IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI

(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.9098/DEL/2019
[Assessment Year: 2017-18]

Smt. Chhavi Anand, F-14/50, 1st Floor, Model Town-II, Delhi-110009	ACIT, Central Circle-06, New Delhi
PAN-ADGPD9947E	
Assessee	Revenue

Assessee by	Sh. Mayank Patwari, CA
Revenue by	Sh. R. K. Gupta, Sr. DR

Date of Hearing	**25.08.2021**
Date of Pronouncement	**30.09.2021**

ORDER

This appeal filed by the assessee is directed against the order dated 11.10.2019 of the learned CIT(A)-24, New Delhi, relating to Assessment Year 2017-18.

2. Facts of the case, in brief, are that the assessee is an individual. A search and seizure action u/s 132 of the Act was carried out on Ashish Begwani by the Investigation Wing, New Delhi on 22.10.2016. Warrant of authorization was also executed in the case of the assessee on 10.11.2016 at locker no.489, Union Bank of India, Delhi. In response to notice u/s

142(1) of the Act issued on 04.06.2018, the assessee filed the return of income on 27.03.2018, which was the return originally filed declaring the income of Rs.3,50,910/-. The AO issued notice u/s 143(2) of the Act on 20.09.2018 and thereafter, issued notice u/s142(1) of the Act along with a questionnaire on 08.10.2018.

3. During the course of assessment proceedings, the AO noted that jewellery valued at Rs.39,29,928/- was found from the locker out of which jewellery valued at Rs.23,46,108/- was seized after giving due consideration to CBDT instruction/circular in relation to seizure of jewellery. During the course of assessment proceedings, the AO asked the assessee to explain the source of jewellery seized. It was submitted by the assessee that jewellery found from the locker is nothing but family owned jewellery over the years. However, the AO rejected the contention of the assessee on the ground that the assessee was filing her return of income declaring very meagre income every year and therefore creditworthiness is doubtful. The submission of the assessee that the jewellery belonging to her sister-in-law Ms. Sikha David (unmarried sister of husband), who is residing with the assessee was also

rejected by the AO on the ground that at the time of seizure of locker when the statement of husband of the assessee Shail Anand was taken, he has not stated the fact that some jewellery is belonging to Ms. Sikha David. Since, the assessee could not explain the source of jewellery to the satisfaction of the AO, he made addition of Rs.23,46,108/- to the total income of the assessee u/s 69A of the Act.

4. Before the learned CIT(A), it was argued that the jewellery belongs to the assessee and her family members namely, Sh. Shail Anand, husband of the assessee, Tarush Anand minor son, Ms. Sikha David, sister-in-law and late Sobha David, mother-in-law. Referring to the CBDT Circular No.1916 dated 11.05.1994 which states that 500 gm jewellery for every married lady and 100 gms for every male member may not be seized, it was argued that the total jewellery found from the locker is 1302.698 gms which is less than the prescribed limit of 1700 gms allowable in the instant case as per CBDT instruction should be treated as explained. It was argued that jewellery of 442.344gms belong to Late Shobha David, mother-in-law of the assessee who had kept the said jewellery in the safe custody of the assessee. However, she has died prior to the

date of search. It was also submitted that jewellery of 468.260 gms of Smt. Sikha David, who is unmarried sister-in-law of the assessee, was also kept in the locker for safe custody since the whole family has only one locker. Affidavit of Ms. Sikha David was already filed before the AO regarding the ownership of the said jewellery. It was argued that remaining jewellery belongs to the assessee, her husband and minor son. So far as the conclusion of the AO that the assessee was not filing wealth tax return is concerned, it was argued that the assessee was not obliged to file wealth tax return since, her net wealth was below the prescribed limit of Rs.30 lakhs and she does not hold other assets till date. Relying on various decisions, it was argued that the addition made by the AO should be deleted.

5. However, the learned CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the addition made by the AO by observing as under:-

> *"5.1. I have considered the material on record including written submission of the AR of the appellant tiled in course of appellate proceedings. I have also perused the assessment order u/s 143(3) of the Act passed by the Assessing Officer.*
>
> *5.2.1. In the present appeal the appellant has raised six ground's of appeal. Ground Nos. 1 to 3 relate to addition of Rs. 23,46,108/- on account of unexplained investment in jewellery u/s 69A r.w.s.115BBE of the Act. It has been contended that the AO ignored the CBDT Instruction No. 1916 dated 11.05.1994 and treated jewellery as unexplained investment. It was also*

contended that the AO ignored the fact that jewellery found belonged to all the members of the family and not solely to the appellant.

*5.2.2. On perusal of written submission of the appellant and the assessment order it is clear that the appellant was given full benefit of CBDT Instruction No. 1916 dated 11.05.1994 at the time of seizure of jewellery. This is evident from Question Nos. 15 &16 of statement recorded u/s 132(4) of the Act of the appellant on 29.11.2016 during the locker operation which has been quoted also in the written submission. During the course of search on 22.10.2016 at the residential premises of the appellant gold equivalent weight of 160gms was found which was not seized. As per the statement of Sh. Shail Anand, the husband of the appellant, the family consists of the appellant, her husband and son Tarush Anand. As per CBDT Instruction No. 1916 dated 11.05.1994 the family was entitled to benefit of 700gms. of gold jewellery. Therefore, at the time of locker operation the appellant was further granted benefit of 540gms. gold jewellery and the balance jewellery was seized. All these facts are clearly mentioned in Question Nos. 15 &16 of statement recorded of the appellant on 29.11.2016 during the locker operation. In response to these queries the appellant replied *No' when she was asked whether she wanted to say anything in this regard. No claim of jewellery belonging to her sister-in-law Ms. Shikha David was made in the statement recorded of the appellant on 29.11.2016 during the locker operation. In the absence of any such claim made by the appellant during the locker operation, subsequent claim of 468.26 gms. of jewellery belonging to her sister-in-law Ms. Shikha David is held to be unacceptable as the claim has been ostensibly made to explain the source of sei/ed jew ellery by including one more member in the family to get benefit of CBDT Instruction No. 1916. Further claim of 442.344 gms. of jewellery belonging to Late Smt. Shobha David, mother-in-law of the appellant is also not acceptable as such claim is not supported by creditable and reliable documentary evidences. Although in response to Question No. 9 in statement recorded on 29.11.2016 during locker operation the appellant explained source of jewellery to be from wedding, gifts received from relatives for her son and some jewellery received from mother-in-law. However, at that time, the appellant in response to Question No. 10. accepted that there is no registered w ill of mother-in-law wherein, the items of jewellery bequeathed to her are listed. The appellant could not provide details of the friends and relatives who gifted jewellery to her. She could not provide breakup of the quantity of jewellery received or the date of receipt of gift. She did not have any record of the gifts received. Against the above backdrop of facts the claim of 442.344gms. of jewellery belonging to mother-in-law l.ate Smt. Shobha David cannot be accepted. The affidavits furnished by the appellant cannot help her in explaining the source of seized*

jewellery in the absence of supporting documents. The fact of certain documents of her sister-in-law having the same address as that of the appellant does not validate claim-of the appellant of sister-in-law staying there with her and keeping 468.26gms of jewellery in the locker of the appellant. The affidavit of husband of the appellant regarding 442.344gms of jewellery of his mother lying in the locker is highly unacceptable in the absence of any credible and reliable documentary evidence. In the light of the above observations. I hold that the appellant has not been able to explain source of seized jewellery amounting to Rs. 23.46.108/- and there is no merit in the contention of the appellant that the AO ignored CBDT Instruction No. 1916 dated 11.05.1994. Thus, in my considered view, the AO is fully justified in making addition of Rs. 23.46.108/- as unexplained investment u/s 69A r.w.s. I15BBK of the Act. Therefore, the addition of Rs. 23.46.108'- as unexplained investment u/s 69A r.w.s. 115BBE of the Act made by the AO is confirmed. Accordingly. Ground Nos. 1 to 3 of appeal are dismissed."

6. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:-

i. "*On the facts and circumstances of the case, the order passed by Ld. CIT(A) is bad both in eyes of law and on facts.*

ii. *That the Ld. CIT(A) has erred in law as well as on facts in confirming the impugned order passed u/s 143(3) of the Income Tax Act, 1961.*

iii. *That the Ld. CIT(A) has erred in law as well as on facts by upholding the addition made by the Ld. AO amounting to Rs.23,46,108/- u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961 on account unexplained investment in jewellery.*

iv. *That the Ld. CIT(A) and the Ld. AO has erred in law as well as on facts by ignoring the CBDT Instruction No.1916 dated 11.05.1994 and treating jewellery as unexplained investment.*

v. *That the Ld. CIT(A) and the Ld. AO has erred in law as well as on facts by ignoring that the jewellery*

found belonged to all the members of the family and not solely to the appellant.

vi. *That the Ld. CIT(A) and the Ld. AO has erred in law as well as on facts by initiating the penalty proceeding u/s 271AAB(1)(c) of the Income Tax Act, 1961.*

vii. *That the CIT(a) has erred in law as well as on facts by confirming the charging of interest u/s 234A/B/C/D of the Income Tax Act, 1961."*

7. The learned counsel for the assessee strongly challenged the order of the learned CIT(A) in sustaining the addition made by the Assessing Officer. The learned Counsel for the assessee filed the following details:-

<table>
<tr><th>Name</th><th>Relation</th><th>Limit as per instruction</th><th>Quantity of Jewellery found pertaining to family members</th></tr>
<tr><td>Shail Anand</td><td>Husband</td><td>100gms</td><td rowspan="3">552.094gms</td></tr>
<tr><td>Chhavi Anand</td><td>Assessee</td><td>500gms</td></tr>
<tr><td>Tarush Anand</td><td>Son</td><td>100gms</td></tr>
<tr><td>Sikha David (unmarried)</td><td>Sister-in-law</td><td>500gms</td><td>468.260gms</td></tr>
<tr><td>Late Shobha David</td><td>Mother-in-law</td><td>500gms</td><td>442.344gms</td></tr>
<tr><td>Total</td><td></td><td>1700gms</td><td>1302.698gms</td></tr>
</table>

8. He submitted that jewellery found from the locker belongs to the assessee as well as her husband, minor son, unmarried sister-in-law and late Mother-in-law is only 1302.698gms, which is much less than the prescribed limit of 1700gms as per CBDT instruction/circular 1961 dated 11.05.1994. He submitted that Mother-in-law of the assessee

late Shobha David died in year 2015 which is one year prior to the date of search and jewellery of 442.344gms belong to her which was kept by her in the locker of the assessee for safe custody. To substantiate the same, it was argued that the daughter and son of Late Shobha David, namely Shikha David and Sh. Shail Anand, respectively have already filed their affidavits before the AO confirming that jewellery of 442.344gms pertains to her. It was argued that jewellery of 468.26gms pertains to Ms. Shikha David, unmarried sister-in-law of the assessee who lives with the assessee at her residence and was also kept by her in locker of the assessee for safe custody since the entire family was having only one locker. It was argued that affidavit confirming the jewellery of 468.26gms pertaining to Ms. Shikha David was already filed before the Assessing Officer. It was argued that Ms. Shikha David is unmarried and resides at the residence of her mother, late Shobha David like any other unmarried women in a Hindu family. It was argued that the Aadhar Card and Passport of Ms. Shikha David also bear the same address as that of the assessee. Therefore, questioning the fact that she is not a member of the family is uncalled for. It was argued that the

remaining jewellery weighing 552.094gms belongs to the assessee, her husband and minor son.

8.1. Referring to the decision of the Hon'ble Delhi High Court in the case of Sushila Devi vs CIT in W.P.(C) No.7620/2011 order dated 21.10.2016, it was argued that the Hon'ble High Court has accepted the explanation of the assessee that the gold jewellery acquired through gifts made by relatives and other family members over a long period of time, is in keeping with prevailing customs and habits.

8.2. Referring to the decision of the Hon'ble Delhi High Court in the case of Ashok Chadha vs ITO, in ITA No.274/2011, order dated 05/07/2011, he submitted that Hon'ble High Court in the said decision has held that it is a normal custom of woman to receive jewellery in the form of "stree dhan" or on other occasions such as birth of child etc. It was held that when the value of the jewellery was not substantial, the addition made by the Assessing Officer and upheld by the learned CIT(A) as well as by the Tribunal is not justified.

8.3. Referring to the decision of the Co-ordinate Bench of the Tribunal in the case of Suneela Soni vs DCIT vide ITA No.5259/Del/2017, order dated 16.03.2018 for A.Y. 2011-12, he drew the attention of the Bench to the finding of the Tribunal and submitted that after considering the above decision and various other decisions, the Tribunal has deleted the addition made by the Assessing Officer on account of unexplained jewellery. He accordingly submitted that the addition made by the Assessing Officer and sustained by the learned CIT(A) is not justified and therefore, the same should be deleted.

9. The learned DR, on the other hand, submitted that the learned CIT(A) has given elaborate reasoning while upholding the addition made by the Assessing Officer treating the jewellery as unexplained. Therefore, the order of the learned CIT(A) should be upheld.

10. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the Assessing Officer in the instant case made addition of

Rs.23,46,108/- u/s 69A r.w.s. 115BBE of the Act on the ground that the assessee was unable to explain the source of jewellery found from the locker maintained with Union Bank of India, Delhi. I find the learned CIT(A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the learned counsel for the assessee that the jewellery found from the locker not only belongs to assessee but also belongs to her husband, her minor son, unmarried sister-in-law and late mother-in-law. Further, it is also his submission that the jewellery found from the locker is not substantial and the lower authorities without assigning any valid reasons and on mere suspicion and surmises have made the addition of Rs.23,46,108/- which is uncalled for.

11. I find some force in the above argument of the learned counsel for the assessee. It is an admitted fact that from the details given by the assessee jewellery weighing 1302.698gms valued at Rs.39,29,928/- were found from the locker no.489 maintained with Union Bank of India, out of which jewellery valued at Rs.23,46,108/- were seized after giving due consideration to CBDT instruction/circular in

relation to jewellery seizure. I find before the Assessing Officer as well as before the learned CIT(A), the assessee was stating that the jewellery found from the locker was belonging to the assessee Chhabi Anand, her husband Mr. Shail Anand, her minor son Tarush Anand, unmarried sister-in-law Ms. Shikha David and Late mother-in-law Sobha David. The submission of the assessee before the lower authorities that the address of Ms. Shikha David, the unmarried sister-in-law of the assessee is the same as that of the assessee has not been controverted. Merely because the husband of the assessee did not mention the name of Ms. Shikha David in his statement recorded u/s 132(4) in my opinion cannot be a ground to disregard the contention of the assessee that Ms. Shikha David was staying with her in the house belonging to her mother Shikha David who is the mother-in-law of the assessee. There is no evidence on record brought by the Revenue that Ms. Shikha David who is unmarried at the relevant time was staying elsewhere and not at her parental property. Under these circumstances, the affidavit of Shikha David stating that jewellery weighing 468.260gms which was kept by her in locker of her sister-in-

law for safe custody cannot be brushed aside, especially when the entire family doesn't have any other locker.

12. Similarly, I find the affidavit of the husband and sister-in-law of the assessee stating that jewellery weighing 442.344gms belonging to their late mother Mrs. Sobha David i.e. mother-in-law of the assessee was rejected by the learned CIT(A) on the ground that there is no credible or reliable documentary evidence. In my opinion, there cannot be any credible or reliable evidence except the affidavit of the children of the deceased person in such cases. Although, it may not be accepted *in toto* however the same also cannot be rejected *in toto*. Therefore, considering the CBDT instruction/circular 1916 dated 11.05.1996 if the benefit of 500gms of every married woman, 250gms for unmarried woman and 100gms jewellery for every male member of the family is allowed then entire jewellery found from the locker stands explained.

13. I find the Co-ordinate Bench of the Tribunal in the case of Suneela Soni (supra) after considering the decision of the Hon'ble Delhi High Court in the case of Ashok Chadha vs ITO, in ITA No.274/2011, order dated 05/07/2011 has observed as under:-

"6. I have heard both the parties and perused the records, especially the orders of the authorities below and the case laws referred by Assessee's counsel. I find that assessee's counsel during the hearing has filed a paper book containing pages 1 to 50 which is a copy of panchnama in the name of Sh. Sanjiv Soni alongwith annexures which includes list of inventory of other valuables, locker keys , FDR etc.; copy of inventory of cash found but not seized; report of valuation of jewellery; (pg. 1 to 8-PB); copy of revocation order of Smt. Suneela Soni; Copy of panchaname in the name of Smt. Suneela Soni alongwith report of valuation of jewellery; copy of revocation order of Sh. Sajeev Soni; copy of panchanam in the name of Sh. Sanjiv Soni alongwith annexures which includes list inventory of books of account, documents found and seized; copy of inventory of cash found but not seized; report of valuation of jewellery; copy of reply filed by the assessee before ACIT; copy of reply filed by the assessee before DCIT; copy of submission before CIT(A) alongwith copy of affidavit of Smt. Suneela Soni and details of jewellery of in lockers; copy of affidavit purchased by Sh. Shiv Sunder Soni, son of late Sh. MG Soni alongwith details of jewellery in lockers; copy of judgment of Hon'ble Rajasthan High Court in the case of Radha Kishan Soni vs. CIT reported in 277 ITR 56 and copy of judgment of Hon'bel High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.) inventory of other valuables, locker keys , FDR etc.; copy of inventory of cash found but not seized; report of valuation of jewellery. I find that AO has made the addition of Rs. 10,65,312.00 on account of purported unexplained jewelery claimed by the assessee without appreciating the fact that the jewelery found during the course of search and seizure operations was from the locker held by the father in law and husband of the assessee and hence the addition in the hands of the assessee is uncalled for. It was noted that jewellery found from the joint lockers was explained to be belonging to Late mother in law of the assessee Smt. Sarita Soni, however, the AO has rejected this contention. It is further noted that assessee's belongs to joint family and it is undisputed position that marriages of mother in law had

taken place 53 years prior to the search and marriage of the assessee had taken place 20 years. I further note that the Hon'ble High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.)/202 Taxmann 395 has accepted the jewellery of 906.60 grams in the case of married lady even without documentary evidence as the denying the explanation would tantamount to overlooking the realities of life by holding as under:-

"As far as addition qua jewellery is concerned, during the course of search, jewellery weighing 906.900 grams of the value amounting to Rs. 6,93,582 was found. The appellant's explanation was that he was married about 25 years back and the jewellery comprised "streedhan" of Smt. Jyoti Chadha, his wife and other small items jewellery subsequently purchased and accumulated over the years. However, the Assessing Officer did not accept the above explanation on the ground that documentary evidence regarding family status and their financial position was not furnished by the appellant. The Assessing Officer accepted 400 grams of jewellery as explained and treated jewellery amounting to 506.900 grams as unexplained and made an ad hoc addition of Rs. 3,87,364 under section 69A of the Act working on unexplained jewellery, by applying average rate of the total jewellery found. The relevant portion of the assessment order reads as follows:-

> *"a very reasonable allowance of ownership of gold jewellery to the extent of 400 grams is considered reasonable and the balance quantity of 506 grams by applying average rate, the unexplained gold jewellery is considered at Rs. 3,87,364 (506/900 x 6,93,582) u/s 69A of the Act."*
>
> *The CIT (A) confirmed this addition stating that the Assessing Officer had been fair in accepting the part of jewellery as unexplained. The ITAT has also endorsed the aforesaid view. Learned counsel for appellant Ms. Kapila submitted that there was no basis for the Assessing Officer to accept the ownership of the gold jewellery to the extent of 400 grams only as*

"reasonable allowance" and treat the remaining jewellery of Rs. 506.900 as unexplained. She also submitted that another glaring fact ignored by the Assessing Officer as well as other authorities was that as the department had conducted a search of all the financial dealings which were within his knowledge and no paper or document was found to indicate that this jewellery belonged to the appellant and that it was undisclosed income of the assessment year 2006-07. In a search operation, no scope is left with the tax department to make addition on subjective guess work, conjectures and surmises. It was also argued that jewellery is "streedhan" of the assessee's wife, evidenced in the form of declaration which was furnished by mother-in-law of the assessee stating that she had given the jewellery in question to her daughter. She argued that it is a normal custom for a woman to receive jewellery in the form of marriage and other occasions such as birth of a child. The assessee had been married more than 25-30 years and acquisition of the jewellery of 906.900 grams could not be treated as excessive.

3. Learned Counsel for the respondent on the other hand relied upon the reasoning given by the authorities below. After considering the aforesaid submissions we are of the view that addition made is totally arbitrary and is not founded on any cogent basis or evidence. We have to keep in mind that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. 'The learned counsel for the appellant/assessee is correct in her submission that it is a normal custom for woman to receive jewellery in the form of "streedhan" or on other occasions such as birth of a child etc. Collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and treat the other as

"unexplained". Matter would have been different if the quantum and value of the jewellery found was substantial.

4. We are, therefore, of the opinion that the findings of the Tribunal are totally perverse and far from the realities of life. In the peculiar facts of this case we answer the question in favour of the assessee and against the revenue thereby deleting the aforesaid addition of Rs. 3,87,364.

5. Appeal is allowed in the aforesaid terms."

13. Respectfully following the decision of the Co-ordinate Bench of the Tribunal cited (supra), I am of the opinion that the explanation given by the assessee regarding the source of jewellery found from the locker is acceptable. Accordingly, the order of the learned CIT(A) is set-aside and the grounds raised by the assessee are allowed.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30.09.2021.

Sd/-

[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated: 30th September, 2021
Shekhar, Sr. P.S
Copy forwarded to:
1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi