IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

ITA No.3979/Mum/2017

(Assessment Year :2012-13)

Mrs. Nawaz Singhania New Hind House 2, N.M. Marg Ballard Estate Mumbai – 400 001	Vs.	DCIT CENT. CIR – 8(1) 6th Floor, Aayakar Bhavan, M.K. Marg Mumbai – 400 020
PAN/GIR No. AFGPM2417N		
Appellant)	..	**Respondent**)

Assessee by	Shri Rakesh Mohan
Revenue by	Ms. N. Hemalatha
Date of Hearing	**04/10/2017**
Date of Pronouncement	**22/12/2017**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

This is an appeal filed by the assessee against the order of CIT(A)-50, Mumbai dated 22/03/2017 for A.Y.2012-13 in the matter of order passed u/s.143(3) of the IT Act.

2. The following ground has been taken by the assessee:-

> *On the facts and in the circumstances of the case and in law, the H'ble CIT(A) erred in confirming addition of Rs. 22,57,632 on account of jewellery u/s. 69A of the Income Tax Act, 1961. The appellant prays that the action of the H'ble CIT(A) may be treated as bad-in-law and the addition upheld by the CIT(A) may kindly be deleted.*

3. Rival contentions have been heard and record perused. Facts in brief are that a search action u/s.132 of the Act was carried out at the residence of the Directors / Promoters of Raymond Group on 03.11.2011. During the course of search operation, jewellery, diamond jewellery,

personal wear jewellery and household silver utensils were found at the residence of the assessee. The jewellery found was valued at Rs.2,38,64,031/-. The only issue in this appeal relates to addition u/s. 69A of the Act, alleged undisclosed jewellery which has been confirmed by CIT(A) to the extent of Rs. 22,57,632/- being diamond jewellery. The primary basis for addition is that the items of diamond jewellery found in search do not match with items disclosed in valuation report of year 2000 which forms the basis of Wealth Tax returns of assessee. An item by item tally has been undertaken by the assessing officer to come to this conclusion. In the course of search the entire ornaments and jewellery found were clubbed together ignoring the fact that it belonged to three members, assessee her husband Shri Gautam Hari Singhania, and minor daughter Miss Niharika Singhania. Only one inventory was drawn and no identification of ownership was done. '

4. From the record, I found that assessee and her husband have been Wealth Tax Assessees. Miss Niharika Singhania being minor, her wealth has been clubbed with Mr Gautam Hari Singhania. The basis of filing the wealth tax return of assessee has been a valuation as on 31/03/2000, report being dated 08/09/2000. The jewellery value in this valuation has been increased year after year at the prevalent rate of gold on successive valuation dates. There are Valuation Reports of jewellery belonging to Shri Gautam Hari Singhania, husband of the assessee which is dated 25.04.2011 and of minor daughter, Miss Niharika Singhania of even date.

5. From the record I also found that the declared jewellery (as per the Wealth Tax Returns and the Valuation Reports), of the family as on the date of search is as under:

Particulars	**Gross Weight of Jewellery in gms.**			
	Gautam Singhania	**Niharika**	**Nawaz Singhania**	**Total**
Gold Ornaments	**434.00**	**40.00**	**774.70**	**1248.70**
Diamond Jewellery	**1252.10**	**113.31**	**510.70**	**1876.11**
Total	**1686.10**	**153.31**	**1285.40**	**3124.81**

6. The total holding of the family in accordance with above is 3124.81 gms. of jewellery measured as gross weight. However, the jewellery found in the course of search is as under:

Particulars of Jewellery	**Gross Weight in gms (as per Panchnama)**
Gold Ornaments	1347.40

Diamond Jewellery	1295.90
Personsal wear diamond jewellery	354.20
Total	2997.50

7. It is clear from the above that in terms of gross weight/ the declared diamond jewellery at 1876.11 gms exceeds the gross weight of jewellery found in the course of search at 1650.10 gms (1295.90 + 354.20) and, this fact has been accepted by the department throughout the proceedings.

8. In terms of Instruction No. 1916 dated 11.05.1994, containing guidelines for effecting seizure in searches undertaken, neither any jewellery should have been seized by the department, nor any addition should have been made in the assessment. In this connection, Clause (i) of the Instruction is reproduced here below:

CBDT Instruction 1916 dated 11-05-1994

> "*Instances of seizure of jewellery of small quantity in the course of operation under section 132 have come to the notice of the Board. The question of a common approach to situation where search parties come across items of jewellery has been examined by the Board and following guidelines are issued for strict compliance.*
>
> *(i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need to be seized. — — —"*

9. In view of the above, it was contended that once on the facts stated above, the jewellery of the assessee could not have been seized in accordance with Instruction No. 1916 dated 11th May 1994, no addition could have been made by the Assessing Officer in respect of such declared jewellery. This contention finds support from the following decisions, which are briefly elaborated in this submission.

1) Decision of Special Bench of Ahmedabad ITAT in the case of Rameshchandra R. Patel reported in 89 ITD 203 :

10. This decision was delivered on 27.02.2004 and in talking about the Instruction No. 1916, the Third Member has explained the intention of the Instruction in following terms :

> *'Though the Instruction speak of not seizing the same, the extended meaning of the same shows the intention that the jewellery is to be treated as explained one and is not to be treated as unexplained for the purpose of Income Tax Act".*

11. As per learned AR, instruction 1916 dated 11/05/1994 dictates jewellery not to be seized in given facts of the case, it has to be treated as explained for the purpose of Income Tax Act and consequently, addition on account of the same cannot be made in assessment. An extended meaning has been adduced to the instruction, going beyond the seizure and hitting at the root of assessment, that the instruction is applicable to assessment with equal force in respect of explained (or otherwise) nature of the jewellery.

12. Reliance was placed on the decision of Hon'ble Gujarat High Court in the case of / Ratanlal Vyaparilal Jain reported in 339 ITR 351.

This decision was delivered on 19.07.2010, commenting about the CBDT Instruction No. 1916, the Hon'ble Court has observed as under:

> *"Thus, although Circular has been issued for the purpose of non-seizure of jewellery during the course of search, the basis for the same recognizes customs prevailing in Hindu Society. In the circumstances, unless the revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery as stated in the Circular stands explained.'*

13. Further reliance was placed on the decision of Hon'ble Karnataka High Court in the case of Smt. Patidevi reported in 240 ITR 727**.** This decision has been delivered on 15.02.1999. In this decision, the addition to income related to an assessee not assessed to wealth tax and Assessing Officer had held that even jewellery within 500 gms. prescribed in clause (ii) of Instruction No. 1916 dated 11.05.1994 has to be considered undisclosed. The Hon'ble Court did not concur with the addition, confirming that what is prescribed in the Instruction No. 1916, even though stated to be for seizure, is equally applicable to assessment.

14. As per learned AR following the above decisions, the Tribunals across the country have decided the cases of undisclosed jewellery on the basic premise that the said Instruction is strictly applicable for assessment. ITAT Mumbai has **also** followed this premise in the following decisions:

1. Rafiq Mohd. Nazir Shaikh in ITA No. 465/Mum/2012
2. Harak Chand N. Jain reported in 101 Taxman 324

15. In the case of Rafiq Mohd. the Tribunal took note of the basis of relief given by CIT (Appeals) in following terms:

> *"The Ld. CIT (A) found merit in the submissions made on behalf of the assessee and relying on the CBDT Circular No. 1916 dated 11.05.1994 as well as the decision of the Hon'ble Gujrat High Court in the case of CIT vs. Ratanlal Vyaparilal Jain 235 CTR (Guj) 568, he treated the balance gold jewellery found during the course of search as explained and deleted the addition made by the A.O. on account of unexplained jewellery."*

16. The decision has been delivered in following terms:

> *"The only contention that has been raised by the Ld. DR is that the CBDT Circular 1916 dated 11.05.1994 lays down certain guidelines for seizure of jewellery found during the course of search and the same cannot be relied upon to treat the jewellery found during the course of search as explained, unless there is other evidence to corroborate the explanation of the assessee as regards the source of jewellery found during the course of search. It is however observed that this aspect of the matter has already been consented by Hon'ble Gujrat High Court in the case of CIT vs. Ratanlal Vyaparilal Jain (supra) relied upon by the Ld. CIT(A) wherein it was held that even though the CBDT instruction 1916 dated 11.051994 lays down the guidelines for seizure of jewellery in the course of search, the same takes into account the quantity of jewellery which could generally be held by family members belonging to an ordinary household. Hon'ble Gujrat High Court therefore upheld the approach adopted by the Tribunal in following the said Circular and giving benefit to the assessee, observing that the same is in consonance with the general practice in the Indian families where jewellery is gifted by the relatives and friends at the time of social functions such as marriage, birthdays and other festivals etc. In our opinion the issue involved in this appeal of the revenue thus is squarely covered in favour of the assessee by the decision of the Hon'ble Gujrat High Court in the case of CIT vs. Ratanlal Vyaparilal Jain and respectfully following the same we uphold the impugned order of the Ld. CIT(A) treating the jewellery of Rs. 13,36,9977- found during the course of search as explained, relying on the CBDT Circular No. 1916 dated 11.05.1994."*

17. As per learned AR, the decision of Hon'ble Allahabad High Court in the case of Ghanshyamdas Johari reported in 41 Taxmann.com 295 also confirms the position that once the jewellery is covered by Instruction No. 1916, addition to income cannot be made. In this connection, Para 14 of the Order is reproduced herebelow:

> *"14. Thus, the entire seized jewellery is covered by aforesaid Circular. When it is so, then there is no occasion to make any addition."*

18. A very categorical finding has been given by the High Court to the effect that when jewellery is within parameters defined by the Circular, addition cannot be made to income. In delivering this decision, Hon'ble High Court was guided by decision of Hon'ble Karnataka High Court in the case of Smt. Pati Devi (Supra) referred in the preceding paragraphs.

19. As per learned AR, similar view has been taken in the case of Smt. Neena Syal reported in 70 ITD 62 by the Chandigarh Bench. In this case, it was pleaded as under:

> *"He further referred to CBDT Circular No. F.288/63/93-IT (Inv)II dated 11.5.1994, which relates to guidelines for seizure of jewellery and ornaments in the course of search. The Board has specified that in case of a person not assessed to wealth-tax, 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 need not be seized. Ld. Counsel submitted that the said circular is not only with reference to seizure of jewellery but the intention underlying the same is also relevant for computation of deemed investment in jewellery."*

20. In response to this pleading, the Tribunal has held as under:

> *"We feel that the submission made by the Learned Counsel that the intention underlying CBDT Instruction issued on 11,05.1994 is also relevant with reference to deeming provisions of Section 69A, has force."*

21. As per learned AR it is pertinent here to draw attention to CBDT Circular no. 14(XL-35) dated 11-04-1955, which holds good even today having not been withdrawn or superceded, the relevant portion of which read as under:

> *"Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessees on whom it is imposed by law, officers should –*
>
> *(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;*
>
> *(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs. "*
>
> *(Circular No. 14 (XL-35) of 1955 dated 11-4-1955)*

22. In connection with the effect of such circular, reliance is also placed upon the decision of the Supreme Court in Navnit Lal C. Javeri v. K. K Sen, Appellate Assistant Commissioner of Income-tax [1965] 56 ITR 198 (SC). There the majority of the learned judges hearing the appeal held that circular issued by the Central Board of Revenue, of the kind of circular mentioned therein, would be binding on all officers and persons employed in the execution of the Income-tax Act. In the light of this decision of the Supreme Court, it is contended here that it was obligatory on the assessing officer when he originally heard the assessment proceedings to draw the attention of the assessee in the instant case firstly to the provision of Instruction 1916 dated 11th May 1994 and in the alternative to grant benefit of the stand of assessee before him that

jewellery was remade and was also received as gifts over a period of ten years since last valuation.

23. Further reliance is placed upon observations of the Supreme Court is SAL Narayan Row v. Ishwarlal Bhagwandas [1965] 57 ITR 149(SC). The judgment of the majority of the learned judges, observed :

> *"The order of the Income-tax Officer which did not take note of the law deemed to be in force must be regarded as defective."*

24. A CBDT Circular which has a binding force, not followed by assessing officer, tantamounts to a defect in the order of assessing officer.

25. On the other hand, learned DR relied on the order of the lower authorities and contended that AO has correctly made the addition with respect to the Gold and Diamond Jewerllery found during the course of search, after comparing the same from the valuation report filed by the assessee vis-à-vis violation report prepared by the Department valuer.

26. I have considered rival contentions and carefully gone through the orders of the authorities below. I have also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR during the course of hearing before me. From the record I found that addition has been made with respect to the jewellery found during course of search after comparing the same with the jewellery declared by the assessee in their wealth tax returns. It is clear from the facts narrated above that gross weight of declared jewellery was at Rs.1876.11 grams more than the gross weight of jewellery found in the

course of search at 1650.10 grams (1295.90 + 354.20). This fact has also been accepted by the lower authorities. The Instruction No. 1916 has been issued in connection with effecting seizure of jewellery etc. in the course of search. The power of seizure in the course of search is derived from Clause (iii) of Section 132(1), which reads as under:

> *"(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search."*

27. The power to seizer is only in the respect of "such" jewellery. It is necessary to reflect upon the linkage that the phrase "such" is referring to. The linkage has to be logically available within the section 132 of the Act under consideration, for otherwise phrase "such" shall lose its significance. A reference to the earlier portion of Section 132 indicates that phrase "such" prefixed to jewellery in Clause (iii) above has reference to Clause (c) of Section 132(1), which contains primary basis for undertaking search and is also one of the grounds for issuance of warrant to search. This clause reads as under;

> *"(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property)."*

28. A perusal of the above reveals that the phrase "such" in Clause **(iii)** referred earlier has reference to jewellery, which has been specifically

provided in clause (c) above to be undisclosed jewellery. Therefore, Instruction 1916 issued by the Board with regard to seizure of jewellery has inherent foundation of undisclosed portion of jewellery that may be identified in the search. The Instruction No. 1916, therefore is describing the criteria for decision making for jewellery to be undisclosed. Accordingly, any portion of the jewellery, which in terms of Instruction No. 1916 is not to be seized is automatically not undisclosed. It is in this background that Courts have held that once seizure is not permitted by virtue of Instruction No. 1916, addition to income cannot be made in the assessment. In the present facts of the case, by virtue of Clause (i) of Instruction 1916, because the gross weight of the jewellery disclosed by the family is in their regular returns were in excess of gross weight of jewellery found in the search, no seizure was possible and therefore, no addition to income is consequently permissible. "

29. It is also clear that the criterion of gross weight has been used in clause (i) of Instruction 1916 dated 11/05/1994. This is in consonance with the philosophy on which the Instruction No. 1916 is based upon. The Courts have time and again held that the basis of Instruction 1916 is recognition of the customs prevailing in Hindu Society. It has been so held by Hon'ble Gujarat High Court in the case of Ratanlal Vyaparilal Jain (supra). It has been observed as under:

> *"Thus, although Circular has been issued for the purpose of non-seizure of jewellery during the course of search, the basis for the same recognizes customs prevailing in Hindu Society."*

30. The instruction itself has recognized the need to take into account the social and customary practices into account when clause (iii) of the Circular 1916 dated 11th May 1994 specifies 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 authorising the search at the time of furnishing the search report."*

31. What is relevant critically includes status of the family, as well as customs and practices of the community to which the assessee belongs. It is keeping in view this philosophy, which is the primary basis for the circular, that for a wealth tax assessee, it is the gross weight which has been prescribed as the basis of decision making. The reason is appreciation of the facts that jewellery is frequently converted into different design depending on the needs. It is in recognition of this fact of the society we live in that gross weight, particularly to the exclusion of comparison item by item, has been prescribed as the decision making criterion for effecting seizure.

32. In view of the above discussion, it is now necessary to look into the facts of the case and applicability of the above legal scenario emerging from interpretation of Instruction 1916 dated 11.05.1994. At the Assessing Officer level, the following were treated as unexplained:

1.	Gold ornaments	Excess Gross Weight 182.70 gms	Rs. 4,62,231/-
2.	Diamond Jewellery	Unreconciled with Wealth Tax records	Rs. 30,32,319/-
			TOTAL Rs.34,94,550/-

33. I found that in picking up excess gross weight as the basis for gold ornaments, the assessing officer is indirectly giving credit to assessee for any changes in designs and remaking that might have been done since the valuation report was last done ten years ago. Question is why this criterion is not adopted for decision making about diamond jewellery. Here also gross weight ought to have been compared and decision taken. In that situation there would have been no addition to income on account of diamond jewellery.

34. The CBDT Instruction 1916 of 11/05/1994 demanded assessing officer to compare gross weight of diamond jewellery, which he chose not to do and adopted an item by item comparison approach which resulted in undue tax upon the assessee. The Apex Court in the case of Simon Carves Ltd reported in 105 ITR 212 have held that justice must be done in a quasi judicial manner. They have observed:

> *"The taxing authorities exercise quasi judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is a part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered, they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee. We are wholly unable to subscribe to the view that unless those authorities exercise the power in a manner most beneficial to the revenue and consequently most adverse to the assessee, they should be deemed not to have exercised it in a proper and judicious manner."*

35. From the record, I also found that in response to the show cause given by assessing officer proposing to make addition of alleged undisclosed jewellery, the assessee had taken the following objections:

a. The jewellery found has been tallied with valuation done by the assessee ten years in the past and during the intervening period, several items were remade which has led to several items not tallying

b. Items were received as gifts on various occasions c. Manner in which valuation was done by department's valuer during the search, in bathroom devoid of space and adequate light, and under time pressure (which facts have been recorded in statement on oath recorded during the search) have led to mistakes (which have also been acknowledged and credit given by CIT(A) in his order) and to improper description noted down in the report, All this it was claimed, has led to mismatch between jewellery found and those appearing in assessee's valuation report for wealth tax purposes.

36. Perusal of the assessment order clearly reveals that all these objections raised have been acknowledged by assessing officer but while taking the decision, these are dismissed without assigning any reasons whatsoever. The only observation of assessing officer is as under:

> *"The explanation of the assessee has been considered and the same is found to be unsatisfactory."*

37. The CIT(A) has given relief in respect of some of the claims made before him, but the manner in which the assessee's arguments have been dismissed in respect of diamond jewellery under consideration valued at Rs. 19,28,323/- needs to be elaborated and commented upon. This decision is contained in paragraph no, 6.6 of the order of CIT(A) and is on

page no 11 of the order. For the sake of ready reference, it is reproduced here below:

> *"6.6 I have considered this claim of the appellant that jewellery of Rs. 19,28,323/- was received by way of gifts over the years. The claim is not acceptable for the following reasons; (i) In her earlier submissions, the appellant did not claim that she had received part of the unexplained jewellery (was received) by way of gift. She all along claimed that the unexplained items found represented items disclosed in the valuation report which are inaccurately described and items which were made out of old items of jewellery appearing in the appellant's valuation report #1, Therefore her claim that* ***part of*** *the items of jewellery were received by way of gifts cannot be accepted.*
>
> *(Brackets provided; Text within to be ignored being language error)*
>
> *(ii) Secondly, the claim that these gifts were received over the years is not consistent with the Wealth Tax returns of the appellant and her husband. I find that in her Wealth tax return the appellant did not show any additions to the items of jewellery appearing in the appellant's valuation report #1 (Valuation report dated 31.03.2000). I find that in her WT returns filed for A.Y. 2001-02 and the subsequent A.Y.s the appellant had merely revalued the items of jewellery and no additions to the items of jewellery after 31.03.2000 is reflected in her wealth tax return. I therefore dismiss the claim of the appellant."*

38. I found that the claim of gifts has been there before assessing officer and therefore the argument that before CIT(A) in earlier submission this claim was not put up carries no weight for the purpose of dismissal of the claim itself. And, as for Wealth tax returns, it needs to be understood that there is always a cyclical kind of rotation between the item being re-made, gifts received etc. This is recognized by the CBDT in their Instruction 1916 dated 11/05/1994 when they gave powers to the department of taking into account the status of the family, customs and practices of the community to which the family belongs. Therefore rejection in the manner done by the appellate authority is not justified at all.

39. The CBDT Instruction 1916 dated 11th May 1994, in particular clause (iii) has to be looked into in background perspective of Raymond Group to which assessee belongs. The assessee has to attend social gatherings. The family functions are conducted on large scales and the list of invitees again is the cream of the society. A necessary concomitant is remaking of the jewellery; for repetition of the same items in any Indian society, including that of assessee, is bound to be looked down upon. Another necessary corollary is the spate of gifts that are received and, frequently, these are ornaments and jewellery, often high value items.

40. Keeping the status of assessee's family in mind as well as customs and practices of the community to which the family belongs as detailed in preceding paragraphs/ the benefit of CBDT Instruction 1916 dated 11th May 1994, is warranted for assessee.

41. In view of the above discussion, I do not find any merit for the addition so made on account of Gold and Diamond jewellery.

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

Order pronounced in the open court on this 22/12/2017

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 22/12/2017
Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai