

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2249/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2011-12)

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| Shri Vinod Garg,<br>C/o M/s Loya Bagri & Co.,<br>Chartered Accountants,<br>Gandhibag,<br>Nagpur - 440 002. | <b>बनाम/</b><br>v. | The Dy. Commissioner of<br>Income Tax - Central Cir<br>18 and 19,<br>Mumbai. |
| स्थायी लेखा सं./PAN : ABOPG 6195 R   |                    |  |
| (अपीलार्थी / <b>Appellant</b> )  | ..                 | (प्रत्यर्थी / <b>Respondent</b> )  |

आयकर अपील सं./I.T.A. No. 2899/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2011-12)

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| The Asstt. Commissioner of<br>Income Tax - Central Rg. 3,<br>Room No. 402, 4 <sup>th</sup> floor,<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai 400020. | <b>बनाम/</b><br>v. | Shri Vinod Ramniwas<br>Garg,<br>Above NUC Office, VCA<br>Complex,<br>R.T. Road,<br>Nagpur - 440 001. |
| स्थायी लेखा सं./PAN : ABOPG 6195 R   |                    |  |
| (अपीलार्थी / <b>Appellant</b> )  | ..                 | (प्रत्यर्थी / <b>Respondent</b> )  |

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|--------------|--------------------------|
| Assessee by  | Shri Rajesh V. Loya,     |
| Revenue by : | Shri Rahul Raman, CIT DR |
|              |                          |

सुनवाई की तारीख / **Date of Hearing** : 27-02-2017

घोषणा की तारीख / **Date of Pronouncement** : 09-03-2017

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member**

These are cross appeals filed by the assessee and the Revenue before the Income-tax Appellate Tribunal, Mumbai (Hereinafter called "the tribunal"). Since common issues are involved, these cross appeals are heard together and are disposed of by this common order for the sake of convenience and brevity. These appeals are directed against the appellate order dated 2<sup>nd</sup> February, 2015 passed by learned Commissioner of Income Tax (Appeals)- 51, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2011-12, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 28<sup>th</sup> March, 2013 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in ITA No. 2249/Mum/2015 for assessment year 2011-12 in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"(1) That the order of the Dy. Commissioner of Income Tax, Central Circle 18 & 19, Mumbai is bad in law and wrong on facts and the learned PR. Commissioner of Income Tax (OSD) further erred in law and on facts in partly confirming the action of the AO.

(2) That the learned Dy. Commissioner of Income-tax erred in law and on facts in making addition of Rs. 42,00,650/- on account of unexplained investments u/s.69B of the Income Tax Act and the learned Pr. CIT (OSD) erred in only partly allowing the appeal by holding that gold jewellery of 600 Gms. is considered as explained out of the total gold jewellery seized of Rs.42,00,650/-. On the basis of facts and circumstances of the case, the evidences furnished and considering the financial status and social standing of the assessee, the action of learned CIT in partly upholding the addition made by the AO is highly unjustified.

(3) That the learned Assessing Officer erred in law and on facts in charging interest u/s 234B and the learned Pr. CIT erred in not adjudicating the Ground. On the facts and circumstances of the case and in law, the action of the Authorities is not justified.

(4) That for any other ground with kind permission of your honour at the time of hearing of appeal.”

3. The following grounds of appeal are raised by the Revenue in ITA No. 2899/Mum/2015 for the assessment year 2011-12 in the memo of appeal filed with tribunal reads as under:-

“1. Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in granting relief of 500 grams per Hindu lady and 100 grams per Hindu male member as per Instruction No.1916 thereby ignoring the fact that jewellery to the extent of Rs.1,30,08,900/- has already been treated as explained and no addition of income was made to that extent.”

2. Whether, on the facts and circumstances of the case and in law, whether the Ld. CIT(A), was justified in granting relief of 500 grams per Hindu lady and 100 grams per Hindu male member based on instruction no.1916 without considering that the said instruction was for seizure of assets during search and does not talk about assets being considered 'explained'. ”

4. The Brief facts of the case are that there was a search & seizure operations u/s.132(1) of the 1961 Act carried out by the Dy. Director of Income Tax (Intelligence)- I, New Delhi in the case of Ispat Industries Limited and its Group Companies, Promoters & Executives on 30<sup>th</sup> November, 2010. The assessee is Executive Director (Commercial) of M/s. Ispat Industries Ltd., the flagship company of Ispat Group. The assessee was also covered under the search & seizure action u/s.132(1) of the 1961 Act on the Ispat Group. During the course of search and seizure operations u/s 132 of 1961 at the residential premises of the assessee at, 1101, Rameshwaram Apartment, Kirti K. Dhruva Marg, Prabhadevi, Mumbai and the bank locker standing in the name of the assessee, the following jewellery , cash and other valuables were seized by Revenue:-

| Sl No. | Details of premises   | Seized   |                   |        |
|--------|---|----------|-------------------|--------|
|        |   | Cash(Rs) | Jewellery (In Rs) | Others |
| 1      | Locker No. 272 State Bank of India, Shivaji Park Branch, Mumbai (Shri Vinod Garg) | -        | 42,00,655         | -      |

The assessee could not explain afore-stated jewellery valued at Rs.42,00,656/- seized from the above locker of the assessee. The assessee was asked by Revenue to explain the source of the jewellery so seized. However, the assessee could not produce any evidence as to the sources of the jewellery found in the locker. The A.O. observed that the assessee in his statement on oath dated 11<sup>th</sup> January, 2011 had admitted to this fact. The relevant questions and answers are reproduced below:-

“Q.2 : You are hereby informed that during the statement of yours recorded on oath on 18.12.2010 you were asked to submit the purchase bills of your items of jewellery found in your locker which were valued and a copy of valuation report was provided to you. In reply to Q. No. 4 which was on the above subject you had stated to give the necessary reply by 10.01.2011. You were again informed that during the search of your locker no. 272 with State Bank of India, Shivaji Park Branch, Dadar, Mumbai, jewellery were found which were valued. According to the valuation report copy of which was provided to you the details of jewellery are as follows:

1. Gold Jewellery (Item 1 to 20) - Net Weight 2962.400 gms.
2. Diamond Jewellery (Item No. D-1 to D-122) - 2556.100 gms. (348.29 carats)

Please explain and provide the necessary evidences in support of purchase of such jewellery.

Ans.: As explained before I had purchased diamonds for which payment was made by cheque from my bank account. Such

diamonds were given to few jewellers to make jewellery as per our preference. I am providing the copy of receipts of such jewellers in which they had acknowledged the receipts of such diamonds. I had worked out details which I am submitting before you.

Gold Jewellery - Item No. 1 to 20 the net weight of gold as per valuation report was 2962.400 gms. I am submitting detailed worked out of such gold jewellery supported with the bills. I am submitting bills for gold jewelleries of net weight 2240.500 gms. The difference is of 770.800 gms. about which I do not have supporting purchase bills.

Diamond Jewellery - Item No. D-1 to D-122 as per valuation report such jewellery had gold net weight 2556.100 gms. and diamond 348.29 gms. I had worked out the details which I am submitting before your goodself as Annexure-3 in which I had tried to match to the extent possible each items of jewellery with a net weight of gold and carats of diamond. As per bills I am submitting before your goodself jewellery of gold net weight 1619.144 gms. and diamond carats 245.59 are supported with bills. The balance jewellery items having gold of 936.956 gms and diamond of 102.700 gm. are not supported by any purchase bills.

Q-3: Please tell what is your explanation with regard to such jewellery items which had been identified in Annexure-4 with respect to diamond jewellery and gold items as Annexure-2 with regards to which you do not have and failed to produce necessary evidences for purchase of such jewellery in spite of sufficient time given to you?

Ans. : I got married in 1986 and myself & my late wife are Income Tax assesseees for more than two decades having sufficient returned income. I have produced jewellery bills, which was purchased from the year 2004 till date. This shows that we were habitual buyer of jewellery which were buying since 1986 for which bills have not been preserved by us as were told by our tax consultant that we are not required to preserve the bills for more than 7 years. I would further like to inform that during last 2 decades I have sufficient withdrawals and since I have very small family consisting of me, my wife and one child. There were lots of savings which used to be spent by my wife in purchasing of jewellery since my wife is no more who was victim of terror attack held at Oberoi Hotel, Mumbai on 26.11.2008, I could not trace

the purchase bills kept by my wife and could not tally few items of jewellery which was known to my wife only. I would further like to humbly inform that my wife brought some jewellery when she got married to me in 1986 but I could not identify such jewellery as it was known to her. Further, I would like to bring to your notice that jewellery which I could not tally are very small items, value of which is as low as Rs. 7,375/- (as per present market value) which obviously must have been purchased by my wife in cash. Total numbers of such items are 64.

Q-4: Please tell had you or your late wife ever filed W. T. Returns considering that the value of jewellery items as per valuation report, for which you have no purchase bills amounts to a value of Rs. 40 lakhs approximately. Please tell had you ever or late wife ever submitted any statement of affairs of yours in which you have declared such jewellery before any Govt. authority. Please tell further without prejudice to what stated above that had you or your late wife ever made any declaration of jewellery before any authority.

Ans. : We have not filed W.T. Returns but our I.T. assessment came under scrutiny wherein Assessing Officer has asked for details of movable and immovable properties wherein submission has been made. At present I do not have such evidence.

Q-5: Do you want to say anything more?

Ans. : I would sincerely and humbly like to request that during search operation by I. T. department at my house no documents have been seized showing undisclosed income except this jewellery which had also been purchased from my taxable income from income earned during last 2 decades. In view of which I earnestly request that my this jewellery should not be seized by your good office".

It was observed by the A.O. that the assessee has not filed Wealth Tax return although the assessee is having taxable wealth as per the valuation report prepared by the Government approved valuer. The assessee was asked by the AO to explain the sources of jewellery seized during the course of search and seizure operations u/s 132(1) of 1961 Act, of which the assessee had not

submitted supporting bills in respect of 770.800 gms of gold jewellery , jewellery items being gold 936.956 gms and diamond of 102.700 gms , totaling Rs. 42,00,656/- . The assessee submitted before the AO that the bills of gold and diamond jewellery purchased during the last 6-7 years were already furnished . It was submitted that for the jewellery for which bills could not be submitted was the jewellery which was bought by assessee's wife in last 22 years of married life out of her small savings as well as this includes the jewellery received by assessee's wife from her father & mother on her marriage and it also includes some jewellery received by her during her birthdays, anniversaries, birth of his son etc. . It was submitted that some of the jewellery/gold coins were received by his son on his birthday in last 21 years and some of the Jewellery were received by wife of the assessee from her mother and her mother-in-law in last 20 years for which there were no bills. The assessee submitted that they had purchased jewellery worth Rs.18 lakhs as appearing in their books of accounts as on 31<sup>st</sup> March, 2004 for which also the bills were not available. It was submitted that the present value of jewellery which was found recorded in books of accounts as on 31-03-2004 , is more than Rs. 50 lacs i.e. more than jewellery un-explained.

The A.O., however, rejected the contentions of the assessee and held that the explanation offered by the assessee was not found satisfactory in the absence of any supporting evidences and the assessee has merely given general explanation . It was held by the AO that the assessee has not filed bills for purchase of jewellery /valuation report by the valuer. It was also observed by the AO that the assessee has also not filed wealth tax return with the Revenue despite having taxable wealth , and sources for purchase of jewellery and diamond to the tune of Rs.42,00,656/- remained un-explained by the assessee as per provisions of Section 69B of the 1961 Act. The AO brought to tax the unexplained jewellery worth Rs. 42,00,656/- which was seized by Revenue during the course of search and seizure operations u/s

132(1) of 1961 Act as income of the assessee u/s 69B of 1961 Act, vide assessment order dated 28.03.2013 passed by the AO u/s 143(3) of the 1961 Act.

5. Aggrieved by the assessment order dated 28.03.2013 passed by the A.O. u/s 143(3) of 1961 Act, the assessee preferred an appeal before the ld. CIT(A) wherein the assessee submitted before learned CIT(A) that he is a married hindu individual, around 50 years of age and is a qualified Chartered Accountant and the Executive Director (Commercial) of the listed company namely Ispat Industries Limited which is the flagship company of the Ispat Group of companies. It was submitted that the assessee has been earning sufficient remuneration from the company in consideration of his directorship services provided from past more than 10 years. It was submitted that he lost his wife in November, 2008. It was submitted that the search operations were carried out at the residential premises of the assessee and also at the bank locker of the assessee on 30<sup>th</sup> November, 2010 as a part of search action on the Ispat Group of Companies and its directors, promoters . During the course of search, jewellery valued at Rs. 1,72,09,556/ - was found from locker No. 272, State Bank of India, Shivaji Nagar Branch, Dadar, Mumbai, belonging to the assessee and his late wife. The assessee was asked to explain all the items of jewellery so found. The statement of assessee was recorded on 18th December, 2010 and 11<sup>th</sup> January, 2011 but the copies of such statements and preliminary statement were not provided to the assessee. It was submitted that the assessee had produced the purchase bills of all items of jewellery, except some old items valuing at Rs. 42,00,656/ - , out of total jewellery found of Rs. 1,72,09,556/. It was submitted that proper explanation with respect to such old jewellery belonging to the assessee's late wife and the assessee was provided by him in the statement recorded on oath. The assessee further submitted that the assessee is a hindu individual, married since 1986 and both assessee and his wife have earned taxable income and

regularly filed return of income with Revenue from past more than 20 years. It was submitted that the bills of jewellery purchased in past 10 years were available with the assessee and it was only old items of jewellery acquired by the wife of the assessee since her childhood and at the time of marriage and other functions whose bills were not available with the assessee. It was submitted that the Investigation wing seized items of jewellery valuing Rs. 42,00,656/- and the remaining jewellery items were returned back to the assessee. It was submitted that during the post search assessment proceedings, the AO asked the assessee to explain the source of the jewellery items which were seized and in reply the assessee filed his reply again explaining that what he had explained to the Investigation officer while the statement was recorded. The A.O., however, held that the assessee's explanation was general in nature and not supported by bills. The details of jewellery found during the course of search in the bank locker belonging to the assessee and his deceased wife are as under:-

| Particulars  | Jewellery found (in gms) | Jewellery supported by bills (in gms) | Old jewellery whose bills are not found (in gms) |
|--|--------------------------|---------------------------------------|--|
| Gold Jewellery   | 2962.40                  | 2240.50                               | 707.80   |
| Diamond Jewellery  | 2556.10                  | 1619.14                               | 936.96   |
| Total of the above   | 5518.50                  | 3859.64                               | 1644.76  |
| Value of the above jewellery whose purchase bills were not found |                          |                                       | Rs.42,00,656/-                                   |

It was submitted by the assessee that the A.O. made addition of Rs. 42,00,656/- towards un-explained Jewellery, out of total Jewellery worth Rs. 1,72,09,556/- which was found during the course of search and seizure operations u/s 132(1) of 1961 Act from the locker of the assessee. It was submitted that the above jewellery belonged to the entire family of the assessee consisting of the assessee and his deceased wife, son and their HUF.

It was contended by the assessee that his explanations was accepted by the Revenue with respect to the recent purchases of jewellery worth Rs. 1.30 crores, since the bills were available . It was submitted that due explanation was submitted before the AO which is reproduced by the AO at page 5 /para 5.3 of the assessment order dated 28-03-2013 passed by the AO u/s 143(3) of 1961 Act. It was submitted that the assessee has prepared item wise reconciliation of all items of jewellery found and the same was submitted along with the ledger accounts during the post search investigations and also during assessment proceedings conducted by AO. It was submitted that the assessee was advised by his CA that only bills and books of accounts of past 7 years are to be preserved and no document prior to that period was needed to be preserved. Hence, the assessee was having the jewellery ledger account from 1.4.2005 onwards which were submitted during the assessment proceedings. It was submitted that the assessee along with his wife had purchased jewellery valuing Rs. 18 lacs before 31<sup>st</sup> March, 2004 which appears as opening balance in the books of account as on 31<sup>st</sup> March, 2004. It was submitted that since the said jewellery was purchased prior to 31<sup>st</sup> March, 2004, the bills of the said purchases were not kept by the assessee and the A.O. has not disputed the same. It was submitted that if gold rates are valued as per market rate on the date of search i.e. on 30.11.2010, the market value of gold jewellery so seized and added by the AO as unexplained jewellery would be much more than 42 lacs i.e. more than the addition made by the AO, hence, it was submitted that the contention of the AO that jewellery worth Rs. 42,00,656/- remains unexplained was not correct. It was further submitted that AO has given complete disregard to the well-known fact that as per the hindu customs, the parents and other relatives of the bride generously gift her precious jewellery at the time of her marriage and even after that on various occasions. Thus, the conclusion drawn by the A.O. that old jewellery which is not supported by bill is un-explained was completely erroneous which is not sustainable in law. It was submitted that

the AO accepted recently purchased jewellery by the assessee and his wife which are supported by bills. It was submitted that the AO made additions of the entire old jewellery which was acquired over years. It was submitted that if AO observations are to be accepted, then the assessee and his wife never received any jewellery during their marriage and other occasions from their parents and other relatives, which is absolutely perverse and is an incorrect finding of the AO. It was also submitted that no incriminating material was found during the course of search operations u/s 132(1) of 1961 Act to implicate the assessee of having made investment in unexplained jewellery and ornaments. It was submitted that additions have been made based on surmises and conjectures. It was submitted that details were duly furnished including jewellery of Rs. 18 lacs as per books of accounts as on 31-03-2004. The assessee contended that assessee is Executive Director(Commercial) of the flagship company of the Ispat Group, Ispat Industries Ltd. and was deriving adequate amount of remuneration from there so as to afford a suitably high standard of living and further the assessee was also earning sufficient income from the investments in the form of capital gains, dividend and interest etc. . The assessee also filed copies of computation of income and acknowledgement of returns for last six years and submitted that from these returns of income filed with Revenue, it is clear that there was sufficient tax paid income so as to enable the assessee to afford a high standard of lifestyle and frequent investments in jewellery. The assessee demonstrated that from these returns of income filed with Revenue , it is clear that the assessee and his wife had bought jewellery over a period of time and they have habit of investing in jewellery and other investments. The assessee relied upon CBDT Instruction No. 1916 dated 11-05-1994 wherein CBDT has directed not to seize jewellery upto 500 gms. per married lady and 100 gms. per male member during course of search operations u/s 132 of 1961 Act, if person is not assessed to wealth tax , is as it is considered to be self explained. It was also submitted that in the said instructions dated 11-05-1994, CBDT has

authorized the officers conducting search not to seize higher quantities of jewellery found during search operations u/s 132 of 1961 Act, keeping in view status of the family, and the custom and practices of the community to which family belongs and other circumstances of the case . The assessee prayed that the additions made u/s 69B of 1961 Act be deleted.

The ld. CIT(A) after considering the submissions of the assessee, gave part relief to the assessee by holding that the total jewellery found during the course of search operations u/s 132(1) of 1961 Act was of value Rs.1,72,09,556/- , out of which the assessee could not explain old jewellery worth Rs. 42,00,656/- while the rest of the jewellery of approx. value of Rs.1.30 crores was duly explained by the assessee by producing bills of jewellery purchased and reconciliation of items was also done by the assessee. The learned CIT(A) granted benefit of CBDT Instruction No. 1916 dated 11-05-1994 to the assessee, whereby jewellery to the tune of 500 gms. per married lady and 100 gms. per male member was considered by him to be deemed as explained , thereby a total of 600 gms. of gold jewellery was considered as explained in the hands of the assessee by learned CIT(A) towards assessee wife and the assessee, and the AO was directed by learned CIT(A) to give relief to the extent of 600 gms. of value of gold jewellery in the hands of the assessee as being explained , vide appellate order dated 02-02-2015 passed by learned CIT(A).

6. The Revenue has challenged part relief given to the assessee by learned CIT(A) to the tune of 600 gms of gold jewellery relying on CBDT instructions dated 11-05-1994 which was considered as deemed explained, while the assessee has challenged additions of Rs. 42,00,650/- made by the A.O. to the extent confirmed by ld. CIT(A). Thus, both assessee and Revenue are in appeal before the tribunal wherein cross appeals are filed before the tribunal.

7. The ld. Counsel for the assessee argued strenuously before the tribunal and reiterated the contentions made before the authorities below. The learned counsel submitted that jewellery to the tune of Rs 42,00,656/- was seized by Revenue during search operations against the assessee u/s 132 of 1961 Act. The assessee is Executive Director (Commercial) of Ispat Industries Limited. There was a search operations u/s 132 of 1961 Act against the Ispat Group of companies, their promoters and Directors conducted by Revenue on 30-11-2010. The assessee was also searched as part of the searches on Ispat Group being Executive Director(Commercial) of Ispat Industries Limited. He submitted that learned CIT(A) has given part relief of 600 gms of gold jewellery as being deemed explained relying on CBDT instructions no 1916 dated 11-05-1994, out of total jewellery of 1644.76 gms seized by Revenue for which additions were made by the AO to the tune of Rs. 42,00,656/- in the assessment order dated 28-03-2013 passed by the AO u/s. 143(3) of 1961 Act. It was submitted that assessee is in appeal before the tribunal for the additions sustained by learned CIT(A) while the Revenue is in appeal before the tribunal for the relief to the tune of 600 gms of gold jewellery granted by learned CIT(A). It was submitted that jewellery valuing Rs 1,72,09,556/- was found during searches u/s 132(1) of 1961 Act from the possession of the assessee , out of which jewellery to the tune of Rs. 42,00,656/- was seized by Revenue. It was submitted that invoices for jewellery which were purchased within last 7 years preceding the date of search on 30-11-2010 , to the tune of Rs. 1.30 crores were produced by the assessee before authorities below which were accepted by the AO. It was submitted that the assessee was advised by his CA that only bills and books of accounts of past 7 years are to be preserved and no document prior to that period was needed to be preserved, hence, the assessee kept purchase bills for 7 years only .The dispute arose w.r.t. old jewellery to the tune of Rs. 42 lacs which was possessed by the assessee prior to 7 years preceding the date of search and was acquired either through purchases by the assessee or his wife over a

period of time since assessee's marriage in 1986 , or the said jewellery was given to the assessee and his wife at the time of marriage as well during post marriage period. It was submitted that jewellery also included jewellery gifted by relatives to his son on his birth as well birthdays in last two decades . The learned counsel for the assessee invited our attention to the paper book filed with the tribunal pages 50-64 , wherein the returns of income filed by the assessee with the Revenue are placed. It is submitted by learned counsel for the assessee that the assessee has an income of more than Rs. 1 crore from salary received from Ispat Industries Limited which has been duly declared and disclosed in the income tax returns filed with the Revenue. It was submitted that wife of the assessee was also having income from house property and other sources and returns were filed with the Revenue regularly. The return of income filed by her for assessment year 2009-10 is placed on record in paper book/page 66-67. It was submitted that the assessee is habitual of investing in jewellery as also his wife when she was alive, which can be evidenced by purchase bills of Rs.1.30 crores produced by the assessee for last seven years prior to the date of search. It is submitted that neither wealth tax returns nor statement of affairs were filed by the assessee and his wife with the Revenue. It is submitted that the assessee wife died in terror attack in Mumbai at Oberoi Hotel on 26-11-2008, death certificate is placed in paper book filed with the tribunal at page no 65. It is submitted that assessee is earning substantial income from salaries and other resources and had substantial financial resources at its disposal to invest in jewellery over a period of time. It was submitted that the assessee could explain jewellery to the tune of Rs. 1.30 crores purchased within 7 years preceding the date of search on 30-11-2010 by way of producing jewellery Bills for purchases. Thus, it was submitted that habit pattern of the assessee reflects that the assessee and his wife were regularly and habitually buying jewellery which explains the pattern of the assessee having bought jewellery prior to seven years preceding the date of search since his marriage . The assessee belongs

to a Marwari family which has custom of savings and also receiving gifts of jewellery which were declared before the Revenue regularly. The assessee's age in the relevant year was 50 years when search took place and he was married in the year 1986 . It was submitted that over a period of time , the possession of the jewellery which was seized being old jewellery of Rs. 42 lacs for which bills could not be produced , the possession thereof by the assessee was reasonable and fully explained before the Revenue keeping in view family background, customs, social status and financial resources of the assessee. The market value of the opening balance of the assessee of Rs.18.51 lacs as is appearing in ledger account as on 31-03-2004 , was more than Rs. 50 lacs , which ledger accounts were part of the seized material during search, and if the said jewellery as is appearing as on 31-03-2004 in ledger accounts seized by Revenue of value of more than Rs 18 lacs is converted at the current value as on date of search , its value will be far more than the additions made by the AO to tune of Rs. 42 lacs. It was submitted that period of opening balance is prior to period for search assessments and no credit has been given for the same by the AO. Thus it was submitted that the entire facts were explained before the authorities below and as such the addition cannot be sustained in the eyes of law, keeping in view the status and standard of the family and the customs and practices to which the family belongs. It was submitted that the Id. CIT(A) although gave relief to the assessee with respect to the possession to the extent of 600 gms. of value of gold jewellery in the hands of the assessee but it was submitted that as per CBDT instructions no 1916 dated 11-05-1994, CBDT had clarified that even higher amount of jewellery found during the search need not be seized keeping in view status of the family, the customs and practices of the community to the which the family belongs, as provided in CBDT instruction dated 11-05-1994. Our attention was drawn to CBDT instructions no. 1916 dated 11-5-1994 which is placed in paper book of case laws/page 1. The Id. Counsel also relied upon following judicial decisions in support of his claim:-

1. CBDT Instruction No. 1916 dated 11-5-1994
2. Ashok Chaddha v. ITO (2012) 69 DTR 82 (Del)
3. CIT v. Ratanlal Vyaparilal Jain (2011) 339 ITR 351(Guj.)
4. CIT v. P.K. Noorjahan (1999) 237 ITR 570 (SC)

It was also submitted that no documents were seized during the search operations by Revenue which incriminates assessee. It was submitted that the AO erred in invoking Section 69B of 1961 Act while making additions, while the applicable section is 69A of 1961 Act , if at all additions were to be made by the AO. It was submitted that since wife of the assessee had died in Mumbai terror attack on Oberoi Hotel on 26-11-2008, the assessee was keeping the jewellery in locker. It was also submitted that no statement of affair was filed by the assessee with the Revenue in the past.

8. The ld. D.R. on the other hand submitted that the assessee could not explain the sources of acquisition of jewellery worth Rs. 42,00,656/- which was seized from assessee during the course of search operations u/s 132 of 1961 Act. During the course of search u/s 132 of 1961 Act, the jewellery was found to the tune of Rs. 1.72 crores , out of which the assessee could not explain jewellery to the tune of Rs. 42 lacs and the addition has been rightly made by AO u/s 69B of the Act to the tune of Rs. 42 lacs and hence the whole of the addition should be sustained. It was submitted that Revenue is in appeal for relief given by learned CIT(A). It was submitted that the AO has already given relief to the tune of Rs. 1.30 crores for which bills were produced by the assessee although AO did not verify the sources of acquiring jewellery in last seven years prior to the date of search. It was submitted that CBDT instruction no 1916 dated 11-05-1994 has limited application as it only refers to the non-seizure of gold jewellery to the extent of 500 gms for married female member and 100 gms for male member of the family. Our

attention was drawn to said CBDT instruction dated 11-05-1994 which is placed in case law paper book/page 1. It was submitted that this CBDT instruction dated 11-05-1994 does not have not relevance so far as assessments are concerned and is applicable only to the limited extent for seizure of jewellery found during course of search operations u/s 132 of 1961 Act. Thus, it was submitted that the learned CIT(A) erred in giving relief to the assessee to the tune of 600 gms of gold jewellery relying on CBDT instruction no 1916 dated 11-05-1994. It was submitted that neither the assessee nor his wife nor HUF were assessed to wealth tax despite that they were liable to file wealth tax returns. It was submitted that no statement of affair has been filed by the assessee before the authorities below till the date of search. It was submitted that no grounds have been taken by the assessee before learned CIT(A) as to applicability of Section 69A of 1961 Act, challenging invocation of Section 69B of 1961 Act which was applied by the AO and hence it cannot be raised for the first time before the tribunal. It was submitted that the assessee is now by filing this appeal is seeking benefit which even goes beyond CBDT instruction no. 1916 dated 11-05-1994 which is not permissible at all.

9. We have considered rival contentions and also perused the material available on record including the case laws relied upon by the rival parties . There was a search & seizure action u/s.132(1) of the 1961 Act carried out by the Dy. Director of Income Tax (Intelligence)- I, New Delhi in the case of Ispat Industries Limited and its Group Companies, Promoters & Executives on 30<sup>th</sup> November, 2010. The assessee is Executive Director (Commercial) of M/s. Ispat Industries Ltd., flagship company of Ispat Group. The assessee was also covered under the search & seizure action u/s.132(1) of the 1961 Act on the Ispat Group. During the course of search and seizure action at the residential premises of the assessee at, 1101, Rameshwaram Apartment, Kirti K. Dhruba Marg, Prabhadevi, Mumbai and the bank locker standing in the name of the assessee, following jewellery , cash and other valuables were seized:-

| Sl No. | Details of premises   | Seized   |                   |        |
|--------|---|----------|-------------------|--------|
|        |   | Cash(Rs) | Jewellery (In Rs) | Others |
| 1      | Locker No. 272 State Bank of India, Shivaji Park Branch, Mumbai (Shri Vinod Garg) | -        | 42,00,655         | -      |

During the course of search operations u/s 132 of 1961 Act from the bank locker No. 272, State Bank of India, Shivaji Nagar Branch, Dadar, Mumbai, standing in the name of the assessee, jewellery totaling to Rs. 1,72,09,556/- was found from the said locker belonging to the assessee and his late wife. Out of this, the assessee could not explain jewellery valued at Rs.42,00,656/- which was seized by Revenue found from the above locker. The rest of the jewellery valuing to the tune of Rs. 1.30 crores was explained by the assessee to be supported by purchase bills which represented jewellery purchased since last 7 years preceding the date of search on 30-11-2010. The said explanation of the assessee with respect to the jewellery to the tune of Rs.1.30 crore was accepted by the AO and matter rested there itself as there is no dispute with respect to jewellery of Rs.1.30 crores found from locker of the assessee. The details of jewellery found and seized during the course of search in the bank locker belonging to the assessee and his deceased wife are as under:-

| Particulars  | Jewellery found (in gms) | Jewellery supported by bills (in gms) | Old jewellery whose bills are not found (in gms) |
|--|--------------------------|---------------------------------------|--|
| Gold jewellery   | 2962.40                  | 2240.50                               | 707.80   |
| Diamond jewellery  | 2556.10                  | 1619.14                               | 936.96   |
| Total of the above   | 5518.50                  | 3859.64                               | 1644.76  |
| Value of the above jewellery whose purchase bills were not found |                          |                                       | Rs.42,00,656/-                                   |

The dispute now is within the narrow range of compass with respect to chargeability to tax of jewellery of Rs.42,00,656/- seized during the course of

search u/s 132 of 1961 Act which was brought to tax by the AO as unexplained and which was explained by the assessee to be an old jewellery acquired and held prior to seven years preceding the date of search through various modes such as streedhan to wife at the time of marriage , gift to the assessee at the time of marriage in 1986, acquisition of the jewellery since marriage in 1986 over a period of time for which bills were not retained, gifts to wife and the assessee since 1986 by relatives, gift to son on his birth and also during several birthdays over the years. The AO is contending that since the assessee could not produce bills for the said jewellery and the same was not declared to Revenue by the assessee in past as no wealth tax returns were filed or otherwise it was also not declared as no statement of affairs was ever filed, the same being an unexplained jewellery is liable to be taxed u/s 69B of 1961 Act and the learned CIT(A) relying on the CBDT instruction no 1916 dated 11-05-1994 has allowed benefit/relief to the assessee of jewellery to the tune of 600 gms of gold jewellery , while the additions made by the AO with respect to the rest of the jewellery was upheld by learned CIT(A). It is the say of assessee throughout consistently that it is incomprehensible to hold that the assessee did not held any jewellery prior to seven years from the date of search on 30-11-2010 while the assessee was married in 1986 and the acquisitions through several modes such as streedhan to wife at the time of marriage , gift to the assessee at the time of marriage in 1986, acquisition of the jewellery since marriage in 1986 over a period of time for which bills were not retained, gifts to wife and the assessee since 1986 by relatives, gift to son on his birth and also during several birthdays over the years was explained to the authorities below , while no bills were retained for the same. The assessee explained its background , social status, financial status etc which did not found favour with the AO while part relief was granted by learned CIT(A) relying on CBDT instructions dated 11-05-1994.

To understand the whole issue in an holistic manner on the touch stone of preponderance of human probabilities i.e. standard of proof which govern the tax proceedings under the 1961 Act, we have to understand the social and financial background and status of the assessee and his family, customs etc. to which the assessee is subjected to.

The assessee is a qualified Chartered Accountant being Executive Director (Commercial) of the listed company, Ispat Industries Limited which is flagship company of the Ispat Group of companies. The assessee belonged to Hindu Marwari family. The Marwari community in India is a respected community most of whom are successfully engaged in various spectrum of businesses . The assessee has not filed any wealth tax returns with the Revenue despite having taxable wealth which is undisputed. It is also admitted position that no statement of affairs had also been filed by the assessee before the authorities below prior to the date of search on 30-11-2010. The assessee has taken a stand that during scrutiny proceedings prior to search on 30-11-2010, the assessee produced before the authorities all the details of jewellery but evidence of having filed such details are not available with the assessee and in absence thereof we shall proceed on assumption that the assessee did not produce any details before the authorities below of the jewellery owned and possessed by him prior to the date of search. We have observed that the assessee is a regular income tax assessee filing return of income regularly with the Revenue . The income declared by the assessee for last 7 years , till the assessment year on which search took place on 30-11-2010 , was as under :

| S.No. | Assessment Year | Income declared as per ITR<br>(In Rs.) |
|-------|-----------------|--|
| 1.    | 2011-12         | 84,20,204/-                            |
| 2.    | 2010-11         | 1,19,94,705/-                          |
| 3.    | 2009-10         | 1,58,03,434/-                          |
| 4.    | 2008-09         | 1,06,20,788/-                          |
| 5.    | 2007-08         | 95,39,400/-                            |
| 6.    | 2006-07         | 39,56,521/-                            |
| 7.    | 2005-06         | 28,22,325/-                            |

Perusal of the above chart clearly reveals that the assessee was a man of means having substantial income declared to Revenue in last 7 years. The assessee has also filed copy of income tax return of the wife of the assessee for assessment year 2009-10 ( which included income till her death on 26-11-2008 in Mumbai terror attack on Oberoi Hotel as thereafter , income is included in the hands of the assessee being a legal heirs of wife of the assessee as stated in ITR) wherein returned income was 16,14,540/- . The assessee being legal heir of wife after her death on 26-11-2008, the jewellery owned and possessed by wife at the time of her death on 26-11-2008 is also to be considered in the hands of the assessee being a legal heir of wife. The instant assessment year under appeal is assessment year 2011-12. The assessee was married in 1986 and has one son also. The assessee has one HUF also. The assessee has recorded jewellery of Rs. 18.51 lacs in ledger accounts as on 31-03-2004 which ledger accounts were part of seized material as stated by learned counsel of the assessee which was seized by Revenue on the date of search on 30-11-2010. The said period ending 31-03-2004 is prior to the period covered by search proceedings. The assessee has

contended that revenue has not given credit for the said jewellery of 18.51 lacs which was found recorded in the ledger accounts found during search which ledger extracts were seized by Revenue , and which represented jewellery acquired by the assessee wife and HUF prior to the period for assessments covered by search operations u/s 132 of 1961 Act for which purchase bills of jewellery are not available.. The market value of said jewellery as found recorded in seized ledger extracts as owned by assessee wife and his HUF as on 31-03-2004 is stated by the assessee to be more than Rs. 50 lacs as on the date of search on 30-11-2010 , while additions to the tune of Rs. 42 lacs were made by Revenue. The jewellery ledger from 1.4.2005 onwards was submitted by the assessee during the assessment proceedings. All the bills for purchase of jewellery to the tune of Rs.1.30 crores for the last seven years were produced preceding the date of search on 30-11-2010, which explanation w.r.t. jewellery to the tune of Rs.1.30 crores was accepted by AO and no additions were made by the AO. The Id. CIT(A) based upon the CBDT Instruction No. 1916 dated 11-05-1994 gave relief of gold jewellery of 500 gms. per married lady(wife) and 100 gms. per male member (assessee), totalling 600 gms of gold jewellery to the assessee. This purchase of jewellery of Rs. 1.30 crores in last seven years preceding the date of search on 30-11-2010 for which the assessee produced purchase bills for purchase of jewellery clearly reveals habitual pattern of the assessee and his wife that they are consistently purchasing jewellery over a period of time. This habitual pattern also leads to the irresistible conclusion that the assessee and his wife were habitual of buying jewellery which pattern of behavior can be safely accepted for the period since assessee's marriage in 1986 onwards till the period ending with seven years prior to the date of search on 30-11-2010 for which no purchase bills for purchase of jewellery were retained by the assessee. Thus, jewellery of value of Rs. 42,00,656/- weighing 1644.76 gms which is sought to be explained to have been acquired by the assessee and his wife for the period from the marriage of the assessee in 1986 till seven

years preceding the date of search is not substantial keeping in view habitual pattern of the assessee. The second factual finding that the assessee has kept and produce the bills for purchase of jewellery for last seven years for purchase of jewellery to the tune of Rs.1.30 cores which is his obligation to keep for the period as stipulated under the provisions of 1961 Act be it re-opening provisions as provided u/s 147/148 of 1961 Act (as the section then was ) or search provisions as are contemplated under Section 153A of 1961 Act and also nothing incriminating has been found by Revenue during search and seizure operations u/s 132 of 1961 Act incriminating assessee , further leads to irresistible conclusion from afore-stated assessee's conduct and behavior pattern that for all the jewellery purchased even prior to seven years from the date of search as was bought by the assessee and his wife and HUF, the relevant persons had purchased jewellery after obtaining proper bills as was demonstrated by their conduct of last seven years prior to search . The ledger extract as on 31-03-2004 which was seized by Revenue during the course of search on 30-11-2010 as stated by learned counsel reflecting jewellery of Rs 18.51 lacs in the name of assessee wife and HUF was acquired prior to seven year period from search cannot be brushed aside lightly and appropriate credit has to be necessarily given while determining jewellery owned by the assessee, his wife and HUF with reference to the jewellery found during the search operations conducted by Revenue u/s 132 of 1961 Act. The market value of said jewellery on the date of search was stated to be more than Rs. 50 lacs which is not contradicted by Revenue as no explanation was given by Revenue about the same, while the additions are made in the hands of the assessee to the tune of only Rs. 42 lacs. The assessee has also explained satisfactorily why the entire jewellery was kept in locker as after the death of wife in Mumbai Terror attack on 26-11-2008, the assessee was seldom available at home due to his pressing job as Executive Director(Commercial) of large company namely Ispat Industries Limited and there was no body at home to take care of the safety and security of jewellery

and hence it was kept in locker, which is a normal human conduct and has to be accepted. The explanation of the assessee that this seized jewellery to the tune of Rs. 42 lacs also included streedhan of her wife given at the time of marriage and thereafter on several occasion to wife by close relatives as well jewellery received by the assessee during marriage cannot be brushed aside and is also a plausible explanation keeping in view social status and background of the assessee as per hindu customs and prevalent culture and traditions, on the touch stone of preponderance of human probabilities. Similarly, the explanation of the assessee that seized jewellery also included jewellery received from close relatives at the time of birth of his son as well on several birthdays during the last two decades cannot be simply brushed aside as the same is also a plausible explanation in the realm of possibility keeping in view hindu culture and customs, social and financial background of the assessee and also factual matrix of the case as discussed, on the touch stone of preponderance of human probabilities . Thus, jewellery of value of Rs. 42,00,656/- weighing 1644.76 gms which is sought to be explained to have been acquired by the assessee and his wife for the period from the marriage of the assessee in 1986 till seven years preceding the date of search is not substantial keeping in view habitual pattern of the assessee, culture, traditions , customs, financial and social background of the assessee. Our view is fortified by decision of Hon'ble Delhi High Court in the case of Ashok Chaddha v. ITO (2011) 202 Taxman 0395(Del. HC) , wherein Hon'ble delhi High Court held as under:

*“3. Learned Counsel for the respondent on the other hand relied upon the reasoning given by the authorities below. After considering the aforesaid submissions we are of the view that addition made is totally arbitrary and is not founded on any cogent basis or evidence. We have to keep in mind that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. The learned counsel for the appellant/ assessee is correct in her submission 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. Collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and treat the other as "unexplained". Matter would have been different if the quantum and value of the jewellery found was substantial.*

**4.** *We are, therefore, of the opinion that the findings of the Tribunal are totally perverse and far from the realities of life. In the peculiar facts of this case we answer the question in favour of the assessee and against the revenue thereby deleting the aforesaid addition of Rs. 3,87,364."*

In any case, there was a seized ledger extracts which showed jewellery as on 31-03-2004 of Rs. 18.51 lacs owned by assessee wife and assessee's HUF , market value of which jewellery as on the date of search comes to more than Rs. 50 lacs which has also to be considered while estimating unexplained jewellery in the hands of the assessee. This contentions of the assessee could not be controverted by Revenue/learned CIT-DR. Thus, in our considered view , keeping in view factual matrix of the case as discussed above , no addition is warranted in the hands of the assessee in the instant case as we hold that jewellery to the extent of Rs. 42,00,656/- as was seized by the Revenue being found from locker of the assessee based on which additions have been made by the AO stood fully explained keeping in view factual matrix of the case, social and financial background of the assessee, culture, traditions and customs to which the assessee belonged. Thus, the addition made by the A.O. as sustained by the ld. CIT(A) is hereby ordered to be deleted. In view of our above decision deleting the entire additions of Rs. 42,00,656/- made by the AO, the question of law raised by the assessee as to the validity of invocation of Section 69B of 1961 by the AO instead of Section 69A of 1961 Act has become infructuous and is not being adjudicated by us. We order accordingly

10. In the result, the appeal filed by the assessee in ITA No. 2249/Mum/2015 is allowed while the appeal filed by the Revenue in ITA No. 2899/Mum/15 for the assessment year 2011-12 is dismissed.

Order pronounced in the open court on 9<sup>th</sup> March, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 09-03-2017 को की गई ।

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 09-03-2017

I

व.नि.स./ R.K., Ex. Sr. PS

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "H" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai