

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1741/Del/2021
Assessment Year 2018-19

Prem Prakash Sethi A-1/54, Freedom Fighter Enclave IGNOU Road, Neb Sarai New Delhi	Vs.	ACIT, Central Circle-14 New Delhi
TAN/PAN: AQIPS3728H		
(Appellant)		(Respondent)

Applicant by:	Shri P.K. Mishra, Chartered Accountant Shri Neeraj Jain, Chartered Accountant		
Respondent by:	Shri Sanjay Pandey, CIT-DR		
Date of hearing:	13	06	2024
Date of pronouncement:	13	06	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-31, New Delhi ('CIT(A)' in short) dated 24.09.2021 arising from the assessment order dated 31.12.2019 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2018-19.

2. The grounds of appeal raised by the assessee read as under:

"1. That the learned Commissioner of Income Tax (Appeals) has erred in upholding the addition made by the assessing officer on account of unexplained jewellery u/s. 69A to the extent of Rs. 22,20,698/-.

2. That the learned Commissioner of Income Tax (Appeals) has erred in upholding the addition made by the assessing officer on account of unexplained cash u/s. 69A to the extent of Rs. 24,91,700/-."

3. When the matter was called for hearing, the Id. counsel for the assessee referred to Grounds of Appeal and submitted that the assessee is aggrieved by endorsement of two additions by the CIT(A) viz.; (i) addition on account of jewellery found in the course of search amounting to Rs.22,20,698/-.

4. With reference to the additions sustained on account of jewellery and cash under Section 69A of the Act, the Id. counsel referred to paper book running from pages 1 to 205 and pointed out that documents in support of both the grounds named above were filed for the first time before CIT(A). The AO was not privy to such documents and therefore, the additions were made by the AO in ignorance of the factual position. The documents were placed before the CIT(A) to support and corroborate the case of the assessee towards lack of justification of additions so made by the AO. The CIT(A) took cognizance of some of the documents but however refused to grant the complete relief as sought by the assessee.

4. With reference to jewellery additions made by AO, the Id. counsel submitted that jewellery found in the course of search at the residence of the assessee weighed 1903.97 gms for which the value was assigned at Rs.70,00,582/-; Jewellery weighing 1009.378 gms were seized for which the value was assigned at Rs.31,65,912/-. The Id. counsel submitted that the family of the assessee comprises of the assessee, his wife, two sons and his mother. Out of total jewellery, 1903.97 gms found in the course of search, the CIT(A) has granted relief to the extent of 1300 gms as attributable to Wife- Smt. Sharda Rani Sethi - 500 gms; Assessee-Mr. Prem Prakash Sethi - 100 gms; son-Shri Ishan Sethi - 100 gms; son-Aryan Sethi - 100 gms; Mother-Pushpa Sethi - 500 gms. The CIT(A) has thus confirmed the additions attributable to remaining 603.97 gms

amounting to Rs.22,20,698/- as unexplained jewellery in the hands of the assessee under Section 69A of the Act. In this regard, the Id. counsel submitted that the remaining additions of jewellery weighing 603.97 gms confirmed by the CIT(A) is wholly unjustified. Adverting to submissions filed before CIT(A) dated 03.08.2021 placed in the paper book, the Id. counsel pointed out that it was submitted before the CIT(A) that the remaining jewellery 603.97 gms also includes jewellery belonging to the married daughter of the assessee which is kept in the custody of the assessee as per the ordinary Indian customs safety purposes. The benefit of 500 gms is thus straightway available to the assessee in terms of CBDT Instruction No.1916 dated 11.05.1995. The Id. counsel submitted that jewellery remaining unexplained by any stretch of imagination cannot stand beyond 103.97 gms. Keeping in mind the social status of the assessee and information enjoyed and also keeping in mind the amount offered for taxation year after year by the family, the remaining jewellery quantity of 103.97 gms should also be treated as explained despite the fact that there is no direct cogent evidence such as bills etc. preserved by the assessee since such jewellery are acquired in the past over a period of long time.

5. The Id. counsel thereafter referred to Wealth Tax Return filed by the assessee for the A.Y. 2001-02 annexed to the Income Tax Return for the A.Y. 2001-02 wherein jewellery of 650 gms belonging to the assessee was declared. The Id. counsel for the assessee likewise referred to wealth tax computation of wife Mrs. Sharda Rani Sethi for A.Y. 2004-05 annexed to the return income for A.Y. 2004-05 wherein jewellery of 1460 gms belonging to the wife of the assessee was declared. The Id. counsel thus submitted that it is a matter of record that jewellery aggregating to 2110 gms was available with the assessee along with his wife out of which a

part was handed over to the daughter at the time of marriage. Such jewellery, in turn, was kept back with the assessee (father) and such conduct resonates with the ordinary customs of the Indian society. The Id. counsel thus submitted that the whole of jewellery found in possession when seen along with the jewellery found relatable to daughter, is slightly lesser than the total jewellery in question. The Id. counsel thus submitted that in the light of facts and evidence of clinching nature placed before the CIT(A), complete relief ought to have been granted by the first Appellate Authority while passing order under Section 250 of the Act.

6. As regards the other grievance viz., additions on account of unexplained cash found in the course of search amounting to Rs.24,91,700/-, the Id. counsel submitted that the aforesaid cash belongs to companies wherein the assessee is associated as a director are as follows:

- (i) M/s. Delite Buildwell Pvt. Ltd. - Rs.5 lakh
- (ii) M/s. Wav Buildwell Pvt. Ltd. - Rs.5 lakh

and the cash in hand belonging to the family members, the breakup of which as under are follows;

- (i) Mr. Prem Prakash Sethi - Rs.1,53,400/-
- (ii) Smt. Sharda Rani Sethi (wife) – Rs.3,33,176/-
- (iii) Shri Ishan Sethi (son) – Rs. 3,00,776/-
- (iv) M/s. Prem Sethi (HUF) – Rs.2,57,051/-.
- (v) Various Gifts - Rs.7,35,000/-.

7. The Id. counsel submitted that these cash are relatable to the cash books of the respective parties. These facts were placed before the CIT(A). However, CIT(A) overlooked such explanation and confirmed the additions. The Id. counsel accordingly submitted that

suitable relief should be given to the assessee.

8. The Id. DR for the Revenue, on the other hand, strongly supported the first appellate order and submitted the explanation offered by the assessee are vague and without corroborations. Adverting to additions of jewellery, the Id. DR for the Revenue submits that maximum possible relief has been given to the CIT(A) in terms of benevolent CBDT Instruction. However, it is farfetched to say that jewellery of married daughter is kept with the assessee, such explanation is difficult to appreciate. The CIT(A) has rightly thus denied relief on this count. The Id. DR thus relied upon observations and findings of the First Appellate Authority. Adverting to unexplained cash contested on behalf of the assessee, the Id. DR pointed out that the CIT(A) has applied his mind to the factual matrix and declined to entertain the farfetched plea of the assessee that said cash in hand belonging to the company and other family members is sourced out of cash available with the companies and other family members.

9. We have carefully considered the rival submissions and perused the case records. The relevant pages of the paper book adverted to in the course of hearing has been taken into account in terms of Rule 18(6) of the ITAT Rules, 1963.

10. As regards additions on account of unexplained jewellery, it is the case of the assessee that the additions are not justified on two counts. (i) the jewellery to the tune of 2110 gms has been duly declared in aggregate in the respective Wealth Tax return of the assessee and his wife. The jewellery declared in the Wealth Tax Return override the jewellery found in the course of search of 1903.97 gms and therefore, the jewellery found is broadly explained by direct and circumstantial evidences, (ii) credit of jewellery of

belonging to married daughter to the extent of 500 gms in any case, is available to the assessee in terms of CBDT Instruction. It is common knowledge that a married daughter do at times, keep her jewellery and other belongings at the maternal place to safeguard and protect her interest. It is thus the case of the assessee that the entire jewellery is explained. On being inquired by the bench, the ld. counsel for the assessee fairly submitted that once the credit for jewellery relatable to married daughter namely, Priya Sethi is given in terms of CBDT Instruction to the extent of 500 gms, the grievance of the assessee would be broadly redressed and therefore, urged for granting relief to the extent of 500 gms without any riders. In respect of remaining 103.97 gms, in order to avoid the protracted allegation, the ld. counsel under the circumstances has given the concession to treat the 103.97 gms as unexplained jewellery. The ld. counsel further hastens to add that no adverse inference however shown drawn for 103.97 gms in penalty proceedings etc. Such concession is being given to bring an end to ongoing litigation.

11. We find traction in the aforesaid plea raised on behalf of the assessee. We are convinced with the assertions raised on behalf of the assessee that jewellery are, at times, kept by the married daughters with the maternal family. There is no warrant to deny credit of 500 gms on account of married daughter in terms of CBDT Instruction No. 1916 dated 11th May, 1994. The assessee thus gets the relief to the extent of 500 gms as against aggregate 603.97 gms for which the additions were sustained before the CIT(A).

12. In the result, Ground No.1 of the appeal of the assessee is allowed in part.

13. Ground No.2 concerns additions on account of unexplained cash to the extent of 24,91,700/-. The assessee has tried to explain

the source of such cash as relatable to companies in which the assessee is a Director and out of the cash in hand generated by the family towards as noted in the preceding paragraphs. On being inquired, the Id. counsel fairly submitted that the paper book giving evidence in relation to source of cash was never confronted to the AO and no remand report was obtained either.

14. Keeping in mind, the salutary principles of natural justice on which Rule 46A of the Income Tax Rules is founded upon, we consider it expedient to restore the matter to the file of the AO rather than the CIT(A) for examination of such facts afresh as may be placed on behalf of the assessee. The assessee shall be at liberty to adduce such evidences as may be considered expedient in corroboration of source of cash in question and may make such submissions as may be advised. Needless to say, reasonable opportunity shall be given by the AO to the assessee to justify its case. The AO shall take into account all evidences as may be placed and pass speaking order in this regard.

14. In view of the delineations made above, Ground No.2 of the appeal of the assessee is allowed for statistical purposes.

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

Order was dictated and pronounced in the open Court on 13th June, 2024.

Sd/-

**[SUDHIR KUMAR]
JUDICIAL MEMBER**

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: June, 2024
Prabhat