IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER

I.T.A. No.1397/DEL/2015
Assessment Year: 2011-12

Shri Raj Kumar Kakrania, H-1593, 2nd Floor, C.R. Park, New Delhi.	vs.	DCIT, CC-04, New Delhi.
TAN/PAN: AAACP 1438L		
(Appellant)		(Respondent)

Appellant by:	Shri G.N. Gupta, Adv.		
Respondent by:	Ms. Paramita Tripathi, CIT-DR		
Date of hearing:	23	05	2018
Date of pronouncement:	30	05	2018

O R D E R

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 25.11.2014 passed by Ld. CIT (Appeals)-XXX, New Delhi for the quantum of assessment passed u/s.143(3)/153A for the Assessment Year 2011-12. In the grounds of appeal, the assessee has raised the following grounds.

"1. That on the facts and circumstances of the case the Ld. CIT (A) has erred:

a) in ignoring the fact that the jewellery found at the time of search also belongs to the wife of the assessee as per the Wealth Tax Return filed by the assessee as Karta of HUF, and Wealth Tax

Returns filed by his wife upto the some years back.

b) In ignoring the fact that the locker from where the jewellery was found was in the joint name of the assessee and his wife and the plea that jewellery found at the time of search also belonged to his wife not considered.

c) In ignoring the affidavit that was filed before the Id AO and the fact that the jewellery also belonged to his wife and the source of the jewellery that was explained in the affidavit.

d) In confirming the additions so made by the Id AO except deleting the addition of jewellery of 600 Grams in weight.

2. That on the facts and circumstances of the case the Ld. CIT(A) has grossly erred in upholding the addition so made by the Ld. AO on account of the unaccounted cash Rs. 5,25,000/- found and seized by the department in spite of the fact the same was duly explained by the assessee. Therefore the same was liable to be deleted."

2. The facts in brief are that a search and seizure action u/s.132 was carried out on 21.01.2011 in DS Group of cases and assessee has also covered under the search and seizure operation. During the course of search at the residence of the assessee and bank locker, jewellery was found in the possession of the assessee which was valued by the Government approved valuer at Rs.21,54,497/- on the jewellery found from the residence and Rs.15,63,395/- on the jewellery found from the locker. The total jewellery found from the assessee weighing 1383.90 gms (wrongly taken as 1583.90 gms by the Assessing Officer) which was valued at Rs.37,17,892/-. Before the Assessing Officer, assessee's case

was that firstly, the benefit of CBDT circular should be given; and secondly, there was a partial partition of bigger HUF on 01.04.1995 and the jewellery held by the HUF was partitioned between two brothers and out of the said partition 683.10 gm was received by the assessee. An affidavit was also filed in this regard. The Assessing Officer held that since assessee has not filed any wealth tax return and affidavit is merely self serving statement, therefore, he added the entire jewellery amounting to Rs.37,17,892/-.

3. Apart from that, cash amounting to Rs.5,25,000/- was found to which assessee had explained that it was pin money of his wife and his savings from salary over a period of time. However, Assessing Officer rejected this contention and added the amount of Rs.5,25,000/- as unexplained u/s.69A.

4. Ld. CIT (A) partly confirmed the investment made on account of unexplained jewellery after observing and holding as under:

> *During the appellate proceedings, Ld. AR argued that before the assessing officer, the appellant vide letter dt. 3.12.2012 has filed detailed explanation for jewellery found where the appellant claimed that assessee's wife was filing wealth tax return regularly and also filed valuation report of the jewellery as on 31.07.1976 in assessee's wife's hand. Vide said letter, the appellant has also filed copy of the valuation report filed alongwith the wealth tax return of Raj Kumar Binay Kumar Kakrania (HUF) and claimed that 683.1 gm of gold was received from Partial partition of HUF by the appellant. Total jewellery claimed by the appellant as explained*

was weighing 1555.1 grm (872.05 gm in the hands of appellant's wife and 683.1 gm on account of partial partition of HUF). During the appellate proceedings, Ld. AR has filed copy of wealth tax return of appellant's wife as well HUF which was filed before assessing officer, A perusal of the copy of wealth tax return/assessment order Wealth Tax Return Act reveals that in the appellant's wife smt. Bimla Devi Kakrania had filed wealth tax return till A.Y. 87-88. A copy of assessment order assessing total wealth at Rs. 2,94,000/- u/s 16(1) was filed in the case of Smt. Bimla Devi alongwith the computation of wealth for A.Y 92-93. Subsequently, no wealth tax return is filed.

I have perused the statement recorded u/s 132(4) of FT. Act. The appellant has explained the jewellery belonged to his family and ancestral jewellery. Nowhere, the appellant has claimed that wealth tax return was filed. Even after considering the evidence in form of wealth tax return filed by appellant's wife, Smt. Bimla Devi Kakrania and appellant's HUF, it is difficult to believe that same jewellery continued till the date of search as last wealth tax returns were filed for A.Y. 92-93 and search took place on 21.01.2011 after the lapse of 19 years. Neither the appellant's wife, or his HUF or he himself has wealth tax return subsequently for 19 years. Even the (affidavit filed in support of partial partition is dated 1.4.1995 (i.e. 16 yrs prior to date of search). Total jewellery claimed to belong to his wife and individual is weighing 872.05 gm & 683.1 gms respectively. Value of such jewellery also exceeds minimum non taxable wealth in recent years. Therefore, in absence of filing of wealth tax return in recent assessment years, it does not prove that the jewellery declared in 18- 19 years back still exists with the appellant and his wife.

In view of the above facts filing of wealth tax return filed 19-20 years back does not explain the source of jewellery found.

However, Ld. AR's claim that at least to the extent of jewellery as per instruction no. 1914 should be treated as explained, is acceptable in view of judicial pronouncement relied by Ld. AR. 1 accordingly treat 100 gm gold jewellery in appellant's hand and 500 gold jewellery in his wife's hand explained as per the quantum of jewellery mentioned instruction no.1914. The assessment order is directed to give relief for the value of 600 gm of jewellery and balance addition is confirmed. The grounds of appeal are partly allowed."

Regarding cash amount, the ld. CIT (A) confirmed the entire addition in the following manner:-

"I have carefully perused the above table. The appellant or his wife is not maintaining any book of account in support of cash withdrawal or cash book as such. Secondly, in none of the financial year, total cash withdrawal from the bank including cash income of the appellant's wife exceeds even Rs. 2 lacs. Household withdrawal whole financial year from 2004-05 to 2010-11 is ranging from Rs. 60,000/- to Rs. 98,895/-. The maximum figure of household expense is less than Rs. 1 lakh annually approximately i.e Rs. 8000 per month. A family residing in Chitaranjan Park cannot support family with meagre household withdrawal in the range of Rs. 5000/- - Rs. 8200/- per month. Therefore, in my view, such cash withdrawal from the bank and cash income of the appellant's are in any case at the most, sufficient to meet household expense and cannot explain the source of cash found. In any case, the assessing officer has given credit on account of pin money or small saving to the 24,000/- (Cash found Rs. 5,49.000/- - addition of cash u/s 69 A Rs. 5.25,000/-."

5. Before us the ld. counsel for the assessee, Mr. G.N. Gupta, Advocate submitted that first of all the observation of

the Assessing Officer that the assessee had not filed wealth tax return is not correct, because earlier the assessee's wife was filing regular wealth tax return and a valuation report of jewellery held as on 31st July, 1976 in assessee's wife hand was duly disclosed along with wealth tax return. Thereafter, such wealth tax return was continued to be filed till the Assessment Year 1992-93. However, after increase in the wealth tax limit, the assessee did not file any wealth tax return because the total value of the jewellery available with the assessee's wife was less than the said limit. Apart from that, he submitted that once the locker was in the joint name and it was duly submitted that the jewellery belongs to the wife then entire addition could not have been made in the hands of the assessee. So far as the jewellery received from bigger HUF after self partial partition, he submitted that assessee has filed the wealth tax return of the HUF showing availability of jewellery; and out of that, jewellery of 683.1 gm was received by the assessee. In this manner, jewellery weighing 872.05 gm belongs to assessee's wife; and 683.1 gm was available on account of partial partition of HUF stood duly disclosed much prior to date of search. In support, he also drew our attention to various wealth tax returns and valuation report submitted in the case of the assessee's wife as well as in the case of bigger HUF, Raj Kumar Binay Kumar Kakrania (HUF). In view of this background, nothing should be held as unexplained because the quantity of jewellery found already stands disclosed prior to the date of search.

6. On the other hand, learned Department Representative strongly relied upon the order of the ld. CIT (A).

7. After considering the rival submissions and on perusal of the relevant findings given in the impugned orders as well as the material referred to before us, we find that the total quantity of jewellery found from the residence and locker aggregated to 1383.90 gm. Out of the said quantity of jewellery, 872.05 gm has been stated to belonging to his wife and in support of that, valuation report of jewellery as on 31st July, 1976 filed along with wealth tax return have been heavily relied upon. Uptill Assessment Year 1992-93 his wife was filing wealth tax return wherein this much quantity of jewellery was regularly shown and thereafter it has not been filed for the reason that the wealth tax limit was increased and his wife was no longer required to submit the wealth tax return. The other part of the jewellery weighing 683.1 gm has been stated to be received from bigger HUF after partial partition and in support of which, the wealth tax return in the case of bigger HUF was filed to show that the bigger HUF had the jewellery. The jewellery was divided after the partition and this much of jewellery has been stated to be bequeathed upon the assessee. The reason given by the ld. CIT (A) for not accepting the assessee's contention is that, the wealth tax return was filed 19 years earlier and it is difficult to believe that the same jewellery continued till the date of search. Such

reason alone cannot be held to be tenable without any contrary material found during the course of search, because if the overall quantity of jewellery has been said to be available with the assessee and his wife much prior to the date of search and the same has been disclosed then presumption is that the said jewellery must be in the possession of the assessee at the time of search. Before us, ld. counsel for the assessee has also filed reconciliation statement to show that most of the jewellery as was disclosed earlier in the wealth tax return still continued to be in possession and some of them were reconverted over the period of time. Even if there was a reconversion then if the overall quantity of jewellery is available with the assessee, then presumption goes in favour of the assessee that same quantity which stood disclosed earlier is available with the assessee and hence nothing can be treated as unexplained. Similarly would be in case of jewellery bequeathed upon assessee after partition of bigger HUF, because bigger HUF had jewellery which was duly disclosed in the wealth tax return. Thus, availability of jewellery with HUF also stands proved. Accordingly, the addition partly sustained by the ld. CIT (A) stands deleted. Thus, the ground on this point stands allowed.

8. Regarding cash found, the assessee had given the availability of cash out of bank withdrawal household's expenditure and cash available with his wife in the following manner:-

Financial Year	*Bank withdrawals by the assessee for household*	*Household expenditure (as per chart attached as annexure D)*	*Contribution by wife (Balancing figure)*	*Cash income of wife (As per chart attached as annexure D)*	*Residual surplus at year end of assessee (As per annexure D)*	*Residual surplus at year end of Assessee's wife (as per annexure D)*	*Balance in hand*
	(A)	*(B)*	*(B)-(A)*				*OB-35000*
2004-05	*52000*	*77000*	*25000*	*NIL*	*NIL*	*NIL*	*35000*
2005-06	*66200*	*81450*	*15250*	*45250*	*NIL*	*30000*	*65000*
2006-07	*76000**	*98875*	*22875*	*62875*	*NIL*	*112800*	*177800*
2007-08	*94700**	*94700*	*NIL*	*NIL*	*NIL*	*22000*	*199800*
2008-09	*60000*	*60000*	*NIL*	*NIL*	*NIL*	*146244*	*346044*
2009-10	*40000*	*80000*	*40000*	*120000*	*NIL*	*128500*	*474544*
2010-11	*60000*	*98895*	*38895*	*118895*	*NIL*	*80000*	*554544*

9. Ld. CIT (A) held that the household shown by the assessee is very less, and therefore, the cash withdrawal made from the bank and the cash income of the assessee is only sufficient to meet the household expense. He only gave credit of Rs.24,000/- on adhoc basis. Accordingly, the addition has been reduced from 5,49,000/- to 5,25,000/-.

10. After considering the submissions made by the parties, we find that though there is no proper explanation given by the assessee as per the availability of the cash, because the bank withdrawal and household expenditure and the contribution made by the wife is not subject to proper verification. In any case, some availability of cash with house wife with old savings and some with the assessee cannot be ruled out. Under the facts and circumstances of the case, we hold that out of 5,25,000/-, sum of Rs.2,25,000/- may be treated as explained in view of cash withdrawals and availability of some cash with his wife who is elderly lady. Thus, assessee gets a part relief of Rs.2,25,000/- and the balance is Rs.3 lacs is confirmed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 30th May, 2018.

Sd/-	Sd/-
[O.P. KANT]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 30th May, 2018