

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'A' : NEW DELHI)

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 1540/DEL/2015
Assessment Year: 2011-12**

Sh. VIBHU AGGARWAL,
H.NO. 14, EAST AVENUE
PUNJABI BAGH,
NEW DELHI – 110 026,
(PAN: AAXPA8414E)
(APPELLANT)

VS. DCIT, CC-06, NEW DELHI

(RESPONDENT)

Assessee by : Sh. Ved Jain, & Sh Ashish Goel, CAs
Revenue by : Sh. Ravi Kant Gupta, Sr. DR.

ORDER

PER H.S. SIDHU, JM

The Assessee has filed the Appeal against the Order dated 22.12.2014 of the Ld. CIT(A)-24, New Delhi pertaining to assessment year 2011-12 on the following grounds:-

1. The Ld. CIT(A) has erred in law and fact in ignoring and rejecting the explanations and submissions made in regard to addition on account of gold and silver ornaments/ articles over and above permitted by CBDT's

Instruction No. 1916 which is highly, unjustified, uncalled for and bad in law.

2. The assessee craves to have the right to add, amend or modify the grounds 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 business premises of M/s Best Group and as well as in the residential premise of the Directors on 28.03.2011, in consequence to which the case of the assessee was taken up for scrutiny. The AO has completed the assessment by making an addition of 30,73,373 on account of unexplained investment in jewellery and addition of Rs. 1,87,082/- on account of unexplained investment in property. The total jewellery found during the course of search was 2531.5 gms, out of which the AO has given assessee the benefit of 950 gms, as per the CBDT Instruction No. 1916 dated 11.4.1994 on account of wife and two children of the assessee. The Ld. CIT(A) in appeal has further allowed the benefit of 600 gms. Of jewellery on account of mother and father of the assessee, holding that the same was allowable to the assessee as per the CBDT Instruction No. 1916, but however, sustained the balance addition made by the

AO, vide order dated 22.12.2014 treating the balance jewellery weighting 1050 gms of gold as unexplained.

3. Aggrieved with the impugned order dated 22.12.2014 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 partly upheld the addition 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 gifted to the assessee and his wife by their parents and grandparents and other relatives at the time of their marriage, and also on several occasions after that, such as birth of their two children, marriage anniversaries etc. Also it was submitted that some of the jewellery was purchased by assessee's wife out of the cash gifts received by her from the relatives on various occasions. It was further stated that the excess jewellery found in the case of assessee, his parents, his wife, their children and the HUF was very nominal, and was very much adequate, keeping in mind the riches and status of assessee's family. It was further stated that CBDT Instruction No. 1916 dated 11.5.1994 stipulates that in case of a family having high status and more customary practices, a larger

quantity of jewellery and ornaments can be accepted by the Department. In view of above, he relied upon the following cases laws:-

- Hon'ble Delhi High Court decision in the case of Sushila Devi vs. CIT in WP© No. 7620 of 2011 dated 21.10.2016
- Hon'ble Delhi High Court judgment in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.)
- ITAT, Delhi Tribunal, in the case of Suneela Soni vs. DCIT in ITA No. 5259/Del/2007 dated 16.3.2018.
- ITAT, Mumbai Bench decision in the case of DCIT vs. Haroon Mohd. Unni in ITA No. 463/Mum/2012 dated 31.1.2014.

5. On the contrary, Ld. DR relied upon the orders of the authorities below. He stated that the total jewellery found during the course of search was 2531.5 gms, out of which the AO has given assessee the benefit of 950 gms, as per the CBDT Instruction No. 1916 dated 11.4.1994 on account of wife and two children of the assessee. However, the Ld. CIT(A) has further allowed the benefit of 600 gms. of jewellery on account

of mother and father of the assessee, holding that the same was allowable to the assessee as per the CBDT Instruction No. 1916, but however, sustained the balance addition made by the AO, treating the balance jewellery weighting 1050 gms of gold as unexplained, which does not need any interference.

6. We 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. We find that in this case a search & seizure operation under section 132 of the IT Act was conducted at the business premises of M/s Best Group and as well as in the residential premise of the Directors on 28.03.2011, in consequence to which the case of the assessee was taken up for scrutiny. The AO called for an explanation during the assessment proceedings explaining all the items of jewellery found during the course of search. In reply, the assessee explained that the jewellery belongs to the assessee's parents, their HUF, assessee's family members and his HUF. Most of the jewellery items were inherited from his grandparents and received as gifts on the occasion of marriage and birth of his children and also gifts were received on marriage anniversary, birthdays of children etc. and there was no occasion to file the wealth tax as the net wealth did not

exceed the minimum limit prescribed under the Wealth Tax from period to period in each case, therefore neither the assessee nor his family members were assessed to wealth tax. The AO has completed the assessment by making an addition of 40,73,373 on account of unexplained investment in jewellery. The total jewellery found during the course of search was 2531.5 gms, out of which the AO has given assessee the benefit of 950 gms, as per the CBDT Instruction No. 1916 on account of wife and two children of the assessee. We further note that in appeal Ld. CIT(A) has further allowed the benefit of 600 gms. Of jewellery on account of mother and father of the assessee, holding that the same was allowable to the assessee as per the CBDT Instruction No. 1916, but however, sustained the balance addition made by the AO, vide order dated 22.12.2014, treating the balance jewellery weighting 1050 gms of gold as unexplained, without appreciating the fact that assessee belongs to a wealthy family where gifting of jewellery possessed by each of the family members; all the family members as well as the HUF were assessed to tax separately; the assessee has been married from the past 18 years, and also had two children, the jewellery was gifted/inherited to the assessee and his wife by their parents and grandparents and

other relatives at the time of their marriage, and also on several occasions after that, such as birth of their two children, marriage anniversaries etc. Also some of the jewellery was purchased by assessee's wife out of the cash gifts received by her from the relatives on various occasions. We also observe that that the CBDT Instruction No. 1916 dated 11.5.1994 vide para no. (iii) stipulates as under:

"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."

6.1 In view of above instructions, the excess jewellery found in the case of assessee, his parents, his wife, their children and the HUF was very nominal, and was very much reasonable, keeping in mind the riches and high status and more customary practices. Our aforesaid view is fortified by following decisions/judgments:-

- i) Judgment of the Hon'ble High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14

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wherein the Hon'ble High Court 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."

- ii) Jurisdiction High Court in the case of Sushila Devi in Writ Petition No. 7620 of 2011 dated 21.10.2016 wherein it has been held as under:-

"The income tax authorities rationale or justification is entirely insubstantial. The assessee says that she was married in mid 1960s and her daughters were born in 1967. She was 70 when these proceedings were started. The income tax authorities do not deny this. In the circumstances, the further explanation that the jewellery belonged to her and represented accumulations of gifts received from family members over a period of time, and also acquired during

the subsistence of her marriage is reasonable and logical [para 9].

The assessee's explanation is justified and reasonable. Her contention that the gold jewellery was acquired through gifts made by relatives and other family members over a long period of time, is in keeping with prevailing customs and habits. The obdurate refusal of the respondents to release the jewellery constitutes deprivation of property without lawful authority and is contrary to article 300A of the Constitution of India. The petition has to succeed; a direction is issued to the income tax authority to release the jewellery within two weeks and in that regard intimate to the assessee the time and place where she (or he representative) can received it [para 10]."

ii) ITAT, Delhi decision in the case of Suneela Soni vs.

DCIT passed in ITA No. 5259/Del/2017 dated

16.3.2018 wherein the Tribunal has accepted the jewellery in excess of limits specified in the CBDT Instruction No. 1916, by following the decision of the Hon'ble Delhi High Court in the case of Ashok Chadha vs. ITO (Supra).

6.2 After perusing the aforesaid decisions of the Hon'ble Delhi High Court as well as the ITAT, Delhi, we are 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 Tribunal, hence, the issue in dispute is squarely covered by the aforesaid decisions.

6.3 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 (Supra) & of Sushila Devi in Writ Petition No. 7620 of 2011 dated 21.10.2016 and the ITAT Delhi decision in the case of Suneela Soni vs. DCIT passed in ITA No. 5259/Del/2017 dated 16.3.2018, 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 partly confirmed by the Ld. CIT(A) on account of balance

jewellery weighting 1050 gms of gold as unexplained is hereby deleted.

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

Order pronounced on 04-05-2018.

Sd/-

Sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

(H.S. SIDHU)
JUDICIAL MEMBER

Dated :04-05-2018

SR BHATANGAR

Copy forwarded to:

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

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NEW DELHI.