

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1843/Del/2022 : Asstt. Year : 2019-20

Ankur Sharma, KA-5, Kavi Nagar, Ghaziabad-201001 (APPELLANT)	Vs	DCIT, Central Circle, Ghaziabad (RESPONDENT)
PAN No. AXMPS9500Q		

**Assessee by : Sh. Rajiv Khandelwal, CA &
Sh. Gagan Khandelwal, Adv.
Revenue by : Mr. Waseem Arshad, CIT DR**

Date of Hearing: 10.08.2023	Date of Pronouncement: 06.10.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-4, Kanpur dated 27.06.2022.

2. Following grounds have been raised by the assessee:

"1. That on the facts of the case, in law and under the circumstances, the Commissioner of Income Tax (Appeal)-4, Kanpur erred in confirming the action of the assessing officer to make an addition of Rs. 20,44,870/- (1/3rd of Rs. 61,34,610/- treated as unexplained jewellery) to the income of the appellant in respect of the alleged un-explained gold ornaments found at the time of search by invoking the provisions of section 69A read with section 115BBE of the Act. The addition confirmed is unjustified and bad in law.

2. That on the facts of the case, in law and under the circumstances, the Commissioner of Income Tax (Appeal)-4, Kanpur erred to confirm the action of the assessing officer to make an addition of Rs. 20,44,870/- for the alleged unexplained jewellery by

invoking the provisions of section 69A read with section 115BBE of the Act by ignoring the plea that jewellery belonging to the daughter is also kept in the house. The addition confirmed by Hon'ble Commissioner of Income Tax (Appeal)-4, Kanpur, is unjustified, unwarranted based on surmises, conjectures, and the same is bad in law.

3. That on the facts and in law and under the circumstances, the issue of the penalty notice under section 271AAB and also the interest charged under section 234A/B/C/D is thus illegal and bad in law."

Unexplained Jewellery – Rs.20,44,870/-:

(1/3rd of Rs.61,34,610/-)

3. Proceedings before the Assessing Officer:

"During the course of search & seizure operation conducted u/s 132 of the Income Tax Act, 1961 at the residential premises of the assessee at KA-5, Kavi Nagar Ghaziabad, gold jewellery weighing 3877.5 Grams amounting to Rs. 1,46,15,635/- was found. During the course of search proceedings, the assessee could not explain the source of the above jewellery. In this regard, the assessee vide notices u/s 142(1) of the Income Tax Act, 1961 dated 20.10.2020, 05.01.2021 and 16.01.2021, was required to explain the above cash, along with supporting documents and was also required to explain the source of the above cash, along with supporting documents. However no reply was received. Hence, the assessee, vide show cause notice dated 23.02.2021, was specifically required to explain the above said cash, along with documentary evidences and was required to explain the sources of the above said cash, along with documentary evidences. In response to the show cause, the AR of the assessee vide reply furnished on 06.08.2021, has stated that the jewellery has been inherited and received in marriages of the family members. However, the source of jewellery has not been properly explained by the assessee. In order to follow principles of natural justice, the CBDT's instruction no. 1916 dated 11/05/1994 and press release dated 01/12/2016 regarding the eligible amount of jewellery

that can be kept by the family members is applied. The family of the assessee consists of the following members who are eligible to claim benefit of above said jewellery to the extent of limit as prescribed in the above said circular.

Sl. No.	Name of the family member	Eligible Weight of jewellery to be claimed
1.	Sh. Ganga Saran Sharma (Father)	100 GMS
2.	Smt. Shashi Sharma (Mother)	500 GMS
3.	Sh. Ankur Sharma (Brother)	100 GMS
4.	Smt Nidhi Bansal (Sister in law)	500 GMS
5.	Sh. Ankit Sharma (Self)	100 GMS
6.	Smt Neha Goel (Wife)	500 GMS
7.	Kiaara Sharma (Daughter)	250 GMS
8.	Advay Sharma (Nephew)	100 GMS
9.	Adyant Sharma (Nephew)	100 GMS
	Total	2250 GMS

The remaining gold jewellery of 1627.5 Grams amounting to Rs.61,34,610/- remains unexplained. Therefore, considering the facts of the case and CBDT's instruction no. 1916 dated 11.05.1994 and press release dated 01.12.2016, the remaining jewellery of 1627.5 GMS for the total value of Rs. 61,34,610/- (as on date of search) is treated as unexplained jewellery. The amount of Rs.20,44,870/- (1/3 share) is added to the total income of the assessee for the year under consideration u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961. The remaining amount is added in the income of Sh. Ganga Saran Sharma, father of assessee and Sh. Ankur Sharma, Brother of assessee.

4. Proceedings before the Id. CIT(A):

"Before the Id. CIT(A), the appellant submitted that it had been explained that the major amount of gold ornaments were inherited

by Shri Ganga Saran Sharma on the death of his mother, besides Shri Ganga Saran Sharma was married in equally rich and business class family and received gold jewellery in marriage. Subsequently, both the sons namely Shri Ankur Sharma and Shri Ankit Sharma also got married in equally well-placed business class families and received gold ornaments in marriage and also in subsequent ceremonial functions that took place in both the families. It is customary to offer gold items and silver wares in marriage/ceremonial functions to the daughters in the family, specially to the married daughters. The family is in the business since generations and doing good business, besides the family has established a charitable Hospital. That proves the financial status of the family. It was further submitted that house-ladies are further very systematic and intelligent enough to make savings from the money received by them for managing house hold. The house-ladies spend money with a tight hand and whatever they save, it is invested by them very wisely in buying gold items and/or cloths. The AR submits that the appellant and his family members have good financial status and there are total net drawings of more than 13.50 crores during the period of nine years and the small value of jewellery found during search stands fully covered and very well explained being merely of the total value of Rs. 1,46,15,635/- and as such, no part of the jewellery be treated as unexplained.

After going through the submissions of the assessee, the Id. CIT(A) held that the appellant has relied on withdrawals of various family members in last 10 years but only withdrawals cannot explain the use of the cash in purchase of jewellery. Complete analysis of withdrawals as well as deposits of cash in various bank accounts of the family members, use of drawings for other household expenses has not been taken into consideration while making a claim that total withdrawals of Rs. 13.50 crores have been made by various family members in their bank accounts. Therefore, the Id. CIT(A) held that the submission is quite vague and lacks specificity in providing the evidence and proving the source of the jewellery found

in the residential premise. The bills of purchase, the wealth tax evidences, valuation certificates along with date of purchase could not be furnished in case of jewellery found in the residential premise, which are considered as clinching evidences to prove the time as well as source of the purchase of jewellery. The Id. CIT(A) held that the AO has already considered as explained the jewellery of 2250 grms in accordance to CBDT Instruction No. 1916 dt. 11.05.1994 pertaining to all male and female members of the family and has been reasonable enough to add only 1627.5 grms jewellery valuing Rs. 61,34,610/- and divided the same in the hands of main family members i.e. the appellant, his father and brother. The Id. CIT(A) held that with regard to the jewellery belonging to daughter of Smt. Shashi Sharma i.e. the sister of the appellant, the appellant could not furnish the requisite evidence, which may conclusively prove that the jewellery belonging to his sister was also kept in the residential premise of the appellant. Therefore, the Id. CIT(A) was of the opinion that this submission as an afterthought and since the same was held to be devoid of merit, the arguments of the assessee were summarily dismissed. In effect, the order of the AO has been confirmed."

5. The addition of Rs.61,34,610/- has been made in the hands of Sh. Ganga Saran Sharma, the patriarch of the family and the siblings Sh. Ankit Sharma and Sh. Ankur Sharma at the rate of 33.33% each.

6. Aggrieved, the assessee filed appeal before the Tribunal.

7. During the hearing before us, the Id. AR relied on the submissions and the arguments taken up before the revenue authorities and the Id. CIT DR relied upon the orders of the authorities below.

8. Heard the arguments of both the parties and perused the material available on record. We have gone through the facts of the case and the judgments of various Courts on this issue.

9. At the outset, we hold that CBDT's instruction no. 1916 dated 11.05.1994 and press release dated 01.12.2016 pertains to seizure of jewellery. It postulates that by going through the archetypal Indian family standard, a persons of an Income Tax payee of considerable amount could have had the prescribed amount of jewellery in the circular. It was brought into force after a series of due deliberation and its impact on taxation. It is never envisaged that the Assessing Authority should restrict the amount of eligible jewellery to the quantity mentioned in the circular. The assesses were trustee of a medical college and also have the returned income in the range of Rs.21.27 lacs to 49.34 lacs as per the returns.

10. The statement showing the incomes of the assessess is as under:

Name	AY 20-21	AY 19-20	AY 18-19	AY 17-18	AY 16-17	AY 15-16
Ganga Saran Sharma	64,85,556	49,44,669	46,68,812	44,59,800	37,43,180	35,00,511
Ankit Sharma	22,92,434	23,08,783	24,27,493	20,56,646	19,79,056	19,96,871
Ankur Sharma	36,78,301	29,59,519	20,18,119	22,99,113	29,74,995	25,33,227

11. The total withdrawals of the family over the period of assessments was to the tune of more than Rs.10 Cr. The assessee stated that the income for all the years had fallen into the highest tax bracket which shows that the assessee has been earning substantial Income clearly establishing the status. It has time and again been held that due credit of the same has to be allowed by the assessing officer looking and appreciating

the status, customs, and traditions relating to the family. Reliance is being placed upon following decisions:

- *Ashok Chaddha vs. ITO, 14 taxmann.com 57 (Delhi)*
- *Vibhu Aggarwal vs. DCIT, 93 taxmann.com 275 (Delhi - Trib.)*
- *Tara Devi Goenka vs. CIT 122 ITR 14 (Cal)*
- *Ms. Pooja Shree Chouksey Vs. ACIT in ITA No. 572/Ind/2018*
- *CIT Vs. Kailash Chand Sharma 198 CTR 201 (Raj)*
- *Suneela Soni Vs. DCIT in ITA No. 5259/DEL/2017*
- *DCIT Vs. Shri Haroon Mohd. Unni in ITA No.463/M/2012*
- *Susan Suresh Chandra Tilwa Vs. DCIT in ITA No.270/RJT/2015*
- *DCIT, CC-8(3), Mumbai Vs. Shri Manekchand Kothari ITA No. 194/Mum/2018*

12. The Hon'ble Delhi High Court in the case of Ashok Chaddha vs. Income-tax Officer 14 taxmann.com 57 (Delhi) held that collecting jewellery of 906.900 gms by a woman in a married life of 25 years in form of stree dhan or on other occasions is not abnormal. The operative part of the judgment is reproduced below:

"3. Learned Counsel for the respondent on the other hand relied upon the reasoning given by the authorities below. After considering the aforesaid submissions we are of the view that addition made is totally arbitrary and is not founded on any cogent basis or evidence. We have to keep in mind that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. The learned counsel for the appellant/assessee is correct in her submission that it is a normal custom for woman to receive jewellery in the form of "stree dhan" or on other occasions such as birth of a child etc. Collecting jewellery of 906.900 grams by a woman in a

married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and treat the other as "unexplained". Matter would have been different if the quantum and value of the jewellery found was substantial.

4. We are, therefore, of the opinion that the findings of the Tribunal are totally perverse and far from the realities of life. In the peculiar facts of this case we answer the question in favour of the assessee and against the revenue thereby deleting the aforesaid addition of Rs. 3,87,364."

13. The Hon'ble Delhi High Court in the case of Suneela Soni Vs. DCIT in ITA No. 5259/DEL/2017 held as follows:

"6.1 After perusing the aforesaid decision of the Hon'ble Delhi High Court, I am of the considered view that facts and circumstances of the present case are similar to the aforesaid decision of the Hon'ble Delhi High Court and hence, the issue in dispute is squarely covered by the aforesaid decision.

6.2 Keeping in view of the aforesaid facts and circumstances of the case as well as the status of the family and on the anvil of the judgement of the High Court of Delhi in the case of Ash ok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.)/202 Taxman 395, the explanation given by the assessee's counsel is accepted. Accordingly the orders of the authorities below are cancelled and addition made by the AO and confirmed by the Ld. CIT(A) amounting to Rs. 10,65,312/- on account of purported unexplained Jewellery claimed by the assessee is deleted.

7. In the result, Assessee's appeal is allowed."

14. The Co-ordinate Bench of ITAT Delhi in the case of Vibhu Aggarwal vs. DCIT 93 taxmann.com 275 (Delhi - Trib.) held that where Assessing Officer under section 69A made addition

on account of jewellery found in search of assessee, since assessee belonged to a wealthy family and jewellery was received on occasions from relatives, excess jewellery was very much reasonable and, thus, no addition under section 69A was called for. The operative part of the judgment is reproduced below:

"2. The brief facts of the case are that a search & seizure operation under section 132 of the IT Act was conducted at the business premises of M/s Best Group and as well as in the residential premise of the Directors on 28.03.2011, in consequence to which the case of the assessee was taken up for scrutiny. The AO has completed the assessment by making an addition of 30,73,373 on account of unexplained investment in jewellery and addition of Rs. 1.87,082/- on account of unexplained investment in property. The total jewellery found during the course of search was 2531.5 gms, out of which the AO has given assessee the benefit of 950 gms, as per the CBDT Instruction No. 1916 dated 11.4.1994 on account of wife and two children of the assessee. The Ld. CIT(A) in appeal has further allowed the benefit of 600 gms. Of jewellery on account of mother and father of the assessee, holding that the same was allowable to the assessee as per the CBDT Instruction No. 1916, but however, sustained the balance addition made by the AO, vide order dated 22.12.2014 treating the balance jewellery weighting 1050 gms of gold as unexplained.

6.3 Keeping in view of the aforesaid facts and circumstances of the case as well as the status of the family and on the anvil of the judgement of the High Court of Delhi in the case of Ashok Chaddha (Supra) & of Sushila Devi (supra) and the IT AT Delhi decision in the case of Suneela Soni (supra), the explanation given by the assessee's counsel is accepted. Accordingly the orders of the authorities below are cancelled and addition made by the AO and partly confirmed by the Ld. CIT(A) on account of balance jewellery weighting 1050 gms of gold as unexplained is hereby deleted."

15. Hence, keeping in view the facts and circumstances of the instant case and also the jewellery found, the total income declared and in view of the various judgments cited above, we direct that the addition made on this account be deleted.

16. In the result, the appeal of the assessee is allowed
Order Pronounced in the Open Court on 06/10/2023.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 06/10/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR