

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

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

Ms. Astha Chandra, Judicial member

ITA No. 978/Del/2023 : Asstt. Year: 2021-22

Chandra Pal, C-8/8787, Vasant Kunj, New Delhi 110070	Vs	The ACIT, Centre Circle-II, Noida
(APPELLANT)		(RESPONDENT)
PAN No. AINPP 1209 K		

**Assessee by : Sh. Mohit Choudhary, CA
Sh. Harish Choudhary, CA
Sh. Mithika Choudhary, Adv.
Revenue by : Sh. T James Singson, CIT-DR**

Date of Hearing: 31.08.2023	Date of Pronouncement: 17.11.2023
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ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by assessee against the order of Ld. CIT(A)-4, Kanpur dated 27.02.2023.

2. A search and seizure operation u/s 132 of the Act was conducted on 27.11.2020 in the premises of M/s. Shiv Shakti Constructions Group of cases and as part of the same action, the premise of the appellant Return of income was filed on 29.03.2022 declaring income of Rs. 42,15,110/-. The assessment was completed by making addition of Rs. 59,57,480/- u/s 69A of IT Act on account of unexplained jewellery which has been confirmed by the Id. CIT(A). Aggrieved, assessee is in appeal before us.

3. Except the amount involved the facts of the case or exactly similar to the case of Preeti Singh which was adjudicated by this Tribunal in ITA No. 980/Del/2023 for AY 2021-22.

4. For the sake of ready reference and brevity the order in the case of Preeti Singh (supra) is reproduced here under:-

The present appeal has been filed by assessee against the order of Ld. CIT(A)-4, Kanpur dated 27.02.2023.

2. A search and seizure operation u/s 132 of the Act was conducted on 27.11.2020 in the premises of M/s. Shiv Shakti Constructions Group of cases and as part of the same action, the premise of the appellant Smt. Preeti Singh was also covered. The case of the appellant was centralized to the jurisdiction of DCIT Central Circle-II, Noida. Return of income was filed on 28.12.2021 declaring income of Rs. 3,90,510/-. Notice u/s 143(2) of IT Act was issued and served upon the appellant on 23.02.2022. Later on, notices u/s 142(1) of the Act alongwith questionnaire were also issued and A.O. completed the assessment by making addition of Rs. 9,66,000/- u/s 69A of IT Act on account of unexplained jewellery. Aggrieved, assessee is in appeal before the undersigned.

3. The Grounds of appeal relate to addition of Rs. 9,66,000/- u/s 69A of IT Act on account of unexplained jewellery. The relevant part of assessment order is as under:

A search & seizure operations u/s 132 of the Income Tax Act. 1961 was conducted on 27.11.2020 on the premises of M/s Shiv Shakti Construction. The business premise of the firm and residences

of its partners and their associates were covered under the search operation. The assessee is one of the partners in M/s Daurau Farms LLP. The residential as well as business premises of the assessee were covered. In view of search operation the group cases were centralized to Central Circle II Noida.

2. Consequently, for the purpose of assessment, notice u/s 142(1) of the Act dated 20/01/2022 was issued through ITBA Portal and duly served upon the assessee. Assessee has e-filed return of income on 28.12.2021 declaring total income as Rs.3.90.510- Subsequently, notice u/s 143(2) of the Act was issued on 23.02.2022 through ITBA and duly served upon the assessee. Further, a notice u/s 142(1) alongwith detailed questionnaire was issued on 25.08.2022, the date for compliance was fixed on 31.08.2022. In response to the notices, the assessee has filed her submission on 31.08.2022.

3. In response to the Notices us 142(1) issued, Harish Chaudhan, CA Authorized Representative of the assessee filed his submission manually on 31.08.2022. The details like were examined verified and placed on record.

4. During the course of search, at the premise occupied by assessee at C-8. Flat No. 8787, Vasant Kunj, New Delhi, jewelry of Rs. 1,10,68,513/- (Gross weight 2834 grs) was found and in the locker in the name of the assessee Sit. Precti Singh, maintained with PN Vasant Vihar, jewelry of Rs 9,60,000 - (Gross weight 227 gms) was found. The gross weight of total jewellery is 3061 grams. Vide notice us 142(1) dated 20.01.2022 and 25.08.2022 the assessee was asked to furnish the source of jewellery. However, no details in this regard were furnished. In order to follow the principles of natural justice a show cause notice was issued to assessee 28 09.2022 to explain the source of jewellery found at his house and locker.

5.1 Vide reply furnished on 24.09.2022 the assessee has stated that the jewelry was gifted to her and her spouse on the occasion of marriage, birth of children etc. and the jewelry pertains to self, wife, mother (expired in 2021), sister, sister-in-law and niece. And the total allowable limit as per CBDT Instruction no. 1916 is mentioned as 3100 grams.

5.2 The reply of the assessee is considered however it is not found tenable. The assessee has included the name of her sister, sister-in-law and niece in her calculation of allowable limit. However, she has not produced any evidence that they reside with her or the jewelry belongs to them. As per the address mentioned in their voter id

card, they have a different address. The assessee has also not justified why they should be included in calculating the allowable limit as they were also not residing with her at the time of search. The assessee has also not produced any bills and vouchers and source of purchase in respect of the jewelry found at her premise.

5.3 in view of the facts mentioned above and in light of CBDT Instruction no. 1916 dated 11.05.1994, the allowable limit of jewellery in case of the assessee and his family is as under:-

S.No	Person	Allowable Limit
1.	Shri Chander Pal (Husband)	100 gm
2.	Smt. Preeti Singh (Self)	500gm
3.	Smt. Draupadi Devi (Mother in law expired 2021)	500 gm
4.	Master Anirudh Singh (son)	100gm
5.	Master Shauraya Singh (son)	100gm
	Total	1300gm

5.4 Accordingly the allowable amount of jewelry comes out to be Rs. 51,11,030/- (1.20.34.513 Assessee 130030611. Hence, the remaining amount of unexplained jewelry comes out to be Rs.69.23.4801-. As the assessee has not furnished any bills/vouchers. wealth tax return and source of purchase of the jewelry found in her house and locker. Hence, the entire amount of Rs. 69,23.480 - is treated as unexplained. However, since the assessee was holding locker in PN Vasant Vihar Branch in which jewellery worth Rs.9,66,000/- was found. Hence, the unexplained jewelry to the tune of Rs. 9,66,000/- is added in the hands of the assessee and the remaining jewellery is added in the hands of husband of the assessee Sh. Chander Pal.

4. In this regard, assessee filed written submission before the Id. CIT(A), the relevant portion of written submission is reproduced as under:

1. The appellant for the year under reference filed her return of income on 28.12.2021 declaring total income at Rs 3,90,510.

2. Mr Chandra Pal, the husband of the appellant, is a partner in a partnership firm namely, Messrs Shiv Shakti Constructions (the "firm).

3. A search and seizure operation under section 132 of the Act was conducted on 27.11.2020 at the premises of Messers Shiv Shakti Construction. The residential premises of Mr Chandra Pal and the appellant was also covered in the search operations.

4. During the search operations, jewellery valuing at Rs 1. 10,68,513 (gross weight 2834.100 gms, net weight 2.352.882 gms) was found at the residential premises of the Mr Chandra Pal and the appellant. Further, jewellery valuing at Rs 9,66,789 (gross weight 227.100 gms, net weight 208.900 gms) was also found from the locker held by the appellant with Punjab National Bank. Thus, total jewellery valuing at Rs 1.20,34,513 (gross weight 3,061.200 gms, net weight 2, 561.782 gms) was found.

5. In the case of Mr Chandra Pal, the Assessing Officer after allowing credit of Rs 51,11,030(1300 gms) on pro rata basis) in light of CBDT Instruction no 1916 dated 11.05.1994 on the subject (refer para 5.3 and 5.4 of the assessment order), made an addition of Rs 69,23,480 under section 69A of the Act re jewellery found at the residential premises.

6. Whereas, in the hands of the appellant, the Assessing Officer made an addition of the value of jewellery found in the locker without giving any credit in accordance with the CBDT Instruction. Thus, the Assessing Officer made an addition of Rs 9,66,000 section 69A of the Act in the hands of the appellant re jewellery found in the locker.

7. At the outset, the CBDT instruction on the subject is reproduced below for ready reference and record –

"Instances of seizure of jewellery of small quantity in course of operations under section 132 have come to the notice of the Board. The question of a common approach to situations 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 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 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. This should be reported to the Director of Income-tax/Commissioner authorising the search at 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.*

These guidelines may please be brought to the notice of the officers in your region."

8. *The appellant submits that the aforesaid jewellery was gifted to her on various occasions such as marriage, birth of children, etc.; such gifts are very common in Indian culture and society. Further, looking at the status of the family of which the appellant is a part, the quantum of such gift of jewellery is not uncommon and hence, the said jewellery cannot be treated as unexplained as per the provisions of section 69A of the Act.*

9. *The appellant contends that the Assessing Officer erred in taking gross weight as a basis to calculate the credit allowed as per the CBDT instruction on the subject. It is submitted that the Assessing Officer ought to have considered the net weight.*

10. *Without prejudice to the above, the appellant further, contends that the Assessing Officer ought to have given credit based on the CBDT Instruction to the appellant and not to her husband Mr Chandra Pal. Net weight of jewellery found in the locker is 208.900 gms and once the credit of 500 gms is allowed, the appellant is still left with a buffer of 291.100 gms.*

In view of the above, the appellant submits that the Assessing Officer ought not to have made the impugned addition of Rs 9,66,000 under section 69A of the Act and hence, the same needs to be deleted.

11. *Without prejudice, if the impugned addition is upheld, the appellant submits that the balance credit of 291.100 gms ought to be allowed in respect of jewellery found in the residential premises,*

the addition of which has been made in the hands of the husband Mr Chandra Pal.

It would not be out of place to mention that the Written Submissions re additions made in the hands Mr Chandra Pal are being filed separately in his appeal.

5. In the matter of addition of Rs. 9,66,000/- made u/s 69A of IT Act on account of jewellery, the AO observed that during the course of search conducted at the premise of the assessee at C-8, Flat No. 8787, Vasant Kunj, New Delhi, jewellery of Rs. 1,10,68,513/- (Gross weight 2834 grms) was found. Further in the locker in the name of the assessee i.e. Smt. Preeti Singh in PNB Vasant Vihar, jewellery of Rs. 9,66,000/- (Gross weight 227 grms) was found. Thus, the gross weight of total jewellery of the assessee and her husband was found to be 3061 grams.

6. The AO observes that in the light of CBDT Instruction no. 1916 dated 11.05.1994, the allowable limit of jewellery in case of the assessee and his family members is as under:-

<i>S.No</i>	<i>Person</i>	<i>Allowable Limit</i>
<i>1.</i>	<i>Shri Chander Pal (Husband)</i>	<i>100 gm</i>
<i>2.</i>	<i>Smt. Preeti Singh (Self)</i>	<i>500gm</i>
<i>3.</i>	<i>Smt. Draupadi Devi (Mother in law expired 2021)</i>	<i>500 gm</i>
<i>4.</i>	<i>Master Anirudh Singh (son)</i>	<i>100gm</i>
<i>5.</i>	<i>Master Shauraya Singh (son)</i>	<i>100gm</i>
	<i>Total</i>	<i>1300gm</i>

7. The moot issue in this appeal is whether the allowance of jewellery should be strictly restricted to 500 grms only as per the CBDT Circular or not. In this case the total jewellery found was 715 grms and the Revenue Authorities allowed 500 grms as per the circular and the equivalent value of the remaining 215 grms was considered as on undisclosed income and brought to tax. We have gone through the taxable income of the assessee for the last few years which is as under :-

<i>Assessment Year</i>	<i>Returned Income</i>
2012-13	14,83,855.00
2013-14	12,54,564.00
2014-15	14,17,162.00
2015-16	6,22,432.00
2016-17	7,03,688.00
2017-18	7,28,688.00
2018-19	7,24,690.00
2019-20	13,52,157.00
2020-21	8,48,060.00
2021-22	3,90,510.00
2022-23	4,90,970.00

8. The assessee stated that the income for all the years 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*

9. 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."

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."

10. 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."

11. 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 of Rs. 9,66,000/- on this account be deleted.

5. The return income of the assessee during the previous years is as under:-

Assessment Year	Returned Income
2012-13	1,69,36,783.00
2013-14	59,61,650.00
2014-15	1,45,83,225.00
2015-16	19,51,453.00
2016-17	47,09,477.00
2017-18	6,21,290.00
2018-19	6,32,228.00
2019-20	16,03,342.00
2020-21	17,52,040.00
2021-22	9,05,040.00
2022-23	10,20,570.00

6. Since the assessee has got sufficient return income, in the absence any change in the factual matrix and the legal proposition, the appeal of the assessee is hereby allowed.

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

Order Pronounced in the Open Court on 17/11/2023.

Sd/-
(Astha Chandra)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated:17/11/2023

NV, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, DELHI