

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 839/Del/2017
Asstt. Year : 2013-14

Vinod Jindal C/o M/s. RRA TAXINDIA D-28, South Extension Part-1 New Delhi – 110 049 PAN AENPJ1202Q (Appellant)	Vs.	DCIT, Central Circle-II Faridabad (Respondent)
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Assessee by:	Shri Somil Agarwal, Advocate Shri Deepesh Garg, Advocate
Department by :	Shri H.K. Chaudhary, CIT(DR)
Date of Hearing	06.04.2022
Date of pronouncement	30.06.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 21.12.2016 of the Ld. Commissioner of Income Tax (Appeals)- Karnal, (“CIT(A)”) pertaining to the Assessment Year (“AY”) 2013-14.

2. The assessee has taken the following grounds of appeal:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the action of the Ld. A.O. in making an addition of Rs.23,54,184/- on account of jewelry found in the search.

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making an addition of Rs.23,54,184/- is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the action of the Ld. A.O. in making an addition of Rs. 1,00,000/- u/s 69A of the Income Tax Act, 1961 on account of cash found during the search.*
4. *That in any case and in any view of the matter action of Ld. CIT(A) in confirming the action of Ld. A.O in making the impugned additions are bad in law and against the facts and circumstances of the case.”*

3. It is a search case. Search was conducted under section 132 of the Income Tax Act, 1961 (**the “Act”**) at M/s. SRS Group on 09.05.2012 and premises of the assessee was also covered.

3.1 In response to notice under section 142(1) of the Act, the assessee filed his return for AY 2013-14 declaring total income of Rs. 9,25,050/- on 07.07.2014. Notices under section 143(2) and 142(1) along with the questionnaire were issued to the assessee on 08.08.2014 which were duly served upon the assessee. The Authorised Representative of the assessee attended the assessment proceedings and the issues were discussed with him.

3.2 The Ld. Assessing Officer (**“AO”**) completed the assessment under section 153B of the Act on total income of Rs. 33,79,234/- on 27.02.2015 including therein addition of Rs. 23,54,184/- on account of jewellery and Rs. 1,00,000/- on account of cash.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who confirmed both the additions. This has brought the assessee before the Tribunal.

5. Ground No. 1 and 2 relate to addition of Rs. 23,54,184/- on account of jewellery found in search in the premises of the assessee. The Ld. AO discussed this issue in para 3 of his order. Jewellery amounting to Rs. 39,60,212/- was found from the bedroom of the assessee. During assessment proceedings the assessee filed an affidavit with regard to the old jewellery received in marriage and copies of the bills. Keeping in view the status of the family and the submissions of the assessee, the Ld. AO allowed credit of the said jewellery amounting to Rs. 16,06,028/- and made addition of Rs. 23,54,184/-.

5.1 On appeal before the Ld. CIT(A), it was contended by the assessee that in view of the Board's instruction No. 1916 dated 11.05.1994 credit for 800 gms @ 2736 should be given to the assessee. It was also submitted that 278.550 gms were purchased by the assessee and bills were also available. Two bills from Harsh Jewellers, Tuglakabad, New Delhi were submitted.

5.2 The contentions of the assessee were not acceptable to the Ld. CIT(A). He observed that the Ld. AO has already given credit of Rs. 16,06,028/-. No reason has been given by the assessee to give further credit. According to the Ld. CIT(A) the bills from Harsh Jewellers did not appear to be genuine and verifiable as they do not have complete address or phone numbers. Source of payment was also not explained. He, therefore, declined to interfere.

5.3 Aggrieved, the assessee is before the Tribunal and Ground No. 1 and 2 relate thereto.

6. We have heard the Ld. Representative of the parties, considered their arguments carefully and perused the material available on records.

6.1 The Ld. AR submitted that there is no basis of the impugned addition. Our attention was drawn to page 10 of the paper book which contains the details of jewellery found in the premises of the assessee. 1152.778 gms jewellery was found. The assessee explained that out of 1152.778 gm of

jewellery, 874.228 gms was received by the four members of his family as gift on various ceremonial occasions and 278.550 gms was purchased by the assessee and his wife out of their own saving (page 61 of the paper book). It was further submitted that the Ld. AO/CIT(A) have not followed the CBDT Instruction No. 1916 dated 11.05.1994 and credit as envisaged in the said instruction has not been allowed. The assessee filed the affidavit of the donors and full details of jewellery (date, occasion, description of items of jewellery, weight) which appear at page 63-66 of the paper book. The Ld. AR pointed out that copies of bills regarding jewellery purchased by the assessee and his wife from savings which could not be submitted during assessment proceedings were filed before the Ld. CIT(A) by way of additional evidence. These appear at pages 112 to 125 of the paper book. Our attention was also drawn to the order dated 08.04.2021 of the Tribunal in ITA No. 838/Del/2017 in the case of Shri Anil Jindal, brother of the assessee. Copy thereof was placed on record.

6.2 The Ld. DR submitted that certain items of jewellery were studded with precious and semi precious stones as would be seen from page 10 of the paper book. Credit can be given for gold but not for diamond etc. He supported the order of the Ld. AO/ CIT(A).

7. On consideration of the rival submissions of the parties, we are of the opinion that in the interest of justice and fair play, the matter should be restored back to the file of the Ld. AO to verify the veracity of the claims made by the assessee who shall produce evidence which were not available with him during the course of assessment proceedings for the purposes of verification. The Ld. AO shall also consider the claim of the assessee taking into account the CBDT Instruction No. 1916 dated 11.05.1994 and decide the issue afresh after giving reasonable opportunity of hearing to the assessee.

8. Ground No. 3 and 4 relate to addition of Rs. 1,00,000/- under section 69A on account of cash found during search which has been upheld by the

Ld. CIT(A). Cash of Rs. 1,21,300/- was found from the bedroom of the assessee. During search proceedings it was explained that the amount is accumulation of saving from withdrawal of Rs. 40,000/- per month for meeting house-hold expenses.

8.1 Before the Ld. AO, in assessment proceedings it was submitted that cash was withdrawn from the bank account of the assessee. The Ld. AO, however, made the impugned addition for lack of proper explanation. Before the Ld. CIT(A) it was explained that cash had been withdrawn from the bank account of the assessee and his wife on 20.04.2012. Since the source of cash was explained, the addition is not justified. The Ld. CIT(A) declined to interfere.

8.2 Before us the Ld. AR submitted that in assessment proceedings full details of cash found with each family member and source thereof were given (para 4.1 of Assessment Order). It will be seen therefrom that the assessee and his wife had withdrawn Rs. 1,00,000/- and Rs. 1,50,000/- from their respective bank accounts on 20.04.2012 few days before the date of search. Copies of cash book and bank statement of the assessee and his wife showing withdrawal of cash submitted before the Ld. AO / CIT(A) appear at pages 32-33 and pages 44-47 of the paper book. It was vehemently argued that the addition is not at all justified. The Ld. DR supported the order of the Ld. AO and CIT(A).

9. We have given careful thought to the rival submissions. Right from the stage of search, the case of the assessee has been that the family withdraws Rs. 40,000/- every month for meeting house-hold expenses and the cash found in search is accumulation of savings. Moreover, documentary evidence of bank statement showing withdrawal of cash of Rs. 1,00,000/- by the assessee and Rs. 1,50,000/- by his wife on 20.04.2012 just few days before search on 09.05.2012 was placed on record. There is no adverse finding that the said withdrawals of cash was utilised for any specific purpose and that nothing was available out of the said withdrawal of cash. We are, therefore,

inclined to hold that the source of cash available at the time of search has been satisfactorily explained by the assessee and delete the impugned addition.

10. In the result, the appeal of the assessee is allowed subject to directions contained in para 7 of this order.

Order pronounced in the open court on 30th June, 2022.

Sd/-

sd/-

**(G. S. PANNU)
PRESIDENT**

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 30/06/2022

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	