

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G' : NEW DELHI  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER  
ITA No.1730/De1/2023, A.Y.2018-19**

DCIT, Central Circle-13, New Delhi	Vs.	M/s. Suman Minda, A-15, Ashok Vihar, Phase-1, New Delhi-110052 PAN: AAJPM6342C
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Pradeep Dinodia, CA & Shri R.K.Kapoor, Advocate
Respondent by	Sh. Dharm Veer Singh, CIT-DR

Date of Hearing	03/06/2024
Date of Pronouncement	13/06/2024

**ORDER**

**PER AVDHESH KUMAR MISHRA, AM**

This Revenue's appeal challenges the order dated 21.03.2023, of the Ld. Commissioner of Income Tax (Appeals)-28, New Delhi [In short, the 'CIT(A)'] deleting the capital gains of Rs.4,33,93,990/- [Rs.3,15,45,577/- & Rs. 1,18,48,413/-] taxed in the Assessment Year [In short, the 'AY'] 2018-19 on the reasoning that the jewellery disclosed in the Wealth Tax Returns of family members & HUF are more than what inventoried during the

search and therefore, the same could not be taxed as unexplained jewellery in the hands of the respondent/assessee.

2. The relevant facts giving rise to this appeal are that the respondent/assessee Group was searched under section 132 of the Income Tax Act, 1961 [In short, the 'Act'] on 8<sup>th</sup> June, 2017. During the course of search, it was noticed by the Authorized Officers conducting search that the jewellery as per the Wealth Tax Returns of family members & HUF of the respondent/assessee Group for AY 2015-16 was more than the jewellery found during the course of search operation. Hence, no jewellery was seized. During the course of search assessment proceedings of the respondent/assessee, the Assessing Officer [In short, the 'AO'] sought explanation/justification for lesser jewellery found during the search [the difference of quantum of jewellery disclosed in the Wealth Tax Returns of family members & HUF and jewellery physically inventoried during search]. The AO was not satisfied with the explanation offered by the respondent/assessee; therefore, he inferred that the jewellery which was not found during the search (difference between the jewellery disclosed in the Wealth Tax Returns of family members & HUF and the jewellery, in aggregate, inventoried during the search) had been transferred/sold out. Therefore, he taxed the capital gains arisen on such transfer/sale of jewellery. In first appeal, the respondent/assessee succeeded. Aggrieved, the Revenue filed this appeal.

3. At the outset, the Ld. DR drew our attention to the fact that the CIT(A) had not adjudicated the grounds of appeal, the issue of taxability of capital gains, raised in the Form 35. The Ld. DR submitted that the finding of the Ld. CIT(A) was misconceived as evident from the reasoning based on which the appeal/relief was allowed/granted by him. He further contended that the AO had not taxed any unexplained investment in jewellery; therefore, the finding of the Ld. CIT(A) that there was no unexplained jewellery was uncalled for. To buttress his arguments, the Ld. DR placed emphasis on the following operative part of the impugned order (page 10-11 of the impugned appellate order) deleting the capital gains charged to tax:

*“In view of the above, the addition made by the AO of Rs.4,33,93,990/- in the hands of the appellant has been already dealt as discussed above and is covered in the assessment order and consequent appeal order in the case of Shri Nirmal Minda, AY 2018-19. From the assessment order and appeal order in the case of Shri Nirmal Minda, AY 2018-19, it is found that the jewellery found during the search is more than the jewellery declared in the wealth tax returns of the family. The Ld. CIT(A)-26 in the case of Sh. Nirmal Minda concluded that he had explained the source of jewellery found during search except the excess investment in stone/pearls of Rs. 3,31,778/- corresponding to 1250.56 cts of stones/pearls. Considering the same it is held that the jewellery found during the course of search is explained except the excess investment in stone/pearls of Rs. 3,31,778/- corresponding to 1250.56 cts of stones/pearls in the hands of family members of Sh. Nirmal Minda & others (including Smt. Suman Minda) and hence, the addition of Rs. 4,33,93,990/- made on account of unexplained jewellery in the hands of Smt. Suman Minda not found to be*

*sustainable thus deleted. Accordingly, the Ground Nos.1 to 3 of the appeal are allowed.”*

In view of the above, the Ld. DR prayed for restoring the matter back to the CIT(A)/AO for proper finding on the issue of capital gains after reconciliation of jewellery in view of the assessee's submission.

4. The Ld. AR contended that the AO, assuming various facts and figures, worked out capital gains on the alleged sale of such jewellery and taxed the same in the hands of Mr. Nirmal Kumar Minda, husband of the respondent/ assessee and the respondent/assessee for identical reasoning under section 69B of the Act. The CIT(A) allowed the relief in the case of Nirmal Kumar Minda after getting satisfied with the reconciliation of jewellery submitted before him. Further, he has argued that since the respondent/assessee had already offered capital gain tax on the sale of jewellery from AY 2013-14 onward. Therefore, the capital gains arisen on the transfer/sale of such jewellery were not liable to be taxed in the relevant year. Further, it was contended that the finding of the ITAT in the case of Nirmal Kumar Minda covers the issue of capital gains in this case as this is an identical appeal. Accordingly, Ld. AR prayed that there was no alleged unexplained or unrecorded sale of jewellery out of books of accounts, hence, the appeal filed by the revenue needed to be dismissed.

5. We have heard both the parties at length and have gone through the material available on the record. There is no dispute on the quantum of

jewellery found during the search. We found force in the arguments of the Ld. DR that the quantum of jewellery disclosed in the wealth tax returns of family members & HUF of AY 2015-16 and the quantum of jewellery found during the search as per Panchnama needed reconciliation as justification for shortage of jewellery offered before the AO and the CIT(A) were not satisfactory. The issue here is related with the shortage of jewellery. In case the same was not found during the search; the AO's inference cannot be faulted out unless the contradictory facts/ material is not brought on the record. The additions made in the case of Nirmal Kumar Minda in AY 2018-19 were unexplained investments in jewellery, etc. under section 69B of the Act whereas in the present case it is capital gains under section 45 of the Act. Thus, these two cases are held distinguishable on the facts. Therefore, we are of the considered opinion that the instant case is not covered by the decision of the coordinate bench in the case of Nirmal Kumar Minda for AY 2018-19.

6. Here, there is no dispute on the investments in jewellery, etc. The issue here is that the jewellery which were not found during the search had been treated to have been transferred/sold as the respondent/assessee failed to offer any plausible explanation. The contention of the Ld. AR that the respondent/assessee had disclosed sale of jewellery and capital gains thereon in AY 2013-14 onwards in the ITR of AY 2013-14 onwards requires verifications/ reconciliation. The effect of

sale of jewellery during AY 2013-14 to 2015-16, if any, would have been reflected in the wealth tax returns of family members & HUF of AY 2015-16. Thus, the effect of sale of jewellery and capital gains thereon, if any, disclosed in the ITR of AY 2016-17 and to 2018-19 also requires verifications/reconciliation. The jewellery as per wealth tax returns of family members & HUF of AY 2015-16, if not transferred/sold, had to exist on the date of search. The shortage of jewellery found during the search have to be properly explained by the respondent/assessee. In case the respondent/assessee Group had shown any transfer/sale of jewellery, etc. in the preceding year then the consequential effect thereof has to be given in the reconciliation of the jewellery. The respondent/assessee has to be heard on this issue.

7. In view of the above, we are of the considered opinion that the reconciliation of quantum of the jewellery requires to be done afresh at the Ld. AO level. In view thereof, without offering any comment on merit of the case we deem it fit to set aside the impugned order and remit the matter back to the file of the Ld. AO for de-novo consideration of the issue of taxability of capital gains. The respondent/assessee should ensure compliances during set-aside proceeding before the AO. The Ld. AO is also required to provide reasonable opportunities of being heard to the respondent/assessee before deciding the case on merit.

8. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in open Court on 13th June, 2024.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AVDHESH KUMAR MISHRA)**  
**ACCOUNTANT MEMBER**

Dated:13/06/2024  
*Binita, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. DCIT
4. CIT(Appeals)
5. CIT-DR

ASSISTANT REGISTRAR

ITAT, NEW DELHI