

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 1040/Bang/2022</b>
<b>Assessment Year : 2015-16</b>

Shri Pratap Kunda, #8-2-703/4/P, Road No. 12, Banjara Hills, Hyderabad – 500 034. <b>PAN: ADFPK4030Q</b>	<b>Vs.</b>	The Assistant Commissioner of Income Tax, Central Circle – 1[2], Bengaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Ms. Neera Malhotra, CIT-DR

Date of Hearing	:	01-05-2023
Date of Pronouncement	:	26-05-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against order dated 06/09/2022 passed by Ld.CIT(A)-11, Bangalore for A.Y. 2015-16 on following grounds of appeal:

*“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The learned CIT[A] is not justified in sustaining the addition of Rs.1,06,97,270/- from out of the original addition of Rs. 1,13,29,855/- made as unexplained investment in the jewellery found at the time of search conducted in the residence of the appellant on*

19/12/2014 under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] ought to have appreciated that the jewellery found at the time of search belonged to the appellant's mother Smt.Hymavathi and the appellant's wife Smt. K.Prathibha and that there was no contradiction in the statement made by the appellant at the time of search when he explained that the jewellery belongs to his family and consequently. the addition made in the hands of the appellant is opposed to law and facts of the appellant's case and the same ought to have been deleted in full.

2.2 The learned CIT[A] further failed to appreciate that the appellant's mother and wife had declared jewellery under the Voluntary Disclosure of the Income Scheme [VDIS], 1997 of Rs. 4,12,870/- and Rs.2,46,903/- respectively aggregating to Rs.6,59,773/-, which jewellery had a value at Rs.73,16,659/- adopting the prevalent rates on the date of search and therefore, the impugned addition to the extent of Rs. 73,16,659/- ought to have been deleted.

2.3 The learned CIT[A] further failed to appreciate that the appellant's mother and wife had purchased jewellery over the years by withdrawing cash from the bank account as well as making payments through banking channels to the extent of Rs.31,80,585/-, which jewellery had a value of Rs.46,44,588/- on the date of search and the same ought to have been deleted in full instead of the amount payments made in cheque to the extent of Rs.6,32,585/-.

2.4 The learned CIT[A] is not justified in disbelieving the claim of the appellant that cash withdrawals from bank were used for purchase of gold jewellery considering that the appellant's wife and mother had declared substantially income over the past 10 years consequently, the claim ought to have been examined and evaluated on human probabilities considering that the assets found was jewellery that is usually acquired by ladies of the family and therefore, the addition sustained by the learned CIT[A] is unjustified and ought to have been deleted in full.

3. Without prejudice to the above, the learned CIT[A] ought to have allowed deduction towards gold jewellery received on the marriages and other customary occasions and thus treating the entire jewellery found as unexplained is highly

*excessive and unreasonable under the facts of the appellant's case.*

*4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.*

*5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”*

**2. Brief facts of the case are as under:**

2.1 The assessee is an individual and return of income for the A.Y. 2015-16 was filed on 30.09.2015 declaring total income of Rs.50,84,270/- comprising house property income and income from other sources. Search and Seizure u/s. 132 was carried out on 19.12.2014 at the company as well as the residence of the assessee at Hyderabad. Subsequently, the case was centralised by the CIT-I, Hyderabad vide F.No. HYD/Pr.CIT-1/Transfer/2015-16 dated 06/10/2015.

2.2 Notice u/s. 142(1) dated 01.09.2016 was issued and served on the assessee. In response to this notice, the assessee filed a copy of acknowledgement of return dated 30.09.2015 declaring total income at Rs.50,84,270/-. Subsequently, notice u/s. 143(2) dated 29/09/2016 was issued and in response thereto the authorised representative of the assessee appeared, and furnished details called for.

2.3 During the course of search at the residential premises of the assessee, gold jewellery valued at Rs.1,13,29,855/- found and jewellery valued at Rs.67,78,697/- alone was seized out of it and

a statement u/s. 132(4) was recorded on 19.12.2014. The assessee was also questioned about the sources thereof. The assessee had stated that gold jewellery seized belonged to the assessee's wife Smt. K. Prathiba and his mother Smt. K. Hymavathi and they are also income tax assesseees. Both of them have filed returns regularly, copies of the same are furnished for A.Ys. 2009-10 to 2014-15. Both of them were covered u/s. 65 of VDIS, 1997 issued by the CIT, Hyderabad, copy of certificates filed are enclosed for perusal.

2.4 It was submitted that the value of jewellery was based on the rates at VDIS period and regular returns, whereas its probable valuation as on 19.12.2014 is also reckoned, which is as follows:

Name of the assessee	Details at the time of VDIS and regular returns				Details as on 19.12.14	
	AY	Value in Rs.	Rate/gram	Weight	Rate/gram	Value in Rs.
Smt. K. Hymavathi	1987-88	412,870	257	1,606.50	2800	4,498,195
Smt. K. Prathibha	1987-88	115,196	257	448.23	2800	1,255,054
Smt. K. Prathibha	1993-94	95,107	414	229.73	2800	643,236
Smt. K. Prathibha -regular return	1997-98	36,600	472	77.54	2800	217,119
Value of Precious stones						703,056
Total						7,316,659

2.5 It was also submitted that the substantial amounts were withdrawn from bank accounts by both of them during 2006-07 onwards and invested in gold jewellery, to the extent of Rs.31,80,585/-. It was thus submitted that the total value of jewellery on the date of search was Rs.1,19,61,247/- comprising of VDIS covered jewellery at Rs.73,16,659/- and post assessment year 2016-17 onwards Rs.46,44,588/-.

2.6 The Ld.AO made addition of Rs.1,13,29,855/- to the total income of the assessee as “unexplained sources” for investment in jewellery found at the residence on the following basis:

- a) In this connection, it is pertinent to note that the Ld.AO’s reasoning for not accepting the explanation of the assessee is without merits in as much as the Ld.AO’s thinking is pervasive to the fact of the case which is clearly established to the fact that mere claim of the assessee that the jewellery found during the course of search belongs to the Joint family of the assessee and not in his individual capacity. Moreover, the declarations made under VDIS schemes by his wife as well as mother and the declarations were accepted by the concerned CIT for which certificates issued establishes the fact that they are legal owners / entities of the jewellery as such at that point of time. Further, it is customary for the family members to have gold jewellery of their own which infact forms jewellery of the joint family for all practical purposes and always be termed as jointly belonging to assessee and his family. The Ld.AO has questioned the basis of declaration in the absence of valuation report not furnished by the assessee now. This is very much against to the aspect when the certificates under VDIS 1997 was issued by the Department, more particularly to the answer to question no. 11 and answer to question no. 16 (of FAQ’s on VDIS 1997, issued by CBDT) where in the declaration will be a valid one and final only when the Certificate issued by the CIT and the Ld.AO had no jurisdiction to say that no valuation report furnished by the

assessee now, that too after 19 years of its declaration, doubting the veracity of the VDIS certificate granted by a higher authority. Moreover, there is no rule that the jewellery as declared during 19 years earlier should be retained as such even now.

- b) At this juncture, it is necessary to highlight that the Ld.AO's view on this issue of ownership of jewellery treating it for VDIS purposes and consequent on search action treating it belong to the assessee in his individual capacity is not correct. However, the Ld.AO had considered the value of jewellery of these female members declared at the time of VDIS at Rs.6,59,773/-, out of Rs.1,19,61,247/- valued now is not correct as the Ld.AO ought to have reduced it at Rs.73,16,659/- as against Rs.6,59,773/- considered for one purposes. The Ld.AO's action in bringing to tax ignoring the value as on 19.12.2014 in respect of the cost as per VDIS and taxing the same in the hands of the assessee is incorrect.
- c) The Ld.AO's action of assessing the "unexplained value of jewellery" in the hands of the assessee is not on the principles of natural justice when ownership of property does not belong to him as stated above and more practically when the female members were considered to be the owners of the same as per VDIS certificate itself who had sufficient sources and filing their income tax returns regularly, treating the entire amount belonging to the assessee is erroneous.

d) The Ld.AO's interpretation that the sources of jewellery purchased by the women members during A.Y. 2005-06 onwards has not established the correlation between the sources and the ownership of the jewellery is devoid of merits as the assessee had clearly furnished the details and sources thereof in the submissions made. This view of the Ld.AO is misconstrued and based on mere presumption and assumption of the facts of the case.

2.7 Aggrieved by the order of the Ld.AO, assessee filed appeal before the Ld.CIT(A).

2.8 The Ld.CIT(A) observed and held as under:

4.2 The submissions of the appellant have duly been considered. As regards the issue of VDIS 97, this is noted that the AO has not doubted the veracity of the VDIS certificate. The AO had only asked the appellant to discharge the onus to substantiate his claim that the jewellery found at the time of search was the same as declared by his wife and mother under VDIS. Since it was the appellant who was claiming so, the onus was squarely on him to show that the jewellery found was the same as was declared in the VDIS. However, the appellant failed to discharge this onus. He failed to produce the copy of the valuation done at the time of VDIS or any other evidence to substantiate his claim. So the benefit of such declaration could not have been allowed to him by the AO.

4.3 As regards claim of the appellant that withdrawals from the bank account were used for purchase of jewellery, the same is also without merit. A perusal of the bank statement of his wife (Mrs Kunda Prathibha), as submitted during assessment proceedings, reveals following facts:

- Mrs K Prathibha was extensively using her bank account for making payments through account payee cheques as well as bearer cheques. There are some cash withdrawals through self-cheques also.

- The appellant has claimed that all such self-cheques were used for purchase of jewellery.

- In addition, there are payments of Rs 6,32,585/- from FY 2006-07 to FY 2014-15 where payments were made to jewellers through cheques or by card.

4.4 An analysis of payments made by cheques and by card shows following details:

Date	Payee	Cheque no	Amount (Rs)
22.10.2009	GR Thangamaligai Jewellers Hyderabad (GRT Jewell, GR Thanga etc.)	490598, 490596	10,000
25.11.2009	GR Thangamaligai Jewellers Hyderabad	490597	5,000
22.12.2009	GR Thangamaligai Jewellers Hyderabad	490600	5,000
18.12.2011	GR Thangamaligai Jewellers Hyderabad	By Card	38,718
05.03.2012	Shree Jewellers Exim Hyderabad	By Card	1,91,500
20.07.2012	GR Thangamaligai Jewellers Hyderabad	By Card	13,400
17.08.2013	GR Thangamaligai Jewellers Hyderabad	By Card	21,240
11.11.2013	GR Thangamaligai Jewellers Hyderabad	By Card	21,227
14.12.2013	Shree Jewellers Exim Hyderabad	By Card	10,000
21.12.2013	Shree Jewellers Exim Hyderabad	941176	2,00,000
19.12.2013	GR Thangamaligai Jewellers Hyderabad	By Card	30,500
15.10.2014	GR Thangamaligai Jewellers Hyderabad	941176	86,000
	<b>Total</b>		6,32,585

4.5 The above details clearly reveal a pattern that Mrs K Pratibha had been purchasing jewellery from two jewellers namely GR Thangamaligai Jewellers, Hyderabad and Shree Jewellers Exim, Hyderabad. This is a common practice in Indian families that they do not change their jewellers as a matter of trust regarding the quality of the jewellery is involved. The pattern also reveals that she had been using cheques or cards to make the payments which could be as small as Rs 5,000/- or as big as Rs 2,00,000/-. There is nothing to suggest that she had been using cash withdrawal from the bank accounts to purchase the

jewellery. Instead of bothering herself by first withdrawing cash and then making cash payment to jewellers, she could have easily used card or cheque to make such payments from the bank account as both the jewellers were accepting payments by not only card but through cheques also as and when given by her. The appellant has thus not explained as to why his wife would withdraw cash from the bank account to purchase jewellery. The cash withdrawals from the bank were thus not meant for purchase of jewellery but for some other routine household expenses where she could not have used card or cheque. The pattern of cash withdrawal shows that she had been withdrawing from the bank account from time to time to maintain a reasonable cash balance in her hand for emergency or for the reason that she could meet her cash expenses in routine. The appellant has just tried to take advantage of such cash withdrawals getting reflected in her bank account to explain the unaccounted investment in the jewellery found at the time of search. Another aspect to be noted is that the appellant has not linked the value of any jewellery item with the corresponding cash withdrawn from the bank account. The appellant has not brought anything on record to substantiate his claim that the unaccounted investment was made by his wife and mother and not him. The claim of the appellant of having received gifts is also unsubstantiated. So as per preponderance of probabilities, the cash purchase of jewellery was from the unaccounted income of the appellant only. However, the benefit of Rs 6,32,585/-, the amount used by his wife for purchase of jewellery by using card or cheques needs to be allowed.

4.6 Considering above, the appellant gets a relief of Rs 6,32,585/-. The balance addition of Rs 1,06,97,270/- is sustained. **The ground of appeal 1 is thus partly allowed.**

Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted that the jewellery found at the time of search belonged to the assessee's mother and Smt. Hymavathi and the assessee's wife Smt. K. Prathibha and that there was no

contradiction in the statement made by the assessee at the time of search when he explained that the jewellery belongs to his family and consequently, the addition made in the hands of the assessee is opposed to law and facts of the assessee's case and the same ought to have been deleted in full.

4. The Ld.AR further submitted that the assessee's mother and wife had declared jewellery under the Voluntary Disclosure of the Income Scheme [VDIS], 1997 of Rs.4,12,870/- and Rs.2,46,903/- respectively aggregating to Rs.6,59,773/-, which jewellery had a value at Rs.73,16,659/- adopting the prevalent rates on the date of search and therefore, the impugned addition to the extent of Rs.73,16,659/- ought to have been deleted.

5. The Ld.AR submitted that the assessee's mother and wife had purchased jewellery over the years by withdrawing cash from the bank account as well as making payments through banking channels to the extent of Rs.31,80,585/-, which jewellery had a value of Rs.46,44,588/- on the date of search and the same ought to have been deleted in full instead of the amount payments made in cheque to the extent of Rs.6,32,585/-.

6. He also submitted that the revenue authorities did not even appreciate that the gold jewellery would have also been received on marriages and other customary occasions and therefore treating the entire jewellery found as unexplained is unreasonable. The Ld.AR placed heavy reliance on the CBDT Instruction No. 1916 dated 11/05/1994 for the proposition that the permissible limits of 500 grams of gold jewellery and ornaments per married lady, 250 gms per unmarried lady, 100 gms per male member of the family were directed not to be

seized. He also placed reliance on the decision of *Hon'ble Karnataka High Court* in case of *Smt. Pati Devi vs. ITO & Anr.* reported in (1999) 240 ITR 727 wherein *Hon'ble Court* has held this instruction to be retrospective in nature and that the benefit has to be given to the extent mentioned therein. *Hon'ble Court* also held that it is not the value which is increased but it is the weight which is to be considered reasonable looking into the social circumstances prevailing in our country.

On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

7. The search was carried out on 19.12.2014 at the company as well as the residence of the assessee at Hyderabad. We note that in the statement that was recorded of Shri K. Pratap on 13.02.2015, in an answer to question no. 14, the assessee had submitted that about 50% of the jewellery found at the residence were disclosed in VDIS scheme and the remaining was purchased over the period of time by way of cheque and cash payments. The assessee also have been filing returns regularly along with his mother and wife. The VDIS declaration offered by assessee's wife and his mother were accepted by the revenue authorities.

8. The details of which are as under:

Smt. K. Hymavathi (assessee's mother) for A.Y. 1987-88 had declared jewellery worth Rs.4,12,870/- and Smt. K. Prathibha (assessee's wife) for A.Y. 1987-88 had declared jewellery worth Rs.1,15,196/- and for A.Y. 1993-94 declared jewellery worth Rs.95,107/-.

9. It is also an admitted position that Smt. K. Prathibha had declared gold jewellery worth Rs.36,600/- in the return of income filed by her for A.Y. 1997-98 and therefore jewellery to the extent of Rs.4,37,831/- has to be treated as explained. The said details have been summarised in a table that is reproduced in para 2.4.

10. Further, we note that assessee's family comprises of six members including assessee wherein assessee's father, assessee's son, assessee's unmarried daughter is also included. According to the CBDT Instructions issued on 11.05.1994, 500 gms of gold jewellery and ornaments are allowed in the hands of married women, 250 gms are allowed in the hands of unmarried lady, 100 gms are allowed per male member of the family. Going by this, a further amount of 550 gms of gold ornaments and jewellery needs to be excluded. The assessing officer has recorded that at the time of search, at the residence of the assessee, jewellery being 3,736.1 gms gross and 3,068 gms net was found out of which jewellery weighing 2,988.7 gms gross and 2,372.7 gms net were seized.

11. It is noted that the benefit of quantity of gold declared by assessee's mother and wife in the VDIS and in the regular return has not been given for the reason that the said jewellery description could not be established and ascertained as per the VDIS declaration. The Ld.AO made addition of the value that was seized without appreciating the declared quantity by assessee's wife and family which in our view cannot be accepted. Thus we direct the Ld.AO to first grant the benefit of quantity of jewellery that was declared by assessee's wife and his mother in the VDIS scheme as well as in the return of income filed as the case may

be. In respect of the balance quantity, benefit must be granted as per Instruction dated 11.05.1994, in respect of other family members being assessee's father, son, unmarried daughter and the assessee himself.

12. The Ld.CIT(A) has deleted the addition to the extent of Rs.6,32,585/- pertaining to the jewellery purchased by assessee's wife by way of cheque / card. The Ld.AO in thus directed to consider the jewellery in line with the decision of *Hon'ble Karnataka High Court* in case of *Smt. Pati Devi vs. ITO & Anr. (supra)*.

**Accordingly the grounds raised by the assessee stands partly allowed for statistical purposes.**

**In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.**

Order pronounced in open court on 26<sup>th</sup> May, 2023.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 26<sup>th</sup> May, 2023.  
/MS /

**Copy to:**

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore