IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 1418/Bang/2024
Assessment Year: 2020-21

Shri Avinash Aradhya, No.26/9, Glenmore, Sankey Road, Abshot Layout, Bengaluru-560 001. **PAN – ACXPA 9531 F**	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Siddesh Nagaraj Gaddi, CA
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	03.09.2024
Date of Pronouncement	:	19.09.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 31/05/2024 in DIN No. ITBA/APL/M/250/ 2024-25/106531484(1) for the assessment year 2020-21.

2. The 1st issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for ₹ 99.95 lakhs on account of unexplained money under section 69A of the act.

3. The necessary facts are that there was a search and survey operation in the case of M/s Gemini Professional Services Private Limited. At the time of search proceedings, the assessee was present at the premises of M/s Gemini Professional Services Private Limited and the assessee was found with a bag containing cash of ₹ 99.95 lacs. The assessee claimed to be the owner of such cash found during the survey and search proceedings at the premises of said party. The assessee during the assessment proceedings explained the source of cash by stating that there was continuous cash withdrawal from the bank account of the assessee since the last many years which has been kept to meets unforeseen and other financial obligations along with the statutory dues. The assessee in support of his contention has filed a copy of the cash book right from 1st April 2012 to 31 March 2019.

4. However, the AO during the assessment proceedings noticed certain facts as narrated below:

a. The assessee was not maintaining regular books of accounts. The cash book has been prepared only after the search to explain the source of cash found in his possession. Accordingly, the veracity of the cash book submitted by the assessee cannot be verified.
b. There was a contradictory stand of the assessee in as much as the assessee on one hand was keeping the cash in hand to meet unforeseen circumstances but on the other hand the assessee is also depositing the same in the bank account.
c. The cash balance available with the assessee prior to the demonetization must have been deposited in the bank during the demonetization period, meaning thereby, there should not have been any cash available with the assessee after demonetization.

.

As such, the withdrawal of cash after the demonetization period stands only at ₹ 13 lakhs only which does not justify the cash in hand of ₹ 99.95 lakhs on the date of search i.e. 15-04-2019 which is almost two and half years after demonetization period.

5. In view of the above, the AO did not accept the contention of the assessee by holding that the cash found from him of ₹ 99.95 lakhs represents the unexplained money under section 69A of the Act.

6. The assessee preferred an appeal to the learned CIT(A). The assessee before the learned CIT(A) submitted that there were financial problems in his group companies and therefore he was retaining the cash in hand to meet the financial obligations in his individual capacity as well as on behalf of the associated enterprises/ companies. The assessee in support of his contention has also filed additional evidence in the form of NCLT order and Debt Recovery Tribunal order.

6. The learned CIT(A) called for the remand report from the AO who submitted that the order of the NCLT or the order of debt recovery tribunal does not explain the source of cash in the hands of the assessee. Furthermore, there is no valid reason furnished by the assessee for withdrawing the cash from the bank and that too for meeting the liability of the statutory dues and financial obligations which could have been done conveniently through the banking channel alone.

7. The learned CIT(A) after considering the submission of the assessee, assessment order and the remand report held that the amount of cash found from assessee during search/ survey operation represents

.

the unexplained money and, therefore, he confirmed the order of the AO by observing as under:

"7.2 The submissions of the Appellant along with the additional evidence have been considered. However, on perusal of the cashbook, it is noted that the activity of cash withdrawal/deposit has not been undertaken to a greater extent after demonetisation, except for 4 to 5 transactions averaging Rs 3 lakhs, which would be utilised for personal expenses. The claim, that the cash withdrawn predemonisation has been held for such an extended period, is not believable.

7.3, The AO has, in his order u/s 143(3) for AY 2017-18, allowed relief of cash that was withdrawn two months prior to demonetisation. Given the same, the Appellant is not justified in seeking the benefit of cash withdrawn prior to 31 March 2016. Applying the theory of human probability, no individual will keep a substantial amount of cash for several years. The submission that the cash drawn prior to 3 years of the search, is the same cash that was found during the course of the search on 15 April 2019, is not acceptable, as the same has not been justified by the appellant and thus the explanation offered by the appellant is unsatisfactory. As per section 69A, if the explanation of the nature and source of cash is not found satisfactory, the same can be considered as unexplained and the AO is justified in making the addition under the said section.

7.4 Further, after demonetisation, the Appellant was bound to deposit demonetised currency. It is unimaginable how the Appellant held cash to the tune of 2,64,13,027/- (claimed to be the opening cash balance as per the cash book) in non-demonetised currency. The highest denomination of non-demonetised currency/valid currency was 100 rupee note and the circulation of the newly introduced Rs.2000 currency was limited. Given the same, the Appellant could not have held cash to the extent as claimed by him post-demonetisation. The same also casts doubt on the cashbook that has been relied upon by the Assessee extensively.

7.5 Therefore, the grounds of appeal no 5 to 8 regarding the addition made u/s 69A are liable to be dismissed. The Appellant's additional ground on peak credit is also dismissed as there remains no cash balance or a very meagre cash balance after demonetization. Since the cash balance as on 31.03.2017 continues to be held and claimed as the opening cash balance as of 31.03.2019 and considering the above conclusion, on the impossibility of holding cash to this extent and for such a long period, the (additional) ground with regard to peak credit is also dismissed.

7.6 The explanation offered by the appellant with respect to the source of the cash found is not acceptable and the order of the AO to this extent is upheld.

Accordingly, grounds 5 to 8, including the additional ground on peak credit, are hereby dismissed."

8. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

.

9. The learned AR before us filed a paper book running from pages 1 to 167 and case law compilation having 1 to 26 pages and contended that there was cash available with the assessee which was withdrawn prior to the demonetization period from the bank. The ld. AR in support of his contention has drawn our attention to the cashbook, bank statement which are placed on pages 63 to 102 of the paper book. According to the learned AR, there was sufficient cash available with the assessee and therefore the impugned amount of cash of ₹ 99.95 lakhs cannot be treated as unexplained money of the assessee. The learned AR also justified the reasons for holding such cash in hand by stating that the proceedings were going on before the Debt Recovery Tribunal. Furthermore, in the case of group company the NCLT order was also passed. The learned AR also filed the sworn statement in support of his contention placed on pages 121 to 130 of the paper book.

10. On the other hand, the learned DR before us contended that the amount of cash available with the assessee before the demonetization must have been deposited in the bank as the specified bank notes were no more legal tender. Likewise, the amount withdrawn by the assessee post demonetization was only ₹ 13 lakhs which cannot justify the source of cash found from the custody of the assessee. The learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the cash found in the custody of the assessee amounting to Rs. 99.95 lakhs was treated as unexplained money under section 69A of the Act by the

.

revenue authorities. The assessee before the authorities below explained that there was cash withdrawal from the bank in the earlier years which the assessee retained with himself as cash in hand for meeting the requirement of unforeseen liabilities. The assessee to justify the cash in hand has furnished the cash book right from 1st April 2012 till 31st March 2019. On perusal of the cash book, it is noted that cash withdrawal from the bank mainly relates from April 2015 till October 2016. As such the assessee has shown cash in hand as on 1 November 2016 amounting to ₹ 5,13,23,027/- only. The assessee out of such cash has deposited a sum of ₹ 2,49,88,000/-in the bank during the demonetization period i.e. 9th November 2016 to 31st December 2016. According to the learned AR of the assessee, the remaining amount of cash of ₹ 2,63,35,027/-(₹ 5,13,23,027 minus ₹ 2,49,88,000/-) was lying with the assessee and cash which was recovered from his custody at the time of search dated 15th April 2019 was out of such remaining cash ₹ 2,63,35,027/- only.

11.1 Now the 1st controversy arises, whether the assessee was in possession of cash as on 1st November 2016 amounting to ₹ 5.13 crores. Regarding this, we note that there was the assessment framed under section 143(3) of the Act dated 16-12-2019 for the AY 2017-18 where the addition for Rs. 2.06 crore was made from Rs. 2.4988 crore deposited during the demonetization period by treating the same from unexplained sources. As such, the AO did not accept the cash in hand out of withdrawal from bank made before September 2016. On appeal, before the learned CIT(A), the assessment framed under section 143(3) of the Act was held as not maintainable vide order dated 16-12-2019. It was also submitted by the learned AR that the order of the learned

.

CIT(A) has reached the finality, meaning thereby, the order of the ld. CIT(A) was not challenged before the higher forum.

11.2 At this juncture, it is also important to note that the proceedings for the same assessment year 2017-18 were also initiated under section 153A of the Act wherein no addition was made with respect to the cash deposited during the demonetization period.

11.3 It is also equally important to note that the revenue has not brought anything on record suggesting that there was no withdrawal from the bank during the period beginning from April 2015 till 31 March 2016 or 31 October 2016 at the case may be.

11.4 Upon a conjoined reading of the above facts, it is revealed that the cash in hand shown by the assessee as on 1st April 2015 to 1st November 2016 was accepted by the revenue to the tune of ₹ 5.13 crores. Admittedly, the cash of Rs. 2.49 crore only was deposited in the bank during the demonetization and therefore, the balance amount of 2.63 was available with the assessee as cash in hand.

11.5 A question also arises whether there can be cash available to the assessee after reducing the amount deposited during the demonetization period i.e. Rs. 2.63 cores. In this regard, a doubt certainly arises that the assessee must have deposited the entire amount of cash available with him before the demonetization period during the demonetization period. Thus, once the cash has been deposited in the bank in entirety, how is it possible to have the cash to the tune of 2.63 crore with the assessee after demonetization period particularly in a situation when the

.

withdrawal after demonetization till date of search from the bank stands only at Rs. 13 lakhs. The suspicion is certainly valid in the given facts and circumstances. But the suspicion cannot be a basis of making the addition in the hands of the assessee. There can be a possibility, though very remote, that the assessee was in possession of the currency which was the legal tender i.e. currency of Rs. 100, 50, 20 and 10. In holding so, we find necessary to refer the judgement of Allahabad High Court in the case of Gur Prasad Haridas vs. CIT reported in 47 ITR 634 wherein it was observed as under:

> *It has been case of this in Kanpur Co. Ltd. a matter. Prior to 12-1-1946, high denomination notes were legal tender. Accordingly, prior to that date it was no part of the duty of an assessee to keep particulars of any high denomination notes that he might have received. It was only as a result of the Ordinance that the assessee was required by the income-tax authorities to furnish an explanation as to the nature and source of receipt of high denomination notes. In those circumstances* prima facie *the value represented by the high denomination notes which might be in the possession of an assessee was presumed to be a part of his cash balance. If the department wanted to treat the value of high denomination notes as the concealed income of the assessee from some undisclosed source then it was for the department to establish that fact. It was obvious that the fact could be established only on the basis of material which might be in the possession of the department. The Tribunal did not outright reject the explanation furnished by the assessee nor did they, in so many words, find that the explanation offered by the assessee was false. On the other hand they accepted the case of the assessee at least with regard to four notes and further the fact that they made their own estimate of the cash balance of the assessee containing, some proportion of high denomination notes; showed that the Tribunal themselves considered that it was possible for the assessee to receive high denomination notes during the course of his business. Having proceeded thus far, the Tribunal committed an error in not accepting the assessee's explanation in* toto *in regard to all the twenty-one high denomination notes. Even in transactions of less than Rs. 1000, there was always the possibility of a receipt of high denomination notes and this possibility could not be ruled out because the burden of proof in a matter like this was upon the department. Unless the possibility of the receipt of high denomination notes in transactions of less than Rs. 1,000 was completely ruled out, it could not be said that the* mere fact that, there were no sale transactions of Rs. 1,000 or over, would not exclude that possibility and the burden upon the department would remain undischarged. The other error which the Tribunal made was in mooting the possibility of a cash balance, containing a certain proportion of high denomination notes. There was no basis for this supposed proportion. It was possible that even in a cash balance of a very large amount there may be no high denomination notes at all. Equally it*

.

was possible that even , in a cash balance of a small amount almost the entire cash balance may be made up only of high denomination notes. When both the possibilities were there, it could not be said that in taking the existence or non-existence of high denomination notes in a certain cash balance in a certain proportion the Tribunal could hold that the burden which rested upon the department stood discharged. It followed that it could not be said that in the circumstances of the case that the Tribunal had there it before it material for holding that the assessee could not have in possession any of the remaining thirteen high denomination notes also and that those or any of them represented the income of the assessee from some undisclosed source.

11.6 From the above verdict, we hold that the revenue cannot question the denomination of the currency which the assessee claimed to have had with himself before or after demonetization period.

11.7 It is also necessary to deal with another aspect that while no prudent person keeps such amount of cash in hand. In this regard, we note that the assessee has explained to hold such a huge amount of cash by stating that that his group was the defaulter of the bank and therefore he was under the fear that if the money remains deposited with the bank then the bank will withdraw such money whereas the assessee was required to keep the money so as to meet the necessary statutory compliance and for making payment to other parties by redepositing. In support of the arguments, the learned AR has drawn our attention to the order of NCLT passed in case of Aradhya Steel Pvt Ltd and proceeding before Debt Recovery Tribunal which are placed on pages 107 to 120 of the paper book. Thus, the contention of the learned AR for keeping the cash in hand by the assessee cannot be brushed aside. In view of the above facts, we are of the view that there was the cash available with the assessee from the disclosed sources i.e. withdrawal from bank as discussed above and therefore the cash in dispute cannot be treated as unexplained money under section 69A of the Act. Hence, the ground of appeal of the assessee is hereby allowed.

.

12. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 44,77,752/- under section 69A of the Act on account of gold jewelry found during search.

13. During the search, gold weighing 5213.78 grams was found from the bank lockers held by the assessee and his family member, out of which gold weighing 1511.65 grams was seized by the search team.

14. The assessee during the assessment proceeding submitted that the gold Jewelry represent stree dhan of his wife and mother. As such, he has been married for more than 15 years and his wife holds jewelry received at the time of marriage and acquired/received as gift over the period on different occasion and festivals. Furthermore, the assessee claimed having already disclosed a substantial amount of jewelry by him and his wife in the return of income.

15. The assessee also submitted that as per CBDT instruction No. 1916 dated 11th May 1994 credit of gold jewelry of 100 grams per male member, 250 grams per unmarried female member and 500 gram per married female member in family should be granted. As per the assessee, his family comprises wife, mother, unmarried daughter, his father, and himself. Accordingly, as per the said circular gold to the tune of 1450 gram should not be held unexplained out of 1511.65 gram seized during the search. After providing the benefit of circular only 75.65 remains only which is of insignificant value. Therefore, such a small amount of gold should be considered as from genuine source considering the family status, rituals, or customs.

.

16. However, the AO did not accept the explanation of the assessee with respect to the gold jewelry of 1511.65 grams. The AO found that at the time of search, various members of the family made a claim over the jewelry found during the course of search but the gold to the extent of 1511.65 was not explained at the time search. Therefore, the same was seized. Likewise, the assessee has also failed to explain the source of impugned gold found during the assessment proceedings. The AO also refused to provide the benefit as per CBDT instruction. Thus, the AO worked out the value of the unexplained gold at Rs. 44,77,752/- (1511.65 x 3000) and added the same to the total income of the assessee.

17. Aggrieved assessee preferred an appeal before the learned CIT(A).

18. The assessee before learned CIT(A) besides reiterating the submission made during assessment proceedings, further submitted the statement of assets and liability of his mother wherein substantial gold Jewelry has been disclosed.

19. The learned CIT(A) after considering the submission of the assessee and assessment order and remand report confirmed the addition made by observing as under:

> *"8.3 The Appellant had moved an application for admission for additional evidence to admit the statement of assets and liabilities prepared in the case of the Appellant's mother. With respect to the admission of the additional evidence, the same is liable to be rejected as the submissions appear to be an afterthought for the following reasons:*
> ** The appellant has admitted that the gold to the extent of 1511.65 grams is unexplained via statements recorded during search;*

.

• The above admission has not been retracted within reasonable period;
• The Appellant has not explained why the above submissions/claims were not made during the course of assessment proceedings.
8.4 Given the above, the application for additional evidence on this issue, is not admitted.
8.5 With respect to the benefit claimed under CBDT circular 1916, the submission of the Appellant vide statements recorded during the search casts shadow/doubt on the relevance of the Circular to the facts in the present case. After having admitted that the gold to the extent of 1511.65 grains is undisclosed, and considering that there has been no retraction of that statement to date, it is absurd to take shelter under the Circular 1916.
8.6 The issue regarding unexplained investment in gold has been analysed in detail by the AO during the assessment proceedings. The AO has already provided the benefit of the Circular 1916 against the entire quantity of 5213.78 grams, which was found during the search. It is only the difference (1511.65) that is treated as unexplained, as the source of the same has not been adequately explained during the assessment proceedings. Since the entire quantity is not considered unexplained by the AO, the benefit of the circular has already been given, and there is no question of granting the relief once again. It is accepted fact that double disallowance is not permissible, following the same principle, double benefit of the same circular is also not possible.
8.7 The applicability of the Circular, though limited to seizures during the search operations, cannot be used to avail the benefit by treating this as a basic exemption limit, as sought to be done by the Appellant in the present case. The above interpretation and intention of the circular is fortified by the press release dated 01.12.2016 wherein it has been noted as under:
SECTION 132 OF THE INCOME-TAX ACT, 1961 - SEARCH & SEIZURE - GENERAL - CLARIFICATIONS ON RUMOURS OF TAXABILITY OF ALL GOLD JEWELLERY INCLUDING ANCESTRAL JEWELLERY AFTER PASSING OF TAXATION LAWS (SECOND AMENDMENT) BILL, 2016 BYLOKSABHA PRESS RELEASE, DATED 1-12-2016
In the wake of Taxation Laws (Second Amendment) Bill, 2016 which has been passed by Lok Sabha and is under consideration with Rajya Sabha, some rumours have been making rounds that all gold jewellery including ancestral jewellery shall be taxed ,(a,,75% plus cess with a further liability of 10% of tax payable.

2. It is hereby clarified that the above Bill has not introduced any new provision regarding chargeability of tax on jewellery. The Bill only seeks to enhance the applicable tax rate under section 115BBE of the Income-tax Act, 1961 (the Act) from existing 30% to 60% plus surcharge of 25% and cess thereon. This section only provides rate of tax to be charged in case of unexplained investment in assets. The chargeability of these assets as income is governed by the provisions of section 69, 69A & 69B which are part of the Act since 1960s. The Bill does not seek to amend the provisions of these sections. Tax rate under section 115BBE is proposed to be increased only for unexplained income as there were reports that the tax evaders are trying to include their undisclosed income in the return of income as business income or income from other sources. The provisions of section 115BBE apply mainly in those cases where assets or cash etc. are sought to be declared as 'unexplained cash or asset' or where it is hidden as unsubstantiated business income, and the Assessing Officer detects it as such.

.

3. It is clarified that the jewellery/gold purchased out of disclosed income or out of exempted income like agricultural income or out of reasonable household savings or legally inherited which has been acquired out of explained sourcesis neither chargeable to tax under the existing provisions nor under the proposed amended provisions. In this connection, a reference to instruction No.1916 is also invited which provides that during the search operations, no seizure of 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 shall be made. Further, legitimate holding of jewellery upto any extent is fully protected.

4. In view of the above, the apprehension sought to be created that the jewellery with the household which is acquired out of disclosed sources or exempted income shall become taxable under the proposed amendment is totally unfounded and baseless.

8.8 Thus, the above Press Release clarifies that the Circular is only dealing with a seizure during the search operations and does not provide a blanket relief without any regard to the background of the assessee and an explanation on the nature and source of investment.

8.9 It is evident from the order of the AO that during the search and post-search proceedings, the Appellant admitted that the source of excess stock of gold valued at Rs. 44,77,752/-, was the unaccounted for and offered the same as unexplained investment. Therefore, the submissions as well as the grounds of the Appellant is addition are liable to be rejected by dismissing grounds 9 to 14."

20. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

21. The learned AR before us contended that the assessee along with his family members have been showing substantial amount of income which is sufficient to justify the source of investment in the gold. Furthermore, the ld. AR submitted that the benefit of CBDT instruction No. 1916 dated 11-05-1994 has not been provided by the revenue. According to the ld. AR, the difference of the unexplained gold as alleged by the revenue becomes miniscule once the benefit of instruction issued by the CBDT is granted to the assessee. The ld. AR also submitted that the mother of the assessee has disclosed gold under VDIS scheme 1997 which is sufficient to justify the source of gold discussed above.

.

22. On the other hand, the learned DR before us submitted that the assessee failed to explain the source of investment in the gold and therefore the same has to be treated as unexplained money of the assessee. The ld. DR vehemently supported the order of the authorities below.

23. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the dispute involved in the appeal before us has already been explained/detailed in the preceding paragraph which are unambiguous. Accordingly, for the sake of brevity and convenience, we are not inclined to repeat the same. The 1st controversy arises whether the benefit of the instruction issued by the CBDT dated 11th May 1994, granting benefit of the jewelry held by the family members should be given to those family members as well who have already disclosed jewelry in their respective hands. This question has been answered by the Jaipur Tribunal in the case of Ram Prakash Mahawar vs. DCIT reported in 115 taxmann.com 241. The relevant extract of the order is reproduced as under:

> ***2.6*** *We have considered the rival submissions as well as the relevant materials available on record. The first issue is regarding the addition sustained by the ld. CIT(A) to the tune of Rs. 4,57,404/- on account of unexplained gold jewellery by rejecting the claim of the assessee being acquisition of the said jewellery by way of purchases made from time to time and also recorded in the books of account of the assessee. There is no dispute regarding the fact that jewellery to the extent 343.328 gms. represents the purchases made by the assessee from time to time which is duly supported by the purchase bills found during the search and seizure action. The said quantity of jewellery is duly recorded in the balance sheet/books of account of the assessee and his family members. Once the AO has not disputed the purchases made by the assessee of the said quantity of jewellery then the same cannot be treated as unexplained jewellery of the assessee. The AO has denied the benefit of the said quantity of jewellery on the ground that since the benefit of reasonable jewellery to the extent of 850 gms. as per CBDT Instruction No. 1916 dated 11-05-1994 is already granted, therefore, to that extent, no further benefit can be granted. It is pertinent to note that CBDT Instruction No. 1916 dated 11-05-1994 has explained in case of gold jewellery found in the possession of the*

.

assessee during the course of search and seizure action and the assessee is not able to explain the same then the quantity prescribed under the said CBDT Instruction No. 1916 in respect of married female member, unmarried female member and male member of the assessee would be treated as a reasonable holding of jewellery on account of acquisition of that much jewellery on various occasions of marriages, other social & customary occasions as prevailing in the society. Therefore, a reasonable possession of the jewellery as per the customs prevailing in the society is the basis for allowing the benefit of certain quantity of jewellery explained by the CBDT Instruction No. 1916 dated 11-05-1994 which means that the assessee need not to explain the source of jewellery found in his possession to the extent of specified quantity treated as reasonable possession by family members of the assessee. The said CBDT Instruction No. 1916 allowing the specific quantity as reasonable and need not to be explained, does not include the jewellery which is otherwise explained by proof of documents of acquisition as well as declared/recorded in the books of account of the assessee. Hence, the quantity of jewellery which is otherwise explained by the assessee by producing the purchase bills as well as recorded in the books of account of the assessee and the AO had not disputed the said explanation then the quantity which is explained otherwise by producing the purchase bills and books of account would not be treated as part of the quantity of reasonable possession as prescribed under the said CBDT Instruction No. 1916 dated 11-05-1994. Therefore, the benefit of CBDT Instruction No. 1916 dated 11-05-1994 will not take away the benefit of the explained jewellery acquired by the assessee. Accordingly, in the facts and circumstance of the case, the quantity of jewellery to the extent of 343.328 gms. has to be allowed separately as explained jewellery and no addition can be made to that extent.

23.1 In the light of the above order of the tribunal, we hold that the assessee is entitled for the benefit of the jewelries for the other family members as well. Accordingly, the assessee is entitled for the relief of 1450 grams of gold. Now the dispute remains for the balance quantity of gold i.e. 75.65 grams. In this connection, we note that the entire family members of the assessee have been paying huge amounts of taxes on the income disclosed by them in different assessment years. The income disclosed by the family members of the assessee in different assessment years have been summarized in submission made by assessee before the learned CIT(A). As per such detail the assessee for A.Y. 2012-13 to 2021-22 has disclosed income averaging more than Rs. 20 Lacs each year. Thus, considering the amount of income declared by the family

.

members of the assessee and the family status, we are inclined to hold that there was no gold available with the assessee which can be termed as from unexplained source of income. Accordingly, in our considered view no addition is warranted in the given facts and circumstances.

23.2 Before parting it is also important to note that the learned CIT(A) in para 8.6 of his order has given finding that the AO has already allowed the benefit of circular 1916 as discussed in preceding paragraphs. In this regard, we perused the assessment order, and find that the AO has nowhere extended the benefit of said circular. The relevant finding of the AO is extracted as under:

> *"5.7 The submissions of the assessee have been perused. However, it is pertinent to mention that entire jewellery- as inventoried during the course of search was not seized. Out of 5213.78 gms of gold which was found and inventoried, only gold to extend of 1511.65 gms which could not be explained by the assessee was seized. Factoring in the Circular 1916 of CBDT and details of disclosed assets, gold to extent of 1511.65 gms only was seized. In light of the same, the argument advanced by the assessee that benefit of circular 1916 needs to be given again to seized jewellery of 1511.65 gms which remains unexplained is untenable. In light of the above discussion, it is pertinent to mention that rationale laid down by Honorable High Courts in case of CIT vs Ratanlal Vyapari lal jain 339 ITR 351, CIT vs Satya Narain Patni 366 ITR 325 are not applicable to the facts of the case in hand."*

23.3 We also note that the finding of the learned CIT(A) is also contradictory. As such the learned CIT(A) in para 8.5 of his order held that the assessee cannot take shelter under circular 1916 issued by the CBDT. The said finding of the learned CIT(A) is extracted as under:

> *8.5 With respect to the benefit claimed under CBDT circular 1916, the submission of the Appellant vide statements recorded during the search casts shadow/doubt on the relevance of the Circular to the facts in the present case. After having admitted that the gold to the extent of 1511.65 grains is undisclosed, and considering that there has been no retraction of that statement to date, it is absurd to take shelter under the Circular 1916."*

.

23.4 On the contrary, the assessee time and again before the AO as well as before the learned CIT(A) requested to provide the benefit of the impugned circular. Thus, it is clear that the assessee was not provided with the benefit of circular 1916 issued by the CBDT in respect of gold jewellery. Hence the ground of appeal of the assessee is allowed.

24. In the result, the appeal filed by the assessee is allowed.

Order pronounced in court on 19th day of September, 2024

Sd/-	Sd/-
(GEORGE GEORGE K)	**(WASEEM AHMED)**
Vice President	Accountant Member

Bangalore,
Dated, 19th September, 2024

vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

.