

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 49/JP/2022
निर्धारण वर्ष / Assessment Year : 2018-19

Shri Gyanendra Singh Shekhawat 101, Himmat Nagar, Tonk Road Jaipur	बनाम Vs.	The ACIT Central Circle-2 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AMCPS 4557 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal, CA
राजस्व की ओर से / Revenue by: Shri Sanajy Dhariwal, CIT

सुनवाई की तारीख / Date of Hearing : 13/07/2022
उदघोषणा की तारीख / Date of Pronouncement: 27 /07/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT (A)-4, Jaipur dated 31-12-2021 for the assessment year 2018-19 raising therein following grounds of appeal.

“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has grossly erred in confirming the addition of Rs.17,55,262/- made on account of jewellery (Rs.15,52,634/- Gold Jewellery and Rs.2,02,628/- silver jewellery) found from the residence as well as bank locker of assessee during the course of search by alleging the same as unexplained u/s 69 of the Income Tax Act, 1961 arbitrarily.

1.1 That the Id. CIT(A) has further erred in confirming the actions of the AO in making addition on account of jewellery found during search by disbelieving the source of acquisition owned by the assessee and his family members and by grossly ignoring the submissions made and evidences adduced, thus the resultant addition deserves to be deleted.

1.2 That the Id. CIT(A) has further erred in ignoring the fact that the jewellery so found was the "STRIDHAN" of the ladies of the family of the assessee and was acquired by them on various occasions since past long, thus the sources cannot be treated as unexplained and accordingly the addition so made u/s 69 deserves to be deleted."

2.1 The Ground Nos. 1 and 1.2 raised by the assessee are interconnected and relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs.17,55,262/- made on account of jewellery (Rs.15,52,634/- Gold Jewellery and Rs.2,02,628/-Silver Jewellery) found from the residence as well as bank locker of the assessee during the course of search. Therefore, we thought it fit to decide this issue by this consolidated order for the sake of convenience and brevity of the case.

2.2 We have heard the Counsel of both the parties and we have also perused the materials placed on record i.e. impugned orders as well as judgements relied upon by both the parties. From the records, we noticed that the assessee is an individual and is an Architect by profession. A Search action u/s 132 of the Act was conducted on 02-08-2007 and the assessee was treated as a Member of Kiran Fine Jewellers Group whereas the assessee from the very beginning had taken a definite/ firm stand that except professional relation the assessee had no other

business connections with the said Group. However, the addition of Rs.24,03,035/- was made on account of jewellery found during the course of search by treating the same as unexplained investment. The Id. CIT(A) while partly allowing the appeal of the assessee restricted the addition to Rs.17,55,262/-. The relevant extract of the finding of the Id. CIT(A) restricting the addition to the tune of Rs.17,55,262/ at para 7.2 (viii) is reproduced as under:-

(viii) Therefore, in view of the above discussion, the addition of Rs.6,47,773/- on account of valuable stones is treated as explained. However, the addition to the extent of Rs.17,55,262/- (Rs.15,52,634/- plus Rs.2,02,628/-) on account of gold jewellery and silver jewellery treated as unexplained is sustained instead of addition of Rs.24,13,,035/- made by the AO u/s 69 of the Act. The appellant gets a relief of Rs.6,47,773/-. Accordingly, the Ground No. 4 stands partly allowed.”

As per factual position as is emanating from the record is that during the course of search total jewellery comprising of gold jewellery weighing 1921.800 gms valued at Rs.47,97,013/- (studded with precious and semi precious stones valuing Rs.6,47,773/- and silver jewellery valued at Rs.2,02,628/- was found. It is also noted that the during the course of assessment proceedings, the AO allowed the benefit in respect of gold jewellery worth 1300 gms in terms of CBDT Instruction No. 1916 dated 11-05-1994 and made the addition which was restricted to Rs. 17,55,262/- by the Id. CIT(A).

2.3 During the course of hearing, the Id. AR of the assessee drew our attention towards its reply filed before the AO regarding explanation of source of total jewellery found during the search which is at Paper Book Pages 16 to 19 and the same has been reproduced below.

‘3. Jewellery

3.1. During the course of search, Gold & Silver Jewellery valuing Rs.56,47,414/- was found. Details of Silver and Gold Jewellery found is as under

Particulars	Gold weight (Grams)	Silver weight (Grams)	Amount
JF-1 Locker in the name of Rekha Shekhawat No. 71, IDBI Bank, Tonk Road, Jaipur	795.50	0.36	22,85,116.00
JF-2 Bedroom of Rekha Shekhawat	386.10	2.26	13,47,361.00
JF-3 Locker in the name of Usha Shekhawat & Gyanendra Shekhawat No. 23, Allahabad Bank, Tonk Road, Jaipur	243.80		6,06,297.00
JF-4, Bedroom of Usha Shekhawat	496.40	3.40	14,08,640.00
Total	1921.80	6.02	56,47,414.00

3.2 The above jewellery found belong to our ancestral family and was received on the occasion of my marriage, marriage of my parents, at the time of birth of my son and other family functions/occasions. I am enclosing herewith few photographs of his marriage for evidencing the jewellery wore by him and his wife at the time of marriage.

3.3 Some of the jewellery was also purchased by me out of cash drawing made by me from my IDBI bank account as under:-

Date	Cash withdrawal (Rs.)
23-01-2013	3,75,000.00
31-01-2013	1,20,000.00
15-03-2014	5,00,000.00

02-02-2015	2,00,000.00
09-02-2015	3,00,000.00
02-12-2015	1,00,000.00
09-12-2015	2,00,000.00
Total	17,95,000.00

I have already submitted my IDBI Bank Statement

3.4. I would like to bring to your kind notice Instruction No. 1916, dated 11.05.1994 issued by the CBDT with regard to seizure of jewellery in course of operations under section 132, which laid down that in the case of a person not assessed to wealth tax, gold jewellery and ornaments to the extent of 500 gms per married lady. 250 gms per unmarried lady and 100 gms per male member of the family need not be seized. It was also laid down that the authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure.

3.5 Considering the status of the family and cash drawings made by me for jewellery from bank, the jewellery found cannot be considered to be unexplained. It is fully explained.”

After filing such reply, no further query was raised by Id. AO nor was any part of the explanation regarding source of acquisition of total jewellery (i) Receiving major portion of jewellery at the time of marriage/other occasions and (ii) Acquiring some jewellery out of withdrawals made over a period of time, remained un-controverted. Id.AO neither doubted the claim of cash withdrawals stated to have been utilized for purchase of jewellery nor has stated why jewellery found is not explainable in view of social status of family/possession at the time of marriage. In fact, while passing assessment order, Id. AO simply allowed the claim of assessee to the extent of jewellery covered by CBDT instruction dt. 11.5.1994 and allowed jewellery weighing 1300 gms, as explained and held the balance 621.8 gm of jewellery as unexplained.

With regard to the silver jewellery found in search and valued at Rs. 2,02,628/-, the same was held as unexplained stating that circular only speaks about the gold jewellery in possession of the assessee. Submission so filed before Id. AO was provided to Id. CIT(A) also, who also failed to consider the same.

As per submission of the Id. AR, the assessee belongs to Rajput Community of Rajasthan and as per customs of the Community, some of the Gold/Silver Jewellery/articles are passed on to the subsequent generations and some of the jewellery was received on various festivals/ auspicious occasions and ceremonies. In fact, the assessee had furnished photographs of functions and marriages to show that ladies of his family wearing heavy gold jewellery which according to him is a part of STREEDHAN and deserves to be treated as explained. The Id. AR of the assessee has also drawn our attention to the cash withdrawn by him from his bank account for purchasing some jewellery from time to time in past many years out of his own savings. Therefore, according to the Id. AR of the assessee, the acquisition of jewellery is not excessive looking to the social status of the assessee.

2.4 At this stage, we appreciate CBDT Circular regarding seizure of jewellery during search wherein it has been specifically mentioned at clause (iii) of Circular as under:-

"(iii) The authorized officer may having regard to the status of the family and the customs and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income tax/Commissioner authorizing the search all the time of furnishing the search report"

2.5 In our view the intention of law is to stick to the jewellery limits mentioned in the Circular. There was no point in inserting the provision at clause (iii) which grants discretionary power to the Income Tax Authorities to decide as to what can be reasonable quantity of jewellery held by an assessee in view of community practices and social status. To this effect, we draw strength from the decisions of Hon'ble High Court as well as ITAT Benches which are mentioned as under:-

(i) Hon'ble Delhi High Court in the case of Ashok Chaddha vs Income Tax Officer in ITA No. 274/2011 has treated the source of jewellery in excess of quantity provided in CBDT instruction by observing as under: (APB 20-21)

“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 "streedhan" or on other occasions such as birth of at child etc. Collecting Jewellery of 906.900 grams by a woman in a married life of 25-30 wars 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 3,87,364/-“

(ii) ITAT Delhi Bench in the case of Suncela Soni Vs DCIT (ITAT Delhi) in ITA No. 5259/DEL/2017 as held as under: (APB 22-28)

“6.1 After perusing the aforesaid decision of the Hon'ble Delhi High Court, I am of the considered view that facts and circumstances of the present

case are similar to the aforesaid decision of the Hon'ble Delhi High Court and hence, the issue in dispute is squarely covered by the aforesaid decision.

6.2 Keeping in view of the aforesaid facts and circumstances of the case as well as the status of the family and on the anvil of the judgement of the High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi)/202 Taxmann 395 the explanation given by the assessee's counsel is accepted Accordingly the orders of the authorities below are cancelled and addition made by the 10 and confirmed by the Ld. CIT(A) amounting to Rs. 10,65,312/- on account of purported unexplained jewellery claimed by the assessee is deleted"

(iii) ITAT Indore bench in the case of Sh. Dinkar Laxman Majumdar vs DCIT in ITA No. 593/Ind/2017 has held as under: (APB 55-56)

11. In the instant case Ld.CIT(A) following the above referred CBDT instructions allowed the claim of investment in gold jewellery weighing 242 gms but confirmed the addition for silver articles weighing 1812 gms. The above referred instructions refers only to "jewellery and ornaments" and nowhere restrict it to gold jewellery. One cannot ignore the fact that in the Indian families there is a culture of giving silver ornaments and utensils on auspicious and marriage occasions, Restricting the limit of 500 gm/250 gm/100 gm only to the "gold jewellery ornaments" will not serve the true purpose of the CBDT instructions and it has to be applied hamnoninerly in the light of the Indian culture and traditions

12. We therefore in the given facts and circumstances of the case are of the considered view that the impugned silver jewellery weighing 1812 gms valuing at Rs.75.278/-should not have been added to the income of the assessee and the benefit of the CBDT Circular No. 1916 dated 11.5.1994 should also be spread so as to cover the silver articles weighing 1812 gms. We therefore set aside the orders of both the lower authorities and delete the addition of Rs.75,278/- for the alleged unaccounted investment in silver articles and allow the grounds raised by the assessee."

(iv) ITAT Delhi Bench in case of Radha Mital and Ruchie Mital Vs. DCIT in ITA No. 2810/Del/2016 dated 09/07/2016 held that Jewellery found in excess of limited prescribed by the above circular as explained on the ground that jewellery belongs to the assessees having received as "streedhan" on the occasion of marriage and also received subsequently on occasions like birth of child etc in pursuant to customs/tradition of family. The Assessee belonging to "Baniya'

family have been married since 35 years and 8 years. Further they were jointly residing with their mother in law Shanti Mittal who had been married for about 65 years. Apart from the above the family comprised of husband of both the assessee and son. Thus looking to the tradition of family Hon'ble Tribunal has accepted the Jewellery in excess of limit prescribed by the above circular was in view of the fact that the same being received as Streedhan during the course of Marriage and subsequent to marriage, (APB 31-49)

(v) ITAT Delhi bench 'A' in the case of Vibhu Aggarwal v. Deputy Commissioner of Income-tax, CC-06, New Delhi [2018] 93 taxmann.com 275 has held that where gifting of jewellery possessed by each of family members was customary and jewellery was gifted to Assessee and his wife by their parents and grandparents and other relatives at time of their marriage, and also on several occasions after that, such as birth of their two children, marriage anniversaries, etc., excess jewellery found was nominal, keeping in mind high status and more customary practices and stands explained.

(vi) ITAT Jaipur bench of ITAT in the case of Mohammad Akhlaq, Jaipur vs DCIT in ITA No. 436/JP/2017 vide order dated 24.05.2019 also expressed the same view and deleted the additions made towards jewellery over and above to the limits specified in CBDT instructions.

2.7 Although ld. DR strongly relied upon the orders of the ld. CIT(A) but failed to rebut the specific and factual position so raised by the ld. AR of the assessee and has also not referred to any contrary decisions.

2.8 Therefore, looking into the totality of the facts and circumstances of the case, we are of the considered view that the AO had ignored the factual position as well as failed to verify the fact that the assessee is living with his parents and belonged to a Rajput Family where the fact of having jewellery as Streedhan by the assessee's mother and wife cannot be ignored. Thus after considering the overall factual position in this case and keeping in view of high status, family

tradition, deduction on account of purity and the deduction towards Streedhan, the excess jewellery found were nominal. In this view of the matter, the addition sustained by the Id. CIT(A) deserves to be deleted and the grounds raised by the assessee are allowed. We order accordingly.

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

Order pronounced in the open court on 27 /07/2022

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 27 /07/2022

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Gyanender Singh Shekhawat, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle-2, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 49/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar