

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.7290/M/2018
Assessment Year: 2016-17**

Mrs. Anila Rasiklal Mehta, Flat No.8, 4 th Floor, New Usha Kiran CHS, 150, Midhanukar Marg, Mumbai – 400 007 PAN: AAOPM2668L	Vs.	DCIT-CC 3(1), Room No.1924, 19 th Floor, Air India Bldg, Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

**ITA No.7292/M/2018
Assessment Year: 2016-17**

Mr. Vivek Sunil Mehta, Flat No.8, 4 th Floor, Ushakiran Co. Op. Hsg. Soc, 150, ML Dhanukar Marg, Mumbai – 400 026 PAN: AABPM1758Q	Vs.	Dy. CIT-CC-3(1), Cent. Range-3, Room No.1924, 19 th Floor, Air India Bldg, Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

**ITA No.7291/M/2018
Assessment Year: 2016-17**

Mr. Kaushika Sunil Mehta, Flat No.8, 4 th Floor, Ushakiran Co. Op. Hsg. Soc, 150, ML Dhanukar Marg, Mumbai – 400 026 PAN: AANPM3667Q	Vs.	Dy. CIT-CC-3(1), Cent. Range-3, Room No.1924, 19 th Floor, Air India Bldg, Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

**ITA No.7293/M/2018
Assessment Year: 2016-17**

Mrs. Shilpa Sudhir Mehta, 25-C, Sushilp Bungalow, Ridge Road, B.G. Kher Marg,	Vs.	Dy. CIT-CC-3(1), Cent. Range-3, Room No.1924, 19 th Floor, Air India Bldg,
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Mumbai – 400 006 PAN: AANPM3668B		Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

ITA No.2458/M/2019
Assessment Year: 2016-17

Mr. Sudhir Rasiklal Mehta, 25-C, Sur Bunglow, Ridge Road, Malbar Hills, Walkeshwar, Mumbai – 400 006 PAN: AABPM9701F	Vs.	Dy. CIT-CC-3(1), Cent. Range-3, Room No.1924, 19 th Floor, Air India Bldg, Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri N.R. Agrawal, A.R.

Revenue by : Shri Salil Mishra, D.R.

Date of Hearing : 12.08.2021

Date of Pronouncement : 14.09.2021

ORDER**Per Rajesh Kumar, Accountant Member:**

The above titled five appeals by different assessees have been preferred against the orders dated 26.10.2018 & 11.03.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2016-17. Since all these appeals are having common issues ,relate to the same family and covered under same search, therefore these are being adjudicated by this common order. We would like to decide appeal in the case of Shri Vivek Sunil Mehta.

ITA No.7292/M/2018

2. The grounds raised by the assessee are as under:

- “1. The learned Commissioner of Income tax Appeals erred in rejecting the most plausible explanation/s offered by the assessee during the course of search and assessment proceedings, while confirming addition under Section 69A of the Act.
2. The learned Commissioner of Income tax Appeals should have considered the family background of assessee and should have deleted the addition under section 69A of the Act, particularly keeping in view instructions of CBDT's in circular number 1916.
3. The learned Commissioner of Income tax Appeals erred in rejecting the most plausible explanation/s offered by the assessee and duly supported by evidences during the course of search and assessment proceedings, while confirming addition under Section 69C of the Act.

All the above grounds of appeal are independent from one other and without prejudice to one other. We further crave to add new grounds of appeal during the course of hearing before your Honor.”

3. The common issue raised by the assessee in all these grounds of appeal is against the confirmation of addition of unexplained jewellery of Rs.26,13,971/- and unexplained cash expenditure of Rs.13,90,000/- by Ld. CIT(A) thereby upholding the assessment order passed by the AO. We are first adjudicating the unexplained addition in respect of jewellery.

4. The facts in brief are that the assessee filed the return of income under section 139(1) of the Act on 28.09.2016 for A.Y. 2016-17 declaring total income of Rs.91,78,060/-. A search and seizure action under section 132(1) of the Act was conducted on Surjem Group which belongs to the assessee on 18.11.2015. During the course of search in the residential premises of key persons as well as on the lockers maintained by the family, certain jewellerys of gold and diamond were found. The assessee was asked to explain and file a reconciliation of the said jewellery found during the search. The jewellery was valued by the government approved valuer Mr. Kamlesh S. Nahar and Mr. Praful Jayant Kumar Bansali. The assessee also filed the reconciliation of the jewellery before the search team. The

difference between the total jewellery found at the time of search in the hands of 5 assessee namely; Mr. Vivek Sunil Mehta and other four assessee is summarised as under the reconciliation in respect of which was furnished by these individuals as under:

- (i) Excess gold jewellery of 1140.30 gms valuing at Rs.26,59,858/-
- (ii) Excess diamond jewellery of 221.93 carats valuing Rs.22,00,616/- thus total addition made in the hands of 5 persons as stated above was Rs.48,60,474/-.

5. During the course of search proceedings, three members of the family were subjected statements u/s 132(4) of the Act at three different places and they gave the statements to the search team that Ms. Sangeeta Mehta and Mr. Manoj Mehta both citizens of Belgium had kept jewellery with the assessee for their personal use as and when they visit India. Besides, the confirmation of Ms. Sangeeta Mehta and Mr. Manoj Mehta, their affidavits were filed before the AO stating that they have kept some jewellery to be used by them as and when they visit India. However, the AO was not convinced with the contentions of the assessee and accordingly added unexplained jewellery in the hand of assessee of Rs.26,13,971/- comprising Rs.24,73,589/- as unexplained gold jewellery and Rs.1,40,382/- as unexplained diamond jewellery in the assessment framed in the case of the assessee under section 143(3) of the Act dated 30.12.2017.

6. The Ld. CIT(A) partly allowed the appeal of the assessee by restricting the addition on account of unexplained gold jewellery at Rs.18,22,856/- thereby allowing a relief of Rs.6,50,733/- in respect of unexplained gold jewellery whereas the addition in

respect of diamond jewellery of Rs.1,40,382/- was confirmed by observing and holding as under:

"5.2 I have considered the submissions and contentions of the assessee as also the order of the AO. It is noted that a search action u/s 132 was carried out on the assessee group on 18.11.2015 and since the assessee is a member of this group, she was also covered. The family tree of Mehta family is explained as under:

Mother Ms. Anila Mehta & Shri Rasiklal Mehta (1st Gen)

Second Generation

Sons	Mr. Manoj Mehta(NRI)	Mr. Sudhir Mehta	Late Mr. Sunil Mehta
Wife	Mrs. Sangita Mehta	Mrs. Shilpa Mehta	Mrs. Kaushika Mehta

Third Generation

Sons	Mr. Saket Mehta & Mr. Sumit Mehta	Mr. Vivek Mehta
Wife	Mrs. Meenti Mehta Mrs. Geeta Mehta	Mrs.Sikha Mehta

5.3 In course of the search action, at the residence of Mr. Saket Mehta at Sushilp, Ridge Road, Malabar Hill, Mumbai as well as Locker No 1335 with Bank of India and Locker No 449 with Dena Bank, diamond and gold jewellery etc. were found. Similarly, from the residence of Mr. Vivek Mehta at Usha Kiran, M L Dahanukar Marg, Mumbai as well as Locker Nos 47, 791, 61 OF, 650 & 11, diamond and gold jewellery etc were found.

5.4 Mr. Saket Mehta was asked to confirm and reconcile the diamond and gold jewellery etc. found from his residence at Sushilp and locker No 1335 with Bank of India and Locker No 449 with Dena Bank. In response, he stated that theirs is a joint family and his cousin brother Mr. Vivek Mehta will provide the complete reconciliation of the jewellery found for the entire joint family. He also gave a general statement that his paternal uncle, Mr. Manoj Mehta and aunt, Mrs Sangita Mehta have kept some jewellery items with his mother, Mrs Shilpa Mehta for safe-keeping for their use during their visits to India. However, since his mother, Mrs Shilpa Mehta was not in India at the time of search action, this claim of Mr. Saket Mehta could not be verified.

5.5 On reconciliation of the diamond and gold jewellery found at the time of search action with the Wealth Tax Returns filed by the various members of the entire joint family, it was observed that there is excess gold jewellery of 1140.3 grams valued at Rs 26,59,858/-. Further, at the time of search action, the item-wise reconciliation of diamond jewellery of Rs 18,72,952/- could not be done. Therefore, Mr. Vivek Mehta was asked to explain the said excess diamond and gold jewellery etc found of the entire joint family in course of the search action. In this regard, Mr. Vivek Sunil Mehta also took the stand that his paternal uncle, Mr. Manoj Mehta & aunt, Mrs Sangita Mehta may have kept some items with his mother, Mrs. Kaushika Mehta for safe-keeping for their use during their visit to India. It was further stated that the total jewellery belonging to Mr. Manoj Mehta and Mrs. Sangita Mehta and lying with them may not exceed the basic wealth-tax exemption limits. When asked

to provide documentary evidences like wealth-tax returns, financial statements, etc. of Mr. Manoj Mehta and Mrs Sangita Mehta, it was informed by Mr. Vivek Mehta that they are NRIs. When specifically asked to furnish some evidences to support the claim that certain jewellery items have been handed over to his mother by Mr Manoj Mehta and Mrs Sangita Mehta, Mr. Vivek Sunil Mehta could not provide any evidence. However, his mother, Kaushika Mehta was not examined, at the time of search action, in view of her old age. While trying to reconcile the excess jewellery/valuables, Mr. Vivek Sunil Mehta also stated that some of the items may have been received as gifts from family and close friends from time to time on festive occasions and personal milestones of the family members including children. However, when asked to clarify as to whether the said gifts received are reflected in their wealth-tax returns, it was informed that these gifts may have been received on or after 01.04.2014 and therefore are not reflected in the respective wealth-tax returns filed till date.

5.6 It is relevant to note that at the time of the search action, both Mr Saket Mehta as well as Mr. Vivek Mehta were specifically asked to furnish evidences to show that Mr. Manoj Mehta and Mrs Sangita Mehta had kept some jewellery with their respective mothers, Mrs Shilpa Mehta and Mrs Kaushika Mehta. However, both of them could not furnish any evidence at the time of the search action or even after around 4 months of the search actions. The relevant portion of the statement on oath of Mr. Saket Mehta and Mr. Vivek Mehta recorded on 27.11.2015 at the time of the search action is reproduced as under:

Saket Mehta

"Q. 7 Please provided the documentary evidence like valuation reports along withwealth tax returns, balance sheet of Shri Manoj Mehta, Smt Sangeeta Mehta or evidence of keeping valuable articles by Shri Manoj Mehta and Smt Sangeeta Mehta at Sushilp, 25/c, B C Kher Road, Ridge Road, Malabar Hill, Mumbai.

Ans As mentioned above they are NRIs. Moreover, the value of the total jewellery belonging to them lying with us may not be exceeding basic wealth tax exemption limits."

Vivek Mehta

"Q.7 Please provided the documentary evidence like valuation reports along withwealth tax returns, balance sheet of Shri Manoj Mehta, Smt Sangeeta Mehta or evidence of keeping valuable articles by Shri Manoj Mehta and Smt Sangeeta Mehta at Flat No 8, 4th Floor, Ushakiran, M L Dahanukar Road, Mumbai.

Ans As mentioned above they are NRIs. Moreover, the value of the total jewellery belonging to them lying with us may not be exceeding basic wealth tax exemption limits."

5.7 From the aforesaid, it can be observed that Mr. Vivek Mehta could not furnish any evidence in support of his claim that certain diamond and gold jewellery belonging to Mr. Manoj Mehta and Mrs Sangita Mehta has been kept with his mother, Mrs Kaushika Mehta and is lying at his residence at Flat No 8, 4th Floor,

Ushakiran, M L Dahanukar Road, Mumbai. Similarly, Mr. Saket Mehta also could not furnish any evidence in support of his claim that certain diamond and gold jewellery belonging to Mr. Manoj Mehta and Mrs Sangita Mehta has been kept with his mother, Mrs Shilpa Mehta and is lying at his residence at Sushilp, 25/c, B C Kher Road, Ridge Road, Malabar Hill, Mumbai.

5.8 As noted earlier, at the time of the search action, Mr. Saket Mehta had stated that some jewellery items belonging to Mr. Manoj Mehta and Mrs Sangita Mehta have been kept with his mother, Mrs. Shilpa Mehta and his mother on her return to India would be able to identify the said jewellery items and also provide necessary evidences. However, on return to India, statement of Mrs Shilpa Mehta was recorded on 17.03.2016, who gave a general statement that Mrs Sangita Mehta had kept some jewellery with her for safe-keeping. However, when asked to furnish itemwise description of the items of jewellery and the exact place at their residences / lockers where the said jewellery items were kept at the time of search action, she replied that she did not remember. The relevant portion of the statement of Ms Shilpa Sudhir Mehta is reproduced as under:

"Q.27 During the course of search action, Shri Saket Mehta in his statement u/s132(4) of the I T Act dated 27.11.2015 stated that you would be in a position to explain regarding jewellery of Sangeeta Mehta whether kept in India. Please furnish the details of jewellery, if any kept related to Sangeeta Mehta with item-wise description?"

Ans I confirm that my sister-in-law Mrs Sangeeta Mehta who is an NRI has kept some jewellery belonging to her with me for safe keeping and for her use as and when she visits India.

Q.28 *Which jewellery have been kept by Smt Sangeeta Manoj Mehta with you and where was it kept?*

Ans I do not remember."

5.9 From the aforesaid, it can be observed that assessee even after around four months of the search action could not furnish item-wise description of the alleged jewellery items belonging to Mrs Sangita Mehta and Mr. Manoj Mehta. She even could not provide details of the specific place at her residence/locker where the said alleged diamond and gold jewellery items belonging to Mrs Sangita Mehta and Mr. Manoj Mehta were lying.

5.10 It is surprisingly noted that in the confirmation filed by Mrs Sangita Mehta and Mr. Manoj Mehta in course of the assessment proceedings, they have owned up all the items of diamond and gold jewellery which were found to be in excess. It is a standard practice among lady members that when jewellery items are given for safekeeping, an inventory is made and is handed over together in a box / pouch, etc. Such items are normally handed over to a single responsible person who in turn keeps it in safe custody either at the residence or in a locker. However, in the instant case, the assessee group claims that the jewellery items were given to 2 members of the family, the assessee and Mrs Kaushika Mehta. It is further noted that no inventory of the jewellery items was found or furnished at the time of the

search action. Further, the said alleged jewellery items could not be identified by the relevant members of the Mehta joint family, even after around 4 months of the search action. It is also noted that the said alleged jewellery items were not found at a single place but were spread across the 2 residences viz. Sushilp and Ushakiran and 7 lockers of the joint family which is unimaginable. Thus, the action of the AO of rejecting the confirmations filed by Mr. Manoj Mehta and Mrs Sangita Mehta owning up the entire excess jewellery found at the time of the search action, is found to be correct.

5.11 The assessee also contends that allowance for minimum jewellery as per CBDT Instruction no. 1919 dated 11.05.1994 was not given by the AO. It is a fact that search warrant was issued in the name of Mr. Manoj Mehta and Mrs Sangita Mehta. As per Instruction No 1916 dated 11.05.1994, gold jewellery to the extent of 250 gms for a lady member and 100 gms for a male member is not to be seized in cases where Wealth Tax Return is not being filed. Even the various Hon'ble High Courts in the cases of Ratanlal Vyaparilal Jain (339 UTR 351 (Guj)), Ashok Chhada (ITA No 274/2011 dated 05.07.2011)(Del) and Kishinchand Uttamchandani in ITA (SS)A No 77/Mum/2007), have held that gold jewellery to the extent mentioned in the said CBDT Instruction should be treated as explained. In the instant case it is observed that Mr. Manoj Mehta and Mrs. Sangita Mehta were not filing their Wealth Tax Returns and therefore, as per Instruction No.1916 of CBDT and the said decisions of the Hon'ble Courts, the AO should have given allowance for gold jewellery to the extent of 350 gms (250 gms for Mrs Sangita Mehta and 100 gms Mr Manoj Mehta) while determining the excess gold jewellery, in respect of the entire assessee group, which has not been done. While adjudicating the appeal of Mrs Kaushika Mehta, allowance has already been given for 73.8 gms of gold jewellery. Therefore, now in the case of the assessee, allowance to the extent of the balance 276.2 gms of value Rs 6,50,733/- (Rs 24,73,589 / 1049.90 X 276.2 gms) is allowed. Thus the addition made by the AO on account of unexplained gold jewellery is restricted to Rs 18,22,856/- (Rs 24,73,589/- - Rs 6,50,733/-). This allowance will also take care of the contention of the assessee group that certain items of jewellery were received by the members on festive occasions as well as achieving personal milestones. However, no infirmity is found in the action of the AO of treating the diamond jewellery of Rs 1,40,382/- as unexplained. Accordingly, this ground of appeal is partly allowed."

6. The Ld. A.R. submitted before us that the Ld. CIT(A) has passed the order by ignoring the legal as well as factual aspects and huge net worth of the family while disposing and deciding the appeal. The Ld. A.R. submitted that total addition made in the hands of five assessee's were aggregated to Rs.48,60,474/- comprising Rs.26,59,858/- towards unexplained gold jewellery and Rs.22,00,616/- towards excess diamond jewellery by the AO. The Ld. A.R. submitted that during the course of search at

the different places of search, the three family members namely Mr. Saket Mehta, Mr. Vivek Mehta and Mrs. Shilpa Sudheer Mehtahad specifically stated during the course of recording of their respective statements under section 132(4) of the Act that Ms. Sangeeta Mehta and Mr. Manoj Mehta ,citizens of Belgium , have kept some jewellery with the assessee so that the same could be used whenever they visit India. The Ld. A.R. referred to the statement recorded of these above individuals the copies whereof were filed in the paper book. The Ld. A.R. also submitted that Ms. Sangeeta Mehta and Mr. Manoj Mehta filed their affidavits and confirmations before the AO as well as before the Ld. CIT(A) claiming that this jewellery was kept for their personal use whenever they visit India. The Ld. A.R. also referred to the purchase bills of diamond for Rs.48,93,962/- dated 25.12.2013 and gold of Rs.12,66,682/- dated 01.10.2013 along with bank statements for making the payments a copy of which is attached at page No.34 to 41. It was also stated before us that some more jewellery were purchased by them during marriage of their two daughters and making charges were also paid of Rs.2,40,200/-, copies whereof are filed at page No.42 to 45. The Ld. A.R. also submitted that the net worth of Ms. Sangeeta Mehta and Mr. Manoj Mehta was Rs.36,78,97,182/- and Rs.2,53,80,102/- respectively on 31.03.2014 that too in respect of Indian assets whereas the assets owned by the couple abroad are separate and apart. The second argument of the Ld. A.R. is that during the course of search a total jewellery valuing Rs.10,01,96,464/- was found as per valuation reports, whereas the addition was only to the extent of Rs.48,70,710/- which account for to 4.86% of the jewellery found during the search.

The Ld. A.R. submitted that assessee belonged to a very reputed business family and as on 31.03.2016 the total capital of the family was Rs.314,28,36,802/- the detail whereof is filed on page No.128A of the paper book while the income offered to tax during the relevant assessment year was Rs.14,72,84,548/-. The Ld. A.R. submitted that considering the status of the family, these additions are very negligible and not warranted to be made to the assessee. In defense of his arguments the Ld. A.R. relied on a series of decisions and Board's circular No.1916 dated 11.05.1994.

1. Vinod Garg & ANR. vs. DOT 49 CCH 0446 (Mum- Trib)
2. Ritu Bajaj vs. DCIT 52 CCH 166, 63 ITR (Tri) 594 (Delhi)
3. Vibhu Aggarwal vs. DCIT 53 CCH 355,170 ITD 580 (Delhi)
4. Nawaz Singhania vs. DCIT 51 CCH 0723,191 TTJ 650 (Mumbai)
5. Instruction No. 1916 dated 11/5/1994 Clause III

6.1 The Ld. A.R. submitted that Ld. CIT(A) partly allowed the appeal of the assessee as per instruction No.1916 dated 11.05.1994 by observing that instruction No.1916 is not applicable to diamond jewellery whereas as a matter of fact the instruction No.1916 is applicable to diamond jewellery as well as to gold jewellery as has been laid in the following decisions :

- a) Nawaz Singhania vs. DCIT 51 CCH 0723,191 TTJ 650 (Mumbai)
- b) Kumkum Kanodia Vs. DCIT, Central Circle-11, ITA No.5260/Del/2014
(Circular no 1916 dated 11/4/1994 covers Diamond Jewellery also)

6.2. The third argument of the Ld. A.R. was that in terms of instruction No.1916 dated 11.05.1994 at least 350 gms (250 gms for his wife and 100 gms for assessee) of jewellery should have been allowed by referring to the family chart which is filed at page No.151 of the paper book and also the computation of eligible jewellery to be allowed to the family members. The Ld. A.R. in defense of his argument relied on the following decisions:

- a) CIT vs. Ratanlal Atanlal Vyaparilal Jain 78 CCH 0569 Guj HC 235 CTR 0568 45 DTR 0290 339 ITR 0351
- b) Ahok Chaddha vs. ITO (2012) 69 DTR 82 (Del)
- c) Ritu Bajaj vs. DCIT 52 CCH 0166 63 ITR (Trib) 0594 (Delhi)
- d) Vibhu Aggarwal vs. DCIT 53 CCH 0355, (2018) 170 ITD 0580 (Delhi)
- e) Kumkum Kanodia vs. DCIT, Central Circle-11, ITA No.5260/Del/2014 A.Y. 2011-12 (Circular No.1916 dated 11/4/1994 covers Diamond Jewellery also)
- f) Mrs. Nawaz Singhanian vs. DCIT 191 TTJ 0650, 162 DTR 0137, 168 ITD 0478 (Mumbai)
- g) Shri Dinkar Laxman Mujumdar vs. DCIT (Central)-I, (Indore) ITA No.593/Ind/2017 A.Y. 2015-16 dated 18.10.2018
- h) Vinod Garg & Anr. Vs. DCIT 49 CCH 0446 (Mum Trib)

6.3. The Ld. A.R. therefore, prayed that the addition as sustained by Ld. CIT(A) may kindly be deleted by allowing the appeal of the assessee on this issue.

7. The Ld. D.R., on the other hand, relied heavily on the order of Ld. CIT(A) by submitting that this jewellery was seized during the course of search which could not be explained by the family including the assessee during the course of search and even thereafter. The Ld. D.R. submitted that the mere status of the family status could not be a justification or ground the deletion of addition on account of unexplained jewellery found during the course of search. On the issue of applicability of circular instruction No.1916 dated 11.05.1994 to the jewellery the Ld. D.R. submitted that it can only be applied if they offer some information as to the purchase of jewellery and source thereof. The Ld DR argued that source can not be applied blindly to allow the relief to the assessee. Accordingly, the order of Ld. CIT(A) may kindly be allowed.

8. After hearing both the parties and perusing the material on record, we find that in this case the jewellery was found to be unexplained during the course of search on account of gold as

well diamond jewellery which has been narrated and discussed hereinabove. During the course search, three family members namely Mr. Saket Mehta, Mr. Vivek Mehta, Mrs. Shilpa Sudheer Mehta during recording of statement under section 132(4) specifically stated that the excess jewellery belonged to Ms. Sangeeta Mehta and Mr. Manoj Mehta who are Belgium residents and visit India during family functions and social occasions and used the said jewellery for their personal purposes. We have also examined the bills of purchase dated 25.12.2013 amounting Rs.48,93,962/- for purchase of diamond jewellery and bill dated 01.10.2013 for the purchase of jewellery amounting to Rs.12,66,682/- along with the bank statements evidencing the payments which are filed at page No.32 to 41 of the paper book by Ms. Sangeeta Mehta and Mr. Manoj Mehta. We also find that the couple bought some more jewellery during the marriage of their two daughters and the bills whereof are placed at page No.157 to 185 of the paper book with the bills for making the charges as enclosed at page No.42 to 45. Besides considering the net worth of the family which is approximately Rs.314 crores as on 31.03.2016, we are quite convinced that the amount of addition is negligible and can not be justified in view of the financial strength and status of the family as well as the foreign residents Ms. Sangeeta Mehta and Mr. Manoj Mehta. Even considering the jewellery found with the family as per circular instruction No.1916 dated 11.05.1994, the addition as sustained by Ld. CIT(A) seems to be fallacious and without any cogent reasons. Considering all these facts and various case laws relied by the Ld. A.R., we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

9. Another issue raised by the assessee is against the confirmation of addition of Rs.13,90,000/- by Ld. CIT(A) under section 69C of the Act upholding the order of AO on this issue.

10. The facts in brief are that during the course of search action, some emails were found having attachments qua Ashabaug house property. From the said excel sheets as on 20.09.2015, it was found that assessee has incurred certain expenses under the head cement, bricks and sand aggregating to Rs.37,57,721/-. The said sheets showed the cash payment already made of Rs.37,45,000/- and balance payable of Rs.12,721/-. Accordingly, the assessee was called upon to explain the source of the same. Mr. Vivek Mehta replied that Ashabaug is a property situated in Gujarat and is in the name of Mrs. Kaushik Mehta and is under renovation for the last one and a half to two years. He further submitted that the source of expenditure incurred were made out of the withdrawals from the bank accounts over a period of several months. Accordingly, during post search proceedings Mr. Vivek Mehta was asked to furnish the bank statement and cash book evidencing the withdrawals and payment of these expenses. On the basis of cash book and bank statement it was found that cash withdrawals were Rs.23,55,000/- leaving Rs.13,90,000/- as unexplained expenditure which was added by the AO under section 69C of the Act to the income of the assessee.

11. In the appellate proceedings, the Ld. CIT(A) affirmed the addition by observing and holding as under:

“6.2 I have considered the contentions of the assessee as also the order of the AO. In course of the appellate proceedings, the assessee submitted that the said cash

expenditure of Rs 37,45,000/- has been incurred over a prolonged period starting from 01.04.2014 to 31.03.2016 and the same is out of the personal withdrawals of his own self as well as family members. However, this claim is very general in nature and is not supported by bills of Shri Hiten Patel etc who undertook the work and also his receipts acknowledging receiving the said cash payments. Moreover, it is noted that the assessee had contended that the said expenditure is out of the cash withdrawals spread over several months whereas as per the cash book and other details filed, it is observed that the said alleged cash withdrawals are spread over several years. Therefore, no infirmity is found in the action of the AO of treating the said amount of Rs 13,90,000/- as unexplained expenditure and making an addition u/s 69C. Accordingly, Ground No 2 of the appeal is dismissed.”

12. We have heard the rival contentions of both the parties and perused the material on record including the various documents filed by the assessee in the paper book. We note that the total withdrawal from 01.04.2014 to 20.09.2015 were Rs.26,13,319/- besides opening balances of cash as on 01.04.2014 and 01.04.2015 of Rs.52,819/- & Rs.2,39,529/- respectively. Thus the available cash for the construction was Rs.29,05,667/- while the actual expenditure on the renovation of bungalow at Navasari, Gujarat were Rs.37,57,721/-. We find that the difference of Rs.8,52,054/- was made up out of cash withdrawals after 21.09.2016 till 31.03.2016 were Rs.27,55,000/-. Therefore, we find merit in the contention of the assessee that Rs.8,52,054/- were paid out of withdrawal made after 21.09.2019. We also note from the copies of ledger accounts that Rs.5 lakhs was accounted for on 02.12.2015 whereas Rs.3 lakhs was accounted for on 18.12.2015. Therefore, we are not in agreement with the conclusion of Ld. CIT(A) that the assessee has offered general explanation not supported with the bills, vouchers and bank statement. We find that the confirmation of addition to the extent of Rs.13,90,000/- as unexplained expenditure is against the facts on record which were also available before the authorities below. However, both

the authorities have failed to appreciate the facts in correct perspective. In view of these facts, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition made under section 69C of the Act.

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

ITA No.7290/M/2018, ITA No.7291/M/2018, ITA No.7293/M/2018 & ITA No.2458/M/2019

14. The issue involved in the above appeals is identical to the one as stated above in ITA No.7292/M/2018 for A.Y. 2016-17. Therefore, our finding in ITA No.7292/M/2018 for A.Y. 2016-17, mutatis mutandis, would apply to these appeals as well. Accordingly, the appeals of the assessee are allowed.

15. In the result, the appeals of all the assesseees are allowed.

Order pronounced in the open court on 14.09.2021.

**Sd/-
(Pavan Kumar Gadale)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 14.09.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.