

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.231/Ind/2023
(Assessment Year: 2018-19)

ACIT (Central)- Bhopal	vs.	Smt. Meenakshi Saraiya E-13/111, Arera Colony Bhopal
(Appellant / Revenue)		(Respondent/ Assessee)
PAN: ANRPS3407K		
Revenue by	Shri Ashish Goyal & N.D. Patwa, ARs	
Assessee by	Shri Ila Parmar, CIT- DR	

CO No.02/Ind/2024
(Arising out of ITA No.231/Ind/2023)
(Assessment Year: 2018-19)

Smt. Meenakshi Saraiya E-13/111, Arera Colony Bhopal	vs.	ACIT (Central)- Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: ANRPS3407K		
Revenue by	Shri Ashish Goyal & N.D. Patwa, ARs	
Assessee by	Shri Ila Parmar, CIT- DR	
Date of Hearing	19.03.2024	
Date of Pronouncement	29.05.2024	

O R D E R

Per Vijay Pal Rao, JM :

The appeal by revenue and cross objection by the assessee are directed against the order dated 27.03.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2018-19. The revenue has raised following grounds of appeal:

“On the facts and in the circumstances of the case, the Ld CIT (A)-3 has erred in:-

1. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 5, 68 ,00,000/- made by the AO on account of undisclosed receipts of income from M / s Satyam Education and Welfare Society without appreciating the facts of the case available on record?

2. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 9 ,24,925/- made by the AO on account of unexplained investment in jewellery without appreciating the facts of the case available on record?”

2. Ground no.1 is regarding addition made by the AO of Rs. 5.68 crores on account of undisclosed receipts from M/s. Satyam Education and Social Welfare Society deleted by the CIT(A). There was a search and seizure action u/s 132 of the Act on 4th August 2017 at the premises of Shri Pradeep Saraiya and Associates. This group is mainly engaged in the business of Real Estate, construction and education. During the course of search and seizure action inter alia a MOU/agreement dated 27.04.2014 was found and seized and marked as LPS-3 page 36 to 41. The AO noted that this MOU contains deed of settlement against

investment made in M/s. Satyam Education and Social Welfare Society which agreed to pay certain amounts to the investing parties including Smt. Saraswati Sharma of Rs.568.50 lacs. The AO further noted that the MOU also contains acknowledgment of payment of Rs.1.20 crores out of total amount of Rs.11.95 crores to be received by these four parties from M/s. Satyam Education and Social Welfare Society and Smt. Saraswati Sharma wife of late Shri Gyasiram Sharma received Rs.57.00 lacs. The balance amount was to be paid as per terms of the said MOU. The assessee is a daughter and power of attorney holder of Smt. Saraswati Sharma and also signatory to the MOU. The AO on the basis of the said MOU and statements of Shri Sandeep Vasdeo Ramtani & Smt. Nirmala Ramtani has held that the assessee has received an amount of Rs.5.68 crores from M/s. Satyam Education and Social Welfare Society during the previous year relevant to A.Y.2018-19. On appeal the CIT(A) has deleted addition made by the AO by considering facts that initial investment in M/s. Satyam Education and Social Welfare Society was made by Smt. Saraswati Sharma and assessee has signed the MOU as Power of Attorney of her mother and therefore, the alleged amount of Rs.5.68 crores cannot be treated as income of the assessee. Aggrieved by the impugned order the department has filed present appeal.

2.Before the Tribunal Ld. DR heavily relied upon the order of the AO and submitted that as per the MOU dated 27.04.2014 M/s. Satyam Education and Social Welfare Society agreed to pay sum of Rs.11.95 crores to various investors including the mother of the

assessee Smt. Saraswati Sharma. Ld. DR has submitted that since the entire amount was to be received before the date of search and seizure action therefore, the said addition is liable to be made for A.Y.2018-19 as this fact was detected during the course of search and seizure action on 04.08.2017. Ld. DR has further submitted that in the statement recorded u/s 132(4) the execution of MOU between the parties was accepted by Shri Sandeep Vasdeo Ramtani, Smt. Nirmala Ramtani and therefore, the amount to be received by these persons including the assessee as per the terms of the MOU is liable to be assessed as undisclosed income for A.Y.2018-19.

3. On the other hand, Ld. AR of the assessee has submitted that the MOU is completely silent about the land purchased by these first parties and therefore, the said MOU is not an enforceable documents being void as per section 120 of Indian Contract Act 1872. He has further submitted that this MOU gives the details of payment in future but no material was found during the search and no fact was detected even in the statements recorded during the search and seizure action as well as during the assessment proceedings that the alleged payments as mentioned in the MOU were actually received by the parties. Ld. AR has submitted that the statement of Nirmala Ramtani cannot be relied upon as she was not signatory of MOU and was not aware about the details of the alleged payments. Ld. AR further contended that the AO has completely ignored statement of the assessee wherein assessee explained that she has purchased only one plot by her own source and therefore, she did not receive any amount from M/s. Satyam

Education and Social Welfare Society as alleged by the AO. He has further submitted that even as per the MOU alleged amount was to be paid to Smt. Saraswati Sharma and not to the assessee. She is only an attorney of Smt. Saraswati Sharma. Further as per MOU the entire amount were to be paid in installments and final installment was to be paid by 01.08.2015 therefore, even as per MOU no money was to be received in the financial year 2017-18 relevant to the A.Y.2018-19. Thus, Ld. AR has submitted that when the assessee has not received any money from M/s. Satyam Education and Social Welfare Society as per the MOU dated 27.04.2014 then the addition made by the AO is not sustainable and the CIT(A) is justified in deleting the same. He has relied upon the impugned order of the CIT(A).

5. We have considered rival submissions as well as relevant material on record. The AO has reproduced the MOU dated 27th April 2014 at page no.23 to 29 of the assessment order. The details of the parties as per the MOU are given at page no.21 of the assessment order are as under:

“1.st Party

- 1. Smt. Saraswati Sharma w/o Late Shri Gyasiram Sharma, through the assessee Smt Meenakshi Saraiyya*
- 2. Shri Satish Kumar Asnani s/o Shri Arjundas Asnani*
- 3. Shri Deepak Babbar s/o Late Shri P L Babbar*
- 4. a. Shri Sandeep Kumar Ramtani s/o Shri Vasdeo Ramtani*
b. Shri Vasdeo Ramtani s/o Late Shri Arjundas Ramtani;
and

2nd Party: M/s Satyam Education and Social Welfare Society.”

5.1 The AO has also extracted the details of amount agreed by first party to these four parties at page no.21 of the assessment order as under:

<i>Name of the person</i>	<i>Amount decided to be paid</i>
<i>Smt. Saraswati Sharma w/o Late Shri Gyasiram Sharma</i>	<i>568.50 lacs</i>
<i>Shri Satish Kumar Asnani s/o Shri Arjundas Asnani</i>	<i>380.00 lacs</i>
<i>Shri Deepak Babbar s/o Late Shri P L Babbar</i>	<i>102.00 lacs</i>
<i>Shri Sandeep Kumar Ramtani s/o Shri Vasdeo Ramtani and Shri Vasdeo Ramtani s/o Late Shri Arjundas Ramtani;</i>	<i>144.50 lacs</i>

5.2 The total of Rs.11.95 crores was stated in the MOU to be paid to the above said four parties. Further the MOU also acknowledged the payment of 1.2 crores out of the total amount of Rs.11.95 crores and the details of which are given by the AO at page no.22 as under:

“This MOU also contains the acknowledgment of payment of payment of Rs.1.20 crore out of total amount of Rs.11.95 crore, which was received by the following manner:

<i>Name of the person</i>	<i>Amount received</i>
<i>Smt. Saraswati Sharma w/o Late Shri Gyasiram Sharma</i>	<i>57.00 lacs</i>
<i>Shri Satish Kumar Asnani s/o Shri Arjundas Asnani</i>	<i>38.00 lacs</i>
<i>Shri Deepak Babbar s/o Late Shri P L Babbar</i>	<i>10.00 lacs</i>
<i>Shri Sandeep Kumar Ramtani s/o Shri Vasdeo Ramtani and Shri Vasdeo Ramtani s/o Late Shri Arjundas Ramtani;</i>	<i>15.00 lacs</i>

5.3 It is manifest from the above extracts of MOU that Smt. Saraswati Sharma the mother of the assessee was one of the recipient of the amount and further the AO himself recorded the fact that a sum of Rs.1.20 crores out of the total amount of Rs.11.95 crores was received and acknowledged at the time of MOU itself. Smt. Saraswati Sharma received Rs.57 lacs and therefore, the said amount was already received on the date of MOU on 27.04.2014. Further as per actual details given in the MOU i.e. the amounts were mentioned as subject to verification as appearing at page no.26 & 27 of the assessment order as under:

प्रथम पक्षकार क्रमांक -1	- 568.50 लाख (subject to verification)
प्रथम पक्षकार क्रमांक -2	- 380.00 लाख (subject to verification)
प्रथम पक्षकार क्रमांक -3	- 102.00 लाख (subject to verification)

प्रथम पक्षकार क्रमांक -4 - 144.50 लाख (subject to verification)

(1) यह कि द्वितीय पक्षकारों द्वारा प्रथम पक्षकारों को कुल राशि रुपये 11.95 करोड में से राशि रुपये 1.20 करोड बयाने के रूप में अदा कर दी गई है जो कि प्रथम पक्षकारों को निम्नानुसार अदा की गई है:-

(अ) प्रथम पक्षकार क्रमांक -1 को राशि रुपये 57.00 लाख अदा की गई है ।

(ब) प्रथम पक्षकार क्रमांक -2 को राशि रुपये 38.00 लाख अदा की गई है ।

(स) प्रथम पक्षकार क्रमांक -3 को राशि रुपये 10.00 लाख अदा की गई है ।

(द) प्रथम पक्षकार क्रमांक -4 को राशि रुपये 15.00 लाख अदा की गई है ।

शेष कुल सौदा राशि रु. 11,95,00,000/- (subject to verification) में से 15 प्रतिशत राशि द्वितीय पक्षकारों द्वारा प्रथम पक्षकारों को 01 नवंबर 2014 को तथा 15 प्रतिशत राशि 01 फरवरी 2015 को तथा 15 प्रतिशत राशि 01 मई 2015 को तथा शेष बची हुई संपूर्ण 45 प्रतिशत राशि 01 अगस्त 2015 को अदा करनी ही होगी ।

5.4 It is clear that out of Rs.5.68 crores to be paid to Smt. Saraswati Sharma a sum of Rs.57 lacs was stated to be paid at the time of MOU and the balance amounts were to be received in installments of 15% up to first November 2014 and next 15% up to 1st February 2015 then next 15% up to May 2015 and balance 45% up to 1st August 2015. Thus simply going by the terms of the MOU without considering when the actual payment was made or not the entire payment was to be paid by 1st August 2015. Hence even as per this term of the MOU no payment was to be made during the financial year 2017-18 relevant to the assessment order 2018-19. The AO has accepted the fact that the assessee was Power of Attorney holder in para 11.4 as under:

“11.4 Apart from this, it is true that assessee was power of attorney holder but it is no where mentioned that she was power attorney holder only to sign the impugned MoU. The assessee has not clarified and proved that after settling when Rs. 11.95 crore was paid by Satyam education and social welfare society to party 1 as per the MoU dated 27/04/2014, then she returned the Rs. 5,68,00,000/- to her mother Smt Saraswati Sharma as per terms of the MoU. It means assessee has not returned the Rs. 5,68,00,000/- which is received by her as per MoU. Assessee has neither clarified in which particular year, Rs. 5.68 Cr were returned to her by the Satyam education and social welfare society and how she has returned the same to Smt Saraswati Sharma. In view of this, it is held that Rs. 5.68 crore returned to her by Satyam education and social welfare society is income of the assessee only of AY 2018-19.”

5.5 However, the AO has made addition in the hands of the assessee on the presumption that she has not returned the said amount to her mother. It is pertinent to note that apart from the MOU the AO has not brought on record any other material to show that the assessee has actually received any amount under the said MOU. Once the assessee has signed the MOU only in the capacity of attorney of her mother then the amount if any was actually received by beneficiaries under the MOU the same cannot be held as income of the assessee. The CIT(A) has considered and decided this issue in para 3.6.2 to 3.6.5 as under:

“3.6.2. I have considered the facts mentioned in the assessment order and the submission of the appellant. During the course of search and seizure proceedings a MOU dated 27.04.2014 was found and seized at page no 36 to 41 of LPS-3 which have been relied upon by the Ld AO before making impugned addition. The Ld. AO observed that an MOU/ Ikararnama was executed between first parties (i) Smt Saraswati Sharma, (ii) Shri Satish

Kumar Asnani, Shri Deepak Babbar, Shri Sandeep Kumar Ramtani and Shri Vasdeo Ramtani and second party M/s Satyam Education and Social Welfare Society. As per the contents of the MOU, it was proposed that the second party will pay sum of Rs.11.95 crores, which was subject to verification, against their past investment and interest in following manner:

<i>Name of the person</i>	<i>Amount decided to be paid</i>
<i>Smt. Saraswati Sharma w/o Late Shri Gyasiram Sharma</i>	<i>568.50 lacs</i>
<i>Shri Satish Kumar Asnani s/o Shri Arjundas Asnani</i>	<i>380.00 lacs</i>
<i>Shri Deepak Babbar s/o Late Shri P L Babbar</i>	<i>102.00 lacs</i>
<i>Shri Sandeep Kumar Ramtani s/o Shri Vasdeo Ramtani and Shri Vasdeo Ramtani s/o Late Shri Arjundas Ramtani;</i>	<i>144.50 lacs</i>

Further, out of entire proposed payment of Rs.11.95 crores, sum of Rs. 1.20 crores was already paid in following manner: -

<i>Name of the person</i>	<i>Amount already paid</i>
<i>Smt. Saraswati Sharma w/o Late Shri Gyasiram Sharma</i>	<i>57.50 lacs</i>
<i>Shri Satish Kumar Asnani s/o Shri Arjundas Asnani</i>	<i>38.00 lacs</i>

<i>Shri Deepak Babbar s/o Late Shri P L Babbar</i>	<i>10.00 lacs</i>
<i>Shri Sandeep Kumar Ramtani s/o Shri Vasdeo Ramtani and Shri Vasdeo Ramtani s/o Late Shri Arjundas Ramtani;</i>	<i>15.00 lacs</i>

The Ld AO considering these contents of the impugned MOU and other findings has concluded that the appellant was in receipts of sum of Rs. 5.68 crores. The appellant per contra by challenging legality, genuineness and sanctity of the MOU/Ikrarnama has pointed out various glaring defects in the MOU in her written submission.

3.6.3. I find that the Ld. AO has also relied upon statement of Shri Santosh Kumar Ramtani recorded u/s 132(4) of the Act wherein in reply to Q.No. 5 he stated that the first parties from time to time has given advance to the second party. Another statement which has been relied upon by the Id AO is of Smt Nirmala Ramtani wherein she stated that the ownership of the first parties was dissolved after payment of sum of Rs. 11.95 crores. The Ld AO has also relied upon statement of appellant recorded during the course of search wherein in reply to Question no 9 she stated that she had received three plots viz plot nos 95, 96 and 76 from the second party which have been registered in the name of Shri Sidharth Sarayia, appellant and Shri Mayank Sarayia. I find that the appellant here refers to plot no 76 at Aditya Grah Nirman Samiti Maryadit which have elaborately been discussed in para 3.5 herein above. The appellant in that case has claimed that the impugned plot was purchased from her declared source of income and the same was found to be justified. She has also offered income for taxation as per the provisions of section 56(2)(vii) of the Act. Therefore, the statement given by the appellant that she received the said plot from the second party, is not in accordance with the documentary evidences placed on record. Hence, statement of appellant, as relied and made one of the

basis of addition by the Id AO, cannot be termed as true statement. Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co Ltd vs State of Kerala 91 ITR 18 (SC) has held that "admission is an extremely important evidence but it can't be said that it is conclusive. It is open to the person, who made admission to show that it is incorrect" and Hon'ble Madras High Court in the case of CIT vs Smt S Jayalakshmi Amman 390 ITR 189 (Mad) has held that "we are of view that mere statement without there being any corroborative evidence should not be treated as conclusive evidence against the maker of the statement."

3.6.4 Another aspect which have been highlighted by the appellant is that Smt. Saraswati Sharma during the FY 2007-08 made investment of Rs. 79,50,000/- in M/s Satyam Education and Social Welfare Society through her SBI bank account. The summary of payments made is as under: -

<i>S.No.</i>	<i>Date</i>	<i>Cheque no.</i>	<i>Amount</i>
<i>1</i>	<i>14.08.08</i>	<i>156645</i>	<i>700000</i>
<i>2</i>	<i>23.09.08</i>	<i>156646</i>	<i>1700000</i>
<i>3</i>	<i>18.03.09</i>	<i>156647</i>	<i>150000</i>
<i>4</i>	<i>11.04.09</i>	<i>156648</i>	<i>400000</i>
<i>5</i>	<i>18.04.09</i>	<i>156650</i>	<i>500000</i>
<i>6</i>	<i>21.04.09</i>	<i>156649</i>	<i>500000</i>
<i>7</i>	<i>26.04.09</i>	<i>799519</i>	<i>1000000</i>

8	11.8.09	799522	600000
9	30.11.09	799524	300000
10	01.02.10	799527	100000
11	28.05.09	833042	1700000
12	28.05.09	833043	300000
		Total	7950000

Smt. Saraswati Sharma received funds out of sales proceeds of land at Bawadiya Kalan, Bhopal and land of Akansha Enclaves. She also received funds from outside India and through local clearing. It is important to mention that these documents were also furnished before the Ld AO and the Id AO has not made any adverse comment qua impugned investment and its source. Hence, it is proven beyond doubt that the investment in M/s Satyam Education and Social Welfare Society was made by Smt. Saraswati Sharma, mother of the appellant and not by appellant or by her husband. This fact is also supported by the statement of Shri Santosh Kumar Ramtani recorded u/s 132(4) of the Act wherein in reply to Q.No. 5, he stated that the first parties from time to time had given advance to the second party which implies that Smt. Saraswati Sharma, one of the first party had made investment in M/s Satyam Education and Social Welfare Society. Now coming to the contents of the MOU, I find that the appellant has only acted upon as a power of attorney holder of Smt. Saraswati Sharma which has also been evidently clear from the MOU. The investment made by Smt Saraswati Sharma and above said MOU evidently proves that the appellant had acted on behalf of her mother Smt. Saraswati Sharma. Therefore, Ld. AO is not justified in treating the amount of Rs.5.68 crore as

income of the appellant. There exists not an iota of evidence proving allegation of the Ld AO, factually correct. On the basis of mere suspicion, the above amount cannot be treated as income of the appellant when seized documents themselves prove that the appellant had acted on behalf of her mother. The appellant has rightly submitted that she was only the power of attorney holder and a POA holder cannot be the owner of the investment or fruits of investments. In support the appellant has placed reliance upon various judicial pronouncements which are as under: -

(i) In the case of Suraj Lamp & Industries (p) Ltd vs State of Haryana, [2011] 14 taxmann.com 103(SC), Hon'ble Supreme Court of India, where it was held that- "Whether transactions of nature of General Power of attorney Sales (GPA Sales) or Sale agreement/General Power of Attorney will transfers (SA/GPA/WILL transfers) do not convey title and do not amount to transfer nor can they be recognized as valid mode of transfer of immovable property- Held Yes"

(ii) In the case of Shri Gyan Chand Agarwal vs. The Addl. Commissioner of Income Tax, ITA No 266/JP/2017. ITAT Jaipur, where it was held that-

Page No.9- "Power of Attorney executed in favour of assessee does not make the assessee owner of the property"

Page no. 18- "The assessee had placed reliance on the judgement of Hon'ble Supreme Court in the case of Rambhau Namdeo Gajrevs Narayan Bapuji Dhotra (2004(8) SCC 614], wherein the honorable Supreme court had held that a power of attorney is not an instrument of transfer in regard to any right, title or interest in any immovable property".

(iii) In the case of Upma Shukla vs. ITO Ward 2(2), ITA No 4218/DEL/2015, ITAT Delhi, where it was held that "The General Power of attorney was executed in favor of the assessee so that assessee could register the sale deed at appropriate time on behalf of Shri Umed Singh in favor of her husband. Therefore, there is no transfer of capital asset from

the side of the assessee, so as to attract provisions of long- term capital gain and short-term capital gain"

In view of the above discussion, it is established that the appellant has not made investment in M/s Satyam Education and Social Welfare Society and therefore, amount of Rs.5.68 crore received by virtue of the said MOU cannot be her income. Any tax liability on receipt of such amount arises, if any, shall be in the hands of owner of investment i.e., Smt. Saraswati Sharma and not in the hands of power of attorney holder. The amount of Rs.5.68 crore should have been considered in the hands of Smt. Saraswati Sharma by the Ld. AO and not in the hands of the appellant.

3.6.5 Thus, considering above discussion, the Ld AO was not justified in making the impugned addition and therefore, the entire addition made by the Ld AO amounting to Rs. 5,68,00,000/- is hereby deleted. Therefore, appeal on this ground is allowed."

5.6 The CIT(A) has specifically pointed out that the AO has relied upon the MOU and the statements of Smt. Nirmala Ramtani as well as Shri Santosh Kumar Ramtani wherein there is nothing about the amount actually received by the parties as stated in the MOU except the amounts which were paid as on the date of MOU. Further during the course of search the assessee has also produced the record with bank statements to explain the investment made by Smt. Saraswati Sharma during the F.Y.2007-08 of Rs.79.50 lakhs in M/s. Satyam Education and Social Welfare Society which shows that the investment in M/s. Satyam Education and Social Welfare Society was made by Smt. Saraswati Sharma the mother of the assessee and not by the assessee or her husband. Therefore, in view of the facts and circumstances of the case as discussed we do

not find any error or illegality in the impugned order of the CIT(A) qua this issue.

6. Ground no.2 is regarding the addition made by the AO on account of unexplained investment in jewellery of Rs.9,24,925/- deleted by the CIT(A).

7. Ld. DR has submitted that during the course of search and seizure action gold jewellery weighing 1364 gram and silver items of 600 grams were found at the residential premises and locker with SBI Bank. The AO after allowing benefit of CBDT instruction no.1916 dated 11.05.1994 to the extent of 800 grams has made an addition in respect of the balance quantity of 565 grams jewellery amounting to Rs.18,31,618/- and 50% of the same Rs.9,24,925/- as undisclosed investment in gold and silver found during the search. Thus, Ld. DR submitted that the AO already allowed the benefit of CBDT Instruction no.1916 dated 11.05.1994 then balance addition made by the AO was justified and CIT(A) has deleted the same by accepting the claim of the assessee that the said jewellery was received as gift from her mother by ignoring the fact that no such claim was made before the AO. He has relied upon the order of the AO.

8. On the other hand, Ld. AR has submitted that the assessee received jewellery weighing 900 grams under the family settlement which is placed at page 23 to 25 of paper book. Further the AO has not disputed veracity and genuineness of the said documents under

which the assessee has received jewellery weighing 900 grams of gold. He has relied upon the order of the CIT(A).

9. We have considered rival submissions as well as relevant material on record. The AO has made the addition on account of undisclosed investment in gold jewellery and silver in para 13 to 13.4 as under:

“13.Undisclosed investment in Jewellery u/s 69A:-

During the course search and seizure, at the residential premise of the assessee Gold Jewellery/Items weighing 154.60 gm net wt. valuing Rs. 4,84,915/- and from the SBI locker no. 34 personal banking branch, Shahpura, Bhopal weighing 1210.40 gm valued at Rs. 39,40,126/- and Silver items weighing 600 gm valuing at Rs. 18,240/- was found.

13.1 Vide notice u/s 142(1) dated 30/09/2019, assessee was required to explain the nature of possession and source/mode of acquisition of jewellery and reconcile the same with his declared income/assets.

13.2 In response, the assessee vide reply dated 18/11/2019, submitted that the jewellery found during the search at my residence and at my locker was reasonable and this by itself can be understood by the fact that every Indian Hindu household carries a reasonable quantity of jewellery in his house even if he is not financially so well off.

13.3 The reply of the assessee is considered and found not acceptable on this issue. The permitted limit of having gold items specified by the Central Board of Direct Taxes vide instruction no. 1916 dated 11/05/1994 is as follows:-

“I. A married woman can have up to 500g of gold.

II. An unmarried woman can have up to 250g of gold.

III. A man can have up to 100g of gold.

As per the above, the amount of jewellery allowed is as follows:-

Family Members Name	Allowed as per CBDT
Meenakshi Saraiya	500gm
Pradeep Saraiya	100 gm
Siddhartha Saraiya	100 gm
Mayank Saraiya	100 gm
Total	800 gm

13.4 As mentioned previously, the total weight of gold jewellery found at the residential premise and locker is 1365 gms amounting to Rs. 44,25,041/-. After giving credit of above discussed 800 gms, the total amount of of unexplained jewellery is 565 gms (1365- 800). The value of undisclosed investment in gold jewellery of 565 gms is Rs. 18,31,610/-. In absence of any clear explanation on the part of the assessee amount of Rs. 9,24,925/- (50% of Rs. 18,31,610/- and 50% of Silver of Rs. 18,240/-) is hereby added to the total income of the assessee for A.Y. 2018-19 u/s 69A of the Act. The balance amount of undisclosed investment pertains to Shri Pradeep Saraiya. In view of the above, I am satisfied that the assessee has concealed his particulars of income. Therefore this is a fit case to initiate penalty proceedings. Hence, penalty proceedings u/s 271AAB is initiated for AY 2018-19 separately.”

9.1 The said addition has been deleted by the CIT(A) in para 3.4.2 as under:

“3.4.2. I have considered the facts mentioned in the assessment order and the submission of the appellant. During the course of search and seizure proceedings, gold jewellery weighing 154.60 gm valued at Rs. 4,84,915/- (was found from the residence of the appellant. Further, Gold jewellery weighing 1210.40 gms valued at Rs. 39,40,126/- and silver items weighing 600 gms valuing at Rs. 18,240/- were found from the locker no. 34 maintained with SBI, Personal Banking Branch, Shahpura, Bhopal. The Ld AO rejected the contentions of the appellant that the quantity of jewellery found was reasonable as every Indian Hindu Household carries a reasonable quantity of jewellery in his house, even, if he is not financially so well off. The Ld. AO calculated permissible limit of gold items as per the CBDT instruction no. 1916 dated 11.05.1994 which is as under: -

<i>Name of Family Members</i>	<i>Allowed as per CBDT</i>
<i>Smt. Meenakshi Saraiya, wife of appellant</i>	<i>500 gm</i>
<i>Shri Pradeep Saraiya, the appellant</i>	<i>100 gm</i>
<i>Shri Siddharth Saraiya, son of the appellant</i>	<i>100 gm</i>
<i>Shri Mayank Saraiya, son of the appellant</i>	<i>100 gm</i>
<i>Total</i>	<i>800 gm</i>

Total Accordingly, the Ld AO found excess unexplained gold jewellery of 565 gm (1365 gm 800 gm) valuing at Rs. 18,31,610/-. In absence of satisfactory explanation in respect of 565 gm of gold jewellery, the Ld AO added Rs. 9,24,925/-,

being 50% of Rs. 18,31,610/- and Rs. 18,240/- (Silver item) in the hands of the appellant for the AY 2018-19 u/s 69A of the Act. Balance amount of addition has been proposed to be made in the hands of Shri Pradeep Saraiya, husband of the appellant. Further, the appellant has claimed that her mother had gifted 900 gms of gold jewellery to her for which the gift deed was executed and the same was submitted before the Ld AO. As per this gift deed, Smt. Sushila Sharma, mother of Smt. Meenakshi Saraiya had gifted 90 tolas (900 gms) of gold jewellery to her daughter Smt. Meenakshi Saraiya. Smt. Sushila Sharma had also gifted various jewellery items to her son Shri Vinod Kumar Sharma and another daughter Smt. Vandana Nayak. The Ld AO has not doubted the veracity of the gift deed furnished before him during the assessment proceedings and also no adverse comments has been given in the assessment order. Therefore, availability of gold jewellery of 900gms received through gift deed with Smt. Meenakshi Saraiya cannot be denied. It may also be acceptable fact that in addition to jewellery received at the time of marriage, the appellant has received above quantity of gold jewellery through gift. Considering the family status of the appellant and customary practices of Indian Society where gifting of gold jewellery and receiving gold jewellery at the time of marriage is very common, holding 1365 gms of gold jewellery or 600 gms of silver items is not unreasonable in any manner. The appellant has also placed credible evidence on record in this regard. Therefore, in view of the above discussion and decision of Hon'ble ITAT, Indore bench in the case of Ms. Pooja Shree Chouksey, reported in (2020) 8 ITJ online 33 (ITAT, Indore), the Ld. AO is not justified in making addition on the above account. Hon'ble ITAT has held as under:

8. On perusal of the records and the submissions given by the Ld. Counsel for the assessee as an officer of the court, that during the course of search no specific question was asked to the assessee about the source of jewellery. In the affidavit given by the assessee on page 32 of paper book the assessee has claimed to have received jewellery weighing approximate 700 gram as gift from her late grandmother Smt. Kalawati Gupta,

two maternal aunts Smt. Laxmi Gupta and Smt. Saojini Chouskey. Further on pages 33 & 34 of the paper book affidavit given by Smt. Laxmi Gupta and Smt. Saojini Chouskey are also filed, both of whom are senior citizens and were employed as lecturers having sufficient accumulated savings. Smt. Laxmi Gupta gifted 225 grams of gold jewellery and Smt. Saojini Chouskey has gifted 175 grams of gold jewellery. The contention of the Ld. Counsel for the assessee referring to various judgments is that guidelines given by CBDT Instruction No. 1916 dated 10.5.1994 should not be applied strictly and Lower Authorities should have taken a lenient view looking to the status of the family and the Indian customs where gifting of gold jewellery is very common. The above contention of the Ld. Counsel for the assessee needs to be examined in the light of judicial pronouncements.

9. We find that the Hon'ble Delhi High Court in the case of Ashok Chaddha Vs. Income Tax Officer (2011) 14 taxmann.com 57 held as under: -

"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. 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. Appeal is allowed in the aforesaid terms".

11. After carefully examining the facts of the instant case in the light of above decision and also looking to the fact that the assessee has placed evidence on record to explain the source of jewellery found during the course of search in the form of affidavits given by her relatives having sufficient means, we direct the revenue authorities to delete the addition for unexplained jewellery of Rs.6,51,090/-. However, this view should not take as a precedence as the same depends on the material facts of a particular case. Thus Ground No. 1of the assessee is allowed.

Further, considering the status of the appellant and his family, the quantity of silver items found is also not abnormal or excessive. Therefore, addition of Rs. 9,24,925/- made on account of unexplained jewellery u/s.69A of the Act is hereby deleted. Appeal on this ground is allowed.”

9.2 The CIT(A) has specifically mentioned that as per the gift deed Smt. Saraswati Sharma (wrongly written as Sushila by CIT(A)) mother of the assessee gifted 900 grams of jewellery. The AO has not doubted the veracity of the gift deed produced by the assessee during the assessment proceedings. We further note that the AO has even not mentioned anything about gift deed which was stated to be produced during the assessment proceedings. Further having regard to the status of the family gold jewellery to the extent of 500 grams and silver items to the extent of 600 grams cannot said to be excessive. The CIT(A) has followed the decision of this tribunal in case of Ms. Pooja Shree Chouksey as well as decision of Hon'ble Delhi High Court in case of Ashok Chaddha vs. ITO 14 taxmann.com

57. Accordingly we do not find any error or illegality in the order of the CIT(A) qua this issue same is upheld.

CO no.2/Ind/2024

10. The assessee has raised following grounds of appeal:

“1. That the Ld. CIT(A) was not justified in confirming the assessment order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

2. The reassessment order is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.”

The assessee challenged the validity of the assessment order in absence of DIN however, the Hon’ble Supreme Court in case of CIT vs. Brandix Mauritius Holding Ltd. reported 158 taxmann.com 247 has stayed the order of Hon’ble Delhi High Court as well as Delhi Benches of the Tribunal dated 19.09.2022. Therefore, once the issue is sub-judiced before the Hon’ble Supreme Court and the decision of Hon’ble Delhi High Court as well as Delhi Benches of the Tribunal has been stayed by the Hon’ble Supreme Court therefore, this issue is kept open. Further when the issues involved in the appeal of the revenue are decided on merits in favour of the assessee and against the revenue then this objection raised by the assessee in the cross objection becomes academic in nature. Hence, in view of the decision of Hon’ble Supreme Court staying orders of Hon’ble Delhi High Court and this Tribunal we do not propose to

take up this issue raised in the cross objection and the same is kept open

6. In the result, appeal of the revenue and CO are dismissed.

Order pronounced in the open court on 29.05.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 29.05.2024

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*