

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 2351/Del/2019 : Asstt. Year: 2015-16

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| Ballabh Prasad Aggarwal, 2 nd Floor, 19, Local Shopping Complex, Near Pushpa Bhawan, Madangir, New Delhi-110062 | Vs. | ACIT, Central Circle-8, New Delhi-110055 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. ACRPA9306Q | | |

**Assessee by : Sh. Ved Jain, Adv.
Ms. Supriya Mehta, CA
Revenue by : Sh. P. Praveen Sidharth, CIT DR**

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| Date of Hearing: 22.02.2023 | Date of Pronouncement: 17.05.2023 |
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ORDER

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

The present appeal has been filed by the assessee against the order of Id CIT(A)-24, New Delhi dated 21.02.2019.

2. The assessee has raised the following grounds of appeal:

"1. That on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-XXIV, New Delhi [the Ld. CIT(A)] has erred in upholding the order of the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi (the Ld. Assessing Officer) in upholding the addition of Rs.71,86,743 made on account of Long term capital gain on alleged sale of jewellery.

2. That on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-XXIV, New Delhi [the Ld. CIT(A)] has erred in

upholding the order of the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi ('the Ld. Assessing Officer') in upholding the addition of Rs.29,19,732/- made on account of Long term capital gain on alleged sale of Diamond.

3. That on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-XXIV, New Delhi ['the Ld. CIT(A)'] has erred in upholding the order of the Assistant Commissioner of Income Tax, Central Circle-08, New Delhi ('the Ld. Assessing Officer') in upholding the addition of Rs.16,77,368/- made under section 69A on account of alleged unexplained investment in jewellery."

3. A search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted in the case of Priyagold Group of cases on 16.12.2014 by Investigation Wing, New Delhi. The assessee has received income under the head 'Income from salary' from M/s Surya Food & Agro Ltd. and also income from other sources as interest from saving bank account.

Addition on account of LTCG on sale of Jewellery:

Addition on account of LTCG on sale of Diamond:

Investment in Jewellery-Section 69A:

4. Suffice to say that the total jewellery as per the Wealth Tax Return of the assessee and the wife of the assessee was Rs.2,17,56,423/-. During the search, total jewellery of Rs.43,17,442/- was found. Out of the jewellery found of Rs.43,17,442/-, jewellery amounting to Rs.16,77,363/- were seized owing to mismatch of the description of the jewellery.

5. Owing to non-availability of the remaining jewellery, the Assessing Officer calculated Long Term Capital Gains on the

presumption that the jewellery "undetected" during the search was sold and determined LTCG of Rs.71,86,743/-. Hence, the question to decide before us is whether the AO can resort to determination of notional LTCG or not. The shortage of jewellery could have been questioned at the time of search and any evidence with regard to the sale of jewellery should be collected during the search or post search enquiry. Nothing of such investigation has been made by the revenue authorities. The revenue authorities have been failed to invoke the provisions of the Act with regard to search & seizure and finding of the jewellery kept in any other premises, have come to presumption of "sale" of such jewellery and determined capital gains. There was absolutely no material to prove that there has been such sale which led to Long Term Capital Gains. There is no provision in the Income Tax Act to deem the difference between value of the jewellery declared (in the Wealth Tax Return) and the value of the jewellery found in the search, in case the jewellery falls short of the amount/quantity declared in the WTR. Hence, we direct that the addition made on account of Long Term Capital Gains on the purported, notional, fictitious sale of jewellery be deleted.

5. With regard to the addition made u/s 69A, there were loose diamond as per the WTR and the jewellery seized of worth Rs.16,77,363/- which has been subsequently treated as unexplained investments. The submission of the assessee that the loose diamonds which were part of the Wealth Tax Return were studded in the jewellery subsequently and that was the reason that the description of the jewellery was different. These three issues need to be examined holistically. The jewellery

seized of Rs.16,77,363/- is intra polated in the jewellery found of Rs.43,17,442/-. Hence, keeping in view the entire disclosed jewellery as per the WTR and as found in the premises, we hold that no addition can be made on this account.

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 17/05/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

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

Dated: 17/05/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR