

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. N. K. Choudhry, Judicial Member  
Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 952/Del/2021 : Asstt. Year : 2017-18**

Komal Nagpal, B-217, Greater Kailash, Part-1, New Delhi	Vs	DCIT, Central Circle-27, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AIYPN2658R</b>		

**Assessee by : Sh. Pradeep Dinodia, CA  
Shri R. K. Kapoor, Adv.  
Revenue by : Ms. Ranu Mukherjee, CIT(DR)**

<b>Date of Hearing: 25.08.2022</b>	<b>Date of Pronouncement: 16.09.2022</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Assessee against the order of the Id. CIT(A)-31, New Delhi dated 26.07.2021.

2. The core issue in this case revolves around the taxability of Rs. 11,97,500/- of cash found in the locker No. 109 with ICICI Bank, Greater Kailash-1, New Delhi. During the course of search proceedings conducted in the case of Sanjay Bhandari/OIS Group of cases on 27.04.2016 a warrant has been issued to search the premises of the locker No. 109 standing in the name of Smt. Komal Nagpal and Smt. Nirmal Bhandari on 15.06.2016. During the course of search cash amounting to Rs. 11,97,500/- has been found in the locker. During the course of locker operation statement of Smt. Komal Nagpal, the Assessee has been recorded u/s 132(4) of the Income Tax Act, 1961.

During the locker operation, the assessee was posed a Question (No. 5) with regard to ownership and source of the cash.

3. The Assessee replied that the cash belongs to Smt. Nirmal Bhandari. The same was her from lifelong saving, inherited from her Late husband Mr. R. K. Bhandari. As she is 87 years old and is bed ridden and unable to operate normal bank account, therefore, she has kept the money in the locker for her personal use. It was replied that the locker was originally in the joint name of Smt. Nirmal Bhandari and Late R. K. Bhandari, father of the Assessee and Mr. R. K. Bhandari died on 15.01.2003. After the demise of her father, the mother of the Assessee used to operate the account being the sole holder of the locker. It was submitted that the name of the Assessee was added in place of Late R. K. Bhandari on 19.12.2011 as the second holder as the mother of the Assessee had grown old and was aged of 87 years and was not very active.

4. As per the Assessment Order even at the time of search of the locker on 29.04.2016 the mother of the Assessee could not present and therefore, the Assessee represented her mother as she operated the locker and the statement of the Assessee were recorded.

5. During the course of assessment proceedings, the AO has held that it may not be out of place to mention that the Assessee is not the first holder for operation of the Locker No. 109 and this is duly evidenced by the certificate dated 22.12.2016 issued by ICICI Bank, GK-1, New Delhi where the name of the Assessee showing as a second holder, the

first holder being mother of the Assessee Smt. Nirmal Bhandari.

6. It was submitted before the AO that cash found in the locker belongs to the mother of the Assessee and as such no addition in the hands of the Assessee was warranted. The AO held that neither the Assessee nor Smt. Nirmal Bhandari explained with documentary evidence of source of cash of Rs. 11,97,500/- was found during the course of search in the locker standing in the name of Smt. Komal Nagpal and Smt. Nirmal Bhandari.

7. The AO held that the Assessee during the course of search has admitted unaccounted income of Smt. Nirmal Bhandari in her statement recorded u/s 132(4) on 15.06.2016 but return of income in response to notice u/s 153A has not been filed by the legal heir of Late Nirmal Bhandari therefore, the AO made an addition of Rs. 11,97,500/- on account of unexplained cash u/s 69A of the Act on substantive basis in the hands of the Assessee and mentioned that protective addition shall be made in the hands of the legal heir of Smt Nirmal Bhandari. Thus, the addition in the hands of the assessee was made on substantive basis. We find that though the AO mentioned that "*protective addition shall be made in the hands of the legal heir of late Smt. Nirmal Bhandari first name holder of above said locker for A.Y. 2017-18*", the substantive assessment has been made in the hands of the assessee which is an inbuilt contradiction.

8. Aggrieved, the Assessee went in appeal before the Id. CIT(A) who confirmed the action of the AO holding that the locker in question was jointly held by the mother of the

Assessee and the mode of operation was "either or survivor". Even though the name of Mrs. Nirmal Bhandari was the first name, the locker operation was solely handled by the Assessee in view of incapacity of her mother. The Id. CIT(A) held that in the same way the appellant was only person who is operating the locker No. 109 with ICICI even though her mother was the first owner. Consequently, she was free to manage valuables and cash kept in all three lockers. At the time of search operation in respect of said locker the Assessee in her statement u/s 132(4) stated that the money kept in the locker belonged to her mother and was from her lifelong savings inherited from her husband Late R. K. Bhandari, who is former homeo physician. The Id. CIT(A) has also held that referring to the statement given by the Assessee that the amount has been disclosed to tax but not honored relying on the judgment of CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC), Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC). The Id. CIT(A) held that it is beyond human probabilities that the cash was inherited by the Assessee's mother from her late father and who passed away way back in the year 2003 which is more than 13 years prior to the search. Since the Assessee is the one who is solely operating the locker in question and was hence free to move the contents there from, the undisclosed cash was held to be belonged to the Assessee and the said cash being unexplained, the addition was upheld by the Id. CIT(A) in the hands of the Assessee.

9. Aggrieved the Assessee filed appeal before the tribunal.

10. During the hearing, the Id. AR vehemently argued that there have been withdrawals from Bhandari Agencies w.e.f. from September 2013 to March 2016 in order to explain the availability of the cash in the hands of the Smt. Nirmal Bhandari. He argued the main proposition was tilted in favour of the Assessee wherein it is probability of the cash found in the locker could be related to the cash withdrawals made from the bank in the capital account of the Bhandari Agencies. The Id. AR argued that the locker was in the name of Nirmal Bhandari and the Assessee is only as second name for the operation of the locker as the withdrawals of the bank indicates. It was argued that the name of the Assessee has been added to the name of the operators only for the matter of convenience after the demise of her father Late R. K. Bhandari who is co-operator of the locker earlier. It was submitted that the contents in the locker have been assessed in the hands of the Assessee under wrong impression of ownership and it was for the convenience and to cooperate with the department that the Assessee has voluntarily operated the locker at the time of search.

11. Against the arguments of the Id. AR, the Departmental Representative fervently argued that it is not a disputed fact that the locker was standing equally in the name of the Assessee and since the mother of the Assessee is ill and bed ridden it was the Assessee who has all the rights and excess to operate the lockers and the contents belonged to the Assessee cannot be denied. It was argued that the amount of 11 lacs cannot be deemed to have been given by her by husband who is deceased approximately 13 years back. It was reiterated that the Assessee is free to move

the contents and has also given a statement that the money is found in the locker would be duly offered to tax which has been dishonored.

12. Heard the argument and gone through the entire contents. The following propositions become obvious:

1. At the outset we have gone through the statement recorded u/s 132(4) on 15.06.2016 during the search operation of the locker. The Assessee explained that to the queries raised by the authorized officer. The Assessee explained that the cash belonged to Smt. Nirmal Bhandari the same is from her lifelong savings inherited from her late husband and she was unable to operate normal bank account therefore, she has kept the same would in only in locker for her personal use. The Assessee further stated that "while this is Smt. Nirmal Bhandari's savings. However, since those amounts have been collected over a period of decades, I have no way to prove it, and therefore, to avoid litigation, I hereby declare an amount As Mrs. Nirmal Bhandari's income for FY 2016-17. I agree that Mrs. Nirmal Bhandari shall pay tax and penalty, if any, in accordance with law. We found that the statement has not been consented by Mrs. Nirmal Bhandari. Under these circumstances the statement of the Assessee that this amount belonged to Mrs. Nirmal Bhandari and offering to tax cannot hold any water. At the same time it is from the statement that the Assessee has been explaining the contents of the locker i.e. cash of Rs. 1197500/- has belonged to her mother, Smt. Nirmal Bhandari. The contention of the revenue is that the Assessee is solely operating in locker is

without any evidence. It is also undisputable fact that the Assessee has been joint or co-owner operator of the locker after the demise of her father in the year 2003.

2. Hence, the amount has to be rightly been assessed in the hands of the primary owner instead of the assessee.
3. Since the locker has been found in the name of two persons, the possibility of owning of 50% each of the contents is also acceptable proposition. Thus, the Assessee would be liable to be taxed @50% of Rs. 1197500/- and remaining 50% has to be assessed in the hands of Smt. Nirmal Bhandari.
4. The other proposition canvassed was that circular of CBDT has issued an instruction No. 3/2017 dated 21.02.2017 wherein, it is mentioned that in case of individual (other than minors) not having any business income, no further verification is required to be made if total cash deposit is up to Rs. 2.5 lakhs. In case of taxpayers above 70 years of age the limit is Rs. 5 lakh per person, no verification has been required. However, thus the Assessee will get remaining Rs. 2.5 lakhs out of Rs. 5 lakhs to be assessed and Smt. Nirmal Bhandari would get the remaining of 5 lakhs being a person of 87 years age.
4. The AO has wrongly assessed the amount of substantive basis in the hands of the Assessee and on protective basis in the name of Smt. Nirmal Bhandari. Keeping in view the fact that the withdrawal dated 26.12.2016 showing Mrs. Nirmal Bhandari as the first

holder and keeping in view the fact that the locker was originally held by Smt. Nirmal Bhandari and Late R. K. Bhandari and the Assessee is joint holder of the locker subsequently it can be concluded that the contents of the locker has to be assessed in the hands of Smt. Nirmal Bhandari. The coordinate bench in ITAT Ahmadabad in the case of Smt. Jaisree K Contractor Vs. ITO 60 Taxmann 394 has held that if the locker had been in the name of the Assessee alone and if the Assessee stated that her mother put the ornaments in her locker, the explanation would not have been acceptable. It was further held that since the locker was in the joint names of the Assessee and her mother the first name that being of her mother and first name was indicative of real ownership and hence the assessment of the contents of the locker should be rightly done in the hands of the first owner of the locker. Similarly in the instant case we find that on the date of search also the Assessee explained that the locker was in the name of Smt. Nirmal Bhandari and as well as the Assessee stated that the amount would be offered to tax in hand of Smt. Nirmal Bhandari. Thus, there was no dispute that on the date of withdrawal the Assessee categorically submitted to the revenue dept. that the contents of the locker belonged to her mother. The submission made by the Assessee on behalf of the mother do not entitled the department to deem the assessee to be the owner of the contents of the locker and to be assessed on the Assessee herself. Further, we also found that the amount found in other two lockers in New Delhi safety Vaults where the Assessee was first owner along with

her son and daughter. First one with NRI daughter have been duly offered to tax. Reliance was also have placed on the instruction of CBDT. In the instant case while the Assessee has given a surrender on behalf of the mother during the locker operation u/s 132(4), the authorities have firmly fastened the liability on the Assessee who is not the rightful owner of the contents of the locker. Since, the AO has already proposed this addition in the hands of the legal heir on a protective basis, having gone through the entire contents, we are of the considered opinion that the substantive addition can be made only in the hands of the "Smt. Nirmal Bhandari or the legal heir" who is rightful owner of the contents of the locker but not on the assessee.

13. To conclude, we hold that the assessee is not liable to be assessed with regard to the cash found in the locker of Smt. Nirmal Bhandari.

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

Order Pronounced in the Open Court on 16/09/2022.

Sd/-

**(N. K. Choudhry)**  
**Judicial Member**

**Dated: 16/09/2022**

**\*Ajay Kumar Keot, Sr. PS\***  
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**