

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 5259/DEL/2017
Assessment Year: 2011-12

SUNEELA SONI,
57, VIGYAN LOK,
DELHI - 110 092
(PAN: BDUPS1701G)
(APPELLANT)

VS. DCIT, CC-20, NEW DELHI

(RESPONDENT)

Assessee by : Sh. Gautam Jain, Advocate &
Sh. Lalit Mohan, CA
Revenue by : Sh. V.K. Jiwani, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 18.06.2015 of the Ld. CIT(A)-2, New Delhi pertaining to assessment year 2011-12 on the following grounds:-

- 1.) That the Learned Commissioner of Income Tax (Appeals) -2, New Delhi has erred in deciding the appellate proceedings by confirming the additions made by the learned Assessing Officer without providing a reasonable opportunity to the appellant to submit and substantiate his claim on the additions made by the Learned Assessing.
- 2.) That the Learned Commissioner of Income Tax (Appeals) -2, New Delhi has erred in confirming an

addition a sum of Rs.10,65,312.00 on account of purported unexplained jewellery claimed by the appellant without appreciating the fact that the jewellery found during the course of search and seizure operations was from the locker in law and husband of the appellant and hence the addition in the hands of the appellant is uncalled for.

3.) That it is accordingly prayed that the additions confirmed by the Learned Commissioner of Income Tax (Appeals) may kindly be deleted.

4) That the appellant further prays that the penalty u/s 271(1)(c) initiated by the Learned Assessing Officer may also kindly be dropped.

5) That the appellant craves leave to add or amend any ground of appeal.

2. The brief facts of the case are that a search & seizure operation under section 132 of the IT Act was conducted at the residence of Smt. Suneela Soni at 57, Vigyan Lok, Delhi-I I 0092 as well as at locker No. 815, Central Bank Of India, Yojna Vihar Market, Delhi and locker No. 817 Vijaya Bank, Vigyan Vihar, Delhi in connection with search & seizure operation under section 132 of the IT Act conducted on Monnet Group of cases on 19.11.2010. The case of the assessee was centralized with DCIT Central Circle-20, New Delhi, vide order No. CIT-XII/Centralisation/2011-12/98 dated 07.04.2011.

Accordingly, Notice under section 142(1) of the Act was issued on 04/09/2012. In response to the notice under section 142(1), the assessee filed her return of income on 03.10.2012, declaring total income of Rs. 6,04,170/- for year under consideration. In the above return, the assessee has shown income from other sources. Further, notice under section 142(1) & 143(2) alongwith a questionnaire dated 15.10.2012 issued to the assessee. In response to the aforesaid notices, the Authorized Representatives, attended the assessment proceedings and furnished necessary details as asked for from time to time. The assessee is deriving interest income from saving bank account, interest on FDR. Interest on post office MIS, interest on NSC, income from tuition fee and interest from PPF. The details filed by the AR of the assessee, have been examined by the AO. During the course of search operation jewellery as under was found from the residence and lockers of the assessee:

Location	Item	Weight	Value
Residence	Gold Jewellery	133.2 gms	Rs.326412/-
Locker No. 815	Gold Jewellery	46 gms	Rs.90620/-
Locker No.817	Gold Jewellery	1046 gms	Rs.2170812/-
	Silver utensils	1283 gms	Rs.58100/-

The assessee was asked to explain the above with books of accounts and to give source of acquisition of the same with proper evidence vide questionnaire dated 15.10.2012. The assessee replied vide letter dated 14.3.2013 through his authorized representative

that out of total jewellery found, 580.400 gm gold [133.200gms + 447.200J] was her streedhan given by her parents and relative at the time of her marriage with Sanjeev Soni on 25.8.1990. Out of total jewellery found in locker no.817, gold jewellery having weight of 598.800 gms and 1.283 Kg silver utensils /coins belonged to her mother in law, Late Smt. Sarita Soni who died on 3.12.2005 which was her streedhan. Further, the assessee has relied upon instruction no. I 916 dated 11.5.1999 issued by CBDT for the purpose of guiding the investigation teams of the Department regarding seizure of jewellery in case of persons who are not assessed to wealth tax. The assessee is also relied upon decision by Hon'ble Delhi High court given on 05.07.20 11 in the case of Sh. Ashok Chaddha vs. ITO wherein the court has held that streedhan in the form of jewellery received during the span of 25 years cannot be said to be unexplained investment under section 69A of the Income tax Act 1961. Explanation of the assessee as mentioned above has been considered and was disposed off by referring section 132(4A) and Section 69 of the Act at page no. 3 & 4 of the assessment order and held that assessee has failed to discharge her onus of satisfactorily explaining the source of acquisition of gold jewellery and silver utensils, therefore, after considering the CBDT circular as referred above, the amount of Rs. 10,65,312/- was considered to be deemed income of the assessee and added back to the declared income of the assessee for the AY 2011-12 vide order dated 28.3.2013 and assessed the

income of the assessee at Rs. 16,69,482/-. Aggrieved with the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 18.6.2015 has dismissed the appeal of the assessee, in view of the CBDT's circular as referred above.

3. Aggrieved with the impugned order dated 18.6.2015 assessee is in appeal before the Tribunal.

4. At the time of hearing Ld. Counsel of the assessee stated that lower authorities have wrongly made and / or upheld the addition of Rs. 10,65,312.00 on account of purported unexplained jewellery claimed by the assessee without appreciating the fact that the jewellery found during the course of search and seizure operations was from the locker held by the father in law and husband of the assessee and hence the addition in the hands of the assessee is uncalled for. Also during the hearing, Ld. Counsel of the assessee filed a Paper Book containing pages 1 to 50 having various records of the search which includes inventory, panchnama, jewellery valuation report, affidavit and the judgement of the Hon'ble Rajasthan High Court in the case of Radha Kishan Soni vs. CIT reported in 277 ITR 56 and judgment of Hon'ble High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.) He stated that the jewellery found from the joint lockers was explained to be belonging to Late mother in law of the assessee Smt. Sarita Soni, however, the AO has rejected this contention. He further stated that it is neither practically desirable nor legally

permissible to make additions on the ground of lack of documentary evidence when it is an undisputed position that marriages of mother in law had taken place 53 years prior to the search and marriage of the assessee had taken place 20 years. He further stated that the Hon'ble High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.) has accepted the jewellery of 906.60 grams in the case of married lady even without documentary evidence as the denying the explanation would tantamount to overlooking the realities of life. He further stated that CBDT Instruction no. 1916, dated 11.5.1992, lays down guidelines for seizure of jewellery and ornaments in the course of search takes into account the quantity of jewellery which would generally be held by the family members of an assessee. The Circular does not specifies the conditions in which it is applicable in other words wherein the term "person" contained in the circular would refer only to living member of the family and not female members who on account of untimely death, leave behind jewellery, which according to Hindu traditions is kept safe with daughter in law. He further stated that AO has not brought any material to hold that the aforesaid circular would not apply to immediate deceased family members and relied upon the decision of the ITAT, Jaipur Bench in the case of DCIT vs. Shri Pawan Lashkary in ITA No. 452/Del/2012. In view of above, status of family status as well as explanation assessee's counsel has requested that addition claim of 500 gms in

the case of deceased mother in law be allowed and an addition relief of 100 gms be allowed in the case of minor son of the assessee and further the silver utensils owned by the mother in law. Considering the addition claim of 600 gms, the balance 525 gms of gold jewellery and the 1283 grams of silver utensils thus be held as duly explained in the hands of the assessee and accordingly, the appeal of the assessee may be allowed.

5. On the contrary, Ld. DR relied upon the orders of the authorities below. He stated that total jewellery found at the residence and lockers of the assessee at the time of search, the AO has already taken 500 gms as explained in the hands of the assessee and 200 gms as explained in the hands of her husband and father in law, in view of the CBDT's instruction no. 1916 dated 11.5.1999 and stated that it is only the excess jewellery over and above and in the absence of any documentary evidence, the AO has rightly made the addition in dispute u/s. 69A of the Act and Ld. CIT(A) has confirmed the same, which does not need any interference.

6. I have heard both the parties and perused the records, especially the orders of the authorities below and the case laws referred by Assessee's counsel. I find that assessee's counsel during the hearing has filed a paper book containing pages 1 to 50 which is a copy of panchnama in the name of Sh. Sanjiv Soni alongwith annexures which includes list of inventory of other valuables, locker keys , FDR etc.; copy of inventory of cash found but not seized;

report of valuation of jewellery; (pg. 1 to 8-PB); copy of revocation order of Smt. Suneela Soni; Copy of panchaname in the name of Smt. Suneela Soni alongwith report of valuation of jewellery; copy of revocation order of Sh. Sajeev Soni; copy of panchanam in the name of Sh. Sanjiv Soni alongwith annexures which includes list inventory of books of account, documents found and seized; copy of inventory of cash found but not seized; report of valuation of jewellery; copy of reply filed by the assessee before ACIT; copy of reply filed by the assessee before DCIT; copy of submission before CIT(A) alongwith copy of affidavit of Smt. Suneela Soni and details of jewellery of in lockers; copy of affidavit purchased by Sh. Shiv Sunder Soni, son of late Sh. MG Soni alongwith details of jewellery in lockers; copy of judgment of Hon'ble Rajasthan High Court in the case of Radha Kishan Soni vs. CIT reported in 277 ITR 56 and copy of judgment of Hon'bel High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.) inventory of other valuables, locker keys , FDR etc.; copy of inventory of cash found but not seized; report of valuation of jewellery. I find that AO has made the addition of Rs. 10,65,312.00 on account of purported unexplained jewelery claimed by the assessee without appreciating the fact that the jewelery found during the course of search and seizure operations was from the locker held by the father in law and husband of the assessee and hence the addition in the hands of the assessee is uncalled for. It was noted that jewellery found from the joint

lockers was explained to be belonging to Late mother in law of the assessee Smt. Sarita Soni, however, the AO has rejected this contention. It is further noted that assessee's belongs to joint family and it is undisputed position that marriages of mother in law had taken place 53 years prior to the search and marriage of the assessee had taken place 20 years. I further note that the Hon'ble High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.)/202 Taxmann 395 has accepted the jewellery of 906.60 grams in the case of married lady even without documentary evidence as the denying the explanation would tantamount to overlooking the realities of life by holding as under:-

"As far as addition qua jewellery is concerned, during the course of search, jewellery weighing 906.900 grams of the value amounting to Rs. 6,93,582 was found. The appellant's explanation was that he was married about 25 years back and the jewellery comprised "streedhan" of Smt. Jyoti Chadha, his wife and other small items jewellery subsequently purchased and accumulated over the years. However, the Assessing Officer did not accept the above explanation on the ground that documentary evidence regarding family status and their financial position was not furnished by the appellant. The Assessing Officer accepted 400 grams of jewellery as explained and treated jewellery amounting to 506.900

grams as unexplained and made an ad hoc addition of Rs. 3,87,364 under section 69A of the Act working on unexplained jewellery, by applying average rate of the total jewellery found. The relevant portion of the assessment order reads as follows:-

"a very reasonable allowance of ownership of gold jewellery to the extent of 400 grams is considered reasonable and the balance quantity of 506 grams by applying average rate, the unexplained gold jewellery is considered at Rs. 3,87,364 $(506/900 \times 6,93,582)$ u/s 69A of the Act."

The CIT (A) confirmed this addition stating that the Assessing Officer had been fair in accepting the part of jewellery as unexplained. The ITAT has also endorsed the aforesaid view. Learned counsel for appellant Ms. Kapila submitted that there was no basis for the Assessing Officer to accept the ownership of the gold jewellery to the extent of 400 grams only as "reasonable allowance" and treat the remaining jewellery of Rs. 506.900 as unexplained. She also submitted that another glaring fact ignored by the Assessing Officer as well as other authorities was that as the department had conducted a search of all the financial dealings which were within his knowledge and no paper or document was found to indicate that this jewellery belonged to the appellant and that

it was undisclosed income of the assessment year 2006-07. In a search operation, no scope is left with the tax department to make addition on subjective guess work, conjectures and surmises. It was also argued that jewellery is "streedhan" of the assessee's wife, evidenced in the form of declaration which was furnished by mother-in-law of the assessee stating that she had given the jewellery in question to her daughter. She argued that it is a normal custom for a woman to receive jewellery in the form of marriage and other occasions such as birth of a child. The assessee had been married more than 25-30 years and acquisition of the jewellery of 906.900 grams could not be treated as excessive.

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 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.

5. Appeal is allowed in the aforesaid terms."

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 AO 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.

7. In the result, Assessee's appeal is allowed.

Order pronounced on 16-03-2018.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated :16-03-2018

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.