

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND**

SHRI. RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.573/Alld/2014

A.Y. 2010-11

Shakun Devi, Sahson, Allahabad PAN-ADAPK7419E	vs.	Joint Commissioner of Income Tax, Central Circle, Allahabad
(Assessee)		(Respondent)

Appellant by:	Sh. Praveen Godbole, C.A.
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	31.10.2022
Date of pronouncement:	05.01.2023

ORDER

SHRI. VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 23.08.2014 of CIT(A) for the assessment year 2010-11. The assessee has raised following grounds:-

"1. That in any view of the matter the assessment order dated 20.12.2011 passed u/s 143(3) of the income tax act by the assessing officer and his action as partly confirmed by the Commissioner of Income Tax (Appeals) is bad both on the facts and in law and therefore declared income by the appellant should have been accepted in the facts and circumstances of the case.

2. That in any view of the matter since mandatory requirements were not complied with for framing a legal and valid assessment by the assessing officer and action of the assessing officer were also confirmed partly by the Commissioner of Income Tax (Appeals) without appreciating the facts of the case correctly hence the assessment is invalid.

3. That in any view of the matter undisclosed income/investment was not determined on the basis of any search material and the assessing officer simply proceeded to make the additions arbitrarily as if it is a normal assessment and his action as partly confirmed by the first appellate authority is also highly unjustified and illegal.

4. That in any view of the matter a part sum of Rs. 6,95,541.00 out of the addition of Rs. 9,49,003.00 made by the assessing officer on count jewelleryes as maintained by the Commissioner of Income Tax (Appeals) is highly unjustified, incorrect and illegal in the facts and circumstances of the case. Because the addition was made based on pure conjectures and surmises ignoring the status of appellant's family, social/religious customs and traditions prevailing in community and without supporting any search material, hence the part of the addition so maintained is liable to be deleted.

5. That in any view of the matter addition of Rs. 1,07,651.00 made by the assessing officer by alleging unexplained cash found in search and his action as confirmed by the Commissioner of Income Tax (Appeals) is highly unjustified and illegal because necessary explanations along with evidences regarding acquisition of the cash found at the time of the search was furnished, hence the addition is liable to be deleted in the facts and circumstances of the case.

6. That in any view of the matter the addition of Rs. 56,310.00 made by the assessing officer on account of Kimam when the same is disclosed in regular books of account and his action as confirmed by the Commissioner of Income Tax (Appeals) without appreciating the correct facts is highly unjustified and illegal hence the addition deserves to be deleted.

7. That in any view of the matter observations and findings of the two lower authorities in their orders for making and maintaining the additions are unjustified, incorrect and contrary to the actual facts of the case, therefore the additions are liable to be deleted.

8. That in any view of the matter interest as charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

9. That in any view of the matter the appellant reserves her right to take any fresh grounds of appeal before hearing of the appeal."

2. At the time of hearing, the learned AR of the assessee has stated at Bar that the assessee does not press ground nos. 1 to 3 and 7 to 9 and the same may be dismissed as not pressed. The learned DR has raised no objection if ground nos. 1 to 3 and 7 to 9 are dismissed as not pressed. Accordingly, the ground nos. 1 to 3 and 7 to 9 of the assessee's appeal are being dismissed being not pressed.

3. Ground no. 4 is regarding addition sustained by the CIT(A) of Rs. 6,95,541/- on account of unexplained investment in the jewellery. The assessee is an individual and derives income from salary and interest on capital from partnership firm of M/s Kesarwani Distributors. The assessee is also proprietrix of M/s Gupta Traders which is engaged in the business of Kimam. There was a search and seizure action carried out on 27.8.2009 in group cases of Kesarwani Zarda Bhandar. During the course of search and seizure action at the resident / business premises of the assessee, gold jewellery weighting 1,796 grams was found. This was the year of search therefore, regular assessment was framed by the AO under section 143(3) on the basis of seized material. In response to the notice issued under section 142(1), the assessee explained the source of acquisition of gold jewellery as it belongs to the assessee, her two daughters and some of the jewellery belongs to her mother Smt. Indra Devi. The assessee further explained that she married in the year 1995 with Sh. Ramesh Kumar s/o Mata Saran Kesarwani. Her husband belongs to a respectable business family of Allahabad. The assessee received jewellery from both sides at the time of marriage as well as on subsequent occasions namely birthdays of children and on other occasion. The assessee further stated that her husband deposited 623 gram gold under tax free gold bond scheme and received back the same on 29.12.1998. The said declared gold was found at the time of search and mentioned at Sr. No. 13 of jewellery inventory in *panchnama*. Similarly, there was disclosure under VDIS-97 of 796.150 grams of jewellery. The rest of the jewellery was claimed as *stridhan* of the assessee as well as her two daughters. The AO did not accept the explanation of the assessee and after allowing the jewellery of 500 grams as *stridhan* of the assessee, the AO treated jewellery of 682 grams as acquired from undisclosed income and made the addition of Rs. 9,49,003/- under

section 69B of the Act. The assessee challenged the action of the AO before the CIT(A). The CIT(A) granted part relief to the assessee and sustained the addition in respect of jewellery of 499.85 grams as against 682 grams.

4. Before the Tribunal, the learned AR of the assessee has submitted that the assessee explained the source of jewellery during her statement recorded under section 132(4) of the Act on 27.8.2009 by the search party. The learned AR has referred to the copy of the statement of assessee recorded under section 132(4) placed at page nos. 46 to 50 of the paper book and submitted that in reply to question no. 6, the assessee has explained each and every item of jewellery recorded in the inventory prepared at the time of search. In this explanation, the assessee has clearly given the details of the jewellery of 504 grams belonging to her mother who kept the jewellery with the assessee as she is also residing in Allahabad and frequently visiting the assessee. The assessee also explained that the gold bar weighting 623 grams belongs to her husband Shri. Ramesh Kumar which is also supported by the fact that it was received by the husband under gold bond scheme of Government. The rest of the jewellery weighting 678 grams belongs to the assessee and her two daughters. Thus, the learned AR has submitted that at the time of search itself, the assessee explained the source of the jewellery found during the search from her residence. The learned AR thus referred to the affidavit of the mother of the assessee filed before the AO and copy of which is placed at page nos. 38 and 39 of the paper book. The learned AR has also referred to the certificate issued by the Reserve Bank of India regarding Gold Bond Scheme 1998 at page nos. 40 and 42. Thus, the explanation of the assessee was duly supported by the documentary evidence in the shape of gold bond certificate wherein the quantity of the gold bar is matching with the quantity found during search

as well as the affidavit of the mother of the assessee confirming the jewellery about 504 grams belongs to her and kept with the assessee. The learned AR has then referred to the decision of the co-ordinate Bench of this Tribunal dated 06.07.2018 in the case of **Shri Praveen Kumar Kesarwani vs. Jt. CIT (OSD), Allahabad** and submitted that an identical issue has been considered and decided by the Bench in favour of the assessee. He has also relied upon the judgment of Hon'ble Rajasthan High Court in the case of **CIT vs. Satya Narain Patni** 106 DTR 436 and submitted that the Hon'ble High Court has held that as per the CBDT instruction dated 11th May, 1994, the jewellery to the extent of 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family need not be seized and therefore, to that extent, the jewellery found in the possession of the assessee cannot be questioned about its source and acquisition. Thus, the learned AR has submitted that the addition sustained by the CIT(A) is not justified and same may be deleted.

5. On the other hand, learned DR has submitted that the explanation of the assessee cannot be accepted as the quantities of the jewellery explained by the assessee are not tallying with the actual jewellery found during the course of search. He has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as relevant material on record. The facts are not in dispute so far as jewellery weighted 1,796 grams found during the course of search and seizure from the resident of the assessee. The assessee in her statement recorded under section 132(4) on the date of search explained the source of acquisition of the jewellery in reply to question no. 6 as under:-

"प्रश्न 6 तलाशी के दौरान आपके बेडरूम की अलमारी से 1182 ग्राम सोने के जेवरात प्राप्त हुए हैं तथा बरामदे की अलमारी से 623 ग्राम सोने की तार प्राप्त

हुए हैं। यह जेवरात तथा गोल्डवार किसकी है इसका पूरा विवरण स्पष्ट करें ? उपरोक्त जेवरात का विवरण तथा वजन श्री गोपाल प्रो० गोपाल ज्वेलर्स, चौक, सुल्तानपुर के द्वारा आपको तथा गवाहों की उपस्थिति में किया गया है जिसकी इन्वेंट्री आपको दिखाई जा रही है ?

उत्तर: उपरोक्त जेवरात में से इन्वेंट्री के आइटम 9 एवम 10 जो कि 504 ग्राम है मेरी मां इन्दिरा देवी ने मेरे पास रख छोड़े है जो कि इलाहाबाद में रहती है तथा व्यवहार यहां आती जाती रहती है। 623 ग्राम गोल्डवार मेरे पति श्री रमेश कुमार के हैं, शेष 678 ग्राम ज्वैलरी मेरी तथा मेरी पुत्रियों डाली तथा ओमी की है।"

7. It is manifest from the statement of the assessee that the assessee explained the various items of the jewellery as part of the inventory as under:-

i. Item no. 9 and 10 weighting 504 grams belonging to the mother of the assessee Smt. Indra Devi. The assessee has also explained that her mother kept this jewellery with her and often visit the assessee.

ii. The gold bar weighting 623 grams were explained by the assessee as belonging to the husband of the assessee Shri. Ramesh Kumar.

iii. The balance 678 grams jewellery was explained by the assessee as her own and two daughters.

8. The AO rejected the explanation for want of any documentary evidence so far as the jewellery belongs to the mother and daughters are concerned. The CIT(A) given the credit of 796.150 grams of jewellery which was disclosed under VDIS 97 by the assessee. The assessee produced the certificate in respect of the VDIS 97 issued by the designate authority and consequently the CIT(A) has sustained the addition to the extent of 499.85 grams amounting to Rs. 6,99,541/-. The relevant finding of the CIT(A) on this issue is as under:-

"(iv) The ground of appeal no. 4, 5, 6, & 7 are against the addition of Rs 949,003/- u/s 69A of the act on account of unexplained investment in acquisition of jewellery. The gold jewellery weighing 1796 gms was found at

the time of search. The appellant explained that she got married in 1975 with Sh Ramesh Kumar S/o Late Mata Saran Kesarwani. That her husband belonged to a respectable family of Allahabad and she received jewellery from both sides at the time of her marriage and subsequently also on the occasions on birthday of her children and other occasions. She explained that her husband deposited 623 gms of gold under tax free gold bond scheme and received it back on 29-12-1998. The said gold was found at the time of search and was appearing at Sr. 13 jewellery inventory in Panchnama. He had claimed a disclosure of 796-150 gms of jewellery in VDIS.

The AO held that jewellery weighing 678 gms belong to the assessee which she held to be acquired from undisclosed sources and made the addition of Rs 949,003/- u/s 69B of the Act.

The main arguments of the appellant against the said addition in her written submissions was that the assessee got married in the year 1975 with Shri Ramesh Kumar Son of Late Shri Mata Saran Kesarwani. Her husband belongs to respectable business family of Allahabad and at the time of marriage she received the jewellery from both side of her relation / relatives and on subsequent occasion which is her STRIDHAN and thus the addition as made is unwarranted.

The fact that the appellant belongs to a status family and that gold is given at the time of marriage and other occasions as stated by the appellant on social and religious occasions as per practice prevailing in the community is not in doubt and accepted. Even as per the board's circular, benefit with regard to possession of jewellery was not allowed to the assessee. Therefore considering the stated facts I hold and allow the benefit of 500 gms of jewellery to the appellant on account of her Stridhan.

The appellant had argued that regarding the source of acquisition of gold jewellery - weighing 1796 gm, the said jewelry belongs to the assessee, her two daughters and some items belong to her mother Smt. Indira Devi, wife of Late Ram Krishan Gupta. In this connection the appellant further stated that her husband Sri Ramesh Kumar deposited 623 gm gold under Tax Free Gold Bond Scheme and received back on 29.12.1998. The said gold does not belong to the appellant and therefore no benefit thereof would be given to the appellant.

Likewise there was disclosure under VDIS 796.150 gm of jewelries in the name of the appellant in respect of which the VDIS 1997 certificate issued by the CIT, Allahabad was submitted by the appellant. The copy of valuation report of the government approved valuer in respect of the said jewellery declared under VDIS was called for and submitted. The copy of the Government approved valuer dated 22-12-1997 reflects the gold jewellery weighing 796.150 gms valued at Rs 298,677/- at which value the same was disclosed under VDIS. Since the said jewellery was disclosed under VDIS 97,

therefore the credit of 796.150 gms of jewellery shall be allowed to the appellant. Since the remaking of gold jewellery between the period of declaration under VDIS and the date of search upon the appellant cannot be ruled out, therefore the credit of 796.150 gms of jewellery is allowed to the appellant. No benefit shall be allowed to the appellant in respect of gold declared by Sh Ramesh Kumar, the husband of the appellant under VDIS, 97 which shall be considered in his own case. Moreover even the appellant did not claim that jewellery belonging to Shri Ramesh Kumar was included in the jewellery weighing 1796 gms.

With regard to the acquisition of jewellery weighing 1796 gms, the appellant had stated before the AO that the said jewellery belongs to herself, her two daughters and some items belonged to her mother Smt Indira Devi, however no evidence was given by the appellant to establish that any part of jewelry weighing 1796 gms belonged to her two daughters and some items belonged to her mother Smt Indira Devi. Accordingly the entire jewellery weighing 1796 gms is held to belong to the appellant.

Therefore after allowing the credit of 500 gms of jewellery on account of Stridhan of the appellant and 796.150 gms on account of jewelry declared under VDIS, 97 by the appellant, only the jewellery weighing $(1796 - 500) = 1296$ gms is held to be the jewellery acquired by the appellant from undisclosed sources. The value of the said jewellery weighing 1296 gms on the same basis as valued by the AO comes to Rs 695,541/-, which addition is confirmed. The appellant get relief of Rs $(949,003 - 695,541) = Rs 253,461/-$.

(v) The ground of appeal no.8 is against the addition of Rs 107,651/- made by the AO u/s 69A of the Act. The cash amounting to Rs 107,100/- was found during search the appellant claimed that Rs 24,000/- belonged to her husband, Rs 53,451/- belonged to her firm M/s Gupta Traders and Rs 30,200/- belonged to her children. The AO rejected the contention of the assessee in this regard and made the addition of Rs 107,651/-."

9. Without going into the controversy regarding the jewellery belonging to the mother of the assessee first we consider the explanation supported by undisputed evidences such as the gold bar weighting 623 grams which were received by the husband of the assessee under tax free Gold Bond Scheme, 1998 for which the assessee has produced a certificate issued by the Reserve Bank of India giving the details of gold bond for 623 grams of 0.995 purity. These certificates at page nos. 40 to 42 are as under:-

RESERVE BANK OF INDIA

ORIGINAL

Delivery Order No. 142

00146

CERTIFICATE

Gold Bonds, 1998

Certified that Shri. Ramesh Kumar residing at Keshavnagar, Zarda Bhandar, Sahar, Abohar

was/ were the last holder(s) of the undernoted Gold Bond(s), for 623 grammes of gold of 0.995 fineness.

Gold Bond 1998 No.	Grammes
<u>142</u>	<u>623 gms.</u>

and that the repayment of the above bond(s) has been made on 29/12/98 to the said recipient(s) in the form of bar/s bearing National Emblem (Ashoka Pillar) and discs of gold of 0.995 fineness bearing India Government Mint markings as per details furnished below :

No.	Serial No. of bars	Weight of bar
<u>Bar of 500 gms.</u>	<u>013855</u>	<u>500.00 gms.</u>
<u>Bar of 100 gms.</u>	<u>005487</u>	<u>100.00 gms.</u>
<u>Bar of 10 gms.</u>	<u>2194, 2407</u>	<u>20.00 gms.</u>
	Discs	
No.		Weight of discs
<u>Disc of 2 gms.</u>		<u>2</u>
<u>Disc of 1 gm.</u>		<u>1</u>

For Reserve Bank of India

p. Chief General Manager

State Bank of India

(Signature)
Manager/Agent

पक्की रसीद	FINAL RECEIPT
स्वर्ण बांड 1998	GOLD BONDS 1998
Uttar Pradesh	Received from Shri (Smt.) Kum. (M/s.) Ramesh Kumar of Kesarwan Zarga Bhandar Sahson Allahabad
(कच्ची रसीद में दर्शाये गये)	gold weighing 628.55
1. उपर्युक्त स्वर्ण की प्रकृति व वजन का स्वर्ण प्राप्त किया।	(Weight in grammes as indicated in provisional receipt) 628.55
2. उपर्युक्त स्वर्ण की प्रकृति व वजन की जाँच की गयी। और यह पाया गया कि	2. The above mentioned gold has been assayed and is found to contain 628.55 grammes of gold of 0.995 fineness
3. भारत सरकार के वित्त मंत्रालय (आर्थिक कार्य विभाग) की दिनांक 18-2-93 की अधिसूचना सं. जीएनआर 76(ई) में किये गये	3. As provided in Government of India, Ministry of Finance (Department of Economic Affairs) Notification bearing No. GSR 76 (E) dated 18th February, 1993 Gold Bonds of the
प्रमाणित है कि उपर्युक्त स्वर्ण के अंकित मूल्य के	face value of 628.55 grammes have been issued and
स्वर्ण बांड अग्रिम उल्लिखित श्री/श्रीमती/कु./सर्वश्री	delivered to the above mentioned Shri (Smt.) Kum. (M/s.) Ramesh Kumar
को जारी और सुपुर्न किये गये हैं।	4. A draft / cheque No. 341.60 for Rs. 341.60 being the value of fraction
5. उपर्युक्त अधिसूचना के पैरा 4(5) के अंतर्गत स्वर्ण बांड जारी करने	over and above the quantity accepted for issue of the Gold
के लिए स्विकार की गयी मात्रा से अधिक खंडित वजन के मूल्य	Bond is enclosed under paragraph 4(5) of the Notification
का एक * * * * * है।	
अनुसूचित बैंक / चेक भारतीय रिजर्व बैंक के वरते	Encl: 1 draft / cheque
* * * * *	* * * as above.
स्थान	Place: Bombay
दिनांक	Date: 31/5/93
* भारत सरकार, वित्त मंत्रालय (आर्थिक कार्य विभाग) की दिनांक 18-2-93	* Issued under paragraph 5(3) of Government of India, Ministry
की अधिसूचना सं. जीएनआर 76(ई) के पैरा 5(3) के अंतर्गत	of Finance, (Department of Economic Affairs) Notification
जारी	bearing GSR 76(E) dated 18-2-93.
* * * * * जहाँ कहीं संभव न हो, वहाँ काट दिया जाये।	* * * To be deleted wherever not relevant.
टिप्पणी: इस रसीद को सावधानीपूर्वक संभालकर रखा जाये।	NOTE: This receipt should be preserved carefully.

भारत सरकार का स्वर्ण बांड 1998
(का अंतर्लेखित स्टाक)
(GOVERNMENT OF INDIA)
INSCRIBED STOCK OF THE GOLD BONDS 1998

1.1 31/5/93
21: बही ऋण प्रमाणपत्र सं.
BOOK DEBT CERTIFICATE NO. BY /RKN- 142
R05638020
10/10/97 p. Manager

FOR -623- ग्राम स्वर्ण के लिए
GRAMMES OF GOLD

यह प्रमाणित किया जाता है कि

भारत सरकार को परिदत्त स्वर्ण के प्रतिफलस्वरूप 0.995 विशुद्धता वाले
ग्राम स्वर्ण के लिए उसे/उन्हें जारी किए गए स्वर्ण बांड, 1998 के सरकारी स्टाक
का/के रजिस्ट्रीकृत स्वत्वधारी है/हैं।

स्टाक का धारक, इस बांड की तारीख से पांच वर्ष की समाप्ति पर, 0.995
विशुद्धता वाले स्वर्ण की उपरोक्त मात्रा और ऐसे स्वर्ण के लिए केवल घालीस रुपए
प्रतिग्राम की दर पर एकमुश्त ब्याज भी प्राप्त करने का हकदार है।
यह बांड पीछे विनिर्दिष्ट अंतरण विलेख के द्वारा अंतरणीय है।

This is to certify that Ramesh Kumar
..... is the registered
proprietor of Government Stock of the Gold Bonds,
1998 issued to it / him / them for Six hundred and
twenty - three
grammes of Gold of 0.995 fineness in consideration
of gold delivered to the Government of India.

The holder of the stock, on the expiry of five years
from the date of this Bond, is entitled to receive the
aforesaid quantity of Gold of 0.995 fineness and also
a lumpsum interest at the rate of rupees forty only per
gramme of such gold.

This Bond is transferable by means of transfer
deed specified on the reverse.

सौक ऋण कार्यालय
Public Debt Office
भारतीय रिज़र्व बैंक, मुंबई
Reserve Bank of India, Bombay
दिनांक 31/5/93
Dated this 31st May 1993

गवर्नर, भारतीय रिज़र्व बैंक
Governor, Reserve Bank of India

हस्ताक्षर
For Manager

10. Therefore, once the assessee explained the acquisition of the gold bar weighting 623 grams belonging to the husband of the assessee received in respect of the Gold Bond Scheme, 1998 then the addition sustained by the CIT(A) in respect of 499.85 grams will not survive. Even otherwise the AO and CIT(A) has allowed the credit of only 500 grams jewellery on account of *stridhan* of the assessee whereas as per the CBDT Circular No. 1916 dated 11th May, 1994, the gold jewellery and ornaments to the extent of 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family need not to be seized. While considering this Circular of CBDT the Hon'ble Rajasthan High Court in the case of ***CIT vs. Satya Narain Patni*** (supra) has held in para 6 to 15 as under:-

6. We have considered the arguments raised on behalf of the counsel for the Revenue, and have gone through the impugned orders so also the circular of CBDT. It is necessary to quote the instruction No. 1916. dt. 11th May. 1994 issued by the CBDT, which reads ad infra:

"Instances of seizure of jewellery of small quantity in course of operations under s. 132 have come to the notice of the Board. The question of a common approach to situations where search parties come across items of jewellery, has been examined by the Board and following guidelines are issued for strict compliance.

- (i) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the WT return only need be seized.*
- (ii) In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms per married lady. 250 gms per unmarried lady and 100 gms per male member of the family need not be seized.*
- (iii) 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. This should be reported to the Director of IT/CIT authorising the search at the time of furnishing the search report.*
- (iv) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment*

purposes. These guidelines may please be brought to the notice of the officers in your region.

*Yours faithfully,
Sd/-
Siddhartha Mukherjee
Secretary (CBDT)
(F.No.286/63/93-IT(Inv.II))"*

7. We have gone through the order of CIT(A) wherein it has been observed as under:-

<i>Belongs to/Found from</i>	<i>Smt. Anita W/o Satyendra Patni (self)</i>	<i>Smt. Aparna W/o Chandra Prakash Patni (Eldest son)</i>	<i>Smt. Priyanka W/o Pushpendra Patni (2nd son)</i>	<i>Smt. Ruchi W/o Girish Patni (3rd son)</i>
<i>Bank Locker Bed</i>	<i>139.5</i>	<i>240.3</i>	<i>210.8</i>	<i>137.6</i>
<i>Bed rooms</i>		<i>315</i>	<i>163.2</i>	<i>195.1</i>
<i>Bed room of Satyendra patni</i>	<i>395</i>	<i>232.4</i>	<i>229.7</i>	<i>246.5</i>
<i>Found one person</i>	<i>40</i>	<i>15</i>	<i>19</i>	<i>32</i>
<i>Total gross wt.</i>	<i>574.5</i>	<i>802.7</i>	<i>622.7</i>	<i>611.2</i>
<i>Total net wt.</i>	<i>500.5</i>	<i>722.5</i>	<i>529.5</i>	<i>449.764</i>

In the statements recorded on 25th Aug.. 2004 during search under s. 132(4) the assessee and various family members stated as below:

Satyendra Patni: In reply to question No. 5 he stated that he possesses one gold ring and 2 gold chains and his wife possesses 30 Tola gold jewellery. He further stated that all his 3 daughter-in-law also possess 30 Tola gold jewelry each which they received from their parental side at the time of marriage and subsequently at the time of birth of children.

Chandraprakash Patni (eldest son): In reply to question No. 12 regarding jewellery lying with him at that time, he stated that around 10 Total of jewellery is lying with him belonging to his wife.

Pushpendra Patni: In reply to question No. 16 he stated that he has one gold chain, bracelet and two rings. In reply to question No. 17 he stated that he is not aware of the jewellery owned by his wife but the jewellery she possesses has been received at the time of marriage in 2.000 and he has not purchased any jewellery thereafter.

Smt. Apama Jain w/o Chandraprakash Patni: In reply to question No. 6 she stated that she possesses one chain. four Churi. two bangles, two pair tops. ladies bracerlet, gents bracerlet, 3-4 rings and Mangalsutra. She further stated that two sets received from her parents and one set received from in-laws are lying with her mother-in-law, Smt. Anila Patni."

8. Thus, from the perusal of above chart as well as statements, it is abundantly clear that jewellery which has been found in possession of the family members is in accordance with customs and practice prevalent in the community and in accordance with status of the family.

9. On perusal of the order of CIT(A) as also the Tribunal. we notice that the AO had not given any basis for restricting the claim of jewellery at 1.600 gms as reasonable while the AO has simply mentioned about there being four ladies, but ignored that in addition to four ladies. there were four male members so also three children and if the male members so also the children are considered then even factually the claim of respondent-assessee appears to be reasonable in the light of the aforesaid instruction dt. 11th May. 1994. If the circular is strictly followed, then to the extent of 2.700 gms.. no jewellery could be seized. (500x4 ladies+100x7 male+children=2,700 gms.). In the aforesaid facts. we fail to understand the basis of 1,600 gms held reasonable by the AO.

10. Therefore, in our view, the Tribunal has rightly considered the said issue and we are also in conformity with the order passed by the Tribunal. We are also of the view that the CBDT keeping in view the status of the family. customs and practice of the community. came down with the said circular and one has to go with the weight and not with the value as the value may fluctuate over the years. The Tribunal has also appreciated the fact on record that the marriages of three sons were performed in the years 1996, 2000 and 2003 and all the marriages including the assessee and three sons were performed prior to 2003. It is also on record that the statements of various family members were recorded and none has stated that these are not personal wearing jewellery and same were received by the respective ladies/daughter-in- law on/or at the time of their marriages either from the parental side or in-laws side and even subsequently at the time of birth of their children.

11. On perusal of the circular of the Board. quoted supra, it is clear that in the case of wealth-tax assessee, whatever gold jewellery and ornaments have been found and declared in the WT return, need not be seized. However, sub cl. to prescribes that in case of a person not assessed to wealth tax gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male member of the family need not be seized. Sub-el, it also prescribes that the authorised 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.

12. It is true that the circular of the CBDT, referred to supra dt. 11th May. 1994 only refers to the jewellery to the extent of 500 gms. per married lady. 250 gms per unmarried lady and 100 gms per male member of the family, need not be seized and it does not speak about the questioning of the said Jewellery from the person who has been found with possession of the said jewellery. However, the Board, looking to the Indian customs and traditions, has fairly expressed that jewellery to the said extent will not be seized and once the Board is also of the express opinion that the said jewellery cannot be seized, it should normally mean that any jewellery, found in possession of a married lady to the extent of 500 gms. 250 gms per unmarried lady and 100 gms per male member of the family will also not be questioned about its source and acquisition. We can take notice of the fact that at the time of wedding, the daughter/daughter-in-law receives gold ornaments jewellery and other goods not only from parental side but in-laws side as well at the time of Vidal (farewell) or/and at the time when the daughter-in-law enters the house of her husband. We can also take notice of the fact that thereafter also, she continues to receive some small items by various other close friends and relatives of both the sides as well as on the auspicious occasion of birth of a child whether male or female and the CBDT. looking to such custom prevailing throughout India, in one way or the another, came out with this circular and we accordingly are of the firm opinion that it should also mean that to the extent of the aforesaid jewellery, found in possession of the varolus persons, even source cannot be questioned. It is certainly 'Stridhan' of the woman and normally no question at least to the said extent can be made. However, if the authorized officers or/and the AOS. find jewellery beyond the said weight. then certainly they can question the source of acquisition of the jewellery and also in appropriate cases. if no proper explanation has been offered, can treat the jewellery beyond the said limit as unexplained investment of the person with whom the said jewellery has been found.

13. Admittedly, looking to the status of the family and the jewellery found in possession of four ladies, was held to be reasonable and therefore. the authorized officers, in the first instance, did not seize the said Jewellery as the same being within the tolerable limit or the limits prescribed by the Board and thus, in our view, subsequent addition is also not justifiable on the part of the AO and rightly deleted by both the two appellate authorities namely CIT(A) as well as the Tribunal.

14. It can also be observed here that prior to 1992. when the exemption limit under the WT Act was about Rs. 1.00.000 or Rs. 1.50.000, then in most of the cases, returns were filed under the WT Act because even in case of possession of 500 gms per lady and the other assets namely: capital investments in firms/shares, landed property etc. etc. being taxable return of wealth were

invariably filed by the assessees. However, by the Finance Act, 1992, w.e.f. 1st April. 1993, drastic change was introduced under the WT Act where only some assets under s. 2(ea) came within the perview of the definition of an "asset" under the wealth-tax and by and large, the other assets namely: liquid capital investments in firms/shares, one house property, commercial assets were exempt and even the limit of other assets was raised to 15 lacs (for the asst. yr. 1993-94 to 2009-10) and thereafter, by and large even the assessees, who were furnishing returns prior to 1st April. 1992, in view of the drastic amendment made under the WT Act. chose not to file WT return as there was no liability for furnishing WT returns. That does not mean that whatever assets were there in their possession, not disclosed under the WT Act. remained undisclosed. May be, later on, on account of increase in the gold/silver prices, value of gems/stones, value of jewellery may have exceeded but that does not mean that if a person has not filed WT return, then jewellery even to the said extent of 500 gms prescribed by the aforesaid circular became undisclosed. Admittedly, it is not the case of the Revenue that the jewellery, so found, which has been prescribed hereinabove, was not admitted by the family members at the time of search. All the ladies in the family admitted that the jewellery found were all their own and some of the jewellery was lying in custody and control of their mother- in-law and in Indian conditions, it happens that the daughter-in-law keeps her jewellery with her mother-in-law or/and head of the family and takes the same whenever required for some occasion in the family. Even otherwise, the jewellery is personal wearing in nature and the Revenue has not placed any material on record to show that the items which were found, were not personal wearing of the ladies.

15. Considering the above facts and circumstances. in our view, the Tribunal has correctly analyzed the circular of the Board and we do not find any infirmity or perversity in the order of the Tribunal so as to call for any interference of this Court. In our view, no substantial question of law arise out of the order passed by the Tribunal. 16. Accordingly, the appeal, being devoid of any merit. is hereby dismissed in limine. No order as to costs."

11. If the full benefit of this Circular is given in the case of the assessee then the gold jewellery of 1100 grams falls in the ambit of the jewellery and ornaments not to be seized and consequentially not required any explanation of source of acquisition. We further note that the co-ordinate Bench of this Tribunal in the case of **Shri Praveen Kumar Kesarwani vs. Jt. CIT (OSD), Allahabad** (supra) has considered this issue in para 8.5 as under:-

“8.5 Now coming to last addition which learned CIT(A) has sustained on account of unexplained jewellery. In this respect we find that the assessee during the initial recording of statement itself had explained the jewellery to be belonging to his wife, son and himself and he further explained that he and his wife had received the jewellery on the occasion of his marriage from his father-in-law and mother and their statements were recorded by the authorities below. We further find that assessee's mother Smt. Urmila Kewarwani had declared jewellery under VDIS scheme, a copy of which is placed at page No. 185 of the paper book. The mother of the assessee had also stated in her statement that the jewellery declared by her in the VDIS Scheme was used for making certain jewellery which she had given to his son. Copy of letter written by the mother of the assessee is placed at page 181 of the paper book. We further find that the grand-father of the assessee Shri Vishwanath Prasad had also declared jewellery under VDIS Scheme, a copy of which is placed at page 187 of the paper book. We further find that grand-father of the assessee Shri Vishwanath Prasad Kewarwani had invested 1168 gms gold in Gold Bond Scheme, the repayment of which was made on 30/09/98 in the form of gold. A certificate to this effect is placed at page 188 of the paper book. All these documents suggest that the assessee's family had sufficient resources to explain the jewellery and there was no occasion to make addition in this respect specifically in view of the fact that the assessee had explained the entire jewellery at the initial stage itself. The Hon'ble Jaipur Bench of ITAT in the case of Devilal Soni vs. ACIT has held that where the possession of items of jewellery is explained and Assessing Officer did not controvert various statements and affidavits filed by the assessee and did not bring any evidence on record to disprove various evidences, the jewellery in possession of the assessee has to be taken as well explained. In the present case, we find that the assessee was able to explain the jewellery from various sources such as on the occasion of his marriage, jewellery declared by grand-father and mother and their confirmations to have given the jewellery for making new jewellery for the assessee. Therefore, the addition sustained by learned CIT(A) are not warranted. In view of the above, ground No. 12 and 13 are allowed.”

12. In view of the above facts and circumstances of the case, if the undisputed quantity of the jewellery / gold bars of 623 grams as well as the benefit of the CBDT Circular dated 11th May, 1994 in respect of 250 grams Gold jewellery of each daughter and 100 grams for the husband of the assessee is given then no addition on account of unexplained investment in

the jewellery is called for. Hence, the addition sustained by the CIT(A) on account of 499.85 grams jewellery is liable to be deleted. We order accordingly.

13. Ground no. 5 is regarding the addition made on account of cash found during the search. During the course of search and seizure action, cash amounting to Rs. 1,07,651/- was found. The assessee explained the source of the said cash as Rs. 24,000/- belongs to the husband of the assessee, Rupees 53,451/- belongs to M/s Gupta Traders, proprietorship concerned and Rupees 30,200/- belongs to the children. The AO did not accept the explanation of the assessee and after allowing the cash balance as on 25th August, 2009 of Rs. 5475.50/-, as per the books of accounts, made the addition of the balance amount of Rs. 100,625.50/- as income from undisclosed sources. Accordingly, the AO rejected the explanation of the assessee that the cash amounting to Rs. 24,000/- belonging to the husband of the assessee and Rs. 30,200/- belonging to the children as a saving for want of any supporting evidence. The CIT(A) confirmed the addition made by the AO on this account.

14. Before the Tribunal, the learned AR of the assessee has submitted that the assessee explained the source of cash in her statement recorded under section 132(4) in reply to question no. 4 and submitted that the assessee has explained that a sum of Rs. 30,200/- was found from the purse of assessee and her daughter which is the money for the household expenditure. The balance was explained by the assessee as belongs to the business entity of M/s Gupta Traders and a sum of Rs. 24,000/- belong to the husband of the assessee Shri. Ramesh Kumar. The learned AR has referred to the assessee's reply before the CIT(A) and submitted that the assessee has clearly explained the source of Rs. 53,451/- which belongs to

M/s Gupta Traders and submitted that there was a sale through cash memo to the extent of Rs. 28,006/- and also collection from a debtors of Rs. 20,000/- alongwith the balance which was already found in the books of Rs. 5475.50 on 26.8.2009, the total comes to Rs. 53,481.50 paisa. Therefore, to the extent of the said amount, the assessee has explained the source. The sales through cash memo and the collection from the debtors were yet to be recorded in the cash book. The assessee also explained that on 26.8.2009, her husband was out of station and the other staff sold goods against the cash memo issued. The necessary entries were also passed in the stock register reflecting the transaction of sale on 26.8.2009. The cash generated from the sales and collection from the debtors was available on the date of search. Thus, he has reiterated the explanation and reply as filed before the CIT(A). Hence, the learned AR has submitted that the addition sustained by the CIT(A) is liable to be deleted.

15. On the other hand, the learned DR has submitted that the addition is made by the AO on the basis of the cash found during the search and seizure action and the assessee failed to explain the source of the cash. He has relied upon the orders of the authorities below.

16. We have considered the rival submissions as well as relevant material on record. The assessee has explained the source of the cash found during the course of search and seizure action to the extent of Rs. 1,07,100/- in reply to question no. 4 in her statement recorded under section 132(4) as under:-

"प्रश्न 4 तलाशी के दौरान आपके इस रिहायशी एवम व्यापारिक परिसर से रु० 1,07,100/- की नकदी मिली है इसका विवरण स्पष्ट रूप से दें ?

उत्तर: रुपये 30,200/- की धनराशि मेरे तथा मेरे पुत्रियों के पर्श से प्राप्त हुआ है जो कि गृह कार्य इत्यादि से संबंधित है। तथा शेष धनराशि मे०

**गुप्ता ट्रेडर्स की व्यापारिक धनराशि है जिसमें से लगभग रु० 25,000/-
मेरे पति श्री रमेश कुमार के भी हैं।"**

17. The cash was found from the possession of the assessee therefore, the assessee is required to explain the source with supporting evidence. The AO allowed the credit to the extent of Rs. 5475.50 paisa as cash balance available in the books of M/s Gupta Traders and rest of the amount was treated as income from undisclosed source. The explanation of the assessee regarding Rs. 24,000/- belonging to her husband and Rs. 30,200/- belonging to the children was not accepted by the AO apart from a sum of Rs. 46,425.50 paisa claimed as the cash of the business entity M/s Gupta Traders. Though, the assessee has tried to explain the source of the cash before the CIT(A) by giving details of the sales through cash memo and recorded in the stock register as well as collection from the debtors however, the CIT(A) was not impressed with the said explanation and sustained the addition. It is pertinent to note that the CIT(A) has held the entire cash of Rs. 1,07,651/- found during the course of search belongs to the assessee and addition to the said extent has been confirmed whereas the AO has already allowed the credit of cash balance available in the books of M/s Gupta Traders to the extent of Rs. 5,475.50 paisa. Therefore, to that extent, there is a mistake in the impugned order of the CIT(A). The CIT(A) has dealt with this issue in para (v) as under:-

(v) The ground of appeal no.8 is against the addition of Rs 107,651/- made by the AO u/s 69A of the Act. The cash amounting to Rs 107,100/- was found during search the appellant claimed that Rs 24,000/- belonged to her husband, Rs 53,451/- belonged to her firm M/s Gupta Traders and Rs 30,200/- belonged to her children. The AO rejected the contention of the assessee in this regard and made the addition of Rs 107,651/-.

The AO observed in the assessment order that with regard to the source of cash amounting to Rs 53,451/- claimed to belong to her Firm M/s Gupta Traders, the cash book of the Firm was written upto 25-08-2009. The AO observed that cash balance as on 25-08-2009 was Rs 5475.50, and on the

date of search it was found that the last bill for sale of goods issued was bill no. 168 dated 22-08-2009. Therefore it implied that no bill was issued after 22-08-2009 till the date of search. Therefore the AO held that the cash amounting to Rs (51,900 5475.50) = Rs 46,425/- was from undisclosed sources of the assessee and therefore added back u/s 69A of the Act.

As regards the cash amounting to Rs 24,000/- claimed by the appellant to belong to her husband Sh Ramesh Kumar, the AO did not accept the said explanation because her husband kept mum on this issue in the assessment proceedings in his own case. Accordingly the AO held the same to be income of assessee from undisclosed sources.

As regards the source of the balance sum of Rs 30,200/- found during the course of search, the contention of the appellant was that it belonged to her children, but in absence of any supporting evidence the AO treated the same as income of the assessee from undisclosed sources and made the addition.

In her written submissions filed by the appellant in appeal proceedings, the explanation about the source of cash amounting to Rs 1,07,651/- was as under-

That the addition of Rs. 1,07,651/- made by the assessing officer by invoking the provision of section 69A is not correct. The said cash belongs to various persons as admitted by the assessee in the preliminary statement recorded on the date of search.

That the breakup of cash amounting Rs. 1,07,100/- found during the course of search was as under:

- (A) Rs. 24,000.00 belongs to her husband sri Ramesh Kumar. (B) Rs. 53,451.00 belongs to her firm M/s Gupta Traders.
- (C) Rs. 30,200/- belong to her children which is their savings.

That with regard to Rs. 53,451.00 which belongs to the firm M/s Gupta Traders / me it is stated that upto 25.08.2009 cash book was written. And opening balance was Rs. 5,475.50 as on 26.08.2009 there was sale through cash-memo to the extent of Rs. 28,006.00 and likewise collection from debtors was Rs. 20,000/- Totaling Rs. 53,481.50 Less Expenses incurred on 26.08.2009 was Rs. 30.50. In this way availability of cash was Rs. 53,451.00. In this connection it is also necessary to mention here that on 26.08.2009 her husband was out of station. Anyhow other staff sold the goods and challans and cash- memo were issued and necessary entry passed in the stock Register viz. transaction took place on 26.08.2009. In this way the cash was generated / available on the date of search. In connection with Rs. 30,200/- it is submitted that the same belongs to the children of assessee and was kept in Almirah. Thus the amount found and seized was from definite source and for such small amount question of drawing any adverse inference does not arise. In this connection it is also necessary to mention here that on 24.08.2009 there was opening cash balance of Rs. 85,978/- and earlier also

on different dates there was sufficient cash balance. In these background declared cash balance as on 26.08.2009 may please be accepted in the facts and circumstances of the case."

The above explanation of the appellant about the source of cash found during the course of search is considered. As regards the explanation about the source of cash amounting to Rs 53,451/- belonging to M/s Gupta Traders, there is no evidence of sale through cash memo to the extent of Rs 28,006/-. Though the appellant claimed that necessary entry of sale was passed in the stock register, but the copy of the relevant page of the stock register was not produced before the undersigned by the appellant. Hence the claim is not substantiated and hence dismissed.

Likewise, the claim of collection of Rs 20,000/- from Debtors is not proved. In her written submissions, the appellant has not furnished even the names of debtors from whom collection of Rs 20,000/- was made, and also did not furnish the copy of account of those debtors from whom collection was made as claimed, in the books of accounts of M/s Gupta Traders in FY 2008-09 to substantiate her statement. Hence the above claims of the appellant are not proved hence dismissed.

As regards the source of balance amount of cash of Rs 30,200/- claimed to belonging to the children of the appellant, the appellant has not furnished any evidence to establish that the cash amounting to Rs 30,200/- found during the course of search belonged to the children of the appellant and hence the explanation of the appellant is dismissed.

As regards the source of cash amounting to Rs 24,000/- claimed by the appellant to belong to her husband Sh Ramesh Kumar, there was not even any argument in the written submissions of the appellant, leave alone any evidence furnished in this regard. Accordingly, I am in agreement with the AO that when the husband of the appellant kept mum on this issue in the assessment proceedings in his own case, the explanation of the appellant that the said cash amounting to Rs 24,000/- belonged to her husband Sh Ramesh Kumar was rightly rejected. Accordingly I hold that the entire cash amounting to Rs 107,651/- found during the course of search upon the appellant, belonged to her alone, and acquired from her undisclosed sources of income. Therefore the addition of Rs 107,651/- made by the AO u/s 69A of the Act is confirmed."

18. Though the assessee has explained the source of cash to the extent of the sales of Rs. 28,006/- dated 26.8.2009 and collection from the debtors of Rs. 20,000/-. However, the CIT(A) has rejected the said explanation on the ground that the assessee has not furnished the name of the debtor from

whom the collection is made and also did not furnish the copy of the debtors account as well as the books of accounts of M/s Gupta Traders to substantiate this explanation. Accordingly, in the facts and circumstances of the case, we do not find any error or illegality in the impugned order of the CIT(A) except the mistake regarding the quantum of addition sustained by it as already discussed in the foregoing part of this order. Ground no. 5 is dismissed.

19. Ground no. 6 is regarding the addition of Rs. 56,310/- made by the Assessing Officer on account of excess stock of Kimam. The AO issued notice under section 142(1) seeking explanation from the assessee about the stock position as found on the date of search in comparison to the stock recorded in the stock register and the books of accounts. After considering the reply of the assessee, the AO has decided this issue as under:-

"Issue of excess stock of kimam:

The reply of assessee with regard to 260Kg. Kimam lying and found at the platform on the date of survey in the factory premises (Idgah Road) is not convincing. It is a fact that the assessee manufactures Kimam from raw tobacco and this process will take certain period of time. As per stock register found and seized as annexure "A 12" there was only 1160 kg of Kimam which was shown as opening stock as on 27-08-2009. Manufacturing process of Kimam takes three to four days. As per said stock register 470 Kg. of raw tobacco was taken for manufacturing of Kimam on 22-08-2009. So whatever yield would have come out of consumption of 470 Kg. of raw tobacco, it should have been taken in this stock register. It is worth mentioning here that just before the date of search that i.e. on 26-08-2009, 320 Kg. of Kimam was entered in the said stock register. Thus opening stock of finished Kimam as on date of search includes the yield of 470 Kg of raw tobacco taken on 22-08-2009. Further from the stock register of raw tobacco it is evident that raw tobacco has not been issued for manufacturing of Kimam after 22.08.09 Therefore availability of unfinished Kimam, as stated by the assessee is ncing but to cover up the stock of 260 Kg of Kimam which was out of stock of the assessee. It is worth mentioning here that during last six years prior to the year under consideration there has not been any entry of unfinished Kimam as on the date of closing of its books of accounts. Therefore 260 Kg of Kimam is treated as undisclosed stock of assessee. The cost price of this Kimam, as taken and signed by the assessee and her auditor in the audit report dated 07-01-2011 is @ 216.58 per Kg. and valued at 56310/- (260X216.58). This value is

taken as income of the assessee from undisclosed sources and added to her total income."

20. The assessee challenged the action of the AO before the CIT(A) and submitted that stock position of kimam as on 26.8.2019 was 1160 kg. Apart from this finished product of kimam as per stock register there was unfinished product / under process stock at the premises at the time of search. The assessee explained that as per the business practice and procedure when the unfinished product becomes finished product which is recorded in the stock register of kimam (finished product). On the date of search, the stock position as per stock register was 1160 kg and the discrepancy was due to consideration of unfinished product as finished product. The CIT(A) did not accept this explanation of the assessee and confirmed the order of the Assessing Officer.

21. Before the Tribunal, the learned AR of the assessee has submitted that the discrepancy pointed out by the AO is only because of the reason that the AO has not considered the unfinished product which was available at the time of search in the factory / survey premises at Sultanpur. The learned AR has referred to the statement of the assessee recorded under section 132(4) and submitted that the explanations were already furnished by the husband of the assessee in his statement recorded by the survey party. Thus, the learned AR has contended that this is a hypothetical addition made by the AO without considering the correct facts of available unfinished product and thereby the AO presumed that the raw tobacco issued from the stock register on 22.8.2009 would have yielded the finished product of kimam of 260 kg and the same was not recorded in the books of accounts. The AO doubted the explanation of the assessee for the unfinished product as to cover the excess stock of kimam of 260 kg found at the time of search and survey. He has thus contended that without verifying the correct position of

the stock of kimam, the AO has made the addition by treating the entire stock as finished product. On the other hand, the learned DR has submitted that the Assessing Officer has made the addition on the basis of the seized / impounded material as per annexure A-11 and 12 which is the stock inventory as well as stock register, respectively. He has relied upon the orders of the authorities below.

22. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has made the addition on account of excess stock of 260 kg of kimam found at the time of survey at the factory premises which was out of stock register. Though, the assessee explained before the AO that the said stock was not finished stock but it was unfinished under process stock and would be recorded in the stock register only when converted into finished product of kimam. Therefore, the assessee submitted that there is no discrepancy in the stock found during the survey as well as recorded in the stock register. The controversy is only regarding whether the 260 kg of kimam was found during the survey was a finished product or unfinished product. The assessee has not produced any material to show that the said stock was not finished product whereas the AO has considered the stock inventory prepared at the time of survey / search which was compared with the stock register maintained by the assessee. Therefore, in the absence of anything contrary to the details recorded in the stock inventory prepared at the time of survey / search, we do not find any reason to interfere with the orders of the authorities below. The CIT(A) has confirmed the order of the Assessing Officer as under:-

"It was stated by the AO in the assessment order that assessee manufacture kimam from raw of tobacco and this process take certain time. As per seized stock register there was only 1160 Kg kimam as opening stock as on 27-08-2009. Manufacturing process of kimam takes 3 to 4 days. Also as per stock register 470 kg of raw

tobacco was taken for manufacture of kimam on 22/08/2009 and the AO inferred that the yield of this consumption of raw tobacco of 470 kg should have been taken in the stock register and on 26-08-2009, 320 kg of kimam was entered in the seized stock register. It was further observed by the AO that no raw tobacco was issued for manufacture of kimam after 22/08/2009. Accordingly I agree with the AO that the yield of 470 Kg of raw tobacco issued on 22-08-09 would have been converted into kimam before the date of search and duly entered in the stock register. Therefore I agree with the AO that the availability of unfinished kimam as stated by the assessee was only to cover up the stock of 260 kg kimam which was found on the date of survey found lying on the platform in the factory premises and the same was not supported with any evidence. Therefore the addition of Rs 56,310/- on account of undisclosed stock of 260 kg of kimam is confirmed."

23. In view of the above discussion, the ground no. 6 of the assessee's appeal is dismissed being *de void* of merit.

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

Order pronounced in the open Court on 05.01.2023 at Allahabad, U.P.

Vide separate concurring order dated 4/1/2023

Sd/- 4/1/2023

**[RAMIT KOCHAR]
ACCOUNTANT MEMBER**

Date: 05.01.2023

Allahabad

Sh

Sd/-

**[VIJAY PAL RAO]
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant-Shakun Devi, Sahson, Allahabad, U.P.
2. Respondent-JCIT (OSD), C.C. Allahabad
3. CIT(A)
4. CIT
5. DR

By order
Sr. P.S.

I.T.A. NO.573/Alld./2014(Assessment Year:2010-11) in the case of Mrs. Shakun Devi, Sahson, Allahabad, U.P.(PAN: ADAPK7419E) v. Joint Commissioner of Income-tax(OSD), Central Circle, Allahabad,U.P..

Concurring Order

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

Being agreed with the conclusion of decision of my Id. Brother(JM) on the issues of addition made by authorities below with respect to jewellery found during the search but not agreed with the reasoning of my Id. Brother(JM) in his order for assessment year 2010-11, I proceed to write my separate concurring order with respect to addition made by authorities below with respect to jewellery found during search. So far as other issues are concerned arising in this appeal, I concur with the reasoning and conclusion of my Id. Brother(JM).

2. The brief facts of the case are enumerated by my Id. Brother(JM) in his order. The grounds of appeal raised by the assessee are also reproduced by my Id. Brother(JM) in his order. There was search and seizure operations conducted by Revenue u/s 132 of the Income-tax Act, 1961 on 27.08.2009 in the group cases of Kesarwani Zarda Bhandar, Sahson and Allahabad and its partners. The assessee is partner in two firms of this group. During the aforesaid search, gold jewellery weighing 1796 grams was found which was inventoried as per Annexure J in two pages. The statement of the assessee was recorded u/s 132(4) on 27.08.2009, and the assessee explained in her statement that 678 gms of jewellery belonged to her and her two daughters namely Dolly and Omi, 623 gold bar belonged to her husband Mr. Ramesh Kumar and 504 gms belonged to her mother Mrs. Indira Devi. During assessment proceedings, the assessee explained that she got married in 1975 to Mr. Ramesh Kumar. Her husband belonged to respectable family of Allahabad. During marriage, she got jewellery from both the sides, as well

on several occasions , she got jewellery as gift. She also explained that her husband Mr. Ramesh Kumar deposited 623 gms gold under Tax Free Gold Bond Scheme , which was received back later on 29.12.1998. The assessee explained that said declared gold jewellery was found at the time of search appearing at S.No. 13 of jewellery inventoried in Panchanama. The assessee also explained that she declared gold weighing 796.150 gms under VDIS. The assessee produced relevant certificates before the AO. The assessee requested that the gold jewellery found during search be accepted as her 'Stridhan' as well as per disclosure. The assessee also drew attention of the AO to CBDT Instruction number 1916 dated 11.05.1994. The AO accepted 500 gms as 'Stridhan' of the assessee and sources of said jewellery stood explained/accepted by the AO, keeping in view the status of the assessee and family background of the husband of the assessee. The AO then treated 682 gms of gold jewellery as unexplained and addition to the income of the assessee was made by AO to the tune of Rs. 9,49,003/- u/s 69B of the 1961 Act. The assessee filed first appeal before Id. CIT(A), and made similar contentions. The Id. CIT(A) accepted gold jewellery to the tune of 500gms as Stridhan of the assessee as being duly explained , which was also allowed by Id. AO. The Id. CIT(A) also accepted gold jewellery of 796.150 gms which was declared by assessee under VDIS, 1997. The balance gold jewellery to the tune of 499.85 gms stood added by Id. CIT(A) to the income of the assessee as being un-explained . So far as gold jewellery of 623 gms belonging to her husband, the Id. CIT(A) did not accepted the contention of the assessee. The matter now travelled to ITAT at the behest of the assessee. The Revenue is not aggrieved by the decision of Id. CIT(A) , as it could not be shown to us that the appeal has been filed by Revenue nor even it could be shown that the C.O. has been filed by Revenue with ITAT, against the part relief granted by Id. CIT(A) to the assessee . My Id. Brother(JM) has accepted

623 gms of gold bar as belonging to her husband which was deposited by her husband under Tax Free Gold Bond Scheme , which was received back later on 29.12.1998. In reply to question put to her while recording statement u/s 132(4) on 27.08.2009, the assessee has duly co-related the said gold bars found during search being belonging to her husband. During assessment proceedings, she produced relevant documents, which are reproduced by my Id. Brother(JM) in his order at page 8-11. I agree with the view of my Id. Brother(JM) as the assessee while recording statement u/s 132(4) on the date of search on 27.08.2009 specifically referred to 623 gms of gold bars found being belonging to her husband , Mr. Ramesh Kumar. Later on she produced evidences regarding deposit of said gold by her husband Mr. Ramesh Kumar under Tax Free Gold Bond Scheme , which was received back later on 29.12.1998. My Id. Brother(JM) has reproduced said evidences in page 8-11 of his order, and he rightly accepted the said gold bars as fully explained. This fully explained the gold jewellery found during the search on 27.08.2009 and conclude the matter in favour of the assessee, after taking cognizance of the gold jewellery accepted by Id. CIT(A) as duly explained vide his appellate order and the said order has attained finality as it could not be shown that Revenue has filed any appeal/C.O. with ITAT against part relief granted by Id. CIT(A). So far as CBDT Instruction number 1916 dated 11.05.1994, it deals with directions not to seize gold jewellery and ornaments under specified circumstances during search operations, and these instructions are not with respect to the computation of income during assessment. I also note/observe that while recording statement u/s 132(4) on 27.08.2009(page 46-50/pb) , the assessee duly explained that jewellery of 504 gms which was found during search belonged to her mother, Mrs. Indira Devi vide item no. 9 and 10 of Panchnama. She later produced affidavit dated 16.12.2011 executed by her

mother Indira Devi aged 77 years, wherein she owned the said jewellery, and explained the sources of its acquisition(page 38-39/pb) . The department rejected the affidavit without any further verifications/investigations as Mrs. Indira Devi was never summoned by department(as is emerging from record before us) for recording her statement to unravel truth. The assessee had discharged her primary burden by explaining the jewellery found during search by explaining in statement recorded u/s 132(4) on 27.08.2009 that 504 gms belonged to her mother Mrs. Indira Devi, which was later supported by assessee by producing affidavit executed by her mother. It is not uncommon in India that old mother of 75 years(on date of search) keep for safe custody her gold jewellery with her married daughter, as it is very much within the preponderance of human probability in Indian Society . The onus was shifted to department to carry out further investigations to rebut claim of the assessee, before rejecting assessee's contentions. Further, the assessee while recording statement u/s 132(4) on 27.08.2009 explained that 678 gms gold jewellery belonged to her as well her two un-married daughters namely Omi and Dolly. The department accepted 500 gms gold jewellery as assessee's Stridhan, keeping in view her status as well family background of her husband. As is emerging from record , the department never investigated about the gold jewellery sought to be explained by the assessee as belonging to her unmarried daughters. Once the unmarried daughters are living with their parents, it is not uncommon in India that jewellery belonging to unmarried daughters will be kept along with the assessee's jewellery in a family home where they are living together . The department before rejecting the contentions of the assessee, ought to have conducted proper enquiry/investigation . Any how, keeping in view the entire facts and circumstances of the case, I concur with the decision of my

ld. Brother(JM) in deleting the entire additions as was confirmed by ld. CIT(A) , for the reasons as explained above. I order accordingly.

3. In the result, the appeal filed by assessee is partly allowed . I order accordingly.

Order pronounced in the open Court on 05.01.2023 at Allahabad, U.P.

Sd/- 4/1/23
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 05/01/2023

Copy forwarded to:

1. Appellant –Mrs. Shakun Devi, Sahson, Allahabad, U.P.
2. Respondent – The JCIT(OSD), Central Circle, Allahabad,U.P.
- 3.The CIT, Allahabad, U.P.
4. The CIT(A), Allahabad,U.P.
- 5.The Sr. DR –Allahabad, U.P.
6. The Guard File

By order
Assistant Registrar