

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2203/DEL/2022
[Assessment Year: 2018-19]

Sunil Sethi, C-1/1209, Vasant Kunj, New Delhi-110070. PAN- AATPS4902N	<u>Vs</u>	DCIT, Central Circle-2, Noida (U.P.)
APPELLANT		RESPONDENT

AND

ITA No. 2204/DEL/2022
[Assessment Year: 2018-19]

Uday Sethi, C-1/1209, Vasant Kunj, New Delhi-110070. PAN- BNSPS0784D	<u>Vs</u>	DCIT, Central Circle-2, Noida (U.P.)
APPELLANT		RESPONDENT
Assessee represented by		Ms. Rano jain, Adv; Shri D.C. Garg, CA; & Ms. Mansi Jain CA
Department represented by		Shri Sanjay Nargas, Sr. DR
Date of hearing		15.02.2023
Date of pronouncement		10.03.2023

ORDER

PER KUL BHARAT, JM:

The captioned appeals, preferred by the assesseees of the same group, pertaining to the assessment year 2018-19, were heard together and are being

disposed of by a consolidated order for the sake of convenience. First we take up ITA No. 2204/Del/2022.

ITA No. 2204/Del/2022 (A.Y. 2018-19):

2. This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Kanpur-4, dated 13.07.2022, pertaining to the assessment year 2018-19. The assessee has raised following grounds of appeal:

“1. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in law as well as on facts by disposing the appeal without appreciating the facts correctly and also without providing proper opportunity of being heard.

2. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in law as well as on facts in enhancing the income of the Appellant by Rs. 12,19,905/- without issuing notice u/s 251.

3. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in law as well as on facts in enhancing income of the Appellant by Rs. 12,19,905/- without interpreting CBDT instruction no. 1916 in right sprit and also without appreciating financial/social status of the family.

4. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in disposing the appeal on the ground of ‘loan against pledged of the jewellery’ which was not raised in the appeal.

5. The appellant craves leave to add, amend or vary from the aforesaid grounds of appeals at or before the time of hearing.”

3. Facts, in brief, are that a search & seizure operation u/s 132(1) of the Income-tax Act, 1961, hereinafter referred to as the “Act”, was carried in the case of M/s Samtel Group on 18.1.2018. The case of the assessee was also covered under the search and survey operations. Thereafter the assessee filed his return through electronic mode on 4.8.2018 declaring income of Rs. 2,51,680/-. Case was taken up for scrutiny and a notice u/s 143(2) of the Act was issued. The Assessing Officer while framing the assessment, treated the jewellery amounting to Rs. 31,78,150/- as unexplained and same was added in the income of the assessee. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who partly reduced the addition and sustained the addition to the extent of Rs. 12,19,905/-. Aggrieved against this, the assessee is in appeal before the Tribunal.

4. At the time of hearing, learned counsel for the assessee vehemently argued that the authorities below were not justified in making the addition and sustaining the same. Learned counsel submitted that the assessee was also covered by the Department in respect of search conducted at Samtel Group on 18.1.2018. Before the authorities below it was stated that jewellery amounting to Rs. 44,53,226/- found at the residence of the assessee was kept in a plastic box separately and it was stated that this jewellery belonged to one Mrs. Sakshi Kaura w/o Shri Puneet

Kaura, which was kept for sale/exchange. Learned counsel submitted that even during the course of recording of statement father of the assessee had stated that the jewellery belonged to Smt. Sakshi Kaura. Learned counsel submitted that the authorities below failed to appreciate the facts in right perspective. Learned counsel further reiterated the submissions as made in the synopsis. For the sake of clarity synopsis of the assessee are reproduced as under:

“SYNOPSIS

ISSUE OF JEWELLERY

AO's ADDITION

	<u>Found</u>	<u>Seized</u>	<u>Addition made</u>
<i>Shri Uday Sethi</i>	12,19,905	-	-
	44,53,226	31,78,150	31,78,150
<i>Shri Sunil Sethi</i>	7,33,580	7,33,580	7,33,580

After CIT(A) Order

<i>Shri Uday Sethi</i>	12,19,905
<i>Shri Sunil Sethi</i>	7,53,580
<i>Dolly Sethi's jewellery</i>	23,00,000
<i>CBDT relief</i>	(23,00,000)

The Ld. Assessing Officer (AO) had made an addition of Rs.31,78,150/- which was on account of jewellery seized at the time of search in the case of Uday Sethi. Similar addition amounting to Rs.7,33,580/- was made in the case of Shri Sunil Sethi, father of the assessee.

During the course of search, jewellery in the case of Uday Sethi was found in two batches of Rs.12,19,905/- and Rs.44,53,226/-. Since out of this, only jewellery amounting to Rs.31,78,150/- was seized out of the second batch of

Rs. 44,53,226/-, the Ld. AO made an addition of the same amount.

The stand of the assessee all along before the Ld. AO as well as the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] was that the batch of jewellery amounting to Rs.44,53,226/- belonged to a relative of the assessee and was not his own.

*The Ld. CIT(A) accepted the contention of the assessee that jewellery amounting to Rs.44,53,226/- belonged to some other person, viz., Smt. Sakshi Kauara and preferred to delete the same. Findings of the Ld. CIT(A) are at **Pg. 15, Para 6.7** of his order.*

*Still the CIT(A) has confirmed the addition of Rs.12.19,905/-, **CIT(A)'s order Pg. 18, Para 6.9**, which in the first place was not added by the A.O. himself, who had given a categorical finding in this regard in his order at **Pg. 2 Para 5**.*

*Further the Ld. CIT(A) also preferred to give assessee and his family together the relief of Rs.23,00,000/- in terms of the CBDT Circular No. 1916 dated 11.05.1994. His findings in this regard are contained at **Pg. 16, Para 6.8** of his order.*

After considering the bunch of jewellery amounting to Rs.44,53,226/- not belonging to Uday Sethi, the only jewellery remaining was in the hands of the father Shri Sunil Sethi, amounting to Rs.7,33,580/-. This would have been sufficiently covered by the amount of Rs.23,00,000/- relief provided by the Ld. CIT(A) as per the CBDT circular.

*However, the Ld. CIT(A) relying on the statement of Shri Sunil Sethi recorded at the time of search and quoting the same at **Pg. 16** of his order, the income of the assessee was*

enhanced by Rs.23,00,000/- stating that this jewellery pledged by Smt. Dolly Sethi also belonged to the assessee's family.

Without prejudice to our submission against the enhancement, even if for the sake of argument, it is taken to be correct, the addition confirmed in the hands of Sunil Sethi can also be deleted as there are several judicial pronouncements, which say that taking consideration of the stature of the family, petty amounts of jewellery over and above the CBDT circular should also not be added.

Reliance is placed on the following judgements:

1. *Ashok Chadha vs. ITO, ITA 274/2011, dt. 05.07.2011, Delhi High Court*
2. *Sushila Devi vs. CIT, W.P. 7620/2011, dt. 21.10.2016, Delhi High Court*
3. *Haroon Mohd. Vs. ITO, ITA 463/M/2012, dt. 31.01.2014*

Even otherwise, as per the statement of Shri Sunil Sethi as reproduced by the Ld. CIT(A) at Pg. 16 of his order, the jewellery belonged to Smt. Dolly Sethi. However, no such addition was made in her hand.”

5. On the other hand learned DR opposed the submissions and supported the orders of the authorities below.

6. I have heard rival submissions and perused the material available on record. The Assessing Officer made the impugned addition on account of unexplained jewellery. The objection of the assessee regarding the said addition is that the Assessing Officer failed to consider the explanation offered by the assessee and without confronting with the real owner of the jewellery he, in an arbitrary manner, made the addition. Before the Assessing Authority it was stated that the jewellery found in the locker belonged to third party. I find merit in the contention of the assessee that without confronting third party who had herself confirmed about the ownership of the jewellery learned CIT(Appeals) was not justified in sustaining the addition. I, therefore, direct the Assessing Officer to delete the impugned addition. Hence, the ground of appeal is allowed.

7. Appeal of the assessee is allowed.

ITA No. 2203/Del/2022 (A.Y. 2018-19):-

8. Now coming to the appeal of Shri Sunil Sethi, being ITA no. 2203/Del/2022, the assessee has raised following grounds of appeal.

“1. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in law as well as on 1 T facts by disposing the appeal without appreciating the facts correctly and also without providing proper opportunity of being heard.

2. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in law as well as on facts in confirming addition of Rs. 5,00,000/- made by the AO u/s 69A on account of cash amounting to Rs. 3,31,200/- found during the search without appreciating the facts that cash so found belongs to company M/s Dolsun Containers Pvt Ltd which was received as part of the advance against sale of immovable property.

3. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in law as well as on facts in confirming addition of Rs. 7,33,580/- made u/s 69A on account of unexplained jewellery found at the time of search.

4. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in law as well as on facts in enhancing income of the Appellant by Rs. 12,19,905/- without interpreting CBDT instruction no. 1916 in right sprit and also without appreciating financial/social status of the family.

5. That having regards to the facts and circumstances of the case, Learned Commissioner of Income Tax (Appeals)-4, Kanpur, has erred in disposing the appeal on the ground of ‘loan against pledged of the jewellery’ which was not raised in the appeal.

6. The appellant craves leave to add, amend, or vary from the aforesaid grounds of appeals at or before the time of hearing.”

9. The facts are identical as were in ITA no. 2204/Del/2022. The learned authorized representatives have also adopted the same arguments. Learned counsel for the assessee reiterated the submissions as made in the written submissions.

10. Apropos to addition on account of cash found, it was submitted that the amount of Rs. 3,31,200/- related to the company in which the assessee was a director. It was stated that an agreement to sell was entered between the company and Shri Rajeev Chawla. The cash was received as an advance for sale of property. Learned counsel pointed out to the agreement to sell.

11. Regarding ground nos. 3,4 & 5 i.e. the addition relating to unexplained jewellery, learned counsel for the assessee reiterated the same submissions as were made in the case of Shri Udai Sethi in ITA no. 2204/Del/2022

12. On the other hand, learned DR supported the orders of the authorities below and submitted that there is no infirmity into the orders of the authorities below, as the explanation offered by the assessee was not supported by credible evidence.

13. I have heard rival submissions. In respect of addition of Rs. 5,00,000/- it is stated that a sum of Rs. 3,31,200/- belonged to the company namely M/s Dolsun Containers Pvt. Ltd. in which the assessee was a director. The agreement to sell is also placed on record. Considering the same I am of the considered view that this evidence ought to have been considered and same could not be brushed aside. Therefore, the addition of Rs. 3,31,200/- out of Rs. 5,00,000/- in respect of cash found during the course of search is deleted. Remaining addition is sustained.

14. Now coming to the issue raised in ground nos. 3, 4 & 5, identical issue was also raised in the case of Shri Udai Sethi, wherein considering the submissions I have decided the issue by observing as under:

“6. I have heard rival submissions and perused the material available on record. The Assessing Officer made the impugned addition on account of unexplained jewellery. The objection of the assessee regarding the said addition is that the Assessing Officer failed to consider the explanation offered by the assessee and without confronting with the real owner of the jewellery he, in an arbitrary manner, made the addition. Before the Assessing Authority it was stated that the jewellery found in the locker belonged to third party. I find merit in the contention of the assessee that without confronting third party who had herself confirmed about the ownership of the jewellery learned CIT(Appeals) was not justified in sustaining the addition. I, therefore, direct the Assessing Officer to delete the impugned addition. Hence, the ground of appeal is allowed.”

15. Taking a consistent view I hereby direct the Assessing Officer to delete the addition.

16. Grounds raised in this appeal are partly allowed.
17. Appeal of the assessee is partly allowed.
18. In the result, ITA no. 2204/Del/2022 is allowed whereas ITA No. 2203/Del/2022 is partly allowed.

Order pronounced in open court on 10th 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