

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 3041/DEL/2022**  
**[Assessment Year: 2019-20]**

Sharad Kumar Garg, 53/19, Ramjas Road, Karol Bagh, Delhi-110055.	<u>Vs</u>	ACIT, Central Circle-20, New Delhi.
PAN- ATUPG5037G		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	<b>S/Shri M.P. Rastogi, Advocate &amp; Deepak Malik, Advocate</b>	
<b>Department represented by</b>	<b>Shri Om Parkash, Sr. DR</b>	
<b>Date of hearing</b>	<b>22.02.2023</b>	
<b>Date of pronouncement</b>	<b>07.03.2023</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-27, New Delhi, dated 13.12.2022, pertaining to the assessment year 2019-20. The assessee has raised following grounds of appeal:

*“1. That in view of the facts and circumstances of the case and in law, the CTT (Appeals) has erred in not accounting for the jewellery inherited by the appellant from his late grandmother and has excluded the same from the permissible limit.*

*2. That in view of the fact3 and circumstances of the case and in law, the*

*act of the assessing officer in disregarding the will completely owing to the non-mentioning of the the quantity of the jewellery despite multiple evidences proving the validity of the will, is completely unjust and must be rever sed.*

3. *That in view of the facts and circumstances of the case and in law, the decisions relied upon by the CIT (Appeals) which show the importance of the Hindu traditions and alterations in jewellery items along with the liberal interpretation provided to the CBDT circular are in favour of the appellant, and any reliance on the said judgements by the CIT (Appeals) to his advantage is a misapplication of law.*

4. *That in view of the facts and circumstances of the case and in law, it is not the contention of the Department that the jewellery value should be increased. Therefore, without any opposition by the Assessing officer at the stage of both the arguments, as well as in the written order, the increase in the quantity of the jewellery to the tune of more than 2091.60 grams is an act of overreach performed by the CIT (Appeals), and owing to its detriment to the appellant, the same must be reversed.*

5. *That in view of the facts and circumstances of the case and in law, the act of the CIT (Appeals) in enhancing the value of the seized jewellery without providing a show-cause notice and hearing the appellant, is contrary to law and violates the principles of natural justice. The wrong calculation of the quantity of jewellery by the CIT (Appeals) must be corrected and his order, be quashed.*

6. *That in view of the facts and circumstances of the case and in law the addition of Rs. 18,39,876 to the appellant's income on account of unexplained jewellery under section 69A r.w.s. 1 1 5RBE of the Income Tax Act, must be reversed and set aside.*

7. *That in view of the facts and circumstances of the case and in law the continuance of the penalty proceedings under section 271AAB(1A) of the Act must be quashed.*

8. *That the appellant craves to add, amend, alter or delete any ground of appeal at the time of the hearing.”*

2. The only effective ground in this appeal is against sustaining the addition of Rs. 18,39,876/- made on account of unexplained jewellery.

3. Facts giving rise to the present appeal are that in this case a search & seizure operation u/s 132 of the Income-tax Act, 1961, hereinafter referred to as the "Act" was conducted by the Investigation Wing on 17.12.2018 in Faquir Chand Lockers and Vaults Pvt. Ltd. Group of cases. The assessee's locker no. 288 at 6704A, Khari Baoli, Delhi-110006 was also covered. The case was centralized to Central Circle-20. The assessee filed his return of income declaring an income of Rs. 4,03,730/- and the case was taken up for scrutiny. During the course of assessment proceedings the assessee was asked to explain about jewellery weighing 1822.380 gms., amounting to Rs. 65,05,721/-. In response thereto, the assessee filed a detailed reply. It was stated that apart from self family, the assessee also received jewellery from his grand-mother and a Will was also produced to this effect. The Assessing Officer after giving benefit of CBDT Instruction no. 1916 dated 11.05.1994 in respect of wife, the assessee himself and two minor children. The excess value of the jewellery was treated as unexplained amounting to Rs. 41,19,198/- against the returned income of Rs. 4,93,730/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who partly allowed the appeal of the assessee and sustained addition to the extent of Rs. 18,39,876/- after giving benefit of the CBDT Instruction in respect of other family members. The learned CIT(Appeals) treated 1500 gms., as explained as per CBDT Instruction and rest of the jewellery was treated as unexplained. Thus, the learned

CIT(Appeals) restricted the addition to the extent of Rs. 18,39,876/-. Aggrieved against this, the assessee is in appeal before this Tribunal.

4. Learned counsel for the assessee vehemently argued that the lower authorities failed to consider the Will of the grand-mother of the assessee. He submitted that the balance jewellery belonged to the grand-mother of the assessee who had given her jewellery to the assessee. He submitted that under these facts the lower authorities were not justified in treating the jewellery as unexplained and making addition in this regard. He, therefore, prayed that the impugned addition may be deleted.

5. On the other hand, learned DR opposed the submissions and submitted that the authorities below have specifically pointed out that there is no specification regarding the jewellery, which was being bequeathed to the assessee, assessee's wife and sons. In the absence of such specific information, the authorities below were justified in not taking cognizance of the Will and rightly made the addition.

6. I have heard rival submissions and perused the material available on record. It is seen from the record that the lower authorities have been disputing the factum of Will. It is also undisputed fact that in the Will there is no specific mention relating to weight and description of such jewellery which was being bequeathed by the testator. However, it also cannot be inferred that by this Will no jewellery

was bequeathed. Therefore, considering the totality of the facts I am of the considered view that the AO should have also given benefit of CBDT Instruction with regard to the jewellery of grand-mother. I, therefore, direct the Assessing Officer to grant set off of 500 gms., of jewellery as per CBDT Instruction relating to the grand-mother of the assessee in addition to the relief given by the learned CIT(Appeals). The Assessing Officer would, accordingly, re-compute the addition, in the light of aforesaid direction. The grounds raised in this appeal are partly allowed.

7. Appeal of the assessee is partly allowed.

Order pronounced in open court on 7<sup>th</sup> March, 2023.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**