

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.As. No.977 & 1067/DEL/2023
Assessment Year 2021-22 & 2021-22

Kirti Singh, 83A, Amba Enclave, Bulandshahr, Panni Nagar, Near Sugar Mill, Bulandshahr.	Vs.	Assistant Commissioner of Income Tax, Central Circle-II, Noida.
TAN/PAN: BCIPS0612K		
(Appellant)		(Respondent)

Appellant by:	Shri Mohit Choudhary, CA Shri Harish Choudhary, CA Ms. Mitika Choudhary, Adv. Ms. Neetu Jain, CA Shri Ankur Rastogi		
Respondent by:	Mr. Waseem Arshand, CIT(DR)		
Date of hearing:	18	10	2023
Date of pronouncement:	07	12	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), Kanpur-4 [‘CIT(A)’ in short] dated 27.02.2023 arising from the assessment order dated 28.09.2022 passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2021-22.

2. When the matter was called for hearing, the Id. counsel for the assessee pointed out that both the captioned appeals carry same cause of action and two appeals have been filed inadvertently. The

ld. counsel thus submits that ITA No.977/Del/2023 may be treated as withdrawn as per the written application in this regard.

3. In view of the submission made, ITA No.977/Del/2023 is dismissed as withdrawn.

4. We now advert to ITA No.1067/Del/2023 concerning Assessment Year 2021-22 for adjudication on merits.

5. Briefly stated, a search and seizure action under Section 132 of the Act was conducted on 27.11.2020 at the premises of M/s. Shiv Shakti Construction which included the assessee herein. During the course of search at the premises occupied by the assessee at 803, Crescent Court, Jaypee Greens Greater Noida, jewellery worth Rs.81,12,090/- (gross weight 2217.30 gms) was found at the residence whereas jewellery worth Rs.12,06,000/- (gross weight 261.900 gms.) was found in the locker. The gross weight of total jewellery thus found was 2479.20 gms. The return filed by the assessee for Assessment Year 2021-22 was thus centralized with group cases and the assessment was framed under Section 143(3) of the Act. The source of jewellery in the course of the assessment was inquired. It was pointed out to AO that jewellery pertains to the assessee, her husband, two sons, mother-in-law and two sister-in-laws. In the light of the CBDT Instruction No.1916 dated 11.05.1994, the Assessing Officer granted the benefit of allowable limit to different members excluding sister-in-law as tabulated in the assessment order reproduced hereunder:

<i>S.No.</i>	<i>Person</i>	<i>Allowable Limit</i>
1.	<i>Shri Mukesh Kumar (Husband)</i>	<i>100 gms</i>
2.	<i>Smt. Kirti Singh (Self)</i>	<i>500 gms</i>
3.	<i>Smt. Shakuntala devi (Mother in law)</i>	<i>500 gms</i>
4.	<i>Sh. Samrat Singh (son)</i>	<i>100 gms</i>
5.	<i>Sh. Yuvraj Sing (son)</i>	<i>100 gms</i>
	<i>Total</i>	<i>1300 gms</i>

6. The Assessing Officer thus treated Rs.48,86,060/- out of Rs.93,18,090/- worth of jewellery as explained. The remaining amount of Rs.44,32,030/- was thus treated as unexplained as the assessee has failed to furnish any bills/vouchers or source of purchase of jewellery. The income returned at Rs.85,93,170/- was thus assessed at Rs.1,30,25,200/-.

7. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) also affirmed the action of the Assessing Officer and declined to interfere with the additions carried out towards unexplained jewellery.

8. Further aggrieved, the assessee preferred appeal before the Tribunal.

9. We have heard the rival submissions and perused the orders of the lower authorities as well as material available on record.

10. The additions on account of unexplained jewellery being 1179.10 gms valued at Rs.44,32,030/- is subject matter of controversy. As pointed out on behalf of the assessee, total jewellery found during the search stands at 2479.10 gms. The Assessing Officer has accepted 1300 gms as attributable to different family members tabulated in the earlier paragraphs as explained. However, the remaining jewellery being 1179.10 gms has been treated as unexplained on the ground that 514 gms and 250.400 gms stated to be relatable to sisters-in-law, i.e., sister of husband (Mr. Mukesh Kumar) was not accepted by the Assessing Officer. Likewise out of 914.70 gms relatable to the assessee has been accepted partly to the extent of 500 gms as explained and remaining 414.70 gms has been treated as unexplained. The tabulation shows in this regard is reproduced hereunder:

<i>S.No.</i>	<i>Name</i>	<i>Weight of jewellery pertaining to assessee and assessee's family members</i>	<i>Relationship with the appellant</i>	<i>Weight accepted by the AO (in gms)</i>	<i>In Dispute before the Hon'ble Tribunal (gms)</i>
1.	<i>Shri Mukesh Kumar (spouse)</i>	<i>100 gms</i>	<i>Husband (spouse)</i>	<i>100</i>	<i>NIL</i>
2.	<i>Smt. Kirti Singh (Self)</i>	<i>914.70 gms</i>	<i>Appellant</i>	<i>500</i>	<i>414.70</i>
3.	<i>Smt. Shakuntalu devi</i>	<i>500 gms</i>	<i>Appellant's mother-in-law</i>	<i>500</i>	<i>NIL</i>
4.	<i>Sh. Samrat Singh (son)</i>	<i>100 gms</i>	<i>Appellant's son</i>	<i>100</i>	<i>NIL</i>
5.	<i>Sh. Yuvraj Singh (son)</i>	<i>100 gms</i>	<i>Appellant's son</i>	<i>100</i>	<i>NIL</i>
6.	<i>Smt. Anju Singh</i>	<i>514.00 gms</i>	<i>Appellant's sister-in-law</i>	<i>NIL</i>	<i>514.00 gms</i>
7.	<i>Smt. Surekha Singh</i>	<i>250.400 gms</i>	<i>Appellant's sister-in-law</i>	<i>NIL</i>	<i>250.400 gms</i>
	<i>Total</i>	<i>2479.10 gms</i>		<i>1300 gms</i>	<i>1179.10 gms</i>

11. The assessee thus submits that the Assessing Officer has ignored the normal practices and customs of Indian Society where the women, for variety of reasons, have been keeping their jewellery in maternal house. The sisters of husband of the assessee have kept a part of their jewellery in the custody of the assessee family which is not uncommon in Indian families and therefore, there was no justification to ignore the explanation offered at the threshold in the course of the assessment proceedings. The ld. counsel also submits that the CBDT Instruction No.1994 dated 11.05.1994 does not bar the retention of gold jewellery and ornaments above 500 per lady. The assessee has affluent status and customs and practices of the community also permits for holding greater quantity of jewellery. The assessee and her spouse has declared substantial taxable income year after year and therefore the status of the assessee cannot be

doubted and thus retention of high jewellery is plausible and a valid explanation for such keeping of gold ornaments accumulated over years and received by way of gifts from other family members and relatives at the time of their marriage and several occasions thereafter.

12. The CBDT Instruction No.1994 dated 11.05.1994 is reproduced hereunder for immediate reference:

"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 authorising 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."

13. The year-wise income reported by the assessee and her husband signifying their capacity and high status is tabulated hereunder:

Smt. Kirti Singh (Appellant)	
Assessment Year	Income of the Appellant (in Rs.)
2012-13	19,84,056/-
2013-14	94,35,109/-
2014-15	57,83,659/-
2015-16	1,17,84,337/-
2016-17	1,48,91,769/-
2017-18	1,21,33,714/-

2018-19	2,21,70,954/-
2019-20	3,02,83,650/-
2020-21	4,02,35,603/-
2021-22	3,51,14,780/-
2022-23	2,70,58,455/-
2023-24	2,70,58,455/-
Total	21,08,40,086/-
Sh. Mukesh Singh (Spouse of the Appellant)	
<i>Assessment Year</i>	<i>Income of the Appellant (in Rs.)</i>
2012-13	17,65,192/-
2013-14	92,01,502/-
2014-15	55,05,186/-
2015-16	1,11,88,412/-
2016-17	1,47,80,690/-
2017-18	1,07,55,278/-
2018-19	2,03,68,777/-
2019-20	2,62,16,266/-
2020-21	3,55,33,785/-
2021-22	2,94,16,569/-
2022-23	1,79,89,313/-
2023-24	1,80,82,613/-
Total	18,27,20,970/-

14. We observe that the income reported as tabulated above clearly shows that the assessee and her family members are high net worth individuals and having regard to their high status, holding such jewellery found in the custody of members of their families cannot be seen to be abnormal and consequently unexplained. Simultaneously, we take note of paragraph 3 of the CBDT instruction, where the status of the family and customs and practices of the community to which family belongs, permit an assessee to hold larger quantity of jewellery and ornaments out of the purview of seizure. As per the instruction, the Income Tax Department also recognizes holding of such high quantity of jewellery as explained where the assessee is in the high income tax brackets. The assessee has thus sufficiently demonstrated the plausibility for holding gold ornaments in excess of the limit prescribed by the CBDT instruction. We also find merit in the explanation offered by the assessee that

credit should be given for gold, jewellery and ornaments held in custody of the assessee on behalf of the sister-in-law, Smt. Anju Singh and Smt. Surekha Singh. Keeping in mind, the overall status of the family as demonstrable from the facts of records, whole of the gold ornaments found at the time of search requires to be treated as clearly explained.

15. At this juncture, we refer to the observations made by the Hon'ble Delhi High Court in the case of *Ashok Chaddha vs. ITO (2011) 14 taxmann.com 57 (Del)* wherein collecting jewellery above the limit prescribed in the instruction, in a married life of 25 to 30 years, was not treated as abnormal. The normal custom of Indian society and realities of life were taken into account by the Hon'ble Jurisdictional High Court. The relevant portion of the judgment is reproduced hereunder for ready reference.

"As far as addition qua jewellery is concerned, during the course of search, jewellery weighing 906.900 grams of the value amounting to Rs. 6,93,582 was found. The appellant's explanation was that he was married about 25 years back and the jewellery comprised "streedhan" of Smt. Jyoti Chadha, his wife and other small items jewellery subsequently purchased and accumulated over the years. However, the Assessing Officer did not accept the above explanation on the ground that documentary evidence regarding family status and their financial position was not furnished by the appellant. The Assessing Officer accepted 400 grams of jewellery as explained and treated jewellery amounting to 506.900 grams as unexplained and made an ad hoc addition of Rs. 3,87,364 under section 694 of the Act working on unexplained jewellery, by applying average rate of the total jewellery found. The relevant portion of the assessment order reads as follows:-

" very reasonable allowance of ownership of gold jewellery to the extent of 400 grams is considered reasonable and the balance quantity of 506 grams by applying average rate, the unexplained gold jewellery is considered at Rs. 3,87,364 (506/900 × 6,93,582) u/s 69A of the Act."

The CIT (A) confirmed this addition stating that the Assessing Officer had been fair in accepting the part of jewellery as unexplained. The ITAT has also endorsed the aforesaid view. Learned counsel for appellant Ms. Kapila submitted that there was no basis for the Assessing Officer to accept the ownership of the gold jewellery to the extent of 400 grams only as "reasonable allowance" and treat the remaining jewellery of Rs. 506.900 as unexplained. She also submitted that another glaring fact

ignored by the Assessing Officer as well as other authorities was that as the department had conducted a search of all the financial dealings which were within his knowledge and no paper or document was found to indicate that this jewellery belonged to the appellant and that it was undisclosed income of the assessment year 2006-07. In a search operation, no scope is left with the tax department to make addition on subjective guess work, conjectures and surmises. It was also argued that jewellery is "streedhan" of the assessee's wife, evidenced in the form of declaration which was furnished by mother-in-law of the assessee stating that she had given the jewellery in question to her daughter: She argued that it is a normal custom for a woman to receive jewellery in the form of marriage and other occasions such as birth of a child. The assessee had been married more than 25-30 years and acquisition of the jewellery of 906.900 grams could not be treated as excessive.

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 "streedhan" 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."

16. A reference is also made to the judgment rendered by the Hon'ble Supreme Court in the case of *Pratibha Rani vs. Suraj Kumar (1985) (2) SCC 70* where it was held that a Hindu married woman is absolute owner of her Streedhan property and can deal with it in any manner she likes and even if it placed in the custody of her in laws or her parents as per her wish. The Hon'ble Supreme Court thus duly took cognizance of the ordinary customs prevailing in Indian society where married woman keeps her gold jewellery and ornaments in her parents' custody.

17. In similar set of circumstances plethora of judgments have

been delivered in favour of the assessee by the Co-ordinate Benches. A reference may be made to the decisions rendered in the case of *Ankur Sharma vs. DCIT, ITA No.1843/Del/2022 Assessment Year 2019-20 order dated 06.10.2023*; *Gagan Saran Sharma vs. DCIT, ITA No.1844/Del/2022 order dated 06.10.2023* and *Ankit Sharma & ors. vs. DCIT, ITA No.1842/Del/2022 order dated 16.10.2023*. In these group of cases, total jewellery found during the search under Section 132 stood at 387.50 gms, the revenue provided relief is to the extent of 2250 gms. The excessive jewellery of 1627.50 gms found in the course of search was treated as explained by the Tribunal in the backdrop of high income declared by the assessee in the different assessment years. The facts towards high status etc. in the present case are found to be better than in the decisions rendered by the Co-ordinate Benches in *Ankit Sharma (supra)*, *Ankur Sharma (supra)* and *Gagan Sharma (supra)*.

18. A reference is also made to the decision of the Co-ordinate Bench in *Monisha R. Jaising vs. DCIT, (2019) 101 taxmann.com 519 (Mum – Trib.)* and *Vibhu Aggarwal vs. DCIT, (2018) 93 taxmann.com 275 (Del. Trib.)* where keeping in mind the high income reported by the respective assessee and having regard to wealthy family status where gifting of jewellery is customary, the explanation offered by the assessee towards holding gold and ornaments in excess of CBDT instruction was treated as explained.

19. In the light of the delineations made above, we see potency in the plea raised on behalf of the assessee. The additions made under Section 69A towards gold ornaments are at odds with the decision rendered by the Jurisdictional High Court in *Ashok Chhadha (supra)* and decisions rendered by Co-ordinate Benches referred hereinabove and therefore cannot be countenanced. We thus set aside the order of

the CIT(A) and direct the Assessing Officer to delete the additions made under Section 69A of the Act on this score.

20. In the result, the appeal of the assessee in ITA No.1067/Del/2023 is allowed.

21. In the combined result, the appeal of the assessee in ITA No.977/Del/2023 is dismissed as withdrawn and appeal in ITA No.1067/Del/2023 is allowed.

Order pronounced in the open Court on 07/12/2023.

**Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER**

DATED: /11/2023

Prabhat

**Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**