

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "F", NEW DELHI

BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER
AND SHRI J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

	I.T.A.No. 5279/DEL/2012 A.Y. 2009-10	
Smt. Ruta S Jindal II C 95, Nehru Nagar Ghaziabad	Vs.	ACIT, Central Circle Ghaziabad
(APPELLANT)		(RESPONDENT)

Assessee by : Sh.Salil Agrawal, Adv.
And Sh.Shailesh Gupta, CA.
Department by : Sh. Vivek Wadekar, CIT, DR

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Ld.CIT(A), Ghaziabad dated 28.8.2012 pertaining to the Assessment Year (AY) 2009-10.

2. The facts as brought out by the Ld.CIT(A) from the statement of facts submitted before him by the AO is at para 3 of the order which is extracted for ready reference.

"The appellant is an individual residing at IIC-95, Nehru Nagar, Ghaziabad in a joint family with her husband Mr. Sunil Jindal, father-in-law Shri Vijay Jindal, her mother-in-law Smt. Chameli Devi , her grand father-in-law Shri Sat Pal, Grand mother-in-law Smt. Sheela Devi. On 14-10-2008 , a search u/s 132 was conducted at the residence of the assessee and total jewellery valued at Rs.

1,03,66,9821- was found from the house. Panchnamas were prepared in the names of ladies only. Details of jewellery found are as under:-

Jewellery Found as on 14.10.2008

Name	Jewellery found on the date of seizer 14.10.2008	Value on the date of 14.10.2008	Jewellery Seized	Value of Jewellery Seized	Jewellery not Seized	Value of Jewellery not seized
Chameli Devi	4128.70 Grams	7,06,837/-	2915.8 Grams	42,55,053/-	1212.9 Grams	28,07,780/-
Sheela Devi	603.70 Grams	8,01,90/-		°	603.70 Grams	8,0,1900/-
Ruta lindal	1502.60 Grams	25,02,245/-	414.30 Grams	6,35,000/-	987.30	18,67,245/-
Total	6235.00	1,03,66,982/-	3330.10	48,90,053/-		54,76,925/-

During the assessment proceedings the assessee was required to explain jewellery found at the time of search. The assessee explained that the assessee and her family owned following jewellery at the time of search.

Jewellery available as per records with each members

Name of the Member	Jewellery held as on 31.3.1999 in grams	Value of jewellery held as on 31.3.1999 value as on 14.10.2008 as per rate applied by the valuer at the time of search – Rs.
Chameli Devi Since this includes Dimond studded Jewellery. This has been valued at Rs.34,06,696/- on 31.03.20081 Therefore, value on the date of search is adopted the same.	1,555.01	34,06,696/-
Jewellery declared at the time of search pertaining to the period from 1.4.2008 to 13.10.2008 in the case of Chameli Devi.	2,400.00	30,00,000/-

Vijay Jindal Jewellery held since 1.4.1999 (Let out of VDIS)	409.00	5,11,250/-
Jewellery declared at the time of search pertaining to the period from 1.4.2008 to 13.10.2008 in the case of Vijay Jindal.	2,400.00	30,00,000/-
Sheela Devi	603.70	8,01,900/-
Satpal: Old 70 tolas converted into grams 812.00	812.00	10,15,000/-
Left out of declared under VDIS 316.34 grams	316.34	3,95,425/-
Ruta Jindal	696.00	8,70,000/-
Total jewellery held by the family residing at II C/95, Nehru Nagar	9182.05 gms	1,29,99,671/-

3. The Assessing Officer rejected the contention of the assessee that :
- the excess gold found in the assessee's room actually belongs to her father-in-law and mother-in-law;
 - The value of 60 tolas of gold as on date of search i.e. 14.10.2008 was not given credit and value of 60 tolas gold as on date of marriage in the year 2002 was given credit.
4. Aggrieved the assessee carried the matter in appeal. The First Appellate Authority after considering the detailed submissions of the assessee rejected the contentions of the assessee that "the value of jewellery found in the possession of the assessee, in excess of 60 tolas, which was "sthree dhan", actually belong to the father in law and mother in law but was lying in her room and in her possession". However, the Ld.CIT(A) granted reduction of the value of the jewellery as on the date of search, instead of value of the

jewellery as on 2002. The claim of the assessee was rejected in the following words.

“However, the appellant’s argument that rest of the jewellery was belonging to father-in-law and was lying in her possession, is not acceptable for the following reasons:

(a) No such stand was taken during search. The appellant should have Pointed out, during inventorisation that a portion of jewellery found in possession was actually belonging to her father-in-law and mother-in-law.

(b) If some of the jewellery of father-in-law and mother-in-law were given to the appellant; then some of the items of jewellery as appearing in the list of jewellery of father-in-law and mother-in-law, should have tallied with the items found in possession (as per inventory) of the appellant at the time of search. But the counsel has been unable to make any such tally of any item of jewellery!!.

Therefore, the balance of the jewellery found i.e. jewellery amounting to Rs. 13,02,245/- (Rs. 25,02,245 (-) Rs. 12,00,000/-) is treated as unexplained jewellery and is required to be added as income of the appellant from undisclosed sources on account of unexplained investment.

The addition of Rs. 22,02,245/- is thus restricted to the extent of Rs. 13,02,245/- . “

5. Aggrieved the assessee is in appeal before us on the following grounds.

“1. That the ALd.CIT(A) has erred both in law and on facts in sustaining an addition of Rs.13,02,245/- representing the value of jewellery found during search and treated as unexplained.

2. That in sustaining the addition of Rs.13,02,245/- the authorities below have failed to appreciate that in joint families living together in the same house jewellery is not necessarily kept in watertight separate rooms/lockers, and it is the total jewellery found from the family residing in the same premises is to be explained.

3. That addition of Rs.13,02,245/- having been wrongly sustained be deleted.”

6. Heard Shri Salil Agrawal, Advocate, the Ld.Counsel for the assessee and Shri Vivek Wadekar, Ld.CIT, D.R. on behalf of the Revenue.

7. The Ld.Counsel for the assessee reiterated the contentions raised by him before the lower authorities. He pointed out to the total jewellery found at the residence of the assessee as well as the value of the jewellery, by furnishing a chart. The chart explained the jewellery found in search on 14.10.2008 at the residence of the family members of the assessee, and their stand in respective assessment proceedings and also the manner in which the assessments and appellate proceedings were finalised, in case of each of the family member. The contentions of the assessee can be summarised as follows.

(a) The factum of availability of jewellery as per chart B is not in dispute and has been duly accepted by the AO. Chart B reads as follows.

Chart B

Name of the member	Jewellery held As on 31.03.1999 in Grams	Value of Jewellery held As on 31.03.1999 Value as on 14.10.2008 as per rate applied by the Valuer at the time of search

Chameli Devi [Since this includes Diamond studded jewellery. This has been valued at 34,06,096/- as on 31.03.2008. AS PER W.T. return for AY 2008-09. Therefore value on the date of search is adopted the same.	1,555.01	3,406,096
Jewellery declared at the time of search to the period from 01.04.2008 to 13.10.2008 in the case of Chameli Devi.	2,400.00	3,000,000
Vijay Jindal Jewellery held since 01.04.1999[Left out of VDIS] Value declared in W.T. for 08-09 is Rs.607485/-	409.00	511,250
Jewellery declared at the time of search to the period from 01.04.2008 to 13.10.2008 in the case of Vijay Jindal.	2,400.00	3,000,000
Ruta Jindal	696.00	870,000
Sheela Devi	603.70	801,900
Sat Pal		
Old 70 Tolas converted into grams 812.00	812.00	1,015,000
Left out of declared under VDIS 316.34 grams.	316.34	395,425
Total Jewellery held by the family residing at 11-C/95 Nehru Nagar	9182.05 Grams	12,999,671

(b) The AO accepts that when joint family is living together in the same house, then the jewellery found in one room cannot be treated as only belonging to the lady living in the room simply because annexure to Panchnama has been drawn in the name of the lady, though no warrant has been issued against the lady.

(c) It is clear that certain jewellery recorded in the panchnama drawn in the name of the lady, was considered as jewellery of male members on whose name warrant of search has been drawn up. This is evident from the assessment of Shri Vijay Jindal and Shri Sunil Jindal. It is an admitted fact that in the room of the mother in law and father in law of the assessee, jewellery that was found, was lesser than what was declared and treated as explained, while in the other room when the son and daughter in law reside, the jewellery of the same value was found. The Annexure discloses what was declared by the daughter in law.

(d) Reliance is placed on the order of the Ld.CIT(A) in the case of Smt. Chameli Devi, the mother in law of the assessee, and the assessment order in the case of Sh. Sunil Jindal.

7.1. Ld.DR on the other hand submitted that, on the date of the search, the assessee did not explain that the excess jewellery actually belongs to her mother in law. He submits that this explanation is an after thought. Further he submitted that the items of jewellery as appearing in the list of jewellery of father in law and mother in law has not tallied with the items of jewellery ;found in the possession of the assessee. He relied on the order of the Ld.CIT(A) and prayed that the same be upheld.

8. In reply the Ld.Counsel for the assessee submitted that no statement was recorded from the assessee at the time of search and only an inventory of the gold jewellery was made. He submitted that there was no occasion for the assessee to state the facts at the time of search or thereafter. Thus he submits that at the first available opportunity, the assessee explained the correct position.

9. After hearing rival contentions, perusing the papers on record, orders of the authorities below, we hold as follows.

10. The total jewellery found at the residence of the assessee is as under.

Chart-A

Name in which Annexure is drawn	Jewellery found on the date of seizer 14.10.2008	Value as determined by the department on the date of 14.10.2008 In Rupees
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Champa Jindal common name of Chameli Devi [Mother-in-law of the Appellant)	Gold Net Weight 3279.5 Grams Diamonds 232 Ct.	6,080,037
Chameli devil Mother-in-law of the Appellant 1 Annexure J of Panchnama in respect of Locker No. 688 of PNB, Lohia Nagar, Ghaziabad	Gold Net Weight 849.2 Grams	982,820
Ruta Jindal [Appellant] At Residence Annexure - J-1 of Panchnama dt, 15.10.2008	Gold Net Weight 1502.60 grams	2,502,245
Sheela Devi [Grand mother-in-law of the Appellant] At Residence	Gold Net Weight 603.70 grams	801,900
TOTAL of JEWELLERY found from IIC-95, Nehru Nagar, Ghaziabad	6235.00 grams	10,366,982

The assessee has further furnished the following chart which gives the details as to how each member of the family have disclosed the respective gold and jewellery in their respective returns of income and as to how the AO and wherever the assessee had gone in appeal, the appellate authority had dealt with the disclosure. This is extracted below.

Chart showing explanation in respect of jewellery found in search on 14.10.2008 at II C-95, Nehru Nagar, Ghaziabad tendered by all the members of the family in their respective assessment proceedings and position of assessment and appeals before CIT(A) in the case of each member.

Name of the member	Jewellery held as on 31.3.1999 in grams	Value as on 14.10.2008 as per rate applied by the Valuer at the time of search IN Rupees	Position of assessment in the cases of each member	Final position as on date
VijayJindal Jewellery held since 1.4.99 (Left out of VD IS)	409.00	511,250	Required to explain jewellery for value of Rs.9536372/- i.e. jewellery found from the rooms of Vijay Jindal and his wife and Sunil Jindal and Ruta Jindal (the	Accepting the explanation of the assessee, no addition was made on account of jewellery by AO Copy of assessment

			appellant)	order is on pages 55-57 of paper book.
Jewellery declared at the time of search pertaining to the period from 1.4.2008 to 13.10.2008 in the case of Vijay Jindal	2.400.00	3,000,000	In explanation common chart placed above was relied upon.	- Do -
Sunil Jindal Husband of Ruta Jindal			Required to explain jewellery for value of Rs.95,63,372/- i.e. jewellery found from the rooms of Vijay Jindal and his wife and Sunil Jindal and Ruta Jindal (the appellant)	Accepting the explanation of the assessee, no addition was made on account of jewellery by AO.
Chameli Devi Since this includes diamond studded jewellery. This has been valued at Rs.34,06,096.00 as on 31.3.2008. Therefore value on the date of search is adopted the same	1555.01		In explanation common chart placed above was relied upon. Copy of reply and chart is placed at page 62-66 of paper book	See page 46 and 47 CIT(A) accepted that jewellery worth the value of Rs.8339150/- was explained in the hands of Chameli Devi and Vijay Jindal and therefore jewellery worth Rs.7062837/- was well explained. Thus admittedly the jewellery found from the room of Vijay Jindal and Chameli Jindal (father in law and mother in law was short by Rs.1276313/-.
Shhela Devi	603.70	801,900	Required to explain jewellery found in search. Addition of Rs.129625/-.	Addition deleted holding that jewellery of husband should have been taken into consideration.
Sat Pal Old 70 tolas converted into grams 812.00 Left out of declared under VDIS 316.34 gms	812.00 316.34	1,015,000 395,425		No additions
Total jewellery held by the family residing at II C/95, Nehur Nagar	9172.05 gms	12,999,671		

10.1. A perusal of all the above demonstrates that, the Revenue has in some cases considered the jewellery found in the possession of one family members,

as jewellery belonging to the other family member. It is undisputed that all these family members are residing together. Under these circumstances the submissions of the assessee that jewellery cannot be said to be kept in water tight compartments in joint hindu families and that the jewellery of one family member is given to the other member for use only and that the jewellery found in the possession of one member could belong to another member of the family, is a possible explanation. Further the amount of jewellery found short in the hands of the mother in law and father in law of the assessee tallies in value, with the jewellery found in excess in the room of the assessee. Regarding non tallying of the items of jewellery the explanation that the items are changed frequently by the ladies of the house, is a possible explanation. In any event the additions in this case was made on the basis of values of jewellery and not on the basis of quantitative tally. The assessee in this case explained that Rs.3 lakhs is the value of 60 tolas as gold ornaments as on 3.7.2002, the date of her marriage, which was duly declared by her, in her I.T.returns. The value of these 60 tolas, as on the date of search is fixed at Rs.11,59,032/- by the valuer. Deduction is granted by the Ld.CIT(A) to such value of Rs.11,59,032/-. As regards jewellery worth Rs.13,02,245/- the Ld.CIT(A) ignored the fact that at the time of search no statement was recorded from the assessee and hence there was no occasion for her to state that part of the jewellery belong to her mother in law/ father in law or to specify the items of such jewellery. AT the first available opportunity the assessee had stated her position. Under the circumstances no adverse inference can be drawn against the assessee.

10.2. Keeping in view the overall facts and circumstances of the case we are of the considered opinion that the addition made on account of unexplained

investments in jewellery in the hands of the assessee, is devoid of merit. In the result the addition is deleted and the assessee's appeal stands allowed.

11. In the result the assessee's appeal is allowed.

Order pronounced in the Open Court on 17th June, 2015.

Sd/-

[I.C. SUDHIR]
JUDICIAL MEMBER
Dt. The 17th June, 2015

Sd/-

[J. SUDHAKAR REDDY]
ACCOUNTANT MEMBER

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Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches