

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI  
BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 5596/Mum/2015

(निर्धारण वर्ष / Assessment Year:2011-12)

DCIT, Cent, Cir-7(3) (Erstwhile DCIT Cent. Cir-42) Room No.655, 6 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	Smt. Sheetal Lodha 216, Shah & Nahar Industrial Estate, Off Dr. E. Moses Road, Worli, Mumbai-18.
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आयकर अपील सं/ I.T.A. No. 5556/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

Sheetal Abhinandan Lodha 412, 4 <sup>th</sup> Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai-400001.	<b>बनाम/</b> Vs.	DCIT, Central Circle-7(3) (Erstwhile Central Circle- 4(2) Room N.655, Aayakar Bhavan, M. K. Road, Mumbai-400020.
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BDCPS7295H

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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Assessee by:	Ms. Aarti Sathe
Revenue by:	Shri Deepkant Prasad (DR)

सुनवाई की तारीख / Date of Hearing: 21/04/2021

घोषणा की तारीख /Date of Pronouncement: 09/07/2021

**आदेश / O R D E R**

**PER AMARJIT SINGH (JM):**

The revenue as well as assessee have filed the above mentioned appeals against the order dated 30.09.2015 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2011-12.

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2. The assessee has filed the present appeal against the order dated 30.09.2015 passed by the Commissioner of Income Tax (Appeals) -48,



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Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.

3. The assessee has raised the following grounds: -

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming Rs.12,19,624/- being the value of 15.62 cts of diamond jewellery as unexplained investment of the appellant, ignoring the fact that this form part of the 287.58 cts of diamond jewellery declared by the 'Lodha Group' company M/s. Shreeniwas Cotton Mills Ltd. before the Income Tax Settlement Commission.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of cash found during search action to the extent of Rs.1,77,000/-*

*3. The appellant craves leave to add to or modify the above grounds of appeal."*

4. The brief facts of the case are that during the search action, various gold bars and coins were found from the residence of the appellant or lockers belonging to her family members. The list of bars and coins found were annexed as "sheet No 2" to the assessment order. The Appellant was asked to explain the said gold bars and coins. The appellant filed a reconciliation of the jeweler which was the part of assessment order annexed as "Sheet No 3". The appellant's explanation was found satisfactory by the AO except for bars and coins weighing 21,108.02 grams. Out of the bars and coins weighing 21,108.02 grams, the appellant explained that bars and coins weighing 1,780 grams and 2.280 grams belong to M/s. Lodha Developers Limited and M/s. Macrotech Construction Private Limited respectively which were recorded in their



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respective books of accounts. For the remaining bar and coin weighing 17,048.02 grams (i.e. 21.108 02 grams — 1.780. gram - 2,280 grams), the appellant explained that the said bars and coins belonging to firm Shree Sainath Enterprises who had filed an application before the Income Tax Settlement Commission (ITSC) wherein they had disclosed the bars and coin and stated to be utilization of additional income offered before the ITSC. However, the AO made the addition of 21,108.02 valuing to Rs. 3,66,53,243/- for the reason that if the bars and coins were belonging to the individuals then there could be no possible reason for keeping the companies gold and bars in the premises and lockers of the individuals. Therefore, the AO made the addition in the hand of following assessee's belonging to same family:

Sr. No.	Name	Weight in grams	Amount
1	Sheetal Lodha (Appellant)	295	6,34,250
2	Vinti Lodha	555	11,93,250
3	Manju Lodha	20,258	4,35,54,700
	Total	21,108	4,53,82,200

The AO also made the protective addition of Rs. 2,58,62,199/- in the hand of Sheetal Lodha (which were disputed in appeal by ground no 4) for the reason that the appellant and Sheetal Lodha jointly held locker number 1084 in Dena Bank where jewellery weighing 12,028.93 grams were found. Substantive addition of the same was raised in the hand of the appellant.

### **ISSUE NO. 1**

5. Under this issue the Ld. Representative of the assessee has challenged the confirming the addition to the tune of Rs.12,19,624/- being the value of 15.62 cts of diamond jewellery as unexplained investment



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which was the part of the 287.58 cts of diamond jewellery declared by the 'Lodha Group' company M/s. Shreeniwas Cotton Mills Ltd, before the Income Tax Settlement Commission. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of Hon'ble ITAT in the assessee's own/family member's cases bearing ITA. No. 5554/Mum/2015 for the A.Y.2011-12, ITA. No. 5555/Mum/2015 for the A.Y.2011-12, ITA. No. 5557/Mum/2015 for the A.Y.2011-12, ITA. No. 5578/Mum/2015 for the A.Y.2011-12, ITA. No.5596/Mum/2015 for the A.Y. 2011-12, ITA. No.5597/Mum/2015 for the A.Y.2011-12 & ITA. No.5598/Mum/2015 for the A.Y.2011-12 dated 19.06.2018. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The copy of order dated 19.06.2018 is on the file in which all eight appeals of the assessee's as well as family members were decided. The present issue raised in the appeal bearing ITA. No.5556/Mum/2015 has not been decided, therefore, the said issue was recalled vide order dated 13.09.2019. The issue has been adjudicated while deciding the ITA. No. ITA. No. 5554/Mum/2015 for the A.Y.2011-12, ITA. No. 5555/Mum/2015 for the A.Y.2011-12, ITA. No. 5557/Mum/2015 for the A.Y.2011-12, ITA. No. 5578/Mum/2015 for the A.Y.2011-12, ITA. No. 5596/Mum/2015 for the A.Y. 2011-12, ITA. No.5597/Mum/2015 for the A.Y.2011-12 & ITA. No.5598/Mum/2015 for the A.Y.2011-12 dated 19.06.2018 and the relevant finding is hereby reproduced as under.:-

*"12. In Ground No.1, revenue is aggrieved by the order of CIT(A) for deleting addition of Rs.4,28,146/- being alleged long term capital gains in the hands of Smt. Manjula Lodha in ITA No.5597/Mum/2015.*

*13. Rival contentions have been heard and record perused.*



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14. Brief facts are that during the course of search action at the premises of the assessee, silver jewellery/utensil weighing 1.5 Kgs were found from the residential premises. She was asked to match the same with wealth tax return. In the wealth tax return, the silver jewellery/utensil shown was 15.600 Kgs; thus, she was asked to explain the reason for shortage of silver jewellery/utensil found as compare to silver jewellery/utensil shown in the wealth tax return. She was also asked to explain why shortage shall not be treated as sale and accordingly Long Term Capital Gain shall be taxed in her hand as the silver utensil was bought in year 2001. Assessee vide letter dated 27.02.2013 objected the proposal of the AO in taxing the shortage as Long Term Capital Gain. She contested that there is no evidence suggesting that she has sold any silver jewellery/utensil; hence, no such 16 addition is justifiable in absence of any material. Not satisfied with the reply of the assessee, the AO made the addition of Rs. 4,28,146/- being Long Term Capital Gain which has been worked out as under:

Particulars	Working	Amount
Sale consideration	14.100 Kgs X Rs. 43,000 per kg	6,06,300/-
Indexed cost of acquisition	(14.100 Kgs X Rs. 7.215 per kg X 711 406	1,78,155/-
	LONG TERM CAPITAL GAIN	4,28,146

The above addition made by the AO holding that assessee failed to appreciate that be variety of reasons for not finding the silver utensil/jewellery at the premises of the (for example jewellery kept at some relatives place, kept at some office, given to jewellers remaking etc.). It is not prudent to presume by an AO that if an assessee owns a valuable item the same cannot move out of the residential premises of the assessee. Such kind of presumption is not justified on the part of the AO.



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*CIT(A) also held that the AO failed to appreciate that only real income, supported by the documentary evidences, can be taxed and not the income determined on the basis of presumption. In the present case, no material, whatsoever remote, has been brought on record by the AO suggesting that the assessee has transferred the silver utensil on a particular date to a particular person. Neither the date of transfer nor the details of transferee has been pointed out by the AO. The Addition made by the AO is solely on presumption that if lesser silver utensil is found than the shown in wealth tax return then it means that the assessee has transferred the remaining. Such kind of presumption is totally unjustified. CIT(A) held that in order to tax income, there must be something more than an allegation and presumptions which is missing in the case of the assessee as no material has been brought on record by the AO substantiating that the assessee has transferred the silver utensil jewellery. The precise observation of CIT(A) was as under:-*

*3.6 I have considered' the submission, paper book and rejoinder to remand report filed by the AR and assessment order and remand report of the AO. The sole reason emerging from the assessment order for making the addition is silver utensils / jewellery found at the time of search is lesser than what is recorded and shown in the wealth tax return. It is not in dispute that assessee belongs to a very rich and reputed family. The AO failed to appreciate that there could be variety of reasons, for not finding the silver utensils / jewellery at the premises of the assessee (for example, jewellery kept at some relatives place, kept at some office, given to jewellers for remaking etc:). It is not prudent to presume by the AO that if an assessee owns a valuable item then the same cannot move out of the residential premises of the assessee. Such kind of presumption is not justified on the part of the Assessing Officer. The AO also failed to appreciate that only real income, supported by the documentary evidences, can be taxed and not the income determined by the AO on his own presumption. In the present case, no material*



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*whatsoever remote has been brought on record by the AO suggesting that the assessee has transferred the silver utensil on a particular date to a particular person. Neither the date of transfer nor the details of transferee has been pointed out by the AO. The addition made by the AO is solely on presumption that if lesser silver utensil is found than shown in wealth tax return then it means that the/assessee has transferred the remaining. As stated above such kind of presumption is totally unjustified. As reiterated by the Hon'ble Supreme Court from time to time in order to tax an income there must be a real income. In order to tax income, there must be something more than, an allegation and presumptions which is missing in the case of the v assessee as no material has been brought on record by the AO substantiating that the assessee has transferred the silver utensils /jewellery. Therefore, the addition made by the AO is deleted. This ground, of appeal is allowed.*

*16. We have considered rival contentions and carefully gone through the orders of the authorities below. From the record we found that addition has been made by the AO in the presumption that the valuable items cannot be moved out of the residential premises of the assessee, therefore, the CIT(A) has correctly appreciated that only real income, supported by the documentary evidences, can be taxed and not the income determined on the basis of presumption. In the present case, no material, whatsoever remote, has been brought on record by the AO suggesting that the assessee has transferred the silver utensil on a particular date to a particular person. Neither the date of transfer nor the details of transferee has been pointed out by the AO. The Addition made by the AO is solely on presumption that if lesser silver utensil is found than the shown in wealth tax return then it means that the assessee has transferred the remaining. Since the silver utensils so found were not more than what has been declared by the assessee in wealth tax returns, there is no justification for making addition. Furthermore, the detailed finding so recorded by CIT(A) at para 3.6 of his appellate order are as*



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*per material on record which do not require any interference on our part.”*

6. On appraisal of the above mentioned finding, we find that the issue has duly been covered by virtue of order dated 19.06.2018, therefore, this issue is being decided in favour of the assessee against the revenue.

### **ISSUE NO. 2**

7. At the time of argument, this issue has not been pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

### **ITA. No. 5596/Mum/2015**

8. The revenue has filed the present appeal against the order dated 30.09.2015 passed by the Commissioner of Income Tax (Appeals) -48, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2011-12.

9. The revenue has raised the following grounds: -

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the value of gold bars and coins weighing 4060 grams found in the locker of Sheetal A Lodha without appreciating the fact that the assessee had not explained as to why the gold bars and coins belonging to the companies were lying in the locker of the assessee and as such not discharged her onus of proving that the gold bars and coins did not belong to her?"*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.31,048/- as Long Term Capital Gain on account of sale of jewellery without appreciating the*



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*fact that the assessee had not explained the reasons for the shortage of 48.86 grams of jewellery found during the course of search as against the quantity of jewellery declared in the Wealth Tax return and as such not discharged her onus during the course of the assessment proceeding?"*

*The appellant prays that the order 01 UIT(A) on the above grounds be set basic and that of the Assessing Officer be restored.*

*The appellant craves leave to amend or alter any ground and/or add new which may be necessary."*

**10.** The facts of the present case are quite similar which have been narrated above while deciding the appeal bearing ITA. No.5556/Mum/2015, therefore, there is no need to repeat the same.

### **ISSUE No. 1**

**11.** Under these issues the revenue has challenged the deletion the value of gold bars and coins weighing 4060 grams found in the locker of Sheetal A Lodha. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own as well as family member's cases bearing ITA. No. 5554/Mum/2015 for the A.Y.2011-12, ITA. No. 5555/Mum/2015 for the A.Y.2011-12, ITA. No. 5557/Mum/2015 for the A.Y.2011-12, ITA. No. 5578/Mum/2015 for the A.Y.2011-12, ITA. No.5596/Mum/2015 for the A.Y. 2011-12, ITA. No.5597/Mum/2015 for the A.Y.2011-12 & ITA. No.5598/Mum/2015 for the A.Y.2011-12 dated 19.06.2018. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The copy of order dated 19.06.2018 is on the file which is hereby as under.:-



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*“17. Next grievance of revenue relates to deleting addition of 4060 Grams of gold bars and coin made u/s 69 of the Act found during the course of search action from the premises of the assessee, her spouse and sons.*

*18. Facts as emerged from the assessment order and CIT(A)'s order are that during the course of search action, various gold bars and coins were found from the residence of the assessee or lockers belonging to her family members. The list of bars and coins found are annexed as "sheet No 2" to the assessment order. The assessee was asked to explain the said gold bars and coins. The assessee filed a reconciliation of the jewellery which is part of assessment order annexed as "Sheet No 3 ". The assessee's explanation was found satisfactory by the AO except for bars and coins weighing 21,108.02 grams. Out of the bars and coins weighing 21.108.02 grams, the assessee explained that bars and coins weighing 1,780 grams and 2,280 grams belongs to M/s. Lodha Developers Limited (LDL) and M/s. Macrotech Construction Private Limited (MCPL) respectively which are recorded in their respective books of accounts.*

*19. For the remaining bar and coin weighing 17,048.02 grams (i.e. 21,108.02 grams - 1,780 grams -2,280 grams), the assessee explained that the said bars and coins belongs to a firm Shree Sainath Enterprises (SSE), who has filed an application before the Income Tax Settlement Commission (ITSC) wherein they have disclosed the bars and coin and stated to be utilisation of additional income offered before the ITSC. However, the AO made the addition of 21,108.02 grams valuing to Rs. 4,53,82,200/- for the reason that if the bars and coins are belonging to the individuals then there can be no possible reason for keeping the companies gold and bars in the premises and lockers of the individuals. Therefore, the AO made the addition in the hand of following assesseees belonging to the same family:*



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Name	Weight in grams	Amount
Sheetal Lodha	295	6,34,250/-
Vinti Lodha	555	11,93,250/-
Manju Lodha	20,258	4,35,54,700/-
Total	21,108	4,53,82,200/-

20. The AO also made the protective addition of Rs. 2,58,62,199/- in the hand of Sheetal Lodha for the reason that the assessee and Sheetal Lodha jointly held locker number 1084 in Dena Bank where jewellery weighing 12,028.93 grams were found; substantive addition of the same was made in the hand of the assessee.

21. Before the CIT (A), the assessee submitted that the gold bars weighing to 17,048/- has been already offered for tax by SSE before the Income Tax Settlement Commission (ITSC). In order to substantiate the contention, the assessee filed the order u/s 245D(4) of the Act passed by the ITSC. For the remaining gold bars, the assessee submitted that bars and coins weighing 1.780 grams and 2,280 grams belongs to LDL and MCPL respectively which are recorded in their respective books of accounts. The assessee filed audited financials statement of the above companies, ledger of gold bars bought and bills raised by the vendors reflecting the gold bars and coin. Being satisfied by the explanation of the assessee, the CIT(A) deleted the addition holding that the only reason for not accepting the explanation of the assessee by the AO is that if the gold bars and coins are belonging to the companies then why were kept at the premises of individual assessee. The CIT(A) held that above companies are closely held companies belonging to Lodha group. In the case of closely held companies, there is nothing un-natural if the documents/movable things of the companies are lying in the premises of their founder and promoters. Moreover, it is not in doubt that the gold bar and coins to the extent of 4,060 grams are accounted in the books of LDL and MCPL, for which payments have been made from the respective



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*companies and bills are also issued at their names. Therefore, transferring the ownership of the coins and bars in the hand of individual assesseees and taxing the same in their hand is grossly unjustified. Similarly, the addition of 17,048 grams of gold bars and coin was also deleted by the CIT(A) holding that the same is offered by the SSE before the ITSC.*

*22. Against the above order of CIT(A), the department is in further appeal disputing deletion of addition of Gold Bars weighing 17.048 grams. We had carefully gone through copy of bills raised by the vendor on LDL and MCPL, ledger account of vendor in the books of LDL and MCPL, relevant extract of audited financial statement showing that the gold bars are shown in financial statement of LDL and MCPL. In view of the above facts and in the light of supporting documents as stated above, the CIT(A) has correctly deleted the addition; hence, his order is being upheld and department's ground is dismissed."*

**12.** Since the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own as well as her family member's cases (supra), therefore, this issue is decided in favour of the assessee against the revenue.

## **ISSUE NO. 2**

**13.** The revenue has challenged the deletion of addition of Rs.31,048/- as Long Term Capital Gain on account of sale of jewellery. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own as well as family member's cases bearing ITA. No. 5554/Mum/2015 for the A.Y.2011-12, ITA. No. 5555/Mum/2015 for the A.Y.2011-12, ITA. No. 5557/Mum/2015 for the A.Y.2011-12, ITA. No. 5578/Mum/2015 for the A.Y.2011-12, ITA. No.5596/Mum/2015 for the A.Y. 2011-12, ITA.



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No.5597/Mum/2015 for the A.Y.2011-12 & ITA. No.5598/Mum/2015 for the A.Y.2011-12 dated 19.06.2018. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The copy of order dated 19.06.2018 is on the file which is hereby reproduced as under.:-

*“48. Grounds of appeal No 1 refers to action of the CIT(A) in deleting the addition of gold bard and coin weighing to 4060 grams in the hand of the assessee on protective basis. The substantive addition of the above ground was made in the hand of Smt. Manju Lodha which has been deleted by the CIT(A). In the appeal fled by the department in the case of Smt. Manjula Lodha, the department has challenged the deletion vide ground of appeal no 2. Following reasoning given hereinabove, we confirm the action of CIT(A) on this issue.*

*19. Grounds No 2 of departments appeal is against the CIT (A)s action in deleting the addition of Rs. 31,048/- being alleged long term capital gains. The facts and circumstances of the case are identical to ground No 1 of the departments appeal; hence, the CIT(A)'s order deleting the addition is being upheld and departments appeal is dismissed.”*

**14.** Since the issue has duly been covered by the decision of the Hon’ble ITAT in the assessee’s own as well as her family member’s cases (supra), therefore, this issue is decided in favour of the assessee against the revenue.



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15. In the result, the appeal filed by the assessee is hereby partly allowed and the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 09/07/2021

Sd/-  
(PRAMOD KUMAR)  
उपाध्यक्ष / VICE PRESIDENT  
मुंबई Mumbai; दिनांक Dated : 09/07/2021  
Vijay Pal Singh/Sr. P.S.

Sd/-  
(AMARJIT SINGH)  
न्यायिक सदस्य/JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai