

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**IT(SS) No.227 to 232/Ind/2017 & ITA No.592/Ind/2017**  
**Assessment Years 2009-10 to 2015-16**

Smt. Rashmi Mujumdar, A-44 Aakriti Garden, Nehru Nagar, Bhopal (M.P)	Vs.	DCIT Central(1), Bhopal
(Appellant)		(Respondent )
<b>PAN No.ABGPM7546N</b>		

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	Shri S.S. Deshpande, C.A
Date of Hearing	29.11.2018
Date of Pronouncement	10.12.2018

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned bunch of seven appeals filed at the instance of assessee pertaining to Assessment Year 2009-10 to 2015-16 are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-3 (in short 'Ld.CIT(A)'], Bhopal dated 29.06.2017 which are arising out of the order u/s 153A r.w.s 143(3) for A.Y. 2009-10 to 2014-15 & u/s 143(3) for A.Y. 2015-16

of the Income Tax Act 1961(In short the 'Act') dated 28.10.2016 framed by DCIT (Central)-I, Bhopal.

2. As the issues raised in these seven appeals are mostly common they were heard together and are being disposed off by this common order for sake of convenience and brevity.

3. From the perusal of the grounds raised by the assessee in these seven appeals following issues needs our adjudication:-

- (1) Whether the additions made by the Learned Assessing Officer (In short Ld. A.O) for Assessment Year 2009-10 to 2012-13 were on the basis of incriminating documents/materials found during the course of search.
- (2) Whether the Ld. CIT(A) was justified in sustaining the addition made by Ld. A.O on account of the alleged unexplained cash deposit in the bank accounts for Assessment Year 2009-10 to 2015-16.
- (3) Whether the Ld. CIT(A) justified in confirming the addition for unexplained silver utensils valuing at Rs.34,495/-

found during the course of search for the Assessment  
Year 2015-16.

4. Brief facts as culled out from the records are that the assessee is employee with State Bank of India for last many years and regularly filing her income tax return u/s 139 of the Act. A search and Seizure operations u/s 132(1) of the Act were carried out at the residential and business premises of the persons/partners/associated concerns of Regal Homes Group on 12.08.2014 which is promoted by Shri Kishan Lal Sharma. Some of the group concerns are M/s. Regal Samarth Construction Company, M/s. Regal Kasturi and M/s. Regal Krishna Builders. One of the partners in these three concerns is Shri Rajeev Majumdar. Assessee is the wife of Shri Rajeev Maumdar. Search were also conducted at the residential premise as well as the lockers owned by the assessee. Notices u/s 153A of the Income Tax Act (In short the Act hereafter) for these assessment years i.e. Assessment Year 2009-10 to 2014-15 as well as notice u/s 143(2) of the Act for Assessment Year 2015-16 were duly issued and served upon the assessee. Though the assessee had been filing her income tax return regularly but it again

furnished the returns in reply to the notices issued u/s 153A of the Act for various assessment years. Certain additions were made on account of unexplained investment made in the jewellery and unexplained cash deposit for various assessment years and the assessments were completed. Against the various additions made by the Ld.A.O assessee preferred appeals before Ld.CIT(A) and partly succeeded.

5. Now the assessee is in appeal before the Tribunal for these six years.

6. The first common issue raised by the assessee is that no incriminating material was found during the course of search relating to the assessee and therefore the additions made for Assessment Years 2009-10 to 2012-13 needs to be deleted as all these four years fall under the category of completed assessments.

7. Ld. Counsel for the assessee at the outset referred and relied the decision of the Co-ordinate Bench, Indore in the case of S.K. Jain Vs ACIT (2010) 14 ITJ 434 (Ind), DCIT vs. Kalani Brothers (Indore) P Ltd (2016) 27 ITJ 286. He also placed reliance of judgment of Hon'ble Delhi High Court in the case of CIT Vs. Kabul

Chawla (2015) 234 Taxman 300 (Delhi). He pleaded that all the returns were filed for Assessment Year 2009-10 to 2012-13 and the limitation period for issuance of notice u/s 143(2) of the Act expired before the date of the search initiated on 12.08.2014 and therefore the assessment proceedings for Assessment Year 2009-10 to 2012-13 abated on the date of search. He further pleaded that no incriminating material was found during the course of search which could have been taken as a basis for making the alleged addition.

8. Per contra Ld. Departmental Representative vehemently argued supporting the orders of lower authorities but could not plead much against the contention of the assessee that whether any incriminating material was found during the course of search.

9. We have heard rival contentions and perused the records placed before us and also carefully gone through the various judgments referred and relied by the Ld. Counsel for the assessee. We find that during the course of search conducted on 12.8.2014 at the residential premises and the lockers owned by the assessee. Except some quantity of gold and silver jewellery found in the Bank Locker no other documents were found. The additions relating to

gold jewellery already stands deleted by Ld.CIT(A) except for the silver utensils valuing at Rs.34,495/- added to the income for Assessment Year 2015-16. The other addition made by the Ld.A.O is for unexplained cash deposit in the bank account.

10. We find that during the course of search except the jewellery ornaments found in the locker no other documents pertaining to the assessee were seized. It was during the course of assessment proceedings for the block period, that the information relating to various bank accounts held by the assessee was called from the assessee and in reply detail of two saving bank account and two over draft staff account were produced. These bank accounts are regularly shown in the income tax return filed by the assessee. It was only on the basis of these bank statements that the information relating to various cash deposits were asked from the assessee. These facts clearly shows that the alleged addition for unexplained cash deposits is not based on any incriminating material/document found during the course of search rather it has been made on the basis of documents collected by the Ld. A.O during the course of assessment proceedings.

11. In such situation where no incriminating material/document was found during the course of search whether the Ld. A.O was justified in making the additions for the assessment years the assessment proceedings relating thereto stood abated on the date of search. We find that the income tax returns for Assessment Year 2009-10 to 2012-13 were duly submitted on 13.09.2009, 26.08.2010, 30.01.2012 and 19.11.2012 declaring income of Rs.1,41,932/-, Rs.2,08,640/-, Rs.3,59,660/- and Rs.4,13,110/- respectively. Assessee's case could have been selected for scrutiny for Assessment Year 2012-13 by issuance of notice u/s 143(2) of the Act not later than 30.9.2013. As the search was conducted on 12.8.2014 the four assessment years from Assessment Year 2009-10 to 2012-13 comes under the category of completed assessments and gets abated as on the date of search.

12. We find that Hon'ble Delhi High Court in the case of CIT V/s Kabul Chawla (*supra*) has held that "if no incriminating material is unearthed during the course of search no addition could have been made to the income already assessed". Similarly Special Bench of Tribunal in the case of All Global Cargo Logistic Ltd Vs DCIT (2012)

147 TTJ 513 considering the similar issue held that “Assessment period abated: the Assessing Officer in the case retains the original jurisdiction as well as the jurisdiction confined to him by Section 153A of the Act for which the assessment shall be made for each of the six assessment years separately. In other cases addition to the income that has already been assessed will be made only on the basis of incriminating material i.e. the books of accounts and other documents found during the course of search but not produced in the course of original assessment or undisclosed income or property disclosed in the course of search”.

13. Similar view also taken the decision of Co-ordinate Bench in the case of Shri Kanta Prasad Diwedi V DCIT ITA No.182/Ind/16 dated 19.9.2018 in which the undersigned is one of the co-author and after adjudicating similar issue it was held that “ *we have heard rival submissions and perused the material available on record and gone through the orders of lower authorities below. Ld. DR has placed reliance on the decision of Co-ordinate Bench in the case of Anant Steel Ltd V/s ACIT (2016) 28 ITJ 47 and the judgment of Hon'ble Delhi High Court in the case of CIT (Central) V/s Kabul*



*Chawla (2015) 61 Taxman.com 412. Ld. DR could not controvert the submissions of the assessee that no incriminating documents was found. Moreover we find that the addition is sustained merely on the basis of presumptions. We therefore direct the AO to delete this addition”.*

14. We therefore respectfully following the above referred judgments and decisions and in the given facts and circumstances of the case where no incriminating material was found during the course of search, the alleged additions confirmed by Ld.CIT(A) which were made by Ld. A.O on account of unexplained cash deposit needs to be deleted for Assessment Year 2009-10 to 2012-13 at Rs.62,000/-, Rs.1,33,000/-, Rs.66,000/- and Rs.20,000/- respectively. We accordingly order so and allow the first common issue in favour of the assessee.

15. Now we will take up second common issue relating to Assessment Year 2013-14, 2014-15 and 2015-16 raised by the assessee against the addition confirmed by Ld.CIT(A) at Rs. 24,000/-, Rs.20,625/- and Rs.2,07,850/- made by the Ld. A.O for unexplained cash deposits.

16. The Ld. Counsel for the assessee supported the written submission placed on record, which reads as follows;

“That during the course of assessment proceedings the assessee had submitted a cash chart incorporating the details of cash drawn from bank by the assessee, the cash utilized by the assessee including the cash deposited in the bank, the source of cash receipts and cash received from husband. The assessee had been receiving cash from her husband on a monthly basis for meeting the house hold expenses of the family which was utilized by her in such manner as considered appropriate by her. The withdrawals made by the husband were duly recorded in his books of account and were readily verifiable from the books, The assessment of the husband (Mr, Rajeev Majumdar) was also simultaneously completed u/s 153A by the same AO. Thus the amount received from the husband was also duly verified. Thus all the source of receipt of funds were readily verifiable from the records available with the AO, However the AO ignored the said cash chart and made additions of the cash deposited after making the following observations:

Para No	Observation of the submission of the assessee AO	Submission of the assessee
9.6.i	Salary is received by the assessee through RTGS	This fact is not in dispute and the assessee has not shown any receipt of salary in cash and thus the observation needs to be ignored.
9.6.ii	The assessee has no other source of income which can be received in cash	Once the AO has herself held that the assessee does not have any source of receipt of income in cash she was not justified in making any be received in cash addition.

		Further the assessee has submitted a cash flow chart giving the source of cash and the same did not include receipt of any income and thus the observation needs to be ignored.
9.6.iii	There are no significant cash withdrawals from bank a/c No prudent person will withdraw money just to deposit in bank	The detail of sources from which the cash was received was furnished and all such details were readily verifiable from the records available at the file of the AO, No specific deficiency is found by the AO. Further the assessee is a bank employee and any surplus cash is deposited by her in the bank account and is withdrawn by her from time to time as may be required by her. It may be mentioned that she was not required to put any extra efforts or to incur any cost in making such deposits as she was herself serving with the same bank which is obvious from the fact that she has even deposited Rs. 1000/-, Rs. 250/-, Rs. 1200/-, in her bank account.
9.6.iv	Cash received from the husband must have been utilized for house hold expenses	The assessee receives a fixed amount for house hold expenses which was utilized by her as per the needs of the family and at times the funds not immediately required were deposited in the bank account. It may be mentioned

		<p>that the total contribution received by the assessee in all the years under consideration from her husband in cash for house hold expenses was Rs. 12,00,000/- as against which the assessee has made cash expenses of RS. 13,18,770/-. Both these figures are readily verifiable from the cash chart submitted before the AO.</p> <p>It may be mentioned that in addition to above house hold expenses were also incurred by cheque for payment of school fees, telephone bills etc.</p>
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Thus the cash chart submitted by the assessee in which the sources of all receipts were readily verifiable was ignored by the AO on irrelevant ground. It may be mentioned that it has been held by various courts that if there is no other contrary evidence in possession of the revenue department about the utilization of cash for some other purpose than the re deposit of cash in the bank out of the previous withdrawal cannot be ruled out.

Reference in this regards may be made to the decision of the Gujarat High Court in the case of CIT V Rajshibhai Meramanbhai Odedera reported at (2014) 108 DTR 265 wherein the court agreed with the ITAT in accepting that the cash withdrawn from the bank was re-deposited. Reference may also be made to the decision of the Delhi Tribunal in the case of ACIT VS Buldev Raj Charla & Othrs (2009) 121 TII 366 and decision dated 30.04.2013 of the Ahmedabad Bench of IT AT in the case of Saurin Nandkumar Shodhan vs ITO in IIT A No 207<sup>5</sup>1 Ahd/2012 where

in it has been held by the court that" if revenue has not established that cash available was utilized elsewhere than on basis on basis of preponderance of probabilities, it can be assumed that that very cash was re deposited in bank".

17. Per contra Ld. Departmental Representative supported the order of Ld. A.O and also submitted that the assessee has been unable to give any basis for the cash receipt from her husband and more specifically the amount received from the husband has doubled in Assessment Year 2015-16.

18. We have heard rival contentions and perused the records placed before us. The addition confirmed by Ld. CIT(A) at Rs.24,000/-, Rs.20,625/- and Rs.2,07,850/- are being challenged by the assessee. These additions have been made for the alleged unexplained cash deposits in the bank account. The assessee has placed detailed cash flow chart in the paper book at page 33 to 47. During the examination it is found that the details of cash receipts are from various sources. Summarised statement have also been prepared, we would like to reproduce the same as below;

Particulars	Assessment Years		
	2013-14	2014-15	2015-16
Opening balance of cash in hand	44,950	146,480	64,655
Cash drawn from Bank	251,485	62,700	162,500
Cash received from husband	180,000	180,000	360,000
Household cash expenses incurred	259,405	195,700	301,000
Cash deposited in bank considered by A.O	42,250	124,325	308,207
Cash deposited in bank not considered by A.O	28,300	4,500	-
Closing balance of cash in hand	146,480	64,655	-
House Hold expenses by cheque	33,866	22,097	88,181
CIT(A) deleted the addition	18,250	103,700	54918+ 45439
CIT(A) confirmed the addition	24,000	20,625	207,850

19. From going through the above chart we find that the assessee who is the employee of State Bank of India is regularly earning income from salary. She has some amount of cash in hand. Assessee also draws cash from bank during the year for the household expenses. Some of the household expenses have been incurred by her through cheque. It has also been claimed that the assessee has received cash from her husband for incurring household expenses.

20. As far as looking to the details of Assessment Year 2013-14 and 2014-15 wherein the assessee has spent Rs.2,59,405/- and

Rs.1,95,700/- as cash expenditure for household needs along with incurring of household expenses by cheque at Rs.33,866/- and Rs.22,097/- , the additions sustained by Ld. CIT(A) is only to the extent of Rs.24,000/- and Rs.20,625/-. Looking to the regular earning source of the assessee and her husband, we find no justification in the finding of Ld.CIT(A) confirming the addition for Rs.24,000/- and Rs.20,625/- towards unexplained cash deposit. We therefore direct the Ld.A.O to delete the addition of Rs.24,000/- and Rs.20,625/- for the Assessment Year 2013-14 and 2014-15.

21. As regards the addition of Rs.2,07,850/- confirmed by Ld.CIT(A) one glaring fact observed by us is that the amount received from husband towards household expenses at Rs.1,80,000/- up to Assessment Year 2014-15 has doubled to Rs.3,60,000/-. There is no evidence placed on record which could support this contention of the assessee that the amount of Rs.3,60,000/- has been received from her husband. No material on record in the form of balance sheet or capital account of the assessee's husband has been filed which could prove that Rajeev Mazumdar has given Rs.3,60,000/- to his wife for household needs. This fact could be verified only from the capital account of Shri

Rajeev Mazumdar for Assessment Year 2015-16 and for this we direct the Ld. A.O for carrying out the necessary verification by calling details from the assessee after providing sufficient opportunity and if it is found that Rajeev Mazumdar has shown cash withdrawal of Rs.3,60,000/- for household needs from his capital account, then the cash flow statement given by the assessee should be accepted and the alleged addition of Rs.2,07,850/- to be deleted. We accordingly set aside Ground No.1 raised by the assessee for Assessment Year 2015-16 to the file of Ld. A.O for necessary verification and accordingly allow Ground No.1 for Assessment Year 2015-16 for statistical purposes.

22. Now we are left with Ground No.2 for Assessment Year 2015-16 relating to the addition of Rs.34,495/- which pertains to silver utensils found in the locker held by the assessee during the course of search. During the course of search gold weighing 30.90 grams (Net weight) and 491.56 grams (Net weight) were found in the two lockers in the name of the assessee valuing at Rs.70,889/- and Rs.12,75,938/- and the additions of the same were made in the assessment. Ld.CIT(A) following the instructions given by Central Board of Direct Taxes (CBDT) vide its Instruction No.1916 dated



11.5.1994 deleted the addition for the gold jewellery observing that the gold jewellery found in the lockers held by the assessee were within the limit provided in the CBDT instruction No.1916 i.e. 500 grams per married lady and 250 gram for unmarried lady and 100 grams for male member.

23. We are surprised to note that the Ld.CIT(A) did not allowed the claim of silver articles weighing 609 grams and 280 grams valuing Rs.24,639/- and Rs.9856/-. CBDT instruction No.1916 dated 11.5.1994, CBDT directs the income tax authorities conducting the search not to seize the jewellery ornaments found during the course of search of varying quantity specified in the instruction depending upon the marital status and gender of the person searched. We find that Ld.CIT(A) has only given relief for the gold jewellery but did not accept the fact that in the Indian customs and traditions at the time of marriage silver utensils are also given to the bride. It is quite possible that the word silver utensils were not included in the CBDT instructions because at that point of time silver utensils were not coming under the category of capital assets. In our considered view Ld. CIT(A) ought to have taken a liberal approach by giving the benefit to the assessee for the value of gold jewellery and value of

silver utensils held by her, within the monetary limit of value as on the date of search of the gold jewellery ornaments and permitted to be held, as provided in the CBDT Instruction No.1916 dated 11.5.1994. We accordingly direct the Ld.A.O to delete the addition of Rs.34,495/- made for Assessment Year 2015-16 for silver utensils found in the locker owned by the assessee. Accordingly Ground No.2 for Assessment Year 2015-16 stands allowed.

24. Grounds other than those adjudicated by us in the preceding paragraphs are general in nature which needs no adjudication.

25. In the result the appeal of the assessee for Assessment Year 2009-10 to 2014-15 are allowed and that for Assessment Year 2015-16 is partially allowed for statistical purposes.

The order pronounced in the open Court on 10.12.2018.

**Sd/-**  
**( KUL BHARAT)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 10<sup>th</sup> December, 2018

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore