

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 1398 & 1397/Del/2022
(AYs: 2009-10 and 2019-20)**

Smt Kavita Kapilashrami, 1002, Tower-4, Vipul Belmonte, Gold Course Road, Sector-53, Gurgaon, Haryana (Appellant) PAN:AFBPK2729J	Vs. DCIT, Central Circle-16, New Delhi (Respondent)
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Assessee by :	Shri T.M.Shivakumar, Adv Ms. Kirti Kishore, Adv Ms. Sanjana, Adv
Revenue by:	Mr. Waseem Arshad, CIT DR
Date of Hearing	09/01/2024
Date of pronouncement	05/04/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1398 and 1397/Del/2022 for AYs 2009-10 and 2019-20, arise out of the order of the Commissioner of Income Tax (Appeals)-26, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10020/08-09 and 10557/18-19 dated 30.03.2022 against the order of assessment passed u/s 153A and 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 14.04.2021 for AY 2009-10 and 19.04.2021 for AY 2019-20 by the Assessing Officer, ACIT, Central Circle-16, New Delhi (hereinafter referred to as 'Id. AO').

2. Let us take up the appeal of the assessee in ITA No. 1398/Del/2022 for AY 2009-10 first.

3. The only issue to be decided in this appeal is as to whether the Id CIT(A) was justified in confirming the addition made in the sum of Rs. 1,75,000/- as unexplained money u/s 69A of the Act towards opening cash balance as on 01.04.2008 in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the material available on record. The assessee in the instant case had not filed the return of income for AY 2009-10 u/s 139 of the Act. A search and seizure operation u/s 132 of the Act was conducted on 13.06.2018 in the case of Pythos Group of cases. The assessee was also covered in the said search. Accordingly, notice u/s 153A of the Act stood issued to the assessee on 22.09.2020. The assessee in response thereto filed the return of income for AY 2009-10 on 31.10.2020 declaring total income of Rs. 9,98,760/-. During the course of assessment proceedings, the Id AO noticed that the assessee has shown opening cash balance of Rs. 1,75,000/- as on 01.04.2008 in cash flow statement submitted by the assessee. The Id AO sought to dispute the existence of the said opening cash balance of Rs. 1,75,000/-. The assessee explained that there was a cash withdrawal from bank account to the tune of Rs. 7 lakhs prior to 01.04.2008 and that sum after meeting the expenses was available to the tune of Rs. 1,75,000/- which was reflected as opening cash balance by the assessee on 01.04.2008. This reply was not found satisfactory by the Id AO and the Id AO proceeded to treat the opening cash balance of Rs. 1,75,000/- as unexplained money and brought forward to tax the same u/s 69A of the Act while completing the assessment u/s 153A read with Section 143(3) of the Act for AY 2009-10 dated 16.04.2021. The assessee in response to the show cause notice dated 10.04.2021 filed her reply vide letter dated 13.04.2021 clearly bringing on record the fact that she and her husband had duly filed the income tax returns for AYs 2004-05 and 2005-06 prior to the date of search on 13.06.2018. The details of income disclosed by the assessee and her husband for AYs 2004-05 and 2005-06 are tabulated as under:-

Name of Assesses	A.Y.2004-05	A.Y.2005-06	Total
Kavita Kapilashrami	4,23,233	4,84,058	9,07,91
Anil Kapilashrami	50,08,610	50,18,342	1,00,26,952
Total	5431,843	55,02,400	1,0934,243

5. The assessee has withdrawn cash of Rs. 5 lakhs from Canara Bank on 16.02.2008 and Rs. 2 lakhs from Kotak Bank on 18.02.2008. This sum after meeting the expenses, had resulted in holding of cash balance as on 31.03.2008 to the tune of Rs. 1,75,000/- which was brought forward as opening balance as on 01.04.2008 by the assessee in the cash flow statement submitted before the Id AO. In our considered opinion, the assessee has given a plausible explanation for holding the cash balance of Rs. 1,75,000/- as on 01.04.2008. Moreover, the entire premise of the revenue is that there was no return filed by the assessee prior to 01.04.2008. This is factually incorrect as is evident from the table of income disclosed by the assessee and her husband for AYs 2004-05 and 2005-06 (supra) to the tune of Rs. 1.09 crores. This explanation goes to prove that the assessee could have easily retained cash balance of Rs. 1,75,000/- as on 01.04.2008. It cannot be disbelieved or doubted at all considering the status of the assessee. Hence, we direct the Id AO to delete the disallowance made u/s 69A of the Act in the sum of Rs. 1,75,000/-. Accordingly, grounds raised by the assessee for AY 2009-10 are allowed.

6. In the result, the appeal of the assessee in ITA No. 1398/Del/2022 for AY 2009-10 is allowed.

ITA No. 1397/Del/2022 for AY 2019-20

7. The only issue to be decided in this appeal is as to whether the Id CIT(A) was justified in confirming the addition made in the sum of Rs. 19,80,742/- u/s 69A on account of jewellery in the facts and circumstances of the instant case.

8. During the course of search on 13.06.2018 jewellery to the extent of Rs. 1896.78 was found. The Id AO gave credit of 800 grams totally and directed the

assessee to explain the remaining 1096.78 grams. A show cause notice to this effect was issued by the Id AO. The assessee submitted that her family members consist of herself, her husband Shri Anil Kapilashrami and her children Mr. Manoj Kapilashrami and Mr. Yatish Kapilashrami. Apart from that, her mother in law late Smt. Hema Kapilashrami who had died on 22.01.2021 was also residing with the assessee. Also Smt. Chhaya, assessee's sister in law, an unmarried woman, who has been working in United Nations, USA, used to visit the assessee on festivals and various family functions and her jewellery was also kept with the assessee's custody as is the normal practice followed. Accordingly, it was submitted that the assessee would be entitled for credit of 1550 grams as per CBDT Instruction No. 1916 dated 11.05.1994 comprising of 6 family members. Apart from that, the assessee also submitted the purchase bills to the tune of 681.483 grams before the Id AO, which was also part and parcel of the documents found during the course of search. Accordingly, the assessee pleaded that the entire jewellery found to the extent of 1896.78 grams stood completely explained and there was no need to make any addition on account of unexplained jewellery. The Id AO did not heed to this explanation given by the assessee and gave credit only to the extent of 1300 grams out of 1896.78 grams found during the course of search. Accordingly, the Id AO valued the alleged unexplained jewellery of 596.78 grams of Rs. 19,80,742/- and added a sum as unexplained jewellery u/s 69A read with section 115BBE of the Act in the assessment. This action by the Id AO was upheld by the Id CIT(A).

9. At the outset, as per CBDT instruction No. 1916 dated 11.05.1994, credit of jewellery is to be given in the following manner:-

a.	For every married lady- 500 gms	In the instant case, there were two married ladies in assessee's case i.e. assessee herself and her mother in law at the time of search. Hence, credit to be given for 1000 gms
b.	For every unmarried lady- 250 gms	In the instant case, the assessee's sister in law Chhaya who was unmarried and working in United Nations and she had kept her jewellery also in the custody of assessee as is the normal practice followed in India for the purpose of using the same in family functions and auspicious occasions

		whenever she visits India. Hence total credit to be given for 250 gms.
c.	For every male member of the family- 100 gms	In the instant case, there were three male members i.e. assessee's husband and her two children and hence total credit to be given for 300 gms

10. Accordingly, total credit to be given for jewellery would be 1550 gms (1000+250+300) as per CBDT Instruction No. 1916 dated 11.05.1994. Though, this instruction is meant for the purpose of non seizure of jewellery at the time of search, Courts and Tribunals have held that the same should be given credit and to be treated as explained. Hence, we hold that jewellery to the extent of 1550 gms stands properly explained. Apart from this, the assessee has also produced purchase bills to the extent of 681.483 grams which is not disputed by the revenue. In fact these bills were found at the time of search itself and are forming part of the seized documents. Hence, to this extent also, assessee is entitled to be given credit. When 1550 and 681.483 grams are considered cumulatively, the entire jewellery found at the time of search becomes properly explained and there would be no case for making any addition. This view of ours is further fortified by the decision of the Hon'ble Jurisdictional High court in the case of Ashok Chaddha Vs. ITO reported in 14 taxmann.com 57 (Del) wherein the relevant observation is reproduced as under:-

"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 "stree dhan" 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 69A 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:-

"a 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 "stree dhan" 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 "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.

5. Appeal is allowed in the aforesaid terms."

11. Accordingly, we direct the Id AO to delete the addition made in the sum of Rs. 19,80,742/- towards unexplained jewellery. Accordingly, grounds raised by the assessee are allowed.

12. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 05/04/2024.

-Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 05/04/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi