs. 16,99,440.00 as determined by the assessing officer vide assessment order dated 20.12.2011 and his actions as partly maintained by the Commissioner of Income Tax(Appeals), Allahabad are unjustified and illegal both on facts and in law and therefore the declared income by the appellant should have been accepted in the facts and circumstances of the case.
2. That in any view of the matter the assessment so framed by the assessing officer is unjustified and illegal because the assessing officer had no jurisdiction to pass block assessment order in the absence of a valid action u/s. 132 of the income tax Act as well as the mandatory requirements were not complied for framing a legal and valid assessment.
3. That in any view of the matter a part sum of Rs. 6,58,969.00 out of addition of Rs. 14,74,642.00 made by the assessing officer by alleging investment in jewellery , as maintained by the Commissioner of Income Tax(Appeals) as per Para 6(iv) of his order is highly unjustified and incorrect in the facts and circumstances of the case, hence the addition deserves to be deleted.
4. That in any view of the matter for making and maintaining addition on account of jewellery both the lower authority ignored the facts , case laws and board circular VDIS disclosure by the assessee etc. as well as the fact that the jewelleryes were acquired by the assessee long ago by the appellant at the time of her marriage on their subsequent occasions from both side families and relatives as per Hindu Custom and tradition and the jewelleryes are her ‘Stridhan’ hence the addition as made without any search material is liable to be deleted.
5. That in any view of the matter the observations and findings of the two lower authorities for making and maintaining the addition as mentioned in their orders are unjustified, incorrect , without support of any search material and also contrary to the actual facts of the case therefore the part of addition as maintained by the CIT(A) is liable to be deleted.
6. That in any view of the matter the interest charged under various sections of the income tax Act is highly unjustified and illegal in the facts and circumstances of the case.

7. That in any view of the matter the appellant reserves his right to add or withdraw any ground of appeal before hearing of the appeal.”

3. The brief facts of the case are that the Revenue conducted search and seizure operations u/s 132 of the 1961 Act against Kesarwani Zarda Bhandar, Sahson , Allahabad and its partners , on 27.08.2009. The assessee is partner in a firm namely Kesarwani Zarda Bhandar . Statutory notice u/s 142(1) was issued on 01.02.2011. The assessee filed its return of income for the impugned ay: 2010-11 on 23.02.2011. The Revenue further issued statutory notices u/s 142(1) and 143(2) of the 1961 Act. During the course of search operations, Locker No. 324, Civil Lines , Allahabad which was co-owned by assessee and her husband was found in possession of the assessee and prohibitory orders were placed . The Locker was operated on 23.09.2009 by Revenue in the presence of assessee and two witnesses. In the above locker, out of total jewellery found, jewellery weighing 1725.04 gms was owned up by the assessee. There were other jewellery also found in the aforesaid locker which was owned up by assessee’s husband and her three sons, and presently we are not concerned with the same. The assessee explained before the AO that the assessee disclosed 677.610 gms under the VDIS scheme. The AO observed that statement of husband of the assessee namely Shri Kailash Chandra Kesarwani was recorded u/s 132(4) and he was specifically asked to co-relate the jewellery found during the course of search and seizure operations with the jewellery disclosed under VDIS , but he stated that he is not having inventory of jewellery. The AO observed that the assessee has not even submitted inventory of jewellery during the course of assessment proceedings. The AO observed that submissions have been made by the assessee that the asssee belongs to well known business family of Allahabad and having social status in the society. The AO treated 500 gms of jewellery as Stridhan of the assessee , which she might have been given on different occasions by her family members and relatives. Thus, the AO treated jewellery weighing 1225.040 gms as purchased out of income from undisclosed

sources. The AO also observed that during search and seizure operations, the registered valuer has valued purity of the jewellery of the assessee between 18/20 to 20/22 with rate of gold at Rs. 16,050/- per 10 gms. Thus, the AO took purity value at lower side of 18/20 the value of jewellery on the date of search of locker i.e. 23.09.2009 , value of jewellery amounting to Rs. 14,74,642/- was brought to tax by the AO , vide assessment order dated 20.12.2011 passed u/s 143(3) of the 1961 Act.

4. Aggrieved by an assessment framed by the AO u/s 143(3) of the 1961 Act , vide assessment order dated 20.12.2011 , the assessee filed first appeal with ld. CIT(A) which was partly allowed by ld. CIT(A), wherein ld. CIT(A) further allowed relief to the assessee of the jewellery declared by assessee under VDIS weighing 677.610 gms, while rest of the jewellery found from locker which was owned by assessee weighing 547.43 gms were brought to tax by ld. CIT(A) in the hands of the assessee as her income from undisclosed sources. Thus, by following the same yardstick followed by AO by taking purity of 18/20 and rate of gold at Rs. 16,050/- per 10 gms, the ld. CIT(A) confirmed additions to the tune of Rs. 6,58,969/- under the provisions of Section 69A. The assessee also challenged the assessment on legal grounds , but the same stood dismissed by ld. CIT(A), vide appellate order dated 27.06.2014.

5. Still aggrieved, the assessee has filed an appeal with tribunal raising as much as seven grounds of appeal. We have heard both the rival parties through cideo conferencing mode and perused the material on record. The assessee has before us mainly challenged the additions on merits , and no arguments were advanced on legal grounds challenging the assessment. Ground No. 1 is general in nature and stand dismissed. Vide Ground No. 2 , legal challenge is made to search conducted u/s 132 of the 1961 Act by claiming that the same was not a valid search. It is also claimed that mandatory requirements were not complied for framing a legal and valid assessment. It is also claimed vide ground number 5 that the additions were

made without any search material. In the statement of fact filed before tribunal, the assessee has mainly stated that no incriminating material was found during the course of search and hence no additions can be made . So far as these legal challenges are concerned, first of all jewellery was found from the locker which is co-owned by assessee and her husband during search operations on Kesarwani Zarda Bhandar, Sahson , Allahabad, and jewellery weighing 1725.040 gms was owned up by the assessee. It is an admitted fact that the assessee has not declared this jewellery in her income-tax returns , filed prior to date of search. Further, the assessee has admittedly not filed any wealth tax return prior to the date of search. Thus, the jewellery found from the locker , under these circumstances, itself is , prima-facie, incriminating material and there is no bar on revenue to use incriminating material found for framing assessment and bringing to tax total income including undisclosed income. The ld. Counsel for the assessee has not made any arguments before us challenging the legality of the search or assessment framed by Revenue. Moreover, the search took place on 27.08.2009 and the ay under consideration is ay: 2010-11 viz. the assessment year relevant to the previous year in which search took place. The assessment for year under consideration was framed u/s 143(3) , and the year under consideration is the year when the search took place , and the mandate under the instant case is to assess the total income. Thus, we decide this issue against the assessee.

6. On merits of the issue, we have heard both the rival parties in details and perused the material on record. We are of the considered view that the assessee has made elaborate arguments before the authorities below , as to her social status and that she belongs to a reputed and big business family of Allahabad , having interests in large businesses. She has also claimed that even her parents were having wide business interests at the time of her marriage and she was bestowed large jewellery as 'Stridhan' by her parents and in-laws at the time of her marriage. She has claimed

to have filed even photographs of her marriage to evidence that she was wearing large jewellery at the time of her marriage. She has also claimed to have filed confirmatory letter from her mother explaining that large jewellery were given to her by her parents at time of marriage, keeping in view their social and financial status. It is also claimed by her that 300 gms of jewellery was purchased by her. Thus, in nutshell a claim is made by assessee that keeping in view her social and financial status, jewellery found from locker is her 'Stridhan' and cannot be subjected to taxation. We have observed that the AO allowed the relief on account of 500 gms of jewellery. We have also observed that Id. CIT(A) allowed the relief on account of 500 gms of jewellery as allowed by the AO, and granted further relief of jewellery disclosed under VDIS. Although no explanation is given by authorities below, as to how they computed and allowed 500 gms of jewellery, but it seems that they relied on CBDT Instruction no. 1916 dated 11-05-1994 wherein it is directed that in case of married women who have not filed wealth tax return, no seizure of jewellery be made upto 500 gms. This circular refers to the jewellery which should not be seized during search operations and not with the assessments to be framed. One of the relevant factor for identifying the 'Stridhan' of a women is her and her family(both parents and in-law) social and financial status/background, which cannot be ignored keeping in view the prevalent practices as per 'Hindu' customs. It is also observed that no elaborate reasons have been given by authorities below rejecting the aforesaid contentions raised by the assessee. In our considered view, the matter need to be restored back to the file of the AO for fresh determination and the AO is directed to pass reasoned and speaking orders. We set aside the appellate order passed by Id. CIT(A) and restore the matter back to the file of the AO for fresh determination on merits in accordance with law. We clarify that the jewellery was found from the locker owned by the assessee, and the onus/burden is on the assessee to explain satisfactorily the jewellery found from the locker. We clarify that we have not commented on the merits of the issue. Needless to say that proper and

adequate opportunity of being heard shall be provided by the AO to the assessee in set aside remand proceedings. The evidences/explanations filed by assessee in her defense shall be admitted by the AO and shall be adjudicated by AO on merits in accordance with law. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

7. In the result, the appeal of the assessee in ITA no. 492/Alld/2014 is allowed for statistical purposes.

Order pronounced on 02/09/2021 at Allahabad.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 02/09/2021

Copy forwarded to:

1. Appellant – M/s Shanti Devi, Sahson, Allahabad, U.P.
2. Respondent – Joint Commissioner of Income Tax, Central Circle, Allahabad
3. CIT(A) –Allahabad, U.P.
4. CIT, Allahabad, U.P.
5. DR – CIT-DR, Allahabad, U.P.

By order

Assistant Registrar