

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.118/SRT/2022 (AY 2018-19)

(Hearing in Physical Court)

Bhaveshkumar Amulakhbhai Sonani, A- 604, Sai Residency, Near Gajera School, Katargam, Surat-395004 PAN No: APSPS 0912 G	Vs	Deputy Commissioner of Income-tax, Central Circle-3, Surat, 5thFloor, Aayakar Bhavan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Ms. Chaitali Shah, CA
राजस्व की ओर से /Revenue by	Shri Ashok B. Koli, CIT-DR
सुनवाई की तारीख/Date of hearing	03.05.2023
उद्घोषणा की तारीख/Date of pronouncement	17.07.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Ld. Commissioner of Income-tax (Appeals)-4, Surat [for short to as “Ld. CIT(A)”] dated 03.03.2022 for assessment year 2018-19, which in turn arises from the addition made by the Assistant Commissioner of Income-tax, Central Circle-3, Surat / Assessing Officer in assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 28.12.2019. The assessee has raised the following ground of appeal:-

“1. On the facts and circumstances of the case and in law, the learned CIT(A) has grossly erred in making an addition of Rs.16,32,732/- u/s 69A of the Act treating the jewellery found and seized during the course of search as unexplained, on erroneous grounds without appreciating that the same is fully reflected in the appellant’s and his family member’s regular books of accounts. Hence, the impugned addition as confirmed by the learned CIT(A) needs to be deleted as being absolutely erroneous, incorrect, illegal and bad-in-law.

2. The appellant company craves leave to add, amend, alter substitute, modify in any or all the above grounds of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

2. Facts in brief are that a search action under section 132 of the Act was carried out on 08.06.2017 in the case of Balar Group of Surat and assessee is one of them *wherein* residential premises *i.e.*, 604, Sai Residency, Near Gajera School, Katargam, Surat-395004, was also searched. During the search action conducted at the above premises of assessee and other group members, various incriminating documents and evidences were seized. The assessee filed his return of income for assessment year 2018-19 on 13.07.2018 declaring total income of Rs.3.00 lakh. The case was selected for scrutiny, during assessment, the Assessing Officer noted that in conducting search action, gold jewellery of 738.69 grams having net weight of 624.13 grams was found. As per valuation report, the value of gold jewellery at

Rs.17,45,849/-. Further in locker with Princess Plaza Safe Deposit Vault, Surat, which was in the name of family members of assessee was found. In the locker diamond jewellery was also found and seized, as per Government approved valuer, value of such diamond jewellery was at Rs.22,14,632/-. Out of total jewellery, jewellery of Rs.16,32,732/- was also seized due to no proper explanation. During the assessment, the assessee was explained that jewellery of Rs.16,32,732/- belongs to assessee and his family members. The assessee also furnished details of his family members and share thereof. The Assessing Officer recorded that no evidence was furnished and in the absence of evidence, the Assessing Officer made addition of Rs.16,32,732/- as unexplained jewellery under section 69A of the Act and brought the same to tax under section 115BBE of the Act.

3. Aggrieved by the addition in the assessment order the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee filed detailed written submission. The submission of assessee duly recorded in para-6.1 of the order of Ld. CIT(A). In the submission, the assessee explained that

during the search action at his residence on 08.06.2017 and from locker belonging to his family members, the jewellery aggregated value of Rs.39,60,481/- was found and seized. The jewellery belongs to assessee and his other family members and assessee furnished the details of such jewellery narrating the gold weight and its value in the following manner:

Sr. No.	Particulars	Gold weight (grams)	Diamond weight (carat)	Amount (Rs)
A	Jewellery found from residence of the appellant at A-604, Sai Residency, Next to Gajera Circle, Katargam, Surat claimed and belonging to the appellant and his family members.	624.130	6.02	17,45,849
B	Jewellery found from the locker No.C-637, Princess Plaa Safe Deposit Valu,t, Varachha Road, Mini Bazar, Varachha Surat	498.920	42.720	22,14,632
	Total (A+B)			39,60,481

4. The assessee explained that jewellery of Rs.17,45,849/- found from the residence of assessee was returned back, *whereas* out of jewellery of Rs.22,14,632/- found in locker No.C-637, Princess Plaza Safe Deposit Valut, Varachha Road, Mini Bazar, Varachha, Surat the diamond studded gold jewellery worth Rs.16,32,732/- was seized and balance of gold jewellery of Rs.5,81,900/- was also returned back to assessee. The assessee submitted that jewellery of Rs.16,32,732/- seized from locker comprised of diamond

embedded in the said gold jewellery of Rs.10,68,00/- having weight of 42.720 carats having weight of 268.920 grams of Rs.5,64,732/-. During the assessment proceedings, the assessee was asked to explain such jewellery found and seized during the course of search action at assessee's residence as well as locker. The assessee submitted that he lives in a joint family with his parents, wife and two daughters. From the residence of assessee and from the locker No.C-637, Princess Plaza Safe Deposit Valet, Varachha, Surat, jewellery is all jointly owned by assessee and his family members. The assessee furnished detailed chart showing complete details of jewellery found during the course of search at his residence as well as from locker, given item-wise complete details of jewellery to whom it belongs and how the same stand duly reflected or explained in the individual hands of the said respective family members. The copy of capital account, balance sheet and income tax returns of the respective family members of assessee were filed before Assessing Officer, copies of which were also submitted before Ld. CIT(A). The assessee also submitted before search party ownership of the entire

jewellery stands fully explained and jewellery may not be seized. However, the search official assured the assessee to return back the entire jewellery to assessee on producing necessary evidence that the same is duly reflected in his books of account. However, despite providing all such evidence and accountability in the regular books of account, and income tax return filed by respective family members of assessee, the search official declined to return seized ornament jewellery. The assessee reiterated that entire jewellery was fully and truly identified at the time of search, vis-à-vis the family members to its belonging and the necessary prove regarding accountability in the books of account was submitted. The assessee without prejudice submitted that in the show cause notice, the Assessing Officer asked to explain only source of diamond in the jewellery amounting to Rs.10,68,000/- found from the locker, the details of break-up of jewellery were also explained by assessee and explained that no diamond purchased in the assessment year 2018-19 but the same was purchased by respective family members of assessee either in assessment years 2016-17 or 2017-18. Thus, there

was no question of making addition in the year itself. The Assessing Officer erroneously made the addition of entire diamond jewellery of Rs.10,68,000/- and gold jewellery of Rs.5,64,732/- aggregating to Rs.16,32,732/- as the addition is erroneous, incorrect, illegal and liable to be deleted.

5. The Ld. CIT(A) after considering the submission of assessee recorded that during the search proceedings, jewellery was at Rs.39,60,481/- was found at the residence and locker No.C-637. However, the jewellery worth Rs.16,32,732/- was seized and remaining jewellery as Stridhan was returned by the authorized officer. The assessee in his submission stated that assessee has two unmarried daughters and the jewellery of respective daughter should be allowed separately, but no evidence was produced by assessee that the wife or the daughters of assessee were earning members and no bills of purchase of diamond starred jewellery was produced. The assessee has filed profit and loss account and balance-sheet of his family members. The assessee has shown cash withdrawal account to prove the source of jewellery. The ld CIT(A) held that said contention of assessee was an after-thought. The Ld. CIT(A) further noted that

return of income of assessee at Rs.3,00,000/- is sufficient only to maintain the family and day-to-day expenses. The withdrawal account of assessee for assessment year 2015-16 was at Rs. 54,000/- and Rs.1,84,000/- respectively. The assessee has shown household expenses @ Rs. 5,500/- which is not sufficient in city of Surat. On the basis of such observation, the Ld. CIT(A) upheld the addition made by Assessing Officer. Further aggrieved the assessee has filed present appeal before the Tribunal.

6. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Commissioner of Income-tax-Departmental Representative (Ld. CIT-DR) for the Revenue and have gone through the order of lower authorities carefully. The Ld. AR for the assessee submits that jewellery worth Rs.17,45,849/- was found at the residence of assessee at the time of search action which consists of 624.13 grams of gold jewellery and 6.02 carats of diamond jewellery. From the locker jewellery of gold and diamond of Rs. 22,14,,632/- was found. The jewellery found in locker consists of 498.92 grams weight and 48.74 carats of diamond jewellery. The family of assessee consists

of six members, including assessee, his wife Vaneetaben B. Sonani, assessee's father Amuulakhbhai R Sonani assessee's mother Rasilaben A Sonani and two daughter, Dharvi B. Sonani and Dhyana B Sonani. The Ld. AR for the assessee submits that as per Circular No.1916 dated 11.05.1994 gold jewellery ornament to the extent of 500 grams are permitted for married female member and 250 grams for unmarried female member of family. Therefore, as per said Circular No.1961 dated 11.05.1994 gold jewellery worth of 1700 grams are permitted. From the locker and residence only 1123.05 grams of gold jewellery ornaments were found and seized and value of diamond starred jewellery of Rs.10,68,00/-. The entire jewellery ornaments were within the permitted limit as penalty the CBDT-Circular (supra). The assessee has already filed return of income for assessment year 2018-19 along with capital account, return of income for assessment year 2017-18 and capital account as on 31.03.2017 as well as for assessment year 2016-17, with capital account and balance-sheet. The assessee also furnished return of income of his father and his wife along with computation of total income and

balance-sheet in separate as on 31.03.2017. The jewellery ornament found and seized at the residence of assessee was not in excess rather within the permissible limit as declared by CBDT Circular (supra).

7. To support his submission, Ld. AR for the assessee relied upon on the Circular of CBDT (supra), decision of tribunal in case of Kailashben Manharlal Chokshi Vs CIT [2008] 174 Taxman 466 (Guj)/[2010] 328 ITR 411 (Guj). CIT Vs Ashok Chandra Kant Gandhi [2014] 41 taxmann. com 121 (Guj)/[2014] 222 Taxman 119 (Guj), CIT Vs Ratanlal Vyaparilal Jain [2010] 2 taxman.com 997 (Guj)/[2011] 339 ITR 351 (Guj), Ashok Chadha vs. ITO [2011] 14 taxmann.com. 57 (Del)/[2011] 202 Taxman 395 (Del), CIT Vs Satya Naraini Patni [2014] 46 taxmann.com 440 (Raj)/[2014] 224 Taxman 312 (Raj)/[2014] 366 ITR 325 (Raj)/[2014] 269 CTR 466 (Raj)[07.04.2014]; CIT Vs Ghanshyam Das Johri [2014] 41 taxmann.com 295 (All); Kumkum Kanodia Vs DCIT, in ITA No.5260/Del/2014 dated 20.11.2018 and Ankit Manubhai Kachadiya vs. DCIT (2021] 131 taxmann.com 304 (Surat-Trib.)

8. On the other hand, Ld. CIT-DR for the revenue supported the order of lower authorities and submits that all the submissions raised by Ld. AR for the assessee were considered by Ld. CIT(A) while deciding the grounds of appeal raised by assessee. The Ld. CIT-DR for the Revenue submits that assessee was having a very meagre income which is hardly sufficient to maintain his family. The jewellery and ornaments found at his residence as well as in locker was not proportionate to their respective income and status. The personal withdrawal of assessee was very low. The ld Sr DR for the revenue prayed for dismissal of appeal.
9. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I have also deliberated on various case law relied upon by Ld. AR for the assessee. I find that Assessing Officer made addition under section 69A r.w.s. 115BBE of the Act and taxed @ 60%. Before me, Ld. AR for the assessee vehemently submitted that family members of assessee consists of six members out of which, two are married women i.e., wife and assessee's mother and two unmarried

daughters of assessee and the gold jewellery up to 1700 grams is within the permissible limit.

10. I find that almost on similar set of fact, having family members of assessee in the case of Kumkum Kanodia vs. DCIT, (supra), the Division Bench of Delhi Tribunal allowed the benefit of jewellery in accordance with CBDT's Circular (supra). Further almost similar view was taken by Division Bench of this Tribunal in case of Ankit Manubhai Kachadiya vs. DCIT (supra). Further, the Hon'ble Allahabad High Court in Ghanshyam Das Johri (supra) and Hon'ble jurisdictional High Court in the case of Kailashben Manharlal Chokshi (supra) and in the case of Ratanlal Vyaparilal Jain (supra) opined that it one goes by the Instruction of CBDT Circular (supra) that married lady of a reputed family is expected 500 grams ornaments. and following the same ratio, seized jewellery which was within permissible limit could not be treated as undisclosed jewellery found and seized in the present case of assessee.

11. I find that as pre the decisions of various Higher Court and Tribunal the permitted limit as per CBDT Circular (supra) the permitted limit of all members of assessee's family is

1700 grams of gold jewellery. Such gold jewellery consists of some diamond therein. I further find that lower authorities while making addition has not treated the cost of diamond separately though the Ld. AR for the assessee submits that gold jewellery includes ornament with diamond. In my view, merely because jewellery consists with diamond cannot be added in the hands of assessee particularly when the jewellery forming part of gross weight jewellery found from the residence as well as locker is within permissible limit prescribed by CBDT in Circular No.1916 dated 11.05.1994 (supra). Thus, respectfully following the decisions of Hon'ble superior courts I direct the Assessing Officer to delete the entire addition. In the result, the grounds of appeal raised by the assessee are allowed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced on 17/07/2023 in open court.

Sd/-

(PAWAN SINGH)

[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 17/07/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT, Surat