

**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE BENCHES, PUNE  
BEFORE SHRI PARTHA SARATHI CHAUDHUARY, J.M**

**SINGLE MEMBER CASE**

Sr. No.	ITA No.	Asstt. Year	Appellant	Respondent
1.	119/PUN/2022	2018-19	Kruti Bhupesh Patel 4A Vikas Centre, S.V. Road, Santacruz West Mumbai-400 054 PAN: AAFPP 6553 J	The Asstt. C.I.T. Cen. Cir. 1, Nasik
2.	120/PUN/2022	2018-19	Rima Tapan Patel 4A Vikas Centre, S.V. Road, Santacruz (West) MUMBAI-400 054 PAN: AKHPP 0599G	-do-
3.	121/PUN/2022	2018-19	Ketki Mukesh Patel, 4A Vikas Centre, S.V. Road, Santacruz West, Mumbai-400 054 PAN: AAFPP 6405K	-do-

Appellants by : Shri Vijay Mehta and  
Shri Akash Gogari  
Respondent by : Shri Piyush Kumar Singh Yadav

Date of Hearing : 18-10-2022  
Date of Pronouncement : 27-10-2022

**ORDER**

These three appeals preferred by the assesseees as appearing above in the captioned matter emanates from separate orders of the Id. CIT(A)-12, Pune all dated 31-12-2021 for the Assessment Year 2018-19 as per the grounds of appeal on record.

2. At the very outset, the parties submitted before me that the facts and circumstances and the issues involved in all these three appeals are absolutely similar and identical and therefore, having heard the submissions, these cases were heard together and disposed of by this consolidated order.

3. That, explaining the facts involved in all these appeals, the Id. A.R for the assessee submitted that ITA No. 119/PUN/2022 for the A.Y. 2018-19 in the case of Kruti Bhupesh Patel may be taken as a lead case. The addition in respect of this case has been done u/s 69A of the Income-tax Act, 1961 (hereinafter referred to as

“the Act”) as unexplained investment. The premises of the assessee were searched which took place on 17-01-2018. During the course of search tally accounts balance sheets were found from the premises of the assessee which pertained to F.Y. 2008-09 to 2017-18 (A.O's order page 11), the gold jewellery during the search was found valued at Rs. 2,85,43,493/- (A.O's order page 10), , diamond jewellery during the search was found valued at Rs. 90,51,980/- (A.O's order page 21). Silver utensils during search were found valued at Rs. 12,01,446/- (AO's order page 25) and gold coins, bullions were also found during the search valued at Rs. 9,75,900/- (A.O's order page 18 in respect of Ketki Mukesh Patel in ITA No. 121/PUN/2022, all aggregating to value of Rs. 3,97,64,819/-. The Id. A.R for the assessee further submitted that the entire gold jewellery was held to be explained by the A.O. The value of silver utensils was added by the A.O but deleted by the CIT(A) as explained and the department is not in appeal before the Tribunal. The gold coins, bullions held to be unexplained by the A.O but were held to be explained by the CIT(A) and the department is not in appeal before the Tribunal on this issue also. In case of diamond jewellery, the A.O held Rs. 64,02,099/- value as unexplained and allowed Rs. 26,00,000/- value as explained. Therefore, the A.O made an addition of unexplained diamond jewellery valuing to Rs.64,02,099/- which was added on 1/3<sup>rd</sup> basis in the hands of each of the assesseees before me. That comes to around Rs. 21,00,000/- in each case additions made by the department. The Id. CIT(A) reduced the addition of Rs. 64,02,099/- to Rs. 51,38,754/- and thereafter 1/3<sup>rd</sup> each of the said value which comes to Rs. 17,12,918/- addition remained in each of the case.

4. The Id. A.R for the assessee also submitted that the balance sheet tally accounts that was found during the course of search were not audited accounts of the assessee but were the bits and pieces of accounts in which it was shown the details regarding the gold jewellery between F.Y. 2008-09 to F.Y. 2017-18. The department has construed the value of gold jewellery keeping these documents as the basis. The Id. A.R for the assessee contended that the assessee had made

detailed submissions regarding gold jewellery found during the course of search before the A.O which at page 11 and the relevant part is extracted as follows

1. *Further, we would also like to state that the assessee and her family members are not required to maintain books of accounts as per the Act, however, the books were maintained partly i.e. in bits and pieces. As per the records available with the assessee, she is the owner of jewellery worth Rs. 13,41,098 prior to 2009. Since, assessee does not have accurate date of purchase of jewellery, assessee and wing officer took average rate of Rs 7,000 per 10 gms, resulting in total brought forward gold jewellery weighing 1,915 gms. Similarly, average rate was also applied for the brought forward jewellery appearing in the books of assessee's sister-in-law (Kruti Patel) up to 2009 amounting to Rs.14,46,044 resulting in brought forward jewellery weighing 2,065 gms. In addition to this, streedhan appearing in the books of account of Mrs. Kruti Patel amounted to 1,332 gms and net weight of jewellery purchased from 2009 onwards after applying an average rate in agreement with the investigation wing, was taken as 3600 gms for both the ladies. The summary of the same is as under:*

<i>Name of the person</i>	<i>Weight</i>
<i>Net weight of jewellery prior to 2009 in assessee's case</i>	<i>1915.00</i>
<i>Net weight of jewellery prior to 2009 in the case Mrs. Kruti Patel</i>	<i>2065.00</i>
<i>Net weight of streedhan of Kruti Patel as per balance sheet</i>	<i>1332.00</i>
<i>Net weight of jewellery purchased after 2009 after applying average rate by Kruti Patel</i>	<i>859.07</i>
<i>TOTAL</i>	<i>8912.07</i>

*At this juncture, we would like to submit that at the time of search action, books of Tapan Patel was also produced which showed a balance of gold jewellery amounting to Rs.4,00,000. However, it is pertinent to note that this balance gold jewellery was missed out in the statement and also missed out by the department for calculation of explained jewellery. Therefore, weight of the said jewellery after applying average market rate as accepted by wing officer of gold at the time of search is taken as 160 gms.*

1. *At this juncture, we would like to bring your goodself's kind attention to the **CBDT's instruction no. 1916 dated 11.05.1994** which states that where the assessee is not assessed to wealth tax, gold jewellery and ornaments to the extent of 500 grains per married lady, 250 grams per unmarried lady and 100 grams per male member of the family need not be seized.*

*1. At this juncture, we would like to bring your goodself's kind attention to the **CBDT's instruction no. 1916 dated 11.05.1994** which states that where the assessee is not assessed to wealth tax, gold jewellery and ornaments to the extent of 500 grains per married lady, 250 grams per unmarried lady and 100 grams per male member of the family need not be seized. The instruction further states that the authorized officer having regard to status of the family and customs and practices of the community to which the assessee belong, decide to exclude a larger quantity of jewellery and ornament from seizure. For further reference, extract of the said CBDT instruction is given below.*

"Instances of seizure of jewellery of small quantity in course of operations under Section 132 have come to the notice of the Board. The question of a common approach to situations where search parties come across items of jewellery, has been examined by the Board and following guidelines are issued for strict compliance.

- (i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need be seized.

(ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family need not be seized.

(iii) the authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax/Commissioner authorizing the search at the time of furnishing the search report.

(iv) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes.”.

On perusal of the above instruction, it is amply clear that no seizure can be made if the jewellery found is within the limits specified in the said instruction. In the present case, gold jewellery belongs to the assessee's family members who do not prepare proper books of accounts, which involve 1 married women, 1 unmarried women and 3 male members. Thus, as per the above circular the permissible limit can be computed as under:

Sr.No.	Name of the person	Relation	Permissible limit
1.	Rima Tapan Patel	Daughter-in-law	500
2.	Bhupesh R.Patel	Brother-in-law	100
3.	Dweta Patel	Niece	250
4.	Aadish Tapan Patel	Grandson	100
5.	Aviyan Tapan Patel	Grandson	100
		TOTAL	1050

*Thus, From the above background, we would like to submit that after applying the average rate, the assessee and her family had in possession of 9072 grams (9,912 + 160) in book and after applying the CBDT circular, the assessee and her family is an answer of total jewellery of 10,122 gms. It was further submitted that the minor difference of 90.6 gms (10,212.60-9,072-1050) is due to average rate taken by the assessee and her family at the time of search and actual purchase quantity. The said fact was also noted by the wing Officer and had accepted the explanation of the assessee and therefore the Wing Officer had not seized any gold jewellery found during the course of the search.”*

5. The A.O has given his finding in para 9.1 of his order and has accepted the entire gold jewellery found during the course of search valued at Rs. 2.85 crores as explained. The Id. A.R further submitted that regarding silver utensils the Id. CIT(A) has discussed this issue at para 3.6 of his order in the lead case viz. ITA No. 119/PUN/2022 in the case of Kruti Bhupesh Patel). The relevant para is extracted as follows:

*“3.6 The Instruction No. 1916 as well as the above decisions and other such decisions recognize the fact that an Indian family generally acquires such articles over a period of time and therefore, a reasonable quantity of the same is allowable. Similarly, these silver articles also consist of such articles which an Indian family acquires over a period of time such as Silver Idols of Gods/Goddesses, Cutlery and utensils to be used on various occasions, social as well as religious functions etc. Coins and ornaments acquired by purchase as well as gifts on various occasions as marriage, birth, birthdays, anniversaries, etc. social gifting etc. and these are also passed over the years. Keeping into consideration the joint family of the appellant, which is quite large and residing together as well as the status of the family, it is reasonable to assume that the appellant’s family can acquired the silver articles of Rs. 12,01,446/- found from the premise of the appellant during the search out of their know sources and AO is not justified in taking the adverse view and rejecting the explanation of the appellant. Thus, considering the above, the source of the silver articles of Rs. 12,01,446/- found during the search is to be treated as explained. Therefore, the addition of one-third of the same made by the A.O on this account, amounting to Rs. 4,00,482/- is deleted. This ground may be treated as allowed.”*

6. The Id. A.R submitted that the CIT(A) has considered while giving relief on this issue that the assessee was having a joint family which is quite large and residing together and has also considered the status of the family of the assessee. So therefore, the silver utensils that were found during the course of search at Rs. 12,01,446/- were held to be explained by the CIT(A) considering the status of the family as well as the fact that the assessee has a huge family living together. The Id. A.R also submitted that as regards the gold coins, bullions which has been discussed in appeal in ITA No. 121/PUN/2022 in the case of Ketki Mukesh Patel, the CIT(A) held in para 4.1 and 4.2 of his order has held as follows:

*4.1 This ground of appeal is against the addition of Rs. 9,57,900/- made by the AO on account of gold bullions, coins weighing 309 gms. The same were found from the locker no. 1092 of Punjab National Bank and the appellant explained the same as received from relatives and friends on occasion of the birth of her grandsons. However, no further explanation in respect of the same was filed by the appellant. Therefore, the same was treated as unexplained by the AO and addition was made. During the course of appellate proceedings also, the appellant placed the same explanation and stated that the impugned gold was received by both the grandsons of the appellant on occasion of their birth and cannot be taxed in the hands of the appellant. The appellant has also stated that gold jewellery of Rs. 10521.6 gms valued at Rs. 28553493/- was found from the appellant including this gold and the AO had accepted the gold jewellery on the basis of evidence filed before the AO as well as CBDT instruction 1916. Since the remaining gold to be explained was only 309 gms, the same may be treated as explained considering the financial status of the family.*

*4.2 I have considered the explanation of the appellant. It is seen that at the time of search itself, when the locker was opened on 12.02.2018, the appellant was confronted with the same and the appellant has explained in her statement dated 12.02.2018 recorded on oath u/s 132(4) of the Act that these coins and bullions pertain to gift received on the birth of her grandsons. Keeping into consideration the status of the family, it is not unreasonable to assume that such gifts could have been received on the birth of children. Further, in the first instance, when these coins, and bullions were found from the appellant, the appellant has explained the same as gift received on birth of her grandsons and statement given at the time of discovery of these articles itself, cannot be discarded as such. The appellant belongs to a well to do family, as is clear from the income shown by the family members as well as the explained gold jewellery of 10212.6 gms found from the premise of the appellant and in such families, gift of gold coins at the time of birth of children is a natural phenomenon. Further, the \_appellant was able*

*to explain Gold jewellery of 10212.6 gms from the explained sources of the family, which also indicates the status of the family. As discussed above, while deciding the ground No. 3 above for the Silver articles, it is customary to receive and give gift on the occasion of birth of a child in Indian families. Considering the same as well as the fact that, this gold of 309 gms, which is below 3 % of the total gold jewellery of 10212.6 gms explained by the appellant's family and the statement given offhand at the time of discovery of the gold itself during the course of search, the explanation given by the appellant in respect of this gold appeals to be acceptable. Therefore, the same is to be treated as explained and the addition made by the AO on this account is deleted. This ground of appeal is to be treated as allowed.*

7. The Id. A.R. submitted that again here also, the CIT(A) provided relief to the assessee by considering the facts the assessee belonged to well to do family and considering the status of the family the entire gold coins and bullions were held to be explained since the assessee had a social status base which was not disputed. It was quite normal that on any social occasions, gifts of gold coins were received. The Id. A.R therefore, submitted that when the department is accepting the gold jewellery to be explained, when the department is accepting the silver utensils to be explained and similarly gold coins and bullions to be explained considering the status of the assessee and huge joint family to which the assessee belongs, similar approach should also be taken in the case of diamond jewellery. It is the contention the Id. A.R for the assessee that whatever jewellery has been held to be unexplained by the department pertains to the assessee which is purchased and received on gifts from the period prior to F.Y. 2008-09 and onwards and during the course of this extensive period and over the years such diamond jewellery has been accumulated and if the department gives consistent approach in the case of diamond jewellery also, then it has to be held to be explained in the hands of the assessee.

8. In this regard the Id. A.R relied on decision of Pune Bench of the Tribunal in the case of National Auto World Vs. ITO (2014) 49 taxmann.com 411 (Pune-Trib) where on the identical facts and circumstances, it was held as follows:

*“9.1 The only point raised by the assessee, and which was not accepted by the CIT(A) is the availability of ancestral jewellery weighing 2,527 gms. The stand of the CIT(A) and also the Revenue before us is to the effect that there is no documentary evidence to support the availability of ancestral jewellery with the assessee. In the course of hearing, the Id. D.R shas also assailed the order of the CIT(A) whereby jewellery weighing 600 gms. Has been considered as explained on the basis of CBDT circular/social status/receipt on occasion of social ceremonies, etc.*

9.2 We have carefully considered the rival submissions. In our considered opinion, firstly, the CIT(A) made no mistake in allowing the benefit of 600 gms. Of jewellery for the reasons assigned by him. Secondly, with regard to the assessee's claim for wrongly shut out by the CIT(A). No doubt, the assessee could not furnish any clinching documentary evidence, so however, considering the status of assessee and the level of income of the entire family, it cannot be ruled out that the assessee was in possession of jewellery inherited from his parents. It would be reasonable to expect that the ancestral jewellery available with the assessee would cover the remaining jewellery weighing 627.45 gms. Considered unexplained by the CIT(A). Therefore, we uphold the plea of the assessee and direct the AO to delete the entire addition."

9. The Id. A.R further relied on another decision of Delhi Tribunal in the case of Vibhu Aggarwal Vs. Dy. CIT CC-06, New Delhi (2018) 93 taxmann.com 275 (Del-Trib) where it was held as follows:

"We 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. We find that in this case a search & seizure. operation under section 132 of the IT Act was conducted at the business premises of M/s Best Group and as well as in the residential premise of the Directors on 28.03.2011, as in consequence to which the case of the assessee was taken up for scrutiny. The AO called for an explanation during the assessment proceedings explaining all the items of jewellery found during the course of search. In reply, the assessee explained that the jewellery belongs to the assessee's parents, their HUE, assessee's family members and his HUF. Most of the jewellery items were inherited from his grandparents and received as gifts on the occasion of marriage and birth of his children and also gifts were received on marriage anniversary, birthdays of children etc. and there was no occasion to file the wealth tax as the net wealth did not exceed the minimum limit prescribed under the Wealth Tax from period to period in each case, therefore neither the assessee nor his family members were assessed to wealth tax. The AO has completed the assessment by making an addition of 40,73,373 on account of unexplained investment in jewellery. The total jewellery found during the course of search was 2531.5 gms, out of which the AO has given assessee the benefit of 950 gms, as per the CBDT Instruction No. 1916 on account of wife and two children of the assessee. We further note that in appeal Ld. CIT(A) has further allowed the benefit of 600 gms. Of jewellery on account of mother and father of the assessee, holding that the same was allowable to. the assessee as per the CBDT Instruction No. 1916, but however, sustained the balance addition made by the AO, vide order dated 22.12.2014, treating the balance jewellery weighting 1050 gms of gold as unexplained, without appreciating the fact that assessee belongs to a wealthy family where gifting of jewellery possessed by each of the family members; all the family members as well as the HUF were assessed to tax separately; the assessee has been married from the past 18 years, and also had two children, the jewellery was gifted/inherited to the assessee and his wife by their parents and grandparents and other relatives at the time of their marriage, and also on several occasions after that, such as birth of their two children, marriage anniversaries etc. Also some of the jewellery was purchased by assessee's wife out of the cash gifts received by her from the relatives on various occasions. We also observe that that the CBDT Instruction No. 1916 dated 11.5.1994 vide para no. (iii) stipulates as under:

"The authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure."

6.1 In view of above instructions, the excess jewellery found in the case of assessee, his parents, his wife, their children and the HUF was very nominal, and was very much reasonable, keeping in mind the riches and high status and more customary practices. Our aforesaid view is fortified by following decisions/judgments:

- (i) *Judgment of the Hon'ble High Court of Delhi in the case of Ashok Chaddha (supra) wherein the Hon'ble High Court 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 kept 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 a 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 rest 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 against the revenue thereby deleting the aforesaid addition of Rs. 3,87,364.*

5. Appeal is allowed in the aforesaid terms.

(ii) Jurisdiction High Court in the case of Sushila De (supra) wherein it has been held as under:

*"The income tax authorities rationale or justification is entirely insubstantial. The assessee says that she was: married in mid 1960s and her daughters were born in 1967. She was 70 when these proceedings were started The income tax authorities do not deny this. In the circumstances, the further explanation that the jeweler belonged to her and represented accumulations of gift: received from family members over a period of time, an also acquired during the subsistence of her marriage i: reasonable and logical [para 9].*

*The assessee's explanation is justified and reasonable. Her contention that the gold jewellery was acquired through gifts made by relatives and other family members over a long period of time, is in keeping with prevailing customs and habits. The obdurate refusal of the respondents to release the jewellery constitutes deprivation of property without lawful authority and is contrary to article 300A of the Constitution of India. The petition has to succeed; a direction is issued to the income tax authority to release the jewellery within two weeks and in that regard intimate to the assessee the time and place where she(or he representative) can receive it [para 10].*

(ii) ITAT, Delhi decision in the case of Suneela Soni (supra) wherein the Tribunal has accepted the jewellery in excess of limits specified in the CBDT Instruction No. 1916, by following the decision of the Hon'ble Delhi High Court in the case of Ashok Chaddha (Supra).

6.2 After perusing the aforesaid decisions of the Hon'ble Delhi High Court as well as the ITAT, Delhi, we are of the considered view that facts and circumstances of the present case are similar to the aforesaid decision of the Hon'ble Delhi High Court and Tribunal, hence, the issue in dispute is squarely covered by the aforesaid decisions.

6.3 Keeping in view of the aforesaid facts and circumstances of the case as well as the status of the family and on the anvil of the judgement of the High Court of Delhi in the case of Ashok Chaddha (Supra) & of Sushila Devi (supra) and the ITAT Delhi; decision in the case of Susheela Soni (supra), the explanation given by the assessee's counsel is accepted. Accordingly the orders of the authorities below are cancelled and addition made by the AO and partly confirmed by the Ld. CIT(A) on account of balance jewellery weighting 1050 gms of gold as unexplained is hereby deleted.

10. Further, the Id. A.R submitted that in the written submissions before the Id. CIT(A) also they have given the details of gross total income of the family members as per the return of income which proved creditworthiness and strong financial background of the assessee's family. The said submissions find place at page 14 of the CIT(A)'s order. Further, the Id. A.R submitted that the department has provided relief to the assessee with regard to the gold jewellery applying the CBDT circular No. 1916 dated 11-05-1994 and also finding the fact that given the social economic status of the family members of the assessee, the said gold jewellery value

was attributed even prior to F.Y. 2008-09 and every year the gold value has accrued to the assessee. Clause (iii) of the said circular states as follows:

(iii) the authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax/Commissioner authorizing the search at the time of furnishing the search report.

11. The Id. A.R placed strong reliance on this particular clause of the CBDT circular and submitted that this clause does not speak of gold jewellery in particular but states only jewellery which can even be diamond jewellery and considering the customs and practices of the family of assessee which is admittedly financially strong having creditworthiness the value of diamond jewellery should also be held to be having attributed even prior to F.Y. 2008-09 and every year value accrued to the assessee and thus diamond jewellery also should be held to be explained in totality.

12. Per contra, the Id. D.R vehemently submitted that the assessee has recorded the gold jewellery in her tally balance sheet which was found during the course of search pertaining to F.Y. 2008-09 to 2017-18 and if the assessee has not recorded the diamond jewellery which means that there were no diamond jewellery as per the accounts of the assessee. The Id. D.R further submitted that there cannot be any piecemeal nature that you are recording some items and leaving others and since there was no recording of diamond jewellery in the account statements, therefore, it has to be construed that the assessee did not have any diamond jewellery. The department was correct to have different approach in regard to the diamond jewellery since in case of gold jewellery some entries were there in the tally account of the assessee on the basis of which the department has considered the status

of the assessee along with the customary practice in the joint family of the assessee and has accepted the gold jewellery to be explained. Since so far as diamond jewellery nothing is there in the tally balance sheet of the assessee, it cannot now be said that because of the status of the assessee, she was receiving gifts in diamond jewellery and accordingly value of such jewellery could be held to be accrued to the assessee. He further submitted that in case of Kruti Bhupesh Patel even streedhan was recorded. The balance sheet has given a holistic picture and if the diamond jewellery has not been recorded the value of it cannot now be attributed to the assessee. The department's view on gold jewellery was arrived at since those were found in tally statement of accounts of the assessee and thus the value derived by the department and as per the circular it cannot be found to be disputed. However, since no diamond jewellery were mentioned in the tally statement the same approach cannot be taken. The Id. D.R further referred to para 6.1.4 of the A.O's order which is as follows:

*6.1.4: Further when asked as per question No. 16 as to why diamond jewellery of Rs. 69,50,896/- should not be seized, Smt. Ketki Mukesh Patel vide her statement recorded u/s 132(4) during the course of search has explained in answer to question No. 16 that, we wish to submit that we may be given some time to reconcile the difference in the value of diamond jewellery. As to the best of our knowledge, the diamond jewellery has been purchased through bank and we request you to allow us few days to reconcile the difference of Rs. 69,50,896/”*

13. But after this statement, the assessee has not filed any evidences and neither any reconciliation was filed. That, purchasing jewellery through banking channels would show the purchase but it cannot be regarded for the purposes of value since it does not find mention in the balance sheet. The Id. D.R further referred to para 6.1.7 of the A.O's order where it is stated that diamond jewellery of Rs. 18,82,024/- has been returned to the assessee after it was explained. If nothing is there in the balance sheet regarding diamond jewellery now assessee cannot say that such jewellery has come from prior accrual giving example of family

status etc. The Id. D.R also submitted that the case-law relied on by the assessee is not applicable in the facts situation because in those cases relied on by the assessee there is no mention of any tally balance sheet where the assessee has recorded the details of certain jewellery whereas in the present case, the assessee did record value of gold jewellery pertaining to F.Y. 2008-09 to 2017-18.

14. Thereafter, the Id. A.R submitting his closing arguments as a counter to the submissions of the Id. D.R stated that it has been already declared before the department which is placed on record that the tally balance sheet found during the search was not audited accounts of the assessee and it was merely accounts in bits and pieces and therefore, it is not correct for the Id. D.R to observe that since the diamond jewellery has not been mentioned in the accounts, there cannot be any prior accumulation and value addition of the diamond jewellery in the hands of the assessee. Statement of accounts, therefore, cannot be held to be exhaustive and the department cannot contend that nothing beyond such scope of the accounts can be allowed. The revenue must take a holistic approach.

15. I have heard the rival submissions, analyzed the facts and circumstances in this case, considered judicial pronouncements placed on record. I have examined the materials/documents available on record vis-à-vis the submissions of the parties herein. The revenue has given relief to the assessee regarding her gold jewellery found during the course of search holding it to be explained. The revenue has also considered the silver utensils and gold coins, bullions as explained in the hands of the assessee considering the family status and background of the assessee. The assessee has explained the financial position and the

creditworthiness of the family members which are placed on record. The revenue has even accepted the contention of the assessee in respect of gold jewellery that it was acquired from period prior to F.Y. 2008-09. The revenue has also accepted the fact that value of gold jewellery and the gold coins can be held attributable in the hands of the assessee since not only they have been purchased throughout several years prior to F.Y. 2008-09 but even some of them have been received in gifts which is a customary practice keeping in mind the family status of the assessee. Regarding diamond jewellery of Rs. 39,13,226/- the Revenue has held the same as explained in the hands of the assessee and the remaining diamond jewellery of Rs. 51,38,754/- were held to be unexplained (para 2.12 of CIT(A)'s order page 29). The Id. A.R of the assessee has demonstrated in the course of his arguments as to the approach of the department that so far as gold jewellery, silver utensils, gold coins and bullions, the Revenue has considered the value accrued in respect of the assessee on these items even prior to F.Y. 2008-09. It has been accepted by the department the status and family background of the assessee and that it was customary practice to give gold and jewellery in social occasions. Accordingly, the value of the above items were held to be explained but the revenue has not considered any accrual value in respect of diamond jewellery in the hands of the assessee. Neither the A.O nor CIT(A) has given any justification for following different approach in respect of gold jewellery on one hand and the valuation of diamond jewellery on the other hand. That regarding gold coins, silver utensils, etc. family status and the joint family background of the assessee were considered but nothing is coming out from facts with regard to the analyses made in case of diamond jewellery valuation by the Department. . Further, I find that in the decision relied by the assessee

in the case of National Auto World (supra) Vibhu Aggarwal (supra) irrespective of non-furnishing of any clinching documentary evidences, the Tribunal has held just considering the status of the assessee and level of income of the entire family it cannot be ruled out that the assessee was in possession of jewellery inherited from parents. So therefore, these case laws reflects the fact that the status of the assessee family and the financial capabilities, creditworthiness were taken into consideration by the Tribunal. Considering the totality of the facts and circumstances in this case, I am of the considered view that consistency in approach in adjudicating the issue has to be there by a Quasi Judicial Authority such as Revenue authorities in deciding issues as in the present case based on the facts and circumstances. Admittedly in the case of the assessee, there has been different treatment in respect of gold jewellery which were found mentioned in the tally statement vis-à-vis diamond jewellery. The revenue while holding the diamond jewellery at Rs. 51,38,754/- to be unexplained has not dealt with specifically with the submissions of the assessee where the assessee has given details of the financial background of the family members, the status of the assessee family and also the fact that they have a huge joint family living together, custom and tradition and the gifts given during various ceremonies. All these practical aspects have not been analyzed in respect of the diamond jewellery held to be unexplained by the department. I am of the considered view that in the interest of justice, these facts should be examined in detail and verified after which the case should be re-adjudicated as per law by the Id. A.O more so because of the fact that the revenue has already accepted the gold jewellery in the hands of the assessee considering a particular approach. In view thereof, I set aside the order of the Id. CIT(A) and restore the matter to the file of

the Id. A.O to re-adjudicate the same as per law and to verify the actual value of diamond jewellery whether it can be attributable to the assessee even prior to F.Y. 2008-09 keeping in mind the socio economic position of the assessee's family and other factual aspects. The A.O shall comply with the principles of natural justice. The A.O shall carry out detailed factual verification in every aspect and come out with a speaking order. The appeal of the assessee in **ITA No. 119/PUN/2022 is allowed for statistical purposes.**

16. The facts and circumstances of the cases in ITA No. 120/PUN/2022 in the case of Rima Tapan Patel and ITA No. 121/PUN/2022 in the case of Ketki Mukesh Patel are absolutely identical and similar to those in ITA No. 119/PUN/2022 in the case of Kruti Bhupesh Patel. Therefore, my decision in ITA No. 119/PUN/2022 shall apply mutatis mutandis to the cases in ITA No. 120/PUN/2022 and 121/PUN/2022. In the result, **Appeal in ITA No. 120/PUN/2022 and ITA No. 121/PUN/2022 are also allowed for statistical purposes.**

17. In the combined result, **all the appeals are allowed for statistical purposes.**

Order pronounced in the open court on 27<sup>th</sup> October 2022

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Pune; Dated : 27<sup>th</sup> October 2022

Ankam

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT((A)-12, Pune
4. Pr. C.I.T. Nagpur.
5. DR, ITAT, SMC Bench, Pune.
6. Guard File.

BY ORDER,

Sr. Private Secretary,  
ITAT, Pune

/// TRUE COPY ///

		Date	
1	Draft dictated on	18-10-2022	Sr.PS
2	Draft placed before author	25-10-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	27-10-2022	Sr.PS/PS
7	Date of uploading of order	27-10-2022	Sr.PS/PS
8	File sent to Bench Clerk	<a href="#">27-10-2022</a>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		