

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member,
Sh. Anubhav Sharma, Judicial Member**

ITA No. 1416/Del/2023 : Asstt. Year: 2019-20

Vivek Bali, C/o Jain & Malhotra, 117, Indraprakash Building, Barakhamba Road, Connaught Place, New Delhi	Vs	ACIT, Circle-1(1)(2), International Taxation, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAIPB6365P		

**Assessee by : Ms. Shivangi Kumar, Adv. &
Sh. Rajesh Malhotra, CA
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 04.04.2024

Date of Pronouncement: 26.06.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 24.03.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1. On the facts and in the circumstances of the case and in law, the authorities below have erred in passing the order passed under 143(3) r.w.s 144C(13) which is bad in law. The action of the authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed.

2. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming the addition on account of disallowance of Rs.34,66,946/- from the indexed cost of acquisition, claimed as a deduction by the assessee in computing Long Term Capital Gain. The action of the authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed.

3. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming the addition on account of unexplained money (jewellery) under section 69A of the Act amounting to Rs.11,83,600/- The action of the authorities below is wrong, illegal, misconceived and unjustified therefore it should be quashed."

3. Two small issues.

Disallowance from indexed cost acquisition:

4. The details are as under:

Particulars	As per Assessee	As per AO
Sale of the property Consideration	11,00,00,000	11,00,00,000
Cost of acquisition as on 01/04/2001	2,50,26,000	2,37,87,805
Cost of Improvement	2,75,800 (F.Y 2003-04)	Nil
Index Cost of Acquisition (70072800+708477)	7,07,81,277 (2,50,26,000*280/100 = 7,00,72,800 (275800*280/109) = 7,08,477	6,66,05,854 (2,37,87,805*280/100 = 6,66,05,854)
Less: Deduction u/s 54 of the Act	3,18,00,000	3,18,00,000
Capital Gain	74,18,723	1,08,85,669

5. Based on the above calculation, the AO made addition of Rs.34,66,946/- under the head 'capital gains' being the difference between Rs.1,08,85,669-Rs.74,18,723/-.

6. It was found that the difference between value adopted by the DVO and value adopted by the assessee's valuer is less than 5%.

S.No.	Particulars	Amount
1.	Valuation of property as per assessee's valuer	2,50,26,000
2.	Valuation of property as per DVO	2,37,87,805
3.	Difference (*) (2,50,26,000 - 2,37,87,805)	12,38,195
*The difference of valuation is Rs.12,38,195/- which is less than 5%		
[12,38,195/2,50,26,000*100 = 4.95%		

7. A number of judicial authorities have held that no addition is called for in cases where the difference between the departmental valuation and the valuation of the assessee in case of property is less than 5%. In the instant case, since the difference in valuation is less than 5%, we hold that no addition is called for.

Unexplained Money:

8. The Assessee in Part B of ITR filed for A.Y 2019-20 has declared jewellery and bullion amounting to Rs.15,00,000/-. Assessee vide notice u/s 142(1) of Act dated 11.05.2022 has requested to provide the following details:

"The details of movable assets furnished against jewellery/bullion amounting to Rs. 15,00,000/- You are hereby required to furnish the holding of jewellery/bullion exceeding the limit if any along with reasons thereof. You are also required to explain the source of income for investment in jewellery/bullion"

9. The assessee submitted before the Assessing Officer that,

"....we would like to submit the assessee was received jewellery from his parents, gift on his marriage and some time he buy out of his saving."

10. The Assessing Officer held that the reply of assessee was considered and not found tenable as the assessee has not provided the details called for such as sale along with the source. The assessee was show caused again vide notice dated 19.05.2022 which was as under:

"You have not provided any documentary proof/sources/invoices/gift deed to acquire gold Jewellery amounting to Rs. 15,00,000/-. You are hereby show-caused as to why the same may not be treated as unexplained money."

11. As the assessee has not furnished any details to establish the source of jewellery, the AO made addition of Rs.15,00,000/- on account of jewellery. The Id. DRP affirmed the action of the Assessing Officer disregarding the explanation given by the assessee before them (para 4.6.3 page 8 of DRP order).

12. From the record, we find that the assessee submitted before the Id. DRP, *in this regard, we again wish to submit that the mother of the assessee passed away in 1965 and father passed away in 1988. Upon the demise of the parents, the jewellery was inherited by the assessee as he was the only child with no other sibling. Further, in view of the guidelines of the CBDT Instruction No. 1916 dated 11-May-1994, possession of 700 gms. (i.e. 500 gms for the assessee's mother, 100 gms for the assessee's father and 100 gms for the assessee himself) is permissible and may be treated as explained irrespective of the availability of documents.*

The maximum value as per the prevailing rate (i.e. INR 31,640 per 10 gms.) in AY 2019-20 is Rs.22,14,800/-. However, the value of jewellery declared by the assessee is Rs.15,00,000/- which is below the threshold limit of Rs.22,14,800/- and is within the prescribed grammage limits of the CBDT Instruction No. 1916 dated 11-May-1994....."

13. Further, it was submitted that at the time of filing of return, the assessee filled up column in the ITR, in the column of statement of assets & liabilities at schedule A1. This column was filled first time by the assessee as during the year first time his total income exceeded Rs. 50 lakhs because of long term capital gain during the year. For immediately preceding two years return of income for A.Y 2018-19 & 2017-18, these columns were not required to be filled as the income was below Rs.50 Lacs. During the year, the Assessee shown jewellery in hand at Rs.15,00,000/- as on 31.03.2019 as the returned income was more than Rs.50 lacs. This jewellery in hand of assessee as on 31.03.2019 is total accumulated value of jewellery which the assessee acquired during his lifetime from his family, at the time of marriage, on various other occasions and purchase also in last 30 years or so, and considering his NRI status and his base in South Delhi and family background the estimated value accumulated at Rs.15,00,000/- is not huge amount. The Id. DR relied on the order of the Id. DRP. We find that the accumulated jewellery of Rs.15,00,000/- as shown by the assessee for the first time in return owing to the increased quantum of the returned income cannot be treated as undisclosed income as the earlier provisions do not mandate maintenance of balance sheet or declaration of the jewellery by

the individuals. The Id. DRP miserably failed to give any cogent, logical, convincing reasons for treating the jewellery as undisclosed inspite of the valid explanation given by the assessee. Hence, we hold that no addition is called for on account of jewellery.

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

Order Pronounced in the Open Court on 26/06/2024.

Sd/-

**(Anubhav Sharma)
Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 26/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR