

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**  
**(DELHI BENCH 'F' : NEW DELHI)**  
**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER**  
**AND**  
**SH. ANUBHAV SHARMA, JUDICIAL MEMBER**  
**ITA No. 2520/Del/2022, A.Y. 2019-20**

Rekha Khaitan B-1, Defence Colony, New Delhi-110024 PAN : AAIPK0457B <b>(APPELLANT)</b>	Vs.	DCIT Central Circle-19, New Delhi <b>(RESPONDENT)</b>
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**ITA No. 2831/Del/2022, A.Y. 2019-20**

DCIT Central Circle-19, New Delhi <b>(APPELLANT)</b>	Vs.	Rekha Khaitan B-1, Defence Colony, New Delhi-110024 PAN : AAIPK0457B <b>(RESPONDENT)</b>
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Appellant by	Anand Chaudhari, Adv., Sh. Mahesh Kumar, CA & Sh. Saurabh Nandy, Adv.
Respondent by	Sh. Sanjay Tripathi, Sr.DR

Date of hearing:	09.05.2023
Date of Pronouncement:	13.06.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeals are preferred by the Assessee & Revenue against the order dated 21.09.2022 of CIT(A)-27, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 27/10827/2018-19 arising out of an appeal before it against the assessment order dated

14.06.2021 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT/DCIT, CC-19, New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are the search and seizure operations u/s 132/133 A of the Income Tax Act, 1961 were conducted on 19.01.2019 in the case of Gautam Khaitan Group of cases at various residential & business premises. Assessee is widow of Late O.P.Khaitan and mother of Gautam Khaitan, who the assessee in the submissions before the Id. Tax Authorities had claimed were renowned Lawyer of reputed law firm. Notice u/s 153A of the Act was issued to the assessee on 23.09.2020. In response the assessee had filed a return of income declaring total income of Rs. 1,57,590/-. A statutory notice were issued with questionnaire.

2.1 The assessee was directed to explain the source of jewelry weighing worth Rs. 7,64,46,500/- found from residence and bank locker of the assessee. After taking into consideration the wealth tax return and invoices the Ld. AO sought explanation of jewelry worth Rs. 2,71,57,132/-. Ld. AO had made two tables. **Table I** had list of jewelry recovered from Premises weighing (Gross weight) 2345.72 gms., and (net weight) 1426.97 gms. and **Table II** had list of jewelry recovered from Bank Locker weighing (Gross weight) 1885.16gms. and (net weight) 1221.07gms.

2.2 The assessee after referring to wealth tax return (WTR), bills supporting articles purchased offered following explanation :

Particulars		Number of Items Gross	Gross Wt in gms
Table 1 – Residence- As per SCN	A	36	2345.72
Items tallied with:			
-WTR	B	22	1827.43
BILL	C	2	45.35
Total Items tallied	D=B+C	24	1872.78
Balance Items as per Table 1	E=A-D	12	472.94

Table 2- Bank Vault – As per SCN	A1	13	1885.16
Items tallied with:			
-WTR	B1	10	1761.87
BILL	C1	1	37.49
Total Items tallied	D1=B1+C1	11	1799.36
Balance Items as per Table 2	E1=A1-D1	2	85.80
Total Balance Items	F=E+E1	14	558.74

3. The assessee claimed that the balance 558.74 gm “**may**” have been received as gifts from family and friends on various occasions ‘**after 2015-16**’ thus, not forming part of assessee’s wealth tax return. Assessee claimed the same commensurate with the financial and social standing of the assessee. It was also claimed by the assessee that having being married for over 60 years on various religious and customary occasions, the gifts were exchanged on festivals and customary celebrations. The assessee claimed benefit of CBDT Circular and instructions dated 11.05.2014 and certain judicial pronouncements to claim that the balance 558.74 gms should be considered to be explained.

4. The ld. AO however made a calculation of the explained and non-explained items of the jewelry and considered following to be explained :-

Table I      545.50 gms. (Net Weight)      Value Rs.98,51,740/-

Table II      467.95 gms. (Net Weight)      Value Rs. 58,90,338/-

The Ld. AO thus concluded that rest remained unexplained amounting to Rs. 38,01,414/- as per Table I, weighing net weight 1426.97gms and Rs. 76,13,640/- as per table II weighing net weight 467.95gms. Totaling in weight 1634.59 worth Rs. 1,14,15,054/-, and made the addition.

5. In appeal before the Ld. CIT(A), assessee again offered explanation with following chart;

Particulars	Net Weight in Gms
Jewelry details as per Panchnama dated	3,230.86

19.01.2019 (found in bed room of Ms. Rekha Khaitan)	
Jewelry details as per Panchnama dated 21.01.2019 (Found in bank locker no. 6315-H, New Delhi)	6,129.61
Total found as per Panchnamas (A)	9,360.47
Jewelry declared in Wealth Tax Return for A.Y. 2015-16	6,979.90
Add:-	
Purchased in subsequent years as per bills	127.95
Jewelry received from O.P.Khaitan HUF	143.75
As per CBDT Instruction No. 1916 not liable to seized	
Rekha Khaitan	500.00
Ritu Khaitan	500.00
3 Male persons in Family	300.00
1 Unmarried Daughter	250.00
Total declared and justified (B)	8,801.60
Difference (A-B) due to accumulated Stridhan	558.87

6. Ld. CIT(A) partly allowed the appeal in terms of instruction no. 1916 and has observed in para 4.5 to 4.13 as follows :-

*“4.5 It is observed that the Jewelry declared/acquired by the appellant or his family members residing with him at the time of search, in any of the following manner can be considered as source of declared Jewelry , in the absence of any specific defect pointed by the AO:*

- i. *Wealth tax return*
- ii. *VDIS1996*
- iii. *Gift deed*
- iv. *Inheritance/Will*
- v. *purchases where payment has been*
- vi. *made through banking channel.*

*4.6 Regarding, the reconciliation, ideally speaking each item of should match by description & weight of metal/stones/diamonds. However, considering the social set up & culture of India where the alterations are very common*

and prevalent in the society, as per the standard methodology, the next best possible methodology of comparing the items would be

- i. to compare the Gross Weight of gold including gold studded with precious stones found during the search with declared .
- ii. Loose diamonds to be considered separately.

4.7 As per the valuation reports of the departmental valuer, the Jewelry found during the search from the family of the appellant is as under:

S. No.	Source	Gross Weight of Gold in gms
1.	Jewelry details as per Panchnama dated 19.01.2019 (found in bed room of Ms. Rekha Khaitan)	5066.69
2.	Jewelry details as per Panchnama dated 21.01.2019 (found in bank locker no. 6315-H, New Delhi)	9092.56
<b>Total</b>		<b>14159.25</b>

4.8 Jewelry allowed as per Instruction No. 1916 to the family members of the appellant :

S. No.	Name	Relationship	allowed in gms
1	Rekha Khaitan	Assessee Himself	500
2	Gautam Khaitan	Assessee's son	100
3	Ritu Khaitan	Assessee's Daughter in law	500
4	Karan Khaitan	Assessee's Grand son	100
5	Priya Khaitan	Assessee's Grant Daughter	250
6	Extra allowance considering the status of family		500
<b>TOTAL</b>			<b>1950</b>

4.9 The declared Jewelry available with the appellant is as under :-

**A. Wealth Tax Return**

S. No.	Source	Gross Weight of Gold in gms

1	Jewelry declared in Wealth Tax Return for AY 2015-16 by the appellant	11198.25
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**B. Received as inheritance:**

S. No.	Source	Gross Weight of Gold in gms
1	Jewelry received from O.P.Khaitan HUF	91.55

**C. Purchases :**

S. No.	From	Gross Weight of Gold in gms	Bank/Cheque No.	Date
1	Shre Ratna Business Holdings	17.95	Yes Bank/800012	22.07.2018
2	S D Jewellers	130.6	Yes Bank 000011	09.01.2018

4.10 The position of total Jewelry, found during the course of search and the declared of the family considered as above, can be summarized as under :

Sr. No.	Description	Gross weight of Gold in gms.
1	Total Found During the Search (para 4.7)	14159.25
2.	Total as Per WTR (para 4.9A)	11198.25
3.	allowed as per Instruction No. 1916 of family members (para 4.8)	1950.00
4.	Received as inheritance (para 4.9B)	91.55
5.	Purchased by family members (para 4.9C)	148.55
6.	<b>Total allowed (S.No. 2 +S. No. 3+S. No. 4 + S. No. 5)</b>	<b>13388.35</b>

4.11 On the basis of above discussion, it is observed that there is a short fall of declared gold Jewelry over found during search.

4.12 The value of unexplained Gold is calculated as under :

Found	allowed	Excess	Average value in Rs./gm	Total value in Rs.
14159.25	13388.35	770.9	5008	3860667

Average value per gram= (26574692+44340329)/14159.25= Rs. 5008/-

4.13 Therefore, addition of Rs. 1,14,15,054/- made by the A.O. under section 69A, on account of unexplained , is hereby restricted to Rs. 38,60,667/- and these grounds of appeal are partly allowed. ”

7. The Revenue is in appeal raising following grounds :

- 1) *The Ld. CIT(A) has erred on facts and in law, in considering the intention of CBDT instruction 1916/1994, while giving the benefit of limits specified over and above the explained jewelry considered.*
- 2) *The Ld. CIT(A) has erred on facts and in law in restricting the addition of Rs. 1,14,15,054/- to Rs. 38,60,667/- on account of unexplained jewelry without considering the fact that the assessee had not submitted any documentary evidence which can prove the sources of the money which was used by the assessee to purchase the jewelry.*
- 3) *The Ld. CIT(A) has erred on facts and in law in restricting the addition on account of unexplained money u/s 69A of the IT Act, 1961 from Rs. 1,14,15,054/- to Rs. 38,60,667/- by not considering that Wealth Tax Return which shows the item wise disclosure of the jewelry items but it is not completely matching with the items found during the search.*
- 4) *The Ld. CIT(A) has erred on facts and in law in changing the nature of unexplained which was in the form of unexplained investment u/s 69B of the I.T. Act, 1961, to unexplained money u/s 69A of the I.T. Act, 1961.*
- 5) (a) *The order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*  
(b) *The appellant craves to add, alter or amend any/all of the ground of appeal before or during the course of the hearing of the appeal.*

7.1 In cross appeal preferred by the assessee following grounds are raised :

*“1. That on the facts and circumstances of the case and in law, the order dated 21.09.2022 passed u/s. 250 r.w.s 143(3) of the Income Tax Act, 1961 (“Act”) by the Commissioner of Income Tax (Appeals)-27, Delhi [“Ld. CIT(A)”] partly*

*confirming/upholding the order dated 14.06.2021 passed by the DCIT, Central Circle-19, New Delhi ("AO") is bad in law.*

*2 That the Ld. CIT(A) erred in confirming an addition of Rs. 38,60,667/- on account of unexplained u/s. 69B of the Act.*

*3 The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal."*

8. Heard and perused the record.

9. On behalf of the assessee primarily it was submitted that the additions u/s 69B are not legally sustainable as Ld. AO has not given any finding to the fact that the amount spent on acquiring the Jewelry in question exceeds the amount recorded in this behalf in the books of assessee from known source of income. It is submitted that this itself makes the exercise of jurisdiction illegal. Further it is submitted that Ld. AO has made the additions only on the basis of valuation report and not on the basis of any incriminating material. Ld. Counsel relied judgment of Hon'ble Delhi High Court in ***R.S. Bedi vs. ACIT in ITA No. 144/2003, CIT v. Agile Properties [2014] 45 Taxmann.com 512 and CIT v. Dinesh Jain HUF [2013] 352 ITR 629*** to support aforesaid legal submissions.

10. On merits the written submission filed by Ld. AR, are extracted here for the convenience where it is submitted on facts that *"the arbitrary disallowance of a mere 770.90 grams of (being "stridhan" of the Assessee) and allowance of just 100 grams ("extra allowance" of 500 grams amongst 5 family members vide para 4.8 table on page 16 of PB via reference to **CBDT Instruction No.1916** dated 11.05.1994 point (iii)), without any reason or legal/factual justification vide impugned appellate order (please see para 4.10 table and para 4.12 table on page 17 of PB) is also legally unsustainable, with reference to the following material and undisputed facts:*

- (i) *Assessee belongs to a very wealthy and successful family, being the wife of Late Sh. O.P.Khaitan, one of the leading lawyers of India, and mother to another leading lawyer.*
- (ii) *The Assessee was married for over 70 years and acquired significant "stridhan" over this long period vide jurisdictional Hon'ble High Court of Delhi's decision in **Ashok Chaddha v. ITO** (2011) 14 taxmann.com 57 (Delhi) (please see para 2 and 3), also applied by **Sushila Devi v. CIT** [2016] 76 Taxmann.com 163 (Delhi) (please see para 9 and 10).*
- (iii) *Assessee had always duly filed her Wealth Tax returns (WTR) and was correctly given allowance for the same for Assessment Year (AY) 2015-16 by the Ld.CIT(A) vide serial no.2 to para 4.10 table.*
- (iv) *That the Ld.CIT(A) correctly allowed exclusion of forming part of WTR without need to explain its source (vide decision dated 20.02.2020 passed by co-ordinate Bench 'B' at Jaipur of this Hon'ble Tribunal in **Shri Ram Prakash Mahawar v. DCIT** in ITA No.918/JP/2019 vide para 2.6) and on gross weight basis, though alleged to be not matching description by the Ld.AO, by citing decision of co-ordinate Bench of this Hon'ble Tribunal in **Nawaz Singhania v. DCIT** [2017] 88 taxmann.com 327 (Mumbai) (please see para 4.4.3 to 4.6 of impugned appellate order or pg.14-15 of PB) and the same view has also been upheld by this Hon'ble Tribunal in **Ninnal Kumar Minda v. ACIT - 1151/DEL/2020** (please see para 13 and 14).*
- (v) *That the Td.CIT(A) correctly allowed full allowance as provided under binding CBDT Instruction vide serial no.3 to para 4.10 table along with allowances vide serial no.4 and 5 to para 4.10 table of the impugned appellate order for received from her late husband and that purchased by her family members, duly accounted via documentary evidence.*
- (vi) *That in near identical circumstances, despite the concerned assessee/appellant not being married for even half as long or being of the same wealth status of the present assessee, a co-ordinate Bench of this Hon'ble Tribunal in **Vibhu Agganval v. DCIT** [2018] 93 taxmaian.com 275 quashed the disallowance of a greater weight of (1050 grams)."*

11. On the other hand, Ld. DR Submitted that Ld. CIT(A) has wrongly interpreted the instructions no.1916. It was submitted that in para 4.13 Ld. CIT(A) has erred in making addition u/s 69A instead of 69B.

12. Giving thoughtful consideration to the matter on record, grounds raised and the submissions which have been made before this bench, it appears that as to the question of fact with regard to weigh and valuation of Jewelry tabulated by Ld. CIT(A) in para 4.7 to 4.9 is not disputed by the assessee. At the time of arguments or in written submission nothing was mentioned to put across anything about the claim of assessee in terms of explanation of specific items of jewelry listed by Ld. AO in respective Tables. Still it is relevant to mention that Ld. AO had made calculation on basis of Net Weight while Ld. CIT(A) has done calculation on basis of Gross Weight. Further the calculation assessee has given before the Ld. CIT(A) is of Net Weight. However, the issue assessee has raised before us and in the grounds of appeal is that the excess of 770.9 gms. (Net Weight), valued at Rs. 5008 per gm. totaling 38,60,667/- arrived by Ld. CIT(A) is also liable to be deleted in the light of Circular no. 1916 and that this remaining found excess can be validly accepted to be *stridhan* of the assessee, who comes from wealthy family.

12.1 At the outset it is observed that **Ground no 3** of the appeal of Revenue has no substance as now it is settled law that the jewelry shown in the WTR need not match in classification, shape and sizes and weight as a whole is relevant factor.

12.2 Further with regard to **Ground no 4** in appeal of the Revenue, it appears there was only clerical mistake in para 4.13 of order of Ld. CIT(A) where he mentioned section 69A instead of 69B, and which was rectifiable by him and does not prejudice any party as such.

13. Now, taking up the first legal submission on behalf of the assessee that Ld. AO had not based the impugned addition with the finding that amount spent on acquiring Jewelry in question exceeds the amount recorded in this behalf in the

books of assessee from any source of income. In the written submissions filed assessee has referred to page no. 54 of the paper book. However, on page 54 of the paper book there is a valuation report of the Jewelry given by one Arun Sankhwal.

13.1 The first thing the Bench observes is that this argument has no specific ground to fall for in appeal memo. Even otherwise there is no matter on record to show that before any of the tax authorities the assessee has produced any books or evidence showing her source of income from other sources. It appears that only wealth tax returns filed up to A.Y. 2015-16 where the only substantive piece of evidence to indicate the acquisition of Jewelry. The reliance of Ld. Counsel on a judgments **R.S. Bedi vs. ACIT in ITA No. 144/2003, CIT v. Agile Properties [2014] 45 Taxmann.com 512 and CIT v. Dinesh Jain HUF [2013] 352 ITR 629** is not benefitting the assessee in any way as the same are in regard to report of DVO for an immovable property or gifts. Further also as to the quantity of Gold assessed by the Id. CIT(A) in the hands of assessee, no factual submissions or evidences has been cited that there was error in the quantity, valuation or panchnama.

14. Thus, this bench is now required to determine as to how far the assessee was entitled for further benefit in respect of 770.9 grms of the jewelry in terms instruction no. 1916 or if benefit extended by the Ld., CIT(A) was wrongly done. In this context, it can be observed that Ld. AO has not given any benefit of the Circular and has observed in the concluding part of the assessment order as under :

*“Also, the assessee has quoted the CBDT guidelines and stated that married ladies entitled to 500 gm of gold ornaments, unmarried ladies 250 gms and male members 100 gm of gold items. But this argument has been not found acceptable because the instruction is mainly with regard to non-seizure of the **and further in the assessee case by following this instruction the department has already released of more than Rs.***

***5,25,32,394/- and no further relaxation can be given of the instruction no. 1916.”***

14.1 What transpires from the order of Ld. CIT(A) is that he has not gone on the question of applicability of Instruction No. 1916 and straight way benefited the assessee for herself and her family, to the extent of 1950 gms as mentioned para 4.8 and reproduced above. Pertinent to mention is that at serial no. 6, extra allowance for the family is mentioned to be 500 gms.

14.2 The Bench is of considered view that the Board's instructions dated 11.05.1994 stipulate circumstances under which excess gold or ornaments could be seized and where it need not to be seized by authorized officer. It will be beneficial to reproduce the relevant clauses of the Circular as follows;

“Instances of seizure of jewellery of small quantity in the course of operation under section 132 have come to the notice of the Board. The question of a common approach to situation 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 to be seized.
- (ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms. per married lady 250 gms per unmarried lady and 100 gms. 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 customs 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 all 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.”

14.3 It is quite clear from the aforesaid instructions that clause (i) will be applicable in case of present assessee as she is a wealth-tax assessee and direction is that gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return ***only need to be seized***. Clause (ii) is not applicable, under which Ld. CIT(A) has benefitted the assessee. Clause (iii) merely extends discretion in hands of authorized officer and not to assessing officer and also that the same is subject to clauses (i) and (ii) only.

14.4 Further, the intention of Circular is to respect the customary jewelry of Indian women on her person. Circular does not lay down a minimum weight of jewelry in the hands of any person to be considered explained for all purposes and intent. Ld. CIT(A) seems to have also failed to appreciate the same and put anything in form of reasons as to why he is benefiting the assessee with the Circular.

14.5 Then the plea of assessee that the excess 770.9 grms, was all “*stridhan*” is rather a self destructive plea to take benefit of Circular No. 1916 which Ld. CIT(A) failed to appreciate. If jewelry found at premises or locker was all *stridhan* of the assessee, then extending benefit of Circular to other members of the family, in the hands of assessee was not justified. *Stridhan* is the individual property of a woman and it cannot be said to be held by other members of family unless specially entrusted to them. Which is not the case of assessee as all the recoveries were from her possession and at every level so far she has claimed it to be her *stridhan* only.

14.6 Further, the Ld. AO mentions that following this instruction the department has already released jewelry worth more than Rs. 5,25,32,394/-. There is no explanation or contradiction of this on the part of assessee. Ld.CIT (A) has also not taken note of it. Ld. CIT(A) has thus fallen in error in out rightly

giving benefit of Circular to the extent of 1950 Gms., to the family as a whole, while the assessee claimed it was all her own *stridhan*.

14.7 Further, the Bench is of considered opinion that when the assessee was filing regular wealth tax returns till the year 2015-16, when it was discontinued by the Government and the relevant assessment year is 2018-19, then for the intervening period, Assessee cannot take a very general defence, as made before Ld. AO and reproduced in para no. 4.1 page no. 12 of the assessment order, that '**may be**' the balance amount of 558.7 gms of jewelry have been received as gifts from family and friends on various occasions after A.Y. 2015-16 and thus not forming part of assessee's WTR.

14.8 In a case like the present where assessee was claiming to have regularly filed WTR, and has managed to explain certain jewelry to be subsequently purchased or received from HUF, then anything beyond that cannot be subjected to Circular and covered up. The period after last WTR and search was not so vast as to give presumption that assessee may have forgotten as to from whom the jewelry was received as gift. Rather women seldom would forget who gifted the jewelry and what was the occasion. The Bench is of considered opinion that more specific plea and explanation ought to be given by an assessee filing WTR, when explanation is sought to discharge burden u/s 69B under the Act, to explain jewelry beyond that mentioned in WTR, which Assessee failed. Thus giving benefit on the basis of status of family, as *stridhan* or in the hands of other family member in terms of Circular by the Ld. CIT(A) had no legal basis.

15. Taking into consideration the judgment relied by Ld. Counsel for the assessee it can be observed that Jaipur Bench judgment in case of **Shri Ram Prakash Mahawar (supra)** was in regard to a case where there was no mention of any WTR being filed by the said assessee. In *Sushila Devi vs. CIT (supra)* the jurisdiction of Hon'ble High Court was invoked by way of writ petition on the basis that the husband of petitioner had requested tax authorities to release the jewellery of petitioner wife claiming that it belonged to wife and was *Stridhan*.

Further, in the assessment proceedings in the hands of husband culminated without any addition of the jewellery or its value in the hands of petitioner's husband and in those circumstances Hon'ble High Court had directed release of the jewellery to the petitioner's wife. In the case of **Ashok Chadha vs. ITO (supra)** the jewellery in question was not considered to be substantial. Again there was no case of assessee's filing WTR.

16. On other hand reliance can be placed on the judgment of Hon'ble Allahabad High Court in the case of **Mahesh Prasad Gupta vs. CIT, ITA No. 807/2012 order dated 24.03.2017** wherein Hon'ble High Court has observed as follows :-

*“While it is true that in a case of married lady, certain quantities of jewellery may be accepted to have been acquired through marriage or Stridhan, yet, this cannot absolve the assessee from furnishing any evidence in support of its claim by relying solely on the circular of the CBDT which as observed above is confined to seizure proceedings and is not binding on assessment proceedings. The facts of each case, evidence adduced & financial & social status of the assessee would have to be specifically pleaded and established before benefit of the aforesaid circular may be claimed.”*

16.1 Further Hon'ble Madras High Court in the case of **V.G.P. Ravidas & Ors vs. ACIT T.C.(A).Nos.387 and 388 of 2014** vide judgement dated 1/9/2014, while referring to instructions 1916 has observed as follows :-

*“3. The short question that arises for consideration is whether the assesseees in both the cases are entitled to plead that the quantum of excess gold jewellery seized does not warrant inclusion in the income of the assesseees as unexplained investment in the light of the Board Instruction No.1916 [F.No,286/63/93-IT (INV. II)], dated 11.5.1994.*

*9. No doubt, Clause (iii) of the Board Instruction dated 11.5.1994 provides that the authorised 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. We find that this is only an enabling provision and will be applicable if there are circumstances to come to the conclusion that the status of the family and custom and practices of the community require holding of such*

*jewellery. In this case, the assessees have not given any such explanation either before the Original Authority or the First Appellate Authority or the Tribunal. We find the Board Instruction is of no avail to the assesses, except to the extent that the assesses families consist of large number of members and, therefore, there is an element of justification for the excess jewellery in hand.*

*10. The Board Instruction dated 11.5.1994 stipulates the circumstances under which excess gold jewellery or ornaments could be seized and where it need not be seized. It does not state that it should not be treated as unexplained investment in jewellery. In this case, the Original Authority has correctly included the excess jewellery other than what has been found in the wealth tax assessment as unexplained investment in jewellery and demanded tax and penalty. We find no error in such order passed by the Assessing Officer, which was confirmed by the Commissioner of Income Tax (Appeals) and Tribunal. In fact, in paragraph (6) of the order of the Tribunal, it is held as under”*

17. Consequently the grounds no 1 and 2 raised in appeal of Revenue deserve to be allowed while grounds raised in the appeal of Assessee have no substance.

**The appeal of Revenue is allowed and of Assessee is dismissed.**

**Order pronounced in the open court on 13th June, 2023.**

**Sd/-**

**(SHAMIM YAHYA)**

**ACCOUNTANT MEMBER**

*Date:- .06.2023*

**\*Binita, SR.P.S\***

Copy forwarded to:

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

**Sd/-**

**(ANUBHAV SHARMA)**

**JUDICIAL MEMBER**

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**