आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE
श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 714/Chd/2022
निर्धारण वर्ष / Assessment Year : 2017-18

Smt. Jyoti Bhalla 3052, Sector-21, Chandigarh-160022	बनाम	The ITO Ward-3(2) Chandigarh
स्थायी लेखा सं./PAN NO: AFGPJ8536H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Amitoz Singh Kabmboj, C.A
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 20/02/2024
उदघोषणा की तारीख/Date of Pronouncement : 16/05/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee challenging the order passed by the Ld. CIT(A)/ NFAC, Delhi dt. 12/10/2022 pertaining to Assessment Year 2017-18.

2. In the present appeal, the assessee has raised the following grounds of appeal:

> *"1. That the Ld. CIT (A) has erred in law by confirming an addition of Rs 10,00,000/- u/s 68 of the Income Tax Act in respect to the amount received from husband. The Ld. CIT(A) ignored the fact that relevant information/documentation regarding the source were produced during the assessment proceedings.*
>
> *2. In relation to the addition of Rs. 35,26,000/- related to the jewellery seized, the Ld. CIT(A) has ignored the fact that the same does not belong to the assessee alone. Out of the total jewellery seized only some belonged to the assessee and rest belonged to the family members and one relative. Also due information and requisite documentation was provided to the AO during the assessment proceedings. Further, CBDT circular regarding seizure of jewellery has also not been considered."*

3. In ground No. 1, the assessee has challenged the sustenance of addition of Rs. 10,00,000/- under section 68 of the Act.

3.1 In this regard, briefly the facts of the case are that during the course of search operation conducted by the CBI on 12/09/2016, cash to the tune of Rs. 14.15 Lacs was found from the locker maintained by the assessee with Indian Overseas Bank (IOB), Sector-22, Chandigarh.

3.2 During the course of assessment proceedings, the assessee was asked to justify the source of cash so found in her locker. In her reply, she submitted that an amount of Rs. 10,00,000/- has been received from her husband, Rs. 20,000/- from her niece and Rs. 3,50,000/- from Pine Drive Resorts for land transaction and the remaining amount of Rs. 45,000/- was her own money out of past savings.

3.3 The AO accepted the assessee's explanation regarding Rs 4.15 lacs however explanation regarding Rs. 10,00,000/- received by the assessee from her husband was not accepted and the addition was made under section 68 of the Act. In this regard, the relevant findings of the AO are contained at para 3.2 to 3.4 and the contents thereof read as under:

> *"3.2 The perusal of above chart furnished by the assessee reveals that she has received Rs. 10,00,000/- from her husband. When the assessee was asked to justify the source in the hands of her husband she further claimed that her husband received cash from Sh. R.K. God and Sh. Krishna Joshi as taken against purchase of land. Both Sh, R.K. God and Sh. Krishna Joshi were summoned to verify the genuineness of transaction claimed by the assessee. Their statement was recorded. During the course of verification both Sh. R.K. Goel and Sh. Krishan Joshi failed to furnish their source of payment of Rs.6,00,000/- and Rs.4,00.000/- respectively. The bank account statement furnished by Sh. R.K. God in which he has claimed to have withdrawn the cash paid to Sh. Gaurav Bhalla also does not prove the genuineness of the transaction as the agreement to sell was of 26.07.2016 and the cash has been withdrawn by Sh. R.K. Goel in piece meal/routine manner starting from May, 2016 to July, 2016. Similarly Sh. Krishan Joshi also failed to justify the source of payment made to Sh. Gaurav Bhalla. From the perusal of the bank a/c statement of Sh. Krishan Joshi, it is seen that cash amounting to Rs. 5 lac was withdrawn on 28.4.2016 whereas agreement for sale of land was made on 26.7.2016 which is approx. 3 month after the date of cash withdrawal. This contention of the purchaser i.e. Sh. Krishan Joshi is not acceptable as this*

cash may have been used for any purposes as there is a gap of approx. 3 month between the cash withdrawal and date of agreement to purchase of land with Sh. Gaurav Bhalla.

3.3 Further from the perusal of the documents/submission put forwarded by the assessee it reveals that documents put forward by the assessee are self serving documents from related person which is only an afterthought of the assessee and her family members to come out of the difficult situation. The assessee has tried to explain the major part of the cash as advance received from her husband in cash in connection with sale of property belonging to him in Himachal Pradesh. The so called agreement is dated 26.07.2016 but relevant parties have failed to furnish any sale deed even after lapse of two years to prove that the laud agreement was genuine. Sh. Gaurav Bhalla husband of the assessee during the course of recording of his statement informed that the same could not be got registered due to ban by the Himachal Govt, for selling immovable property to Non-Himachali. She could not substantiate her claim and it is nothing but cooked up story and the husband of the assessee was well aware that he cannot enter into an agreement to sell with non-Himachali. In view of the prevailing laws in this regards the further strengthen the view of the department that the family members of the assessee have manipulated documents to save her from difficult situation. Further the agreement was also not on judicial stamp papers and was also not notarized. This agreement was on Non-Judicial Stamp Papers and had it been notarized the real/actual date of this agreement could have been easily ascertained. By creating a sham agreement on plain papers, the assessee has only tried to hood wink the investigation. It is crystal clear that the assessee's claim is an afterthought to cover of the cash found in the possession of the assessee. The agreement is a sham agreement cannot be relied upon.

Further, the claim of the assessee that she was in receipt of Rs.3,50,000/- from Pine Drive Resorts for purchase of land. In support her contention the assessee has furnished copy of ledger account appealing in the books of M/s Pine Drive Resort, copy of cash book & copy of resolution passed by the said company to purchase the said land. Considering the above facts no adverse inference has been drawn with regard to receipt of Rs, 3,50,000/- from M/s Pine Drive Resort as shown by the assessee.

3.4 The onus to prove the source/genuineness of cash found in her possession was upon the assessee. She has failed to discharge her onus to prove the genuineness of his claim. Keeping in view of the above facts it is held that cash to tune of Rs. 10,00,000/- is unexplained cash in her possession earned from unexplained sources.

Accordingly, an addition of Rs. 10,00,000/- is made to the total income of the assessee for the A.Y. 2017-18 by invoking the provisions of Section 68 of the Act and tax is charged @60% plus applicable surcharge as per Section 115BBE. Further, penalty u/s 271AAB of the Act for under reporting of the income is initiated."

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said addition. Against the findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

5. During the course of hearing, the Ld AR submitted that in respect to Rs. 10,00,000/- found from the locker, the assessee has stated that she has received cash from her husband which was received by him as an advance against his land situated in Himachal Pradesh in respect of which he has entered into an agreement to sell with two other persons. This explanation was submitted by assessee at the time of CBI search too i.e. 12/09/2016 and is part of locker inspection memo dated 12/09/2016 which is placed at Paper Book at Page No. 35-37.

5.1 It was submitted that, in order to substantiate her claim, the assessee had submitted following documentary evidence before the ld. AO:

- Affidavits, Income tax Returns and Bank Statements of Sh. R.K. Goel and Sh. Krishan Joshi (intended buyers)
- Agreement to sell entered between assessee's husband and above persons
- Statement recorded before the ld. AO by both the above mentioned persons

5.2 It was further submitted that as per the settled law prevailing for the said relevant year under consideration i.e. AY 2017-18, in the instant case, assessee was only required to explain the source of such money and not the source of source and the assessee had duly discharged her onus for explaining her source. Although the initial burden of proof lies on the assessee to explain the source, however the said onus of proof is not a static one. The initial burden of proof to explain the source have duly been explained by the assessee by stating that the same was received by her from her husband who have further received it as advance against land along with relevant documentary evidence.

5.3 It was submitted that the Id. AO has accepted the source of cash in the hands of assessee i.e. source being her husband, however have questioned the source of source i.e. source in the hands of her husband. If the Id. AO is not satisfied with the explanation/documentation submitted by the assessee in relation to her husband source, the revenue has all the power and wherewithal to tax her husband.

5.4 It was further submitted that he said explanation from the assessee has been there since the inspection of locker by CBI Team and thereafter by Income Tax Investigation team. This is not the case where the assessee has come up with an afterthought before the Id. AO during the assessment proceedings.

5.5 Reliance was placed on the Chandigarh Bench decision in the case of ITO vs. Swaran Fastners (2021) 89ITR(T) 650 wherein the Bench held as under:

> *"10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the assessee explained the source of the partner Smt. Swaran Kanta for depositing the amount of Rs. 20,50,000/- in the capital account. The said amount was received by the partner from her son Shri Puneet Gupta who is NRI, the transaction through banking channel out of the NRE saving bank account of Shri Puneet Gupta. Therefore the addition made by the AO was not justified. Moreover, the amount was received by the assessee firm from the partner who explained the source for the same and if at all any addition was called for that was required to be made in the hands of the partner and not in the hands of assessee firm. On an identical issue the Hon'ble Jurisdictional Punjab & Haryana High Court in the case of Nahar Singh Sadhu Singh (2002) 253ITR 471 held that "the partner had the requisite amount to invest towards the capital account of the firm. Since no evidence has been pointed out against that finding the amount could not be assessed as income from undisclosed sources of the firm"*

5.6 Reliance was also placed on the Chandigarh Bench decision in the case of Nirmal Rani vs. DCIT (2017) 163 ITD 491 wherein the Bench held at Para 19 of the order has held as under:

> *"…by asking the assessee to file copied of the Income Tax Returns and also their bank statements in their country of residence, the revenue is indulging in the exercise of verifying the source of the source which is settled law, cannot be done in this case. The onus to explain the credit being on the assessee, reflects the general rule of law of evidence codified in Section 106 of the Evidence Act, 1872, as per which the source of income is a*

matter with the exclusive knowledge of the assessee which he has to prove and demonstrate. It is for this reason only that the source of source, which is not within the knowledge of the assessee at all, is not required to be proved by the assessee. The addition has been made merely on the basis of suspicion, without any iota of evidence to even lead to the fact that the amount received as gifts were actually the assessees' income only. This cannot be the basis of making an addition under section 68 in the present case."

5.7 It was further submitted that with respect to explanation of source of source in the case of any assessee, first proviso has been inserted under Section 68 only w.e.f 1/4/2023 by the Finance Act, 2023 and no such provisions stood before that.

5.8 It was further submitted that without prejudice to above, even when the assessee had presented the parties (intended buyers) before the Id. AO with whom her husband have entered into an agreement, the Id. AO presumptively rejected their explanation on the ground that there is a time gap in the cash withdrawal and cash given to assessee's husband by such parties by stating that cash may have been used for any other purposes.

5.9 It was submitted that both Shri R K Goel as well as Shri Krishan Joshi have got their statements recorded before the Id. AO during the assessment proceedings and stated that they have entered into an agreement to sell (attached at Page No. 50-51 of the Paper Book) with assessee's husband. Even with respect to source of cash for entering into such agreement, both the parties have submitted their banks statements and shown cash withdrawals to justify their claim. Even both the persons i.e. R K Goel and Krishan Joshi have submitted affidavits (attached at Page No. 38-39 and 43-44 of the Paper Book) before the Id. AO.

5.10 It was submitted that the Id. AO simply rebutted their statements by stating that there is a time gap of one to three months between the withdrawal and entering of agreement and stating that the said cash withdrawal must have

been used somewhere else without bringing any evidentiary proof of the same. Thus the said observation of ld. AO is purely on the basis of surmises and presumptions as and when the parties who have given cash to assessee's husband have given statements before the ld. AO that cash was given by them. Merely because there is a time gap does not form the basis of additions.

5.11 It was further submitted that even the Ld. CIT(A) as per para 5.1.4 of his appellate order has agreed with the assessee's contention and stated that *"the ld. AO had only guessed that the funds may have been used for any other purpose as there was a gap of approx. 03 months between the cash withdrawal and date of agreement to so called purchase of land from Sh. Gaurav Bhalla. There was no such enquiry led proof in possession of ld. AO to conclude like that." It was submitted that the onus was on the AO to bring out the relevant material on record that these persons have used the money so withdrawn for any other purposes.*

5.12 It was submitted that the onus was on the AO to bring out the relevant material on record that these persons have used the money so withdrawn for any other purposes. In support, reliance was placed on following judgments:

- *ITO vs. Mrs. Deepali Sehgal (ITA No. 56601/del/12012), in this case, it was held by the Hon'ble ITAT, Delhi, that the AO, in his remand report could not bring out any fact that the cash withdrawn from Saving Bank Account and partnership overdraft account was used for other purpose anywhere else then, merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount cannot be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. The AO rejected the explanation of the assessee on hyper technical basis which is not acceptable. We reach to a conclusion that the AO made addition without any legal and justified reason which was rightly deleted by the CIT(A). (Page No. 1 -8 of the Case Law Paper Book)*

- *In the case of ACIT Patiala vs. Sh. Joginder Paul (ITA No. 734/Chd/2014), the Hon'ble Chandigarh Tribunal opines that the learned Commissioner of Income-tax (Appeals) has correctly decided the issue because admittedly the assessee had*

disclosed the cash deposited in the assessment year 2007-08 and 2008-09. This amount was surrendered during the search and tax has been duly paid and the assessed income includes this amount of surrender. Further, cash is duly reflected in the wealth-tax return. Once the fact of having cash deposited by the Revenue during wealth-tax assessment proceedings, then later on the Revenue cannot challenge the existence of cash, therefore, we find nothing wrong with the order of the learned Commissioner of Income-tax (Appeals) and we confirm the same. (Page No. 9-14 of the Case Law Paper Book)

- *In the case of ITO vs. Sh. Ashok Kumar Jain (ITA No. 180/Chd/2013), it was held by the Hon'ble ITAT, Chandigarh Bench that the merely because cash was withdrawn on a particular date does not imply that the cash already withdrawn on earlier dates had been utilized. The observation of the Assessing Officer was without any cogent basis. It was further observed that assessee had explained during the course of assessment proceedings that such cash was withdrawn with the intention to buy some property. The Ld. CIT(A) has categorically observed that the actual amount of cash required in these circumstances would be known to the assessee only. He also stated that there is no bar in keeping the cash at home according to the requirements. Thus, the observations of the CIT(A) are correct and, therefore, we do not see any infirmity in the order of the CIT(A). (Page No. 15-21 of the Case Law Paper Book)*

5.13 It was further submitted that during the assessment proceedings, the assessee has categorically stated that as the permission required u/s 118 of the HP Tenancy & Land Reform Act from Government of Himachal Pradesh was pending, the deed could not be registered by her husband in the name of intended buyers who were Non-Agriculturist. Even as per the agreement to sell, both the parties i.e. buyer and seller have agreed that permission u/s 118 will be applied by the buyer and once received, buyer will inform the seller for execution of Sale deed. However, this does not stop any individual for entering into an agreement and the said agreement to sell is as much evidence as the registered sale deed would have been as stated by Hon'ble ITAT, Kolkata Bench in the case of Gautam JhunJhunwala *(ITA No. 1356/Kol/2017) 173 ITD 93 (2018*) wherein it stated as under:

'The Hon'ble Supreme Court has opined that when an unregistered document is tendered in evidence, not as evidence of a completed sale, but as proof of an agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the Act of 1908. The Hon'ble Apex Court went on to observe that admission of an unregistered sale deed by the Court in such

cases would be in consonance with the proviso appended to Section 49 of the Act of 1908. 9. In the light of the discussion, we are of the opinion that though the agreement to sell is not registered, the vendee can seek decree of specific performance on the basis of unregistered agreement to sell in accordance to law as laid by the Hon'ble Delhi High Court in Devinder Singh Vs. Hari Singh (decision on 26.04.2017) and Hon'ble M.P. High Court in Akshay Doogad Vs. Dr. Laxmanrao Dhole (decision on 18.08.2015). So as discussed in para 5 & 6 supra, in the facts and circumstances of the case, we allow the appeal of the assessee and direct grant of exemption u/s. 54 of the Act."

5.14 Even as per the SLP no. 14884/2022 between R. Hemalatha vs. Kashthuri decided on 10/4/2023, Hon'ble Supreme Court held as under:

"13. Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49."

5.15 It was submitted that an agreement made on plain paper is valid and can be used in the Court as evidence, except that the Court would require you to pay the stamp fee with a penalty if the nature of the agreement is such that it requires to be stamped and registered. Section 35 [1] of the Indian Stamp Act, 1899, specifically states that a document that any person relies on to be used as evidence cannot be used as such if it is not duly stamped and unregistered. One may pay the deficit stamp duty, as well as any penalties imposed by the collecting authority, in order for it to be enforceable and valid.

5.16 It was submitted that when both the intended buyers themselves appeared before the ld. AO, gave their statements that they have entered into an agreement to sell with the assessee's husband, produced relevant documents, the ld. AO and ld. CIT(A) contention that as the agreement not

being on judicial stamp paper and not notarised is a mere suspicion on their part without considering the fact that both the parties have confirmed that they have entered into such agreement and money have exchanged hands. As with respect to non-execution of sale deed, as stated above, assessee has stated that as the permission required u/s 118 of the HP Tenancy & Land Reform Act from Government of Himachal Pradesh was pending, the deed could not be registered by her husband in the name of intended buyers who were Non-Agriculturists. Even as per the latest Jamabandi of said land in question, the said restriction is still applicable, and both the parties are in consensus of the said facts.

5.17 It was accordingly submitted that considering the above provisions of law and judgments, there was nothing on record from the facts and circumstances of the case that the assessee's husband and the intended buyers could not enter into agreement and furthermore such cash withdrawn by the intended buyers was not available for entering into an agreement to sell, with the assessee's husband. Thus the said additions are requested to be deleted and necessary relief be provided to the assessee.

6. Per contra, the ld DR has vehemently argued the matter and relied on the findings of the lower authorities and our reference was drawn to the relevant findings as contained in para 5.1.3 to 5.1.8 of the impugned order and the contents thereof read as under:

> *"5.1.3 All the facts and circumstances related to the impugned addition of Rs. 10,00,000 are duly considered. The appellant had claimed that out of the total amount of Rs. 14,15,000 cash found in the locker during the CBI Search, the source of Rs. 10,00,000 was cash received from her husband Shri Gourav Bhalla who had taken the amount from two persons* viz. *Shri R.K. Goel and Shri Krishan Joshi (for purchasing Land)*
>
> *Details & Sources of Cash:*

Sr. No.	Details of Cash	Weight (Approx.)

1.	Own	Rs.45,000/-
2	Received from husband for advance	Rs.10,00,000/-
3.	Niece	Rs. *20,000*/-
4	Cash from Pine Drive Resorts for land	Rs.3,50,000/-
	Total	Rs.14,15,000/-

5.1.4 During the course of verification both Sh. R.K. Goel and Sh. Krishan Joshi failed to furnish their source of payment of Rs.6,00,000 and Rs.4,00,000 respectively. In the bank account statement furnished by Sh. R.K. Goel it was claimed that Shri Goel withdrew the cash paid to Sh. Gaurav Bhalla. However, the Ld. AO found that claim was not proved by the genuineness of the transaction as the Agreement to Sell was dated 26.07.2016 whereas the statement showed that cash had been withdrawn by Sh. R.K. Goel in piecemeal/routine manner starting from May, 2016 to July, 2016. Similarly, Sh. Krishan Joshi also failed to justify the source of payment made to Sh. Gaurav Bhalla. From the perusal of the bank a/c statement of Sh. Krishan Joshi, it was seen by Ld. A.O. that cash amounting to Rs. 5,00,000 was withdrawn on 28.4.2016 whereas agreement for sale of land was made on 26.7.2016 which is approx. 3 months after the date of cash withdrawal. Though to the wisdom of Ld. A.O. these contentions were not acceptable and there was time gap but to my mind, they could not have been rejected only on that ground as it is a matter of common knowledge that mostly the seller tax the contracted value as agreed before and upto the date of 'Agreement to Sell' if subsequently there is not so long-time gap between the date of 'Agreement to Sell' and the date of 'Sale Deed'. Further, the Ld. AO had only guessed that the funds may have been used for any other purpose as there was a gap of approx. 3 months between the cash withdrawal and date of agreement to so called purchase of land from Sh. Gaurav Bhalla. There was no such enquiry led proof in possession of Ld. AO to conclude like that.

5.1.5 However, to my mind, more important observation of the Ld. A.O. that led to his objection raised in this regard, was that the so called agreement was dated 26.07.2016 but relevant parties did fail to furnish any 'Sale Deed' even after lapse of two years. This led the Ld. AO to conclude and rightly show that the 'Agreement to Sell' was not genuine. Further from the perusal of the documents/submission put forward by the assessee before the Ld. AO it was revealed that documents put forward by the assessee were self serving documents from related person which was only an afterthought of the assessee and her family members to come out of the difficult situation.

5.1.6 In the background of the above facts and discussion made supra, *the Ld. AO had to conclude and rightly so that the so called agreement dated 26.07.2016 (as the relevant parties failed to furnish any 'Sale Deed'even after lapse of two years to prove that the land agreement was genuine) was nothing but cooked up story. It was further observed by the Ld. AO that the husband of*

the assessee was well aware that he could not enter into an agreement to sell with non-Himachali in view of the prevailing laws in this regard.

5.1.7 In view of Ld. AO it further strengthened the view of the department that the family members of the assessee had manipulated documents to save her from difficult situation. Also, the agreement was not on Judicial Stamp Paper and was also not Notarized. Ld. AO further, observed that had it been notarized the real/actual date of the agreement could have been easily ascertained.

5.1.8 Thus, the Ld. AO had to conclude that by creating a sham agreement on plain paper, the assessee only tried to derail the investigation. Thus, to AO it was crystal clear that the claim made by assessee, in this regard, was an afterthought to explain the cash found in the locker of the appellant lady. In light of the above discussion, it is found that the action of Ld. AO in making the impugned addition of Rs.10,00,000 is sustainable in the facts of the case and in law The action of Ld. AO is , therefore, confirmed and Ground no.1 is , thus, dismissed."

7. We have heard the rival contentions and purused the material available on record. The issue under consideration relates to the source of cash found from the locker maintained with Indian Overseas Bank in the name of the assessee as found during the course of search. In her explanation, the assessee has submitted that the cash so found belongs to her husband. It has been further explained that her husband has entered into an agreement to sell his land situated in Himachal Pradesh with Shri R.K. Goel and Shri Krishan Joshi and as part of the said transaction, had received the said amount and which has been kept in the locker maintained by the assessee. In order to support her explanation, she has submitted the copy of the agreement to sell, and copy of the affidavits, income tax returns and bank statements of Shri R.K. Goel and Shri Krishan Joshi. Further, during the course of assessment proceedings, these persons have been called and their statements were recorded wherein they have confirmed before the AO of entering into the agreement to purchase the land with the assessee's husband and paying the advance amount to him. We therefore find that the assessee has sufficiently explained the source of cash so found belonging to her husband and further, the persons, from whom the cash was initially received by her husband, have personally appeared before the AO and confirmed advancing the money to assessee's husband duly corroborated

by agreement to sell and their bank statements showing the necessary cash withdrawals and which were subsequently paid to the assessee's husband. Merely the fact that there was time gap of approx three months between the cash withdrawal and payment to the assessee's husband and the fact that the sale deed has not been subsequently executed cannot be held against the assessee. We find that once these persons have confirmed the factum of making the payment to the assessee's husband in their affidavit and which has been subsequently affirmed and verified in their statement recorded during the course of assessment proceedings and sufficient nexus has been established between the availability of funds, withdrawal and payments, the onus placed on the assessee is sufficiently discharged. Secondly, regarding non-execution of the sale deed, it is an admitted fact that the sale deed couldn't be executed for want of the requisite regulatory approval, however, the same cannot be a basis to question the agreement to sell where both the parties have appeared and confirmed the factum of entering into the said agreement and factum of ownership of land in name of the husband of the assessee not been disputed. In light of aforesaid discussions, we find that there is no legal and justifiable basis to sustain the addition in the hands of the assessee as she has sufficiently explained the source of cash so found in her locker duly supported by documentation placed on record. In the result, the addition so made is hereby directed to be deleted and the ground of appeal so taken by the assessee is allowed.

8. In Ground No. 2, the assessee has challenged the sustenance of addition of Rs. 35.26 Lacs in respect of Jewellery seized from the locker of the assessee.

8.1 In this regard, briefly the facts of the case are that during the course of assessment proceedings, the assessee was asked to explain the source of jewellery found in her possession during the course of search of her locker maintained with IOB and in her reply the assessee submitted that jewellery

weighing 1541 grams have been found from her locker and out of that 500 grams belongs to her and 300 grams belongs to her Husband and Son, 300 grams belongs to her Niece and 441 grams belongs to her Father in Law and in support of her explanation the affidavit from the family members were also submitted. The submissions so filed by the assessee were considered but not found acceptable to the AO and the relevant findings are contained at para 4.3 to 4.5 and contents thereof read as under:

> *"4.3 The assessee in her reply has claimed that out of the total 1541 grms of jewellery 441 grams belongs to her father-in-law Subhash Bhalla, 300 gms to her husband and two sons and 300 grams to her niece Ms. Gauri Puri and balance 500 gms belongs to her. During the course of assessment proceedings, she has failed to produce any bill and other valid documents in support of her claim. It is also worthwhile to mention here that all the persons who have submitted their affirmations/affidavits in favor of the above deposition of the assessee are her close relatives (husband, father-in-law and niece) and other (acquaintances) and their affirmation are an attempt to save a close relative from a difficult situation. It is also significant that neither she and nor any other family member have ever filed any Wealth Tax Returns. The assessee has also admitted before the investigation wing/CBI that she was having some jewellery at her residence when the CBI authority had searched her residence She has however not been able to quantify the weight of the jewellery found at her residence. It is clear that the jewellery in the locker is in addition to the jewellery in her possession and in the possession of her family members. It is also pertinent to mention here that the locker in which the above jewellery was found is/are in the Individual name of the assessee. In light of the above discussion and in the absence of any documentary evidence it cannot be accepted that jewellery contained in the locker belongs to any other than Smt. Jyoti Bhalla assessee. Further she has failed to produce any bill and other valid documents in support of her claim. The explanation furnished by the assessee during the course of assessment proceedings are devoid of merits and therefore, are untenable. The onus to prove the genuineness and source of the jewellery found is upon the assessee.*
>
> *4.4 It is also brought on record that as per the appraisal report of CBI authorities received from the Investigation Wing the jewellery valuing to Rs.35,26,000/- was seized out of the total jewellery valuing Rs.49,98,000/- found in the locker. The assessee was already given benefit of CBDT's Guidelines relating to seizure of jewellery in respect of married lady and thus jewellery for the balance amount of Rs. 35,26,000/- has been seized.*
>
> *Therefore, keeping in view of the above facts it is held that value of jewellery to tune of Rs.35,26,000/- (Seized by the CBI Authorities) has been acquired by the assessee from undisclosed sources.*

4.5 Accordingly, an addition of Rs. 35,26,000/- is made to the total income of the assessee for the A.Y. 2017-18 by invoking the provisions of Section 68 of the Act and tax is charged @ 60% plus applicable surcharge as per Section 115BBE. Further, penalty u/s 271AAB of the Act for under reporting of the income is initiated."

9. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said addition. Against the findings and the directions of the Ld. CIT(A), the assessee is in appeal before us.

10. During the course of hearing, the Ld. AR submitted that 1541 grams of Gold Jewellery was found from the assessee's bank locker and the assessee had submitted that the same belong to her as well as her relatives as per details below:

S. No.	Name of the person to whom jewellery belong	Weight (Approx)
1	Self	500
2	Husband and Sons	300
3	Niece	300
4	Father in Law	441
	TOTAL	1541

10.1 It was submitted that the assessee had duly submitted in her reply filed before the Id. AO that the jewellery found in the locker belongs to her as well as her family members and has submitted the affidavits of each of the family members. The Id. AO at para 4.2 of his order as well as Id. CIT(A) at para 5.2.4 of his order have rebutted the affidavits from relatives merely on the basis of mere surmises and presumptions by stating that it's an attempt to save a close relative without bringing on record any evidentiary proof that such affidavits are false evidence or does not stand good in the eyes of law as and when during the summons, the assessee had submitted that such jewellery belong both to her as well as her family members. Furthermore, no cross examination was done by the Id. AO from the relatives from where he could find that these are false affidavits and put up such kind of rebuttal at para 4.2 of his order that these affidavits are an attempt to save. Thus, taking into consideration the above facts, the Id.

AO/ld. CIT(A) observations are purely on the basis of surmises and conjuctures and without any evidentiary proof. Reliance was placed on the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Prafulbhai (2013) 215 taxmann 86 wherein it was held as under:

> *"2. We have heard the learned counsel Mr. Manav Mehta for the Revenue. The first question concerns deletion of addition of Rs. 10,73,550/- made by the Assessing Officer on the ground of undisclosed income in jewellery. When challenged before the CIT (Appeals), it deleted the entire amount by elaborate discussion of the issue. It was during the course of the search that such jewellery has been found at the residence of the assessee. The statements of different family members were recorded. The confirmation/affidavit of the father, mother, wife of the assessee claiming jewellery were also recorded. In such background, the CIT (Appeals) noted that the jewellery belonged to different family members and it also relied on a circular of the CBDT, which permitted customary owning of such jewellery by the ladies. Resultantly, it deleted the entire amount.*
>
> *When challenged before the Tribunal, it concurred with the findings of the CIT (Appeals) by briefly holding that out of the total disclosure made for the block period by the assessee of Rs. 2.76 crore, the remaining jewellery was covered by the Board's Circular and was already reflected in the books of accounts. We see no reason to entertain this issue as we are convinced by the reasonings given by the CIT (Appeals) at length and also the logic assigned by the Tribunal. In any case, this being predominantly the factual aspect and when has been considered appropriately by both the authorities, no entertainment is necessary."*

10.2 It was further submitted that with respect to the ld. AO's observations at para 4.4 of his order that "*jewellery valuing to Rs. 35,26,000 was seized out of the total jewellery valuing Rs. 49,98,000/- found in the locker. The assessee was already given benefit of CBDT's Guidelines relating to seizure of jewellery in respect of married lady and thus jewellery for the balance amount of Rs. 35,26,000 has been seized. Therefore, keeping in view of the above facts it is held that value of jewellery to tune of Rs. 35,26,000 (seized by CBI Authorities) has been acquired by the assessee from undisclosed sources.*" and ld. CIT(A) affirming the same at para 5.2.7 on page 15 of his order, it was submitted that the observations raised by ld. AO are factually incorrect as although the ld. AO have stated the figures in rupees, however he hasn't reconciled the said

amounts vis a vis jewellery physically found from locker. Our reference was drawn to the Locker Inspection Memo dated 12/09/2016 at Indian Overseas Bank Sector 22, Chandigarh wherein gold items found in the locker have been stated at Page 2 of the memo and the total weight of gold items found in the locker stood at approx. 1541 grams. Furthermore, as per the last para on Page 2 and first para on Page 3 of the memo, it has been categorically mentioned by the CBI team that none of the jewellery is being seized by them and the same has been kept back in the locker. Thus, the Id. AO finding that jewellery to the tune of Rs. 35,26,000 has been seized by CBI authorities and Id. CIT(A) affirming the same is factually incorrect. It was submitted that the jewellery was subsequently seized by the Investigation wing on 27/03/2017 on the basis of search undertaken and the location of search was Locker No. XXX, Indian Overseas Bank, Sector 22D, Chandigarh.

10.3 It was further submitted that the Id. AO statement that CBDT guidelines benefit has already been given to the assessee is factually incorrect. It was submitted that the Ld. AO states that as against the jewellery valuing Rs. 49,98,000, only jewellery valuing Rs. 35,26,000 was seized, thus the benefit of CBDT guidelines given. However, the Id. AO ignored the fact that how much weight of jewellery is valued Rs 49,98,732/- and how much weight of jewellery is valued at Rs. 35,26,000. It is pertinent to mention here that the CBDT guidelines speaks about the weight and not the value. Reference was drawn to the locker inspection memo wherein it was stated that 1541 grams of gold items were found in locker, and the valuation report of jewellery is also enclosed herewith at Page No. 33-34 of the Paper Book wherein as against the value of Rs. 49,98,732/- net weight of 1539.284 grams have been mentioned and it was submitted that this 1539.284 grams pertains both to Gold as well as Diamond Jewellery as stated in the valuation report. It was submitted that at page 2 of the valuation

report, it has been mentioned that items mentioned at S.No. 1 to 6 have not been seized (valuing at Rs. 1472753/-) and items no. 7 to 19 have been seized (valuing at Rs. i.e. approx.. 35.26 lakhs) and the comparison thereof is as under:

Net weight of items mentioned at S. No. 1 to 6 stood at	259.366 grams	14,72,753/-
Net weight of items mentioned at S. No. 7 to 19 stood at	1279.918 grams	35,25,979/-
Total	1539.284 grams	49,98,732/-

10.4 It was submitted that what has been not seized weigh only 259.366 grams and therefore, how can the ld. AO state that the benefit of CBDT guidelines has been given to the assessee. It was submitted that out of the total 1539.284 grams of jewellery found in locker, only 259.366 grams have not been seized by the Investigation Wing. Thus, the ld. AO stating that benefit of CBDT guidelines i.e. 500 grams to the married woman, 250 grams in the case of unmarried woman and 100 grams in the case of male member was already given is totally incorrect statement without looking at the factual position of the case.

10.5 It was submitted that the ld. AO completely ignored that the total jewellery found in the locker stood at 1539.284 grams net weight as per valuation report (1541 grams as claimed by CBI authorities) and the value of the complete 1539.284 grams stood at Rs. 49,98,732/- and the assessee has been substantiating her claim of ownership on the said complete 1539.284 grams as under:

S. No.	Name of the person to whom jewellery belong	Weight (Approx)
1	Self	500
2	Husband and Sons	300
3	Niece	300
4	Father in Law	441
	TOTAL	1541

10.6 It was submitted that the detail of jewellery owned by each member i.e. Husband & Sons, Father in law of the family as well as her niece as per their affidavits has been duly submitted before the lower authorities.

10.7 It was further submitted that the assessee was married in Year 1996 and at the time of marriage, the assessee has received jewellery from her parents and as well as parents-in-law. It was submitted that as per the traditions and customs followed in Hindu families, assessee being Hindu by religion and as per the Hindu tradition there are several occasions where stridhan is given to ladies by family, relatives and friends. Gold jewellery has long been used to celebrate marriage and child birth or presented as gifts during religious festivals and accordingly assessee's husband as well sons also received the jewellery during numerous occasions as a gift from close relatives since the past 30 years.

10.8 It was further held that as per the CBDT guidelines for the 'seizure' of the jewellery found during the course of search, it has been held in various judicial pronouncement that although CBDT instruction is a guideline for not carrying out seizure during the course of search, it inter-alia indicates the intention that the jewellery to the extent specified in instruction should be treated as explained jewellery in the hand of searched person. It was submitted that keeping in mind the high status and customary practices prevailing in one's community, various courts have held that excess jewellery (more than the prescribed limit as per clause (ii) of Board's Instruction no 1916 dated 11/05/1994) found during the course of search will not be considered as unexplained. It has been held that married ladies receiving jewellery in the form of 'streedhan' during her long-married life on various occasion like birth of child, birthdays, marriage anniversaries, etc., and accumulated over a period of years are to be excluded. In support, reliance was placed on the following decisions:

- *Delhi High Court in the case of Ashok Chaddha [2011] 14 taxmann.com 57 wherein the Hon'ble High Court has accepted the jewellery of 906.60 grams in the case of married lady even without documentary evidence. The court stated that collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. The court has held 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.*

- *Delhi High Court, following the decision of Ashok Chaddha (supra), in the case of Sushila Devi [2016] 76 taxmann.com 163 has held that the gold jewellery which is acquired through gifts made by relatives and other family members over a long period of time, is in keeping with prevailing customs and habits.*

- *Hyderabad ITAT in the case of R. Umamaheswar v. Deputy Commissioner Of Income-tax [2015] 38 ITR(T) 790 has held that the gold jewellery in excess of what is specified in the instruction, found during the course of search can reasonably be treated as explained, being the streedhan of the Assessee's wife, having been received by her on the occasion of marriage as well as subsequent occasions over the period.*

- *Delhi ITAT in the case of Vibhu Aggarwal v. Deputy Commissioner of Income-tax, CC-06, New Delhi [2018] 93 taxmann.com 275 has held that where gifting of jewellery possessed by each of family members was customary and jewellery was gifted to Assessee and his wife by their parents and grandparents and other relatives at time of their marriage, and also on several occasions after that, such as birth of their two children, marriage anniversaries, etc., excess jewellery found was nominal, keeping in mind high status and more customary practices and stands explained.*

- *Delhi ITAT in case of Radha Mital and Ruchie Mital Vs. DCIT in ITA No: 2810/Del/2016 dated 09/07/2016 held that Jewellery found in excess of limited prescribed by the above circular as explained on the ground that jewellery belongs to the assessees having received as "streedhan" on the occasion of marriage and also received subsequently on occasions like birth of child etc in pursuant to customs/tradition of family. The Assessee belonging to 'Baniya' family have been married since 35 years and 8 years. Further they were jointly residing with their mother in law Shanti Mittal who had been married for about 65 years. Apart from the above the family comprised of husband of both the assessee and son. Thus looking to the tradition of family Hon'ble Tribunal has accepted the Jewellery in excess of limit prescribed by the above circular was in view of the fact that the same being received as Streedhan during the course of Marriage and subsequent marriage.*

10.9 It was accordingly submitted that keeping in view the above circular issued by CBDT as well as the case laws justifying the same, the jewellery seized

by the department is within the permissible limits of jewellery holdings as prescribed in the CBDT Instructions and the additions may please be deleted.

11. Per contra, the ld DR has vehemently argued the matter and relied on the findings of the lower authorities and our reference was drawn to the relevant findings as contained in para 5.2.3 to 5.2.8 of the impugned order and the contents thereof read as under:

> *"5.2.3 All the facts and circumstances related to the impugned addition of Rs. 35,26,000 are duly considered. During the course of Search Operation conducted by the CBI on 12.09.2016 and as A.O. mentioned in the impugned Asst. Orderas per the appraisal report of CBI authorities received from the Investigation Wing; the jewellery valuing Rs. 35,26,000 only was seized out of the total jewellery valuing Rs.49,98,000 found in the locker of the appellant lady. Thus, the Ld. A.O. rightly held that the appellant lady was already given benefit of CBDT's Instruction quoted by the Ld. counsel of the appellant both in the impugned Asst. Proceedings as well as in these appeal proceedings relating to seizure of jewellery in respect of Rs.35,26,000 only was, thus, seized.*
>
> *5.2,4 Further, Ld. A.O. also mentioned that all the persons who had submitted their affirmations/affidavits in favor of the deposition of the appellant lady were her close relatives (husband, father-in-law and niece) and their affidavits were self serving as an attempt to save a close relative from a difficult situation. It was also significant in view of Ld. A.O. and rightly so that neither the appellant nor any other family member of her had ever filed any Wealth Tax Return/s.*
>
> *5.2.5 It was also found by the Ld. A.O. that the said locker in which the above jewellery was found was in the Individual name of the appellant lady.*
>
> *5.2.6 In light of the above discussion and in the absence of any documentary evidence produced before the Ld. A.O., jewellery contained in the locker was rightly held by the Ld. A.O. to be belonging to the appellant lady i.e., Smt. Jyoti Bhalla only and no one else. The explanation furnished by the appellant during the course of assessment proceedings were, thus, found to be devoid of merits and untenable by the Ld. A.O. Even in these appeal proceedings no such documentary evidence was uploaded except the affidavits or the copy of the passport of the niece Ms. Gauri Puri which were given in the impugned Asst. Proceedings and after considering which in a detailed and speaking manner the Ld. A.O. made the impugned addition.*
>
> *5.2.7 The observation of the Ld. A.O. is found to be correct that the onus to prove the genuineness and source of the jewellery found is/was upon the assessee. It was, therefore, that the Ld. A.O. keeping the above facts in view held that value of jewellery to tune of Rs.35,26,000 (Seized by the CBI Authorities} had been acquired by the appellant lady from undisclosed sources and therefore, he proceeded to make the impugned addition of Rs. 35,26,000.*

5.2.8 In light of the above discussion, it is found that the action of Ld. AO in making the impugned addition of Rs. 35,26,000 is sustainable in the facts of the case and in law. The action of Ld. AO is, therefore, confirmed and Ground no. 2 is, thus, dismissed."

12. We have heard the rival submissions and purused the material available on record. As per the valuation report, 1539.284 grams of jewellery valued at Rs 49,98,732/- has been found from the locker in the name of the assessee. The assessee has explained that the jewellery so found weighing 500 grams belongs to her, 300 grams belong to her husband and sons, 300 grams belong to her niece and 441 grams belongs to her father in law and to support her explanation, she has placed on record the affidavits signed by the family members wherein they have confirmed the ownership of the jewellery as belonging to them and the fact that the same was kept with the assessee for safe custody. We have gone through the affidavit of Shri Gaurav Bhalla, husband of the assessee, where he has confirmed having kept the jewellery belonging to him and his two sons weighing 300 grams in the locker of the assessee. Similarly, in the affidavit submitted by Shri Subhash Chander Bhalla , the father-in-law of the assessee, he has confirmed having kept the jewellery belonging to him and his late wife Smt Shanti Bhalla, weighing 300 -400 grams in the locker of the assessee. Similar is the affidavit submitted by the niece of the assessee, Gauri Puri where she has stated that given that she had to travel abroad, she had kept the jewellery belonging to her weighing 280-300 grams in the locker of the assessee. Unlike the earlier situation, where the AO has called the two persons who claimed to have given money to the husband of the assessee and which was also kept in her locker and recorded their statement, the AO didn't deem it necessary to call the family members and record their statements in the instant case. There is thus nothing on record to rebut the affidavits so submitted by the family members of the assessee. Therefore, to the extent of jewellery so found from the possession of the assessee, the factum

of ownership thereof is explained as belonging to the family members and not that of the assessee, therefore, to that extent, the same cannot be brought to tax in the hands of the assessee. As far as jewellery weighing 500 grams admittedly belonging to the assessee is concerned, we find that the same is within the permissible limits as prescribed in the CBDT instruction referred supra. The Courts and Benches of the Tribunal have consistently held that although the CBDT instruction lays down the guidelines in the context of search and seizure operations and not to seize the jewellery where the same is found within the permissible limits, at the same time, the rationale of non-seizure has been laid down that to the extent of jewellery which has been found within the permissible limits, the jewellery to that extent shall be treated as reasonable holding on account of acquisition of jewellery on various occasions of marriage and other social occasions as prevailing in the society and thus, be treated as explained. In this regard, useful reference can be drawn to the decision of the Coordinate Jaipur Benches (where one of us was a party) in case of Mohammed Akhlaq, Jaipur vs Dcit, Jaipur *(ITA No. 436/JP/2017),* it was held as under:

> *"12. We have heard the rival contentions and gone through the material available on record. The assessee is married for last 30 years and the family of the assessee consists of his wife, three daughters out of which two are unmarried and one unmarried son. It is not in dispute that the assessee over the period of time had purchased some gold jewellery for himself and his family members, and further customary possession of gold jewellery/silver items on account of marriage gifts and gifts on other social occasions and festivities to the assessee and his family members cannot be denied. The limited question for consideration is what is the reasonable quantity of jewellery which can be considered as acquired/received by the assessee over the period of time and which can be considered as explained for tax purposes. During the course of search, gold jewellery weighing 1979.92 gms and silver jewellery/items weighing 3229 gms were found in possession of the assessee. In her statement recorded u/s 132(4), the wife of the assessee (duly accepted by the assessee) has stated as under:*
>
> *13. Basis the above statement, the search team has found the possession of the above jewellery by the assessee and other members of the family within the reasonable limits and has not carried any seizure of the aforesaid jewellery. The Assessing officer has however considered jewellery pertaining to assessee, his wife, two unmarried daughters and one son as explained as per minimum threshold prescribed by the aforesaid CBDT circular and the remaining jewellery stated to be belonging to married daughter and two grandchildren as unexplained. To our mind, once the assessee has stated on oath in her statement u/s 132(4) that the jewellery also belongs to her married daughter and her two children besides other family members, there is no basis with the Assessing officer to restrict the same to only few members excluding the*

other members. Once the assessee has stated that though the jewellery has been found in her possession, a part of the jewellery belongs to and thus owned by her married daughter, the said statement cannot be negated in absence of anything contrary on record. Under section 69A, the language used is where the assessee is found to be owner of any jewellery, therefore mere possession is not sufficient enough to determine the ownership especially when the assessee has stated on oath u/s 132(4) that a part of jewellery belongs to/owned by her married daughter. The statement of the assessee has to be read as a whole and not in parts. The Revenue cannot take the stand that only part of the statement is accepted and remaining is not acceptable. Where the Revenue disputes a part of the statement as not correct, the onus shifts on the Revenue to prove otherwise and not the assessee. Therefore, going strictly by clause (i) of the CBDT Circular dated 11.05.1994, the gold jewellery found in possession of the assessee is within the permissible limits as belonging to the assessee and other family members including married daughter and children.

14. Further, if we read clause (ii) of the said CBDT circular, even as per said clause, the search team has found the possession of the above jewellery by the assessee and other members of the family within the reasonable limits as per the status, customs and practices of the community to which the family belongs and has not carried any seizure of the aforesaid jewellery. The assessee belongs to a reputed old Mohammed Akhlaq, Jaipur vs. DCIT, Jaipur Jagirdar family and so enjoying high status in society, married about 30 years back and has three daughters and one son and possession of gold and silver jewellery is customary in the Indian society and also gifts on marriages and other social functions. The Courts have held that where the CBDT looking to such customs and practices prevailing throughout India, in one way or the another, came out with this Circular and the search team makes no such seizure effectively accepting the status of the assessee, customs and practices and possession of the jewellery, it should also mean that to the extent of the aforesaid jewellery, found in possession of the assessee, even source cannot be questioned. In the present case, looking at the status of the family and the jewellery found during the search, it was held to be reasonable and therefore, the search team, in the first instance, did not seize the said jewellery and thus, in our view, subsequent addition is also not justified on the part of the Assessing Officer. Similar is the position regarding silver jewellery and items found in possession of the assessee in respect of which the source can be said to be duly explained. In this regard, useful reference can be drawn to Hon'ble Rajasthan High Court decision in case of CIT vs Satya Narain Patni 46 Taxmann.com 440 wherein it was held as under:

> *"8. Thus, from the perusal of above chart as well as statements, it is abundantly clear that jewellery which has been found in possession of the family members is in accordance with customs and practice prevalent in the community and in accordance with status of the family.*
>
> *9. On perusal of the order of CIT (Appeals) as also the Tribunal, we notice that the Assessing Officer had not given any basis for restricting the claim of jewellery at 1600 gms as reasonable while Mohammed Akhlaq, Jaipur vs. DCIT, Jaipur the Assessing Officer has simply mentioned about there being four ladies, but ignored that in addition to four ladies, there were four male members so also three children and if the male members so also the children are considered, then even factually the claim of respondent-assessee appears to be reasonable in the light of the aforesaid instruction dated 11.5.1994. If the circular is strictly followed, then to the extent of 2700 gms, no jewellery could be seized. (500x4 ladies+100x7 male+ children=2700 gms.). In the aforesaid facts, we fail to understand the basis of 1600 gms held reasonable by the Assessing Officer.*
>
> *10. Therefore, in our view, the Tribunal has rightly considered the said issue and we are also in conformity with the order passed by the Tribunal. We are also of the view that the Central Board of Direct Taxes keeping in view the status of the family, customs and practice of the community, came down with the said circular and one has to go with the weight and not with the value as the value may fluctuate over the years. The Tribunal has also appreciated the fact on record that the marriage of three sons were performed in the year 1996, 2000 and 2003 and all the marriages including the assessee and three sons were performed prior to 2003. It is also on record that the statement of various family members were recorded and none has stated that these are not*

personal wearing jewellery and same were received by the respective ladies/daughter-in-law on/or at the time of their marriages either from the parental side or in-laws side and even subsequently at the time of birth of their children.

11. On perusal of the circular of the Board, quoted supra, it is clear that in the case of wealth tax assessee, whatever gold jewellery and ornaments have been found and declared in the wealth tax return, need not be seized. However, sub-clause (ii) prescribes that in 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. Sub-clause (iii) also prescribes that 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.

12. It is true that the circular of the CBDT, referred to supra dt. 11/05/1994 only refers to the jewellery 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 and it does not speak about the questioning of the said jewellery from the person who has been found with possession of the said jewellery. However, the Board, looking to the Indian customs and traditions, has fairly expressed that jewellery to the said extent will not be seized and once the Board is also of the express opinion that the said jewellery cannot be seized, it should normally mean that any jewellery, found in possesion of a married lady to the extent of 500 gms, 250 gms per unmarried lady and 100 gms per male member of the family will also not be questioned about its source and acquisation. We can take notice of the fact that at the time of wedding, the daughter/daughter-in-law receives gold ornaments jewellery and other goods not only from parental side but in- laws side as well at the time of 'Vidai' (farewell) or/and at the time when the daughter-in-law enters the house of her husband. We can also take notice of the fact that thereafter also, she continues to receive some small items by various other close friends and relatives of both the sides as well as on the auspicious occasion of birth of a child whether male or female and the CBDT, looking to such cutoms prevailing throughout India, in one way or the another, came out with this Circular and we accordingly are of the firm opinion that it should also mean that to the extent of the aforesaid jewellery, found in possession of the varoius persons, even source cannot be questioned. It is certainly 'Stridhan' of the woman and normally no question at least to the said extent can be made. However, if the authorized officers or/and the Assessing Officers, find jewellery beyond the said weight, then certainly they can question the source of acquisation of the jewellery and also in appropriate cases, if no proper explanation has been offered, can treat the jewellery beyond the said limit as unexplained investment of the person with whom the said jewellery has been found.

13. Admittedly, looking to the status of the family and the jewellery found in possesssion of four ladies, was held to be reasonable and therefore, the authorized officers, in the first instance, did not seize the said jewellery as the same being within the tolerable limit or the limits prescribed by the Board and thus, in our view, subsequent addition is also not justificable on the part of the Assessing Officer and rightly deleted by both the two appellate authorities namely' CIT(A) as well as the Tribunal.

14. It can also be observed here that prior to 1992, when the exemption limit under the Wealth Tax Act was about Rs.1,00,000/- or Rs.1,50,000/-, then in most of the cases, returns were filed under the Wealth Tax Act because even in case of possession of 500 gms per lady and the other assets namely; capital, investments in firms/shares, landed property etc. etc. being taxable return of wealth were invariably filed by the assessees. However, by the Finance Act, 1992 w.e.f. 01/04/1993 drastic change was introduced under the Wealth Tax Act where only some assets u/s 2(ea) came within the perview of the definition of an "Asset" under the wealth tax and by and large, the other assets namely; liquid, capital investments in firms/shares, one house property, commercial assets were exempt and even the limit of other assets was raised to 15 lacs (for the Assessment Year 1993-94 to 2009-10) and thereafter, by and large, even the assessees, who were

furnishing returns prior to 01/04/1992, in view of the drastic amendment made under the Wealth Tax Act, chose not to file wealth tax return as there was no liability for furnishing wealth tax returns. That does not mean that whatever assets were there in their possession, not disclosed under the Wealth Tax Act, remained undisclosed. May be, later on, on account of increase in the gold/silver prices, value of gems/ stones, value of jewellery may have exceeded but that does not mean that if a person has not filed wealth tax return, then jewellery even to the said extent of 500 gms prescribed by r the aforesaid circular, became undisclosed. Admittedly, it is not the case of the revenue that the jewellery, so found, which has been prescribed hereinabove, was not admitted by the family members at the time of search. All the ladies in the family admitted that the jewellery found were all their own and some of the jewellery was lying in custody and control of their mother-in- law and in Indian conditions, it happens that the daughter-in-law keeps her jewellery with her mother-in-law or/and head of the family and takes the same whenever required for some occasion in the family. Even otherwise, the jewellery is personal wearing in nature and the revenue has not placed any material on record to show that the items, which were found, were not personal wearing of the ladies.

15. Considering the above facts and circumstances, in our view, the Tribunal has correctly analyzed the Circular of the Board and we do not find any infirmity or perversity in the order of the ITAT so as to call for any interference of this Court. In our view, no substantial question of law arise out of the order passed by the ITAT."

15. In light of above discussions and in the entirety of facts and circumstances of the case and respectfully following the decision of the Hon'ble Rajasthan High Court (supra), the matter is decided in favour of the assessee and against the Revenue. The order of the lower authorities is set-aside and the appeal of the assessee is allowed."

13. Similarly, reference can be drawn to another decision of the Jaipur Benches (again, one of us was a party) in case of Ram Prakash Mahawar vs DCIT *(ITA No. 918/JP/2019)* wherein it was held as under:

"2.6 We have considered the rival submissions as well as the relevant materials available on record. The first issue is regarding the addition sustained by the ld. CIT(A) to the tune of Rs. 4,57,404/- on account of unexplained gold jewellery by rejecting the claim of the assessee being acquisition of the said jewellery by way of purchases made from time to time and also recorded in the books of account of the assessee. There is no dispute regarding the fact that jewellery to the extent 343.328 gms. represents the purchases made by the assessee from time to time which is duly supported by the purchase bills found during the search and seizure action. The said quantity of jewellery is duly recorded in the balance sheet/ books of account of the assessee and his family members. Once the AO has not disputed the purchases made by the assessee of the said quantity of jewellery then the same cannot be treated as unexplained jewellery of the assessee. The AO has denied the benefit of the said quantity of jewellery on the ground that since the benefit of reasonable jewellery to the extent of 850 gms. as per CBDT Instruction No. 1916 dated 11-05-1994 is already granted, therefore, to that extent, no further benefit can be granted. It is pertinent to note that CBDT Instruction No. 1916 dated 11-05-1994 has explained in case of gold jewellery found in the possession of the assessee during the course of search and seizure action and the assessee is not able to explain the same then the quantity prescribed under the said CBDT Instruction No. 1916 in respect of married female member, unmarried female member and male member of the assessee would be treated as a

reasonable holding of jewellery on account of acquisition of that much jewellery on various occasions of marriages, other social & customary occasions as prevailing in the society. Therefore, reasonable possession of the jewellery as per the customs prevailing in the society is the basis for allowing the benefit of certain quantity of jewellery explained by the CBDT Instruction No. 1916 dated 11-05-1994 which means that the assessee need not to explain the source of jewellery found in his possession to the extent of specified quantity treated as reasonable possession by family members of the assessee. The said CBDT Instruction No. 1916 allowing the specific quantity as reasonable and need not to be explained, does not include the jewellery which is otherwise explained by proof of documents of acquisition as well as declared/ recorded in the books of account of the assessee. Hence, the quantity of jewellery which is otherwise explained by the assessee by producing the purchase bills as well as recorded in the books of account of the assessee and the AO had not disputed the said explanation then the quantity which is explained otherwise by producing the purchase bills and books of account would not be treated as part of the quantity of reasonable possession as prescribed under the said CBDT Instruction No. 1916 dated 11-05-1994. Therefore, the benefit of CBDT Instruction No. 1916 dated 11-05-1994 will not take away the benefit of the explained jewellery acquired by the assessee. Accordingly, in the facts and circumstance of the case, the quantity of jewellery to the extent of 343.328 gms. has to be allowed separately as explained jewellery and no addition can be made to that extent.

2.6.1 As regards the valuation of gold jewellery, we find that the AO has valued the entire jewellery by applying the prevailing rate of 2700/- per gram and by ignoring the fact of actual cost of acquisition to the extent of 343.328 gms. at Rs. 4,57,404/- as reflected in the purchase bills as well as in the books of account of the assessee. Therefore, we do not find any error or illegality to the extent of value of said jewellery accepted by the ld. CIT(A). Hence, the addition sustained by the ld. CIT(A) on account of unexplained jewellery is deleted.

2.6.2 As regards 50% of the addition on account of silver items sustained by the ld. CIT(A), we find that silver items of Rs. 1,33,650/- were found at the time of search out of which the ld. CIT(A) has considered 50% of the same as reasonable holding of silver items by the assessee, considering the status and standing of the assessee family. Therefore, in the absence of any other material or facts brought before us, we do not find any error or illegality in the order of the ld. CIT(A) by considering 50% of silver items as reasonable and to the extent the order of the ld. CIT(A) is upheld."

14. In light of the aforesaid discussion, we find that the jewellery so found from the locker of the assessee has been duly explained by the assessee as belonging to her family members and as far as her own jewellery is considered, the same is within the permissible limits as so prescribed and thus be treated as reasonable holding and the same cannot be brought to tax. In view of the

same, the addition so made and sustained by the ld CIT(A) is hereby directed to be deleted and the ground of appeal is allowed.

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

Order pronounced in the open Court on 16/05/2024

Sd/-	Sd/-
आकाश दीप जैन	**विक्रम सिंह यादव**
(AAKASH DEEP JAIN)	**(VIKRAM SINGH YADAV)**
उपाध्यक्ष / VICE PRESIDENT	**लेखा सदस्य/ ACCOUNTANT MEMBER**

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar