

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा0 मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 584/JP/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Sakshi Maheshwari A-666-D, Indira Vihar Kotan 324 005	बनाम Vs.	The ACIT Central Circle Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BLNPM 6890 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sharwan Kumar Gupta
राजस्व की ओर से / Revenue by: Shri Anoop Singh, Addl CIT-DR

सुनवाई की तारीख / Date of Hearing : 07/02/2024
उदघोषणा की तारीख / Date of Pronouncement: 06/05/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A), Udaipur -2 dated 24-08-2023, for the assessment year 2017-18 wherein the assessee has raised the following grounds of appeal.

“1.That the Ld. A.O. grossly erred on law and facts in making the additions of Rs. 2975651.00 by stating unexplained Jewellery, whereas the assessee fully explained the Jewellery in course of search and in post search proceedings. And the Ld.CIT(A) have not considered the ground & erred in sustaining the addition.

2. That the Ld. A.O. grossly erred on law in charging tax u/s. 115BBE on the Jewellery added in income which is not from undisclosed sources. The Ld. A.O. charged tax @60/- and the surcharge on tax @ 25% which is wrong. And the Ld. CIT(A) have not considered the ground and erred in sustaining the addition.

2.1 Apropos Ground No. 1 & 2 of the assessee, the brief facts of the case are that the appellant is Sakshi Maheshwari, A666 D Indra Vihar, Kota is an Individual. The appellant derives income from other sources. She was partner of firm M/s Radha Residency which runs hostel business. A search & seizure operation under section 132(1) of the Income-tax Act, 1961 (hereinafter "the Act") was carried out on 02.02.2017 at the various premises of Allen Career Institute Group, Kota to which the appellant belongs. The case of the appellant was also covered under search proceeding. The search action was carried out on the appellant on 02.02.2017 at her residence A-666 D. Indra Vihar, Kota and 203-B. Friends Paradise, Indira Vihar, Kota and various lockers were also searched. Consequent to search action, the case of the appellant was centralized to Central Circle-Kota by the Commissioner of Income-tax, Kota vide his order No:- CIT/ITO(Hq.)/KTA/S. 127/16-17/3592 dated 16.02.2017. Notice u/s 143(2) of Act was issued by the AO on 26.03.2018 and 24.09.2018 manually and system generated respectively and duly served upon the appellant Notice u/s 142(1) of the Act was issued by the AO on 29.06.2018 along with questionnaire/Annexure-A

requiring certain details/information, which was served upon the appellant through Income Tax Inspector. Assessment order u/s 143(3) of the Income Tax Act, 1961 was passed by the AO at assessed income of Rs. 37,84,150/- on 21.12.2018 after making addition of Rs.29,75,651/-on account of unexplained jewellery.

2.2 Being aggrieved by the order of the AO, the assessee carried the matter before the Id. CIT(A) who dismissed the appeal of the assessee by observing as at para 5.6 and 6.4 of his order

2.3 Being aggrieved by the order of the AO, the assessee carried the matter before this bench with the submissions that the Id. CIT(A) is not justified in confirming the above mentioned grounds of appeal which is required to be dismissed by submitting the following contentions.

“The assessee Sakshi Maheshwari is an individual resident at A-666 D Indra Vihar, Kota(Raj.), derives income from Partnership M/s Radha Residency running hostel business and Income From Other Sources including Interest & Lease Rentals & she is the daughter of Shri Rajesh Maheshwari, partner of ALLEN CAREER INSTITUTE. That there was search conducted at Allen Career Institute Group & in course there to the search was extended at her residence u/s. 132(1) on 02.02.2017 i.e. the search was consequential.

That in a course of search the Ld. Departmental representatives, found Jewellery at her residence and lockers and out of that Part Jewellery worth Rs. 29,75,651/- (813.962 Grams) was seized by the department on their own judgment considering it unexplained.

In post search proceedings, we explained Jewellery before the Ld. ADIT and before the Ld. A.O. but prejudice to the said seizure the Ld. A.O. have not considered our plea and made

the unjustified addition on A/c of Jewellery Rs. 29,75,651/- based on surmises and conjectures.

A part of from above fact, we submit that in the search at ALLEN, there has nothing been found in relation to the assessee, the department conducted search operation at the residency of married daughter, since she has living in the same city, Kota. The Department have not taken any action against other family members, daughters which are living outside Kota.

Generally, the search & survey operation are conducted at the residence, premises of the business house or group, since in ALLEN there are 4 partners (brothers) in that case the search can be confined up to firm & residence of partners, further no direct individual benefit is given to her by the ALLEN, thus she was searched, just that she is the daughter of one of the partner of ALLEN.

That even in search the Department Should consider the things related to ALLEN not her personal belongings thus in all we submit that the said search was consequential for which no cognizance be taken in this case.

That by making the said addition relating to Jewellery Rs. 29,75,651/- the Ld. A.O. assessed the returned income of Rs. 8,08,500/- at Rs. 37,84,150/-. So aggrieved by the addition assessee forwarded the appeal before Hon'ble CIT (A), Udaipur vide Appeal No. ITBA/APL/S/250/2023-24/1055404349(1). Still no respite to the assessee, as the Ld CIT(A) kept the addition intact based on remand report, leaving aside all our contentions and facts presented alongwith the affidavits of relatives and other details and passed the Order under Section 250 of the Income Tax Act, 1961. Hence the Appeal is presented before Hon'ble ITAT, Jaipur.

Grounds of Appeal

1. That the Ld. A.O. grossly erred on law and facts in making the additions of Rs. 2975651.00 by stating unexplained Jewellery, whereas the assessee fully explained the Jewellery in

- course of search and in post search proceedings. And the Ld.CIT(A) have not considered the ground & erred in sustaining the addition.
2. That the Ld. A.O. grossly erred on law in charging tax u/s. 115BBE on the Jewellery added in income which is not from undisclosed sources. The Ld. A.O. charged tax @60/- and the surcharge on tax @ 25% which is wrong. And the Ld. CIT(A) have not considered the ground and erred in sustaining the addition.
 3. That the Appellant craves leave to add, alter, amends the Grounds of Appeal.

Ground No.1

That the Ld. A.O. grossly erred on law and facts in making the additions of Rs. 2975651.00 by stating unexplained Jewellery, whereas the assessee fully explained the Jewellery in course of search and in post search proceedings. And the Ld.CIT(A) have not considered the ground & erred in sustaining the addition.

Submission

We hereby submit that during the consequential search action u/s 132 of the IT Act on the assessee and the Jewellery worth Rs. 2,16,60,411/- has been found in Residence/Lockers and out of that Part Jewellery worth Rs. 29,75,651/- has been unjustifiably considered as unexplained. Whereas the assessee have explained the Jewellery found with her in course of search including belonging to and receiving on account of direct gifts from relatives or utilized the received cash gifts for jewellery. However the Ld. A.O. made the addition & Ld. CIT(A) kept intact the addition of Jewellery 813.962 Gram of value Rs. 29,75,651/- which was seized at the time of search that is 13.74% in terms of value of the total jewellery.

Assessee a Hindu lady belongs to the affluent family of Allen Career Institute as her father is one of the partner. She was Born in the year of 1990 since then there were occasions to get the jewellery in Gift & Appreciation from the family members & relatives. Based on that we have submitted the source of Jewellery of Rs. 2975651.00 in post search investigation before ADIT the copy there of is of enclosed.

Your Honour, out of the Jewellery seized & added in income the details are as under.

	<u>WT.</u>	<u>Amount</u>
1. Items belong to Mother & Sister	437.071	1636705/-
2. Items Purchased from Cash Gifts received	139.748	433614/-
3. Gift from Kamal Mama on Marriage	17.000	98420/-
4. Gifts in form of jewellery received on Various occassion	204.143	762512/-
5. Self/Remade out of Old Jewellery	<u>15.000</u>	<u>44400/-</u>
	<u>812.962</u>	<u>2975651/-</u>

(Detailed Chart enclosed in Paper Book Page No. 1)

Majorly the contentions raised by the Ld A.O. and remained intact by Ld. CIT(A) can be broadly classified as:

S.No.	Particulars	Gross Wt (Gms)	Net Wt (Gms)	Value
1	Total Unexplained Jewellery Seized (As per Department Exhibit JS-1)	1152.50	812.962	29,75,651/-
	Less: Out of the above as explained by Assessee			
1	Belonging to Relatives (Mother Gross Wt 453.06 Gms /Sister Gross Wt 141.44 Gms) – Bills and Affidavits already Produced JF-1 Sr. No. – 5,12,13,14,15,30	594.50	437.071	16,36,705/-
2	Jewellery covered as per CBDT Instruction 1916 dtd. 11/05/1994 Married Woman (Also the husband is eligible for 100 Gms as per the Instructions)		500.000	-

The above Point No. 2 based on CBDT Instruction 1916 covers the remaining seized jewellery so as explained in above charts as this is in weight is well below the defined limit & other than Point No.2 that belongs to Mother/Sister hence entire seized jewellery is fully covered. Also above documents are enclosed in Paper Book from Page No. 1- 12.

Now we hereby submit Point Wise Justification based on above chart:

EXPLANATION FOR POINT NO. 1 – Jewellery pertaining to Mother & Sister

It has been mentioned by Ld. CIT(A) in his order that there was no claim that any item is belonging to her sister has been made in her statements taken during search and only mother has been mentioned but we hereby mention that since her first submission to ADI and thereafter in assessments the assessee has mentioned that the jewellery belong to her mother and sister. That is common in regular parlance that mother daughters may exchange there jewellery between themselves and return after wearing them. Also we have provided bills (enclosed from Page No 6 -12 of Paper Book) in relation to the said jewellery alongwith the conforming affidavits of the Mother Asha Maheshwari & Sister Shruti Maheshwari (Enclosed on Page No. 3, 4 & 5 of Paper Book)

Also majorly of this jewellery is of Mother only (454 Grms) and Sister has small part (141.44 Gms).

There are several case laws that support the assessee's right to claim that jewellery belongs to assessee relative at any stage:

In case of CIT v. Rakesh Ramani. (2018) 256 Taxman 299/ 168 DTR 356 (Bom) (HC)

Merely on the basis that assessee in course of statement made under S. 132(4) had admitted that said jewellery belonged to him, could not be sustained, when in the course of assessment proceedings established that jewellery seized from him actually belonged to his employer – There is no requirement in law that evidence in support of its case must be

produced by assessee only at time when seizure has been made and not during assessment proceedings .[S.132(4) , 158BC].

As also mentioned in **Shakun Devi Vs JCIT (ITAT Allahabad) ITA No. 573/Alld/2014**

I also note/observe that while recording statement u/s 132(4) on 27.08.2009(page 46-50/pb) , the assessee duly explained that jewellery of 504 gms which was found during search belonged to her mother, Mrs. Indira Devi vide item no. 9 and 10 of Panchnama. She later produced affidavit dated 16.12.2011 executed by her mother Indira Devi aged 77 years, wherein she owned the said jewellery, and explained the sources of its acquisition(page 38-39/pb).

The department rejected the affidavit without any further verifications/investigations as Mrs. Indira Devi was never summoned by department(as is emerging from record before us) for recording her statement to unravel truth. The assessee had discharged her primary burden by explaining the jewellery found during search by explaining in statement recorded u/s 132(4) on 27.08.2009 that 504 gms belonged to her mother Mrs. Indira Devi, which was later supported by assessee by producing affidavit executed by her mother.

Also as held in the High Court of Judicature for Rajasthan at Jaipur Bench - CIT vs. Satya Narain Patni (supra) D.B.INCOME TAX APPEAL NO. 196/2010

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.

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 Tribunal 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 Tribunal. 16. Accordingly, the appeal, being devoid of any merit. is hereby dismissed in limine. No order as to costs.”

Assessee can not be taxed for jewellery belonging to family members erroneously or under compulsion offered to tax during search. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer. [CBDT Circular No. 14 (XL-35) dated 11/04/1955-Department must not take advantage of ignorance of assessee to collect more tax].

Further the Ld. CIT(A) in his order u/s 250 from page no. 29 to 33 has mentioned about Variation in the weight compared to the Valuation Sheet of the Valuer as per Exhibit JF-1 and the Bills presented for verification with regards to the jewellery of Mother/Sister.

S.N o.	Particulars	Gross Wt as per JF-1 (in Grams) A	Net Wt as per JF -1 (in Grams) B	Wt. as per Bills (in Grams) C	Diff in Wt. (in Grams) D = C-A
1	Sr. No. 12 of JF-1 (Asha Maheshwari)	34.050	24.618	33.190 (Bill on Page No. 6)	-0.860
2	Sr. No. 13 of JF-1 (Rajesh maheshwari)	60.500	43.989	121.83/2=60.92 (Bill on Page No. 7)	0.420
3	Sr. No. 14 of JF-1 (Belongs to Mother)	64.500	38.377	64.590 (Bill on Page	0.090

	(Asha Maheshwari)			No. 8)	
4	Sr. No. 15 of JF-1 (Belongs to Mother 123.430 gms & Sister 88.720 gms) (Asha Maheshwari/Shruti Maheshwari)	212.000	180.000	123.430+88.720 = 212.150 (Bill on Page No. 9 & 10)	0.150
5	Sr. No. 30 of JF-1 (Belongs to Mother) (Shruti Maheshwari)	52.500	34.607	52.720 (Bill on Page No. 11)	0.220
6	Sr. No. 5 of JF-3 (Belongs to Mother) (Asha Maheshwari)	171.000	116.280	171.570 (Bill on Page No. 12)	0.570
	Total	594.550		595.14	0.590

So the total deviation comes to 0.590 Grams and so applying even the highest rate of gold as mentioned in the bills as enclosed above Rs. 2870/Gram (Rs. 28700/10 Gms) the deviation value is just Rs. 1694/-.

Hence this menial deviation of 0.590 Grams shall not be made basis to reject the whole submission by just using a similar catchphrase everywhere as mentioned by Ld CIT(A) in his order that *“Gold Weight is measured even upto 3 digits after point. It means every milligram is measured. Therefore there cannot be reason of difference in either net weight or gross weight.”*

A miniscule variation could be there because there can be a number of reasons for such a variation, such as:

Manufacturing tolerances: Jewelry is typically made with a certain amount of tolerance for weight, so there may be a small difference between the weight of the jewelry as it is made and the weight of the jewelry as it is weighed by the income tax authorities.

Wear and tear: Jewelry can lose weight over time due to wear and tear, such as friction from being worn or stored.

Different weighing scales: The weight of jewelry can vary depending on the type of weighing scale that is used.

Similarly, **there was unnecessary confusion created in relation to Gross Weight & Net Weight** as the Registered Valuer has himself mentioned both the weights of impounded jewellery and so was mentioned the Gross Wt in all bills as clearly highlighted that we have enclosed for verification. So Gross Wt is to be compared with Gross Wt and miniscule deviation should not form basis for making the addition of Relatives Jewellery in the Hands of the assessee.

Further more we have also **enclosed affidavits** of Mother Asha Maheshwari and Sister Shruti Maheshwari clearly mentioning as to their owning of the impounded jewellery to the extent as mentioned above.

EXPLANATION FOR POINT NO. 2 – Jewellery covered under CBDT Instruction No. 1916

The Ld. CIT (A), as mentioned in the order *“the total jewellery found in search was much more than 500 gms. Out of that only 812.962 gms was seized by the department. Therefore, it is not the case of the appellant that 500 gms of the jewellery was not left by the searched team from seizure and not given benefit of the CBDT Circular”* has failed to appreciate the fact that the CBDT Circular No. 1916 dated 11th May, 1994, mentions the gold jewellery and ornaments to the extent of 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family need not to be seized over the undisputed quantity and in the family of the assessee there are 2 Persons Herself & Her Husband.

The circular was aimed to cover the special characteristics of India Families where the jewellery tends to pass upon from one generation to another & also the older jewellery is utilized to be exchanged for newer one and it becomes very difficult to get the bill from

older generation so the disputed jewellery to be given the benefit till particular measurement but the same was vehemently rejected by the Ld. CIT(A) in the instant case.

It has been held in the case of **Shri Ram Prakash Mahawar Vs DCIT (ITAT Jaipur)[ITA No. 918/JP/2019]** that *Explained Jewellery cannot be included while giving benefit of CBDT Instruction related to Unexplained Jewellery.*

As explained by **Hon'ble Ahmedabad I.T.A.T. in case of Kishorbhai V Sakaria , Rameshchandra R Patel 89 ITD 203 and Manila! S Dave 117 Taxman 23** referred supra wherein it has been explicitly held that though board circular is a guideline for not effecting seizure during the course of search, extended meaning of same shows the intention that the jewellery to the extent mentioned in such circular should be treated as explained jewellery and gold found to that extent for family members cannot be treated as unexplained in the hand of appellant.

So as per CBDT Circular the Unexplained Jewellery is to be treated as Explained to the extent mentioned for Married Lady. Hence the already explained jewellery falls outside the ambit of the Circular as that is already explained does not require any blanket cover of circular.

In DCIT v Haroon Unni (ITA 463/Mum/2012) dated 31.01.2014.(Mum)(Trib) [Pg 130-133 of P.Book II)

In that case, gold jewellery of Rs 20.71 lakhs and diamond jewellery of Rs 5.67 lakhs was found during a search. The AO taxed the diamond jewellery and a portion of the gold jewellery. The CIT(A) deleted the addition on the ground that the jewellery found was within the CBDT limit. The order of the CIT(A) was upheld by the Mumbai ITAT.

In Ritu Bajaj v DCIT (ITA 4101/Del/2017) dated 09.03.2018 (Del)(Trib).

In that case, diamond studded jewellery of Rs 24.09 lakhs was found during a search and added to the total income by the AO. The CIT(A) partly confirmed the addition. The Hon'ble ITAT deleted the addition on the ground that the jewellery found was within the CBDT limit.

Hence out of total jewellery found in search only 812.962 gms was seized by the department so the remaining unsiezed jewellery was undisputed as was with proper justification so it never required benefit of CBDT Circular as it was never disputed hence the benefit of circular no. 1916 was to be given over and above undisputed quantity otherwise why the benefit of CBDT Circular is even required if the assessee already own undisputed jewellery. Hence the jewellery is explained.

FURTHER OUR EXPLANATION NOTWITHSTANDING AS MENTIONED IN POINT NO.2 RELATED TO CBDT INSTRUCTION

Although even if Notwithstanding anything mentioned above in Point No.2 regarding CBDT Instruction 1916 there is legible explanation we have tendered for the remaining seized jewellery mentioned below:

S.No.	Particulars	Gross Wt (Gms)	Net Wt (Gms)	Value
A	Purchase out of Cash Gifts on Different Occasions (Cash Declared under Vivaad Se Vishwas Scheme) JF-1 Sr. No. – 10,11,31,32,33,36,39,42	195.000	139.748	4,33,614/-
B	Gifts Received on Various Occasions/Relatives Gift JF-1 Sr. No. – 1,2,34,35 JF-3 Sr. No. – 10	323.000	221.143	8,60,932/-
C	Old Item (25 Years Old) JF-1 Sr. No. 41	40.000	15.000	44,400/-
	Total (A+B+C)	558.000	375.891	13,38,946/-

Family Pedigree

The family pedigree of the assessee is given for perusal of the same your good self will find that, since her birth she had been bestowed with the Gifts, (Particularly) Jewellery from the family, further the family is well being, in that case the Gift of precious & Semiprecious Jewellery is common thing. We are submitting the details of family members of the assessee.

-Grand Monther - Smt. Krishna Devi Maheshwari

-Father – Sh. Rajesh Maheshwari

-Mother – Smt. Asha Maheshwari

-Sister - Smt. Shruti Maheshwari

-Brother –Sh. Anand Maheshwari

-Husband –Sh. Vaibhav Jhanwar

-Uncles – Sh. Govind Maheshwari

Sh. Naveen Maheshwari

Sh. Brijesh Maheshwari

Sir, the list given by us is the list of persons living together, apart from this the Maheshwari Family is having first generation cousins i.e. children of uncles of Shri Rajesh Maheshwari the counting there of is also of more than 20 people. Further the occassion is not only birth day there are festivals in Maheshwari Samaj which are celebrated by giving Gifts to daughters, Sisters etc. such as.

1. Birth day
2. Teej (Choti Teej/falling in Sawan Month)
3. Teej (Badi Teej/ falling in Sawan Month)
4. Bhai Dooj (2nd day after Holi)
5. Bhai Dooj (2nd day after Diwali)
6. The elders do always take chance to make happy to the children by obliging with gifts on coming to Travel (Yatra) as per custom in the Hindu Society.

Gold jewelry is highly associated with the Indian customs and festivities including marriage, child birth, Diwali etc. Also, gold jewelry is considered to be most priced possession of

Indian women and it's a fact that Indian housewives hold round 11% of the World's Gold. Thus, women in India are supposed to have a good amount of gold jewelry that could have been received as Streedhan, in ancestral inheritance, gift or under will.

As it is mentioned in clause (iii) of the said instruction 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) 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 'stree dhan' 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 exclude. In this particular case also it has been established that assessee belongs to affluent family of Allen Career Institute Group of Kota that is well known for its coaching classes across India hence it is normal to have jewellery excess that Circular Limits.

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.

Hon'ble 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.*

In the case of **Kumkum Kanodia vs DCIT vide ITA No. 5260/Del/2014 dated 20.11.2018** *it was held that Gross weight of jewelry including gold as well as diamonds and other precious stones, should not be seized, if they do not weigh by more than the prescribed limit as per the above stated Instruction.*

In the case of **Nawaz Singhania Vs. DCIT Central Circle 8(1), Mumbai** the issue of mismatch in jewelry declared and found was discussed and it was held that a necessary concomitant is remaking of the jewellery; for repetition of the same items in any Indian society, including that of assessee, is bound to be looked down upon. Another necessary corollary is the spate of gifts that are received and, frequently, these are ornaments and jewellery, often high value items.

In the case of **Sunita Gupta vs DCIT vide ITA No. 5295/Del/2013 dated 17/03/2016, the Hon'ble Delhi ITAT, the tribunal in para 12** of its order stated that: *"12. The aforesaid explanation of the assessee appears to be plausible because in the society to which the assessee belongs the jewelry got remade with the passage of time and in accordance with the change in fashion/occasion."*

Further we mention that nothing of the abovementioned is afterthought as that in course of Search the Authorized officer took statement & the following statement were recorded from the assessee that were in line with the Explanation as given for seized jewellery. This is for your kind perusal:

प्रश्न 14 कृपया बतावे की आपके पास किसी अन्य व्यक्ति/कंपनी का कोई Cash या कोई मूल्यवान वस्तु जखी हुई है या आपकी कोई मूल्यवान वस्तु या Cash किसी अन्य के पास या कहीं और रखी हुई है I

उत्तर . मेरे घर पर मेरी माँ श्रीमति आशा माहेश्वरी का एक सेट एवं चार चुडिया सोने की रखी हुई है I

प्रश्न 26 तलाशी की कार्यवाही के दौरान आपको तीन लॉकरों संख्या – RG - 2 - 75, CBI, राजीव गाँधी नगर, कोटा, लॉकर संख्या - RG -2 - 75, CBI, तलवंडी, कोटा, व लॉकर संख्या 472 OCB, इंद्रा विहार, कोटा तथा आपके निवास B - 203 Friends Parelive Indira Vihar kota से जो सोना, चाँदी व डायमंड की ज्वेलरी **ikbZ** गयी है तथा जिसका मूल्यांकन राशि Valuer द्वारा आपकी उपास्थि में किया गया है। क्या आप उससे (Valuation) से सहमत है?

उत्तर- जी हाँ मैं Registered Valuer के Valuation से सहमत हूँ।

प्रश्न 27 कृपया बताये की उपरोक्त ज्वेलरी जिसमे सोने व Diamond ज्वेलरी का gross वजन 8467 1100 ग्राम और NET Weight 5763 1784 ग्राम तथा मूल्य 2,12,95,087 /- के तथा चांदी की Bars व Jewellery व बर्तन आदि का gross weight 09.404 KG व NET Light 8.803 KG तथा मूल्य रूपये 3,65,324 /- है। इस Jewellery की खरीद का स्रोत बताइये ?

उत्तर- उपरोक्त Jewellery में से 3 सोने के बिस्किट 100-100 ग्राम मेरे तीन Uncle श्री गोविन्द माहेश्वरी, श्री नवीन माहेश्वरी व श्री ब्रजेश माहेश्वरी ने मेरी शादी में कन्यादान में उपहार स्वरूप दिए थे। इसके अलावा एक 50 ग्राम सोने का बिस्किट मेरे Uncle श्री गोविन्द माहेश्वरी ने अपनी पुत्री समीक्षा की शादी में मुझे उपहार में दिया था। इन सभी से संबंधित बिल में आपके समक्ष प्रस्तुत कर रही हूँ। इसके अतिरिक्त समस्त ज्वेलरी मेरे पिता जी द्वारा मेरी शादी एवं अन्य अवसरों पर उपहार स्वरूप दी गई है जिनमे कुछ ज्वेलरी मेरे कुछ अन्य रिश्तेदारों द्वारा मेरी शादी के अवसर पर उपहार स्वरूप दी गई है वह भी शामिल है। लग भग सभी ज्वेलरी के बिल में आपके सामने प्रस्तुत कर रही हूँ।

प्रश्न 28 उपरोक्त ज्वेलरी के सम्बन्ध में आपके द्वारा जो बिल दिए गए हैं उनमे से Exhibit JF-1 के Serial No. 1, 2, 10, 11, 12, 13, 14, 15, 30, 32, 33, 34, 35, 36, 39, 41, 42 और Exhibit JF-3 के Serial No. 5 और 10 से सम्बंधित बिल आपने प्रस्तुत नहीं किये हैं। इस सम्बन्ध में आपका क्या इस्पष्टीकरण है?

उत्तर- जैसा मेने आपको पहले बताया की इसमें कुछ Jewellery Items मुझे अन्य रिश्तेदारों से उपहार स्वरूप प्राप्त हुए थे जिनके बिल मेरे पास नहीं है, इसके आतिरिक्त कुछ Jewellery मेरी माता जी की है जिनके बिल उन्ही के पास है। इसके अलावा कुछ बिल में आपके Exhibit में दिए गए वजन और Item की संख्या से मीलान नहीं कर पा रहे है। जो भी बिल मुझे मिल जायेंगे, उन्हें मैं बाद में आपके सामने प्रस्तुत कर दूंगी।

Further Your Honour as you can see the Family Background of the assessee. She is a housewife and does not own some Manufacturing or Processing Unit or any other business. Further her husband is employed in Allen Career Institute as faculty and getting Salary for his Services so from where the assessee is supposed to generate unaccountable cash to purchase jewellery hence its clearly established that either jewellery is purchased from Cheque Payment or gifted to the assessee. Hence clearly the seized jewellery should not be framed as assessee income for making null and void addition.

Also out of the details submitted for Jewellery we submit that jewellery purchased out of cash Gifts Rs. 433614 (139.748 GMS) is the addition of Cash gifts received on marriage these gifts were received in F.Y. 2014-15 (A.Y. 2015-16) in this year the Ld. A.O. made addition of cash gifts Rs. 512728.00 and on this 512728.00 we have declared in Vivad se Vishwas scheme & paid tax, thus the cash gifts from the Jewellery purchased have already been taxed and the assessee has paid the tax thus the overall tally will be as under .

That we are enclosing here with the relevant pages of Assessment order for the A.Y. 2015-16 and also the paper of V to V & taxes paid in A.Y. 2015-16 in relation to Cash declared as received in gifts on various occasion during F.Y. 2014-15 (Enclosed on Page No. 14 - 24 of Paper Book).

Also we have enclosed earlier and now again the Affidavit of Kamal Toshniwal (Mamaji) to further substantiate the claim of jewellery received in gift and the same was not disputed by the Ld. A.O. the same is enclosed on Page No. 13 of Paper Book.

In view of all the above submissions it is submitted that the entire Jewellery is duly explained and hence there is no question to treat the said Jewellery as unexplained and have wrongly been added by the Ld. A.O. and sustained by Ld CIT(A) in her income which is requested to Your Honour that addition kindly be deleted.

Ground No. 2

That the Ld. A.O. grossly erred on law in charging tax u/s. 115BBE on the Jewellery added in income which is not from undisclosed sources. The Ld. A.O. charged tax @60/- and the surcharge on tax @ 25% which is wrong. And the Ld. CIT(A) have not considered the ground & erred in sustaining the addition.

Submission

Without Prejudice to our submission on ground No. 1 that the Ld. A.O. wrongly treated the Jewellery & Gifts received on Marriage anniversary, birthday and other occasions as income of the assessee, the Gifts were received from the relatives of the assessee hence it is not taxable in view of sec. 56(1)(vii) of I.T. Act. 1961.

Thus, though the Gifts are not taxable as per section 56(1) (vii) of I.T. Act 1961 but even not treating the Gifts from relative then it can be made taxable u/s 56(1)(vii) of I.T. Act, it can Nowhere be termed as undisclosed income falling u/s 68, 69, 69A, 69C, 69D of I.T. Act 1961., since the donors are identifiable.

Hence it can be tax under normal provision of I.T. Act 1961, and since the income is out of scope of sec 115BBE, the tax is to be charged at Normal rates.

Further we also submit that the Gifts are the capital receipt not liable to tax, any therefore treating it as income and charging of Tax u/s 115BBE is totally wrong.’’

2.4 On the other hand, the ld DR strongly relied upon the order of the ld. CIT(A).

2.5 We have heard both the parties and perused the materials available on record. In this case, it is noted that the appellant Sakshi Maheshwari is an

individual who derives income from other sources. She was partner of firm M/s Radha Residency which runs hostel business. A search & seizure operation under section 132(1) of the Income-tax Act, 1961 was carried out on 02.02.2017 at the various premises of Allen Career Institute Group, Kota to which the assessee belongs. The case of the assessee was also covered under search proceeding. The search action was carried out on the assessee on 02.02.2017 at her residence A-666 D. Indra Vihar, Kota and 203-B. Friends Paradise, Indira Vihar, Kota and various lockers were also searched. Consequent to search action, the case of the assessee was centralized to Central Circle-Kota by the Commissioner of Income-tax, Kota vide his order No:- CIT/ITO(Hq.)/KTA/S. 127/16-17/3592 dated 16.02.2017. Notice u/s 143(2) of Act was issued by the AO on 26.03.2018 and 24.09.2018 manually and system generated respectively and duly served upon the appellant Notice u/s 142(1) of the Act was issued by the AO on 29.06.2018 along with questionnaire/Annexure-A requiring certain details/information, which was served upon the appellant through Income Tax Inspector. Assessment order u/s 143(3) of the Income Tax Act, 1961 was passed by the AO at assessed income of Rs. 37,84,150/- on 21.12.2018 after making addition of Rs.29,75,651/-on account of unexplained jewellery. In first appeal, the Id.CIT(A) confirmed the action of the AO. It is not imperative to repeat the facts of the case but it is also

noticed that the submissions as advanced by the ld. AR of the assessee (supra) has merit who has meticulously countered the order of the ld.CIT(A) praying that it needs to be deleted. From the submissions so advanced before this Bench, it is noticed that the ld. AR of the assessee has explicitly raised his point as to the additions so made hereinabove and we concur with the submissions of the assessee. In this view of the matter, the appeal filed by the assessee is allowed.

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

Order pronounced in the open court on 06/05/2024.

Sd/-

(डा० मीठा लाल मीना)
(Dr. Mitha Lal Meena)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06/05/2024

*Mishra

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

1. The Appellant- Sakshi Maheshwari, Kota
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle, Kota
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.584/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar