

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

ITA No.2970/Mum/2014
(Assessment Year: 2009-10)

Shri Abdul Kader Abdul Latif Fazlani 21, Nirmal, Nariman Point, Mumbai-400 021	Vs.	Asst. CIT Central Circle – 44, Mumbai
PAN/GIR No. AADPF 9228 J		
(Appellant)	:	(Respondent)
Appellant by	:	Dr. K. Shivaram & Shri R. P. Meena
Respondent by	:	
Date of Hearing	:	18.09.2018
Date of Pronouncement	:	05.12.2018

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-37 (‘ld.CIT(A) for short) dated 24.02.2014 and pertains to the assessment year (A.Y.) 2009-10.

2. The grounds of appeal read as under:

1. On the facts and circumstances of the case and according to law the Learned CIT (A) erred in confirming the order of Learned Assessing Officer for addition of Rs.77,26,700/- on account of undisclosed jewellery, without appreciating that the said jewellery did not belong to the appellant and hence, no addition can be made in the hands of the Appellant

2. On the facts and circumstances of the case and according to law the Learned CIT (A) erred in confirming the order of the Learned Assessing Officer for addition of Rs.70,00,000/- in respect of alleged transaction with Shri. I. M Patel Civil Contractor, Pune.

2.1 Without prejudice to above, the learned CIT(A) failed to appreciate that no addition of Rs.70,00,000/- can be made in the impugned assessment year as the said transaction is recorded in the earlier years.

3. Brief facts of the case are as under:

A search action u/s. 132 of the I.T. Act was carried out in the case of the assessee on 29/04/08. Notices u/s. 153A of the IT, Act was issued for A.Y. 2003-04 to 2008-09.

The assessee filed return of income for A.Y. 2009-10 on 04/03/10 declaring a total income of Rs.10,34,840/-. Notice u/s, 143(2) was issued on 09/03/10. Assessment was completed vide order dated 31/12/10 in which the income was assessed at Rs.1,65,25,220/-. In the assessment additions were made in respect of certain issues.

4. The facts of the issue which are subject matter of this appeal are as under:

During the course of the search, jewelry valued at Rs.1,40,38,367/- was found which comprises of:

Gold jewelry (6594.800 gms nett)	Rs.68,83,972/-
Diamond Jewelry	Rs.71,00,395/-
Silver	Rs.54.000/-

The jewellery held by the entire family of the assessee was to the extent of 2635.200 gms. There were further accounted purchases of 914.770 gms. After examining the details of the jewelry found and that which was accounted for in the tax returns of the family, the assessee, in his statement recorded u/s. 132(4) during the search action, had declared an amount of Rs.77,26,700/- as undisclosed and unaccounted investment in jewelry.

On account of excess gold jewelry	Rs.18,52,245/-
On account of diamond jewelry	Rs.58,74,455/-

In the assessment proceedings, the assessee retracted his admission and explained that the jewelry found during the search was old jewelry as per the valuation report of 2001 which was seized by the department and also comprised of the jewelry received at the time of 4 marriages which took place in the family. This explanation was not accepted by the AO since Wealth tax Returns had not been filed over the years. In respect of the explanation that the jewelry was received at the time of marriage in the family the

AO noted no evidence was furnished in support of the jewelry claimed to be thus received. He therefore made an addition of Rs.77,26,700/- in respect of the jewelry/-.

5. Further, one of the seized documents was on P. 43 and 44 of bundle no. A-3 found at the office premises of Sopariwala Exports which read as follows:

"In the case of my death- :

I) Patel (Poona Civil Contractor) -70 lacs loan to be converted in Donation for Rashid Khan School."

At the time of search the assessee in reply to question no. 17 stated that Rs. 70 lacs of the said loan to Shri I.M.Patel was not recorded in the books of accounts. However, during the assessment proceedings the appellant retracted his admission and submitted that Rs. 45 lacs loan to Shri I M Patel was accounted for in A.Y. 2003-04, 2004-05 and 2006-07 and that subsequently the loan was paid off. The A.O. held that the recorded transaction of Rs. 45 lacs is a different transaction from Rs.70 lacs mentioned in the seized documents. The accounted transaction will be covered by accounting norms and in such case there was no need for the assessee to give a direction that such amount should be converted into donation to Rashid Khan School. He therefore added Rs. 70 lacs as undisclosed income of the assessee for this year.

6. Against the above order, the assessee filed appeal before the Id. CIT(A).

7. The Id. CIT(A) considered the assessee's submissions. But he did not find himself in agreement with the same. He confirmed the addition made by the assessing officer.

The Id. CIT-A held as under:

In the appellate proceedings the appellant has submitted that the gold and diamond jewelry was collected from Flat Nos. 342, 352 and 362 Kalpataru Heights, Dr.

A.B.Nair Marg, Mumbai., and also the lockers at Central Bank of India, HDFC Bank at Mumbai Central. All the jewelry has been treated as owned by appellant as he is the patriarch of the family. In reality gold and diamond jewelry is belonging to his individual family members. It has been submitted that during the search the assessee was under stress and therefore had recorded in his statement that he offered the jewelry as unexplained and relating to the current year's income. This statement is retracted and the appellant submitted that the jewelry was explained as received during the marriage occasions of his 4 sons that took place between 1995 to 2005 as well as the jewelry belonging to the family members as on 31/03/01 which can be seen from the valuation report of Tribhovandas Bhimji Zaveri prepared for wealth tax purposes. The returns for the individual family members were not filed since the wealth of the individual family members was below Rs. 15 lacs and therefore, there was no need to file the wealth tax return. The appellant also relied on Circular no. 119 of I.T.Act as per which certain quantum of Jewelry has to be given credit for the female and male members Kit the-family. It is claimed that the valuation report dated 12/04/01 is the evidence that the jewelry is owned by the assessee and his family members much prior to the period of assessments in h s case. Marriage of 3 sons took place prior to 2001 and marriage of .4th son was conducted on 20/01/06.

5.11.1. I have perused the details filed by the appellant in the proceedings before me and also examined the submissions carefully. The appellant was asked to reconcile the jewelry found during the course of search with the jewelry appearing in the alleged valuation report dated 12/04/01. The description in the two reports do not match for instance in the valuation report dated 12/04/01 in respect of Farida A. Fazlani the first item under the head Diamond jewelry is described as 1 Ruby Necklace in 14 Kt. The gross weight is mentioned as 54.900 gms and the number of stone pieces is mentioned as D-905 R 9. The assessee has claimed the same to be matched with the Diamond necklace found and seized from locker no. 231 HDFC Bank Mumbai Central Branch which is appearing as item no. 79 in the valuation report prepared at the time of search. The description in the valuation report at the time of search describes it as Diamond necklace 1 and Eartop Pair 1. The gross weight is mentioned at 82.400 gms and the number of pieces of stones is mentioned as 1235 and 13 pieces of rubies. While the description in the valuation report dated 12/04/01 in the case of rubies were 32.50 kt the valuation report at the time of search shows the weight 25kt in respect of the rubies. Similar discrepancy is there in the weight in carats in respect of the diamonds.

5.11.2. Second aspect of the matter is that the jewelry found during the course of search is not segregated and identified as belonging to different persons of family as is: being claimed now. This is particularly true in respect of jewelry found in the lockers belonging to the appellant. The next aspect to be noted is that there is no cogent document/evidence to indicate how this jewelry were acquired. There is no evidence in respect of jewelry claimed to be received at the time of marriage nor is there any co-relation with the jewelry found during the search. During the appellate proceedings copies of few old cash memos for purchase of jewelry in 1992 and 1995 was submitted and which was claimed to be reflected in

the valuation report during the search proceedings. However, there was no sufficient description in the purchase bills to reconcile it with the jewelry found during the course of search. Further the appellant could not clearly show despite being specifically asked to do so, to demonstrate the acquisition/purchase of the jewelry, and match the description with the jewelry found during search. In some of the bills, copies of which were filed before me, it is noted that name has been added subsequently to suggest that it belongs to the person whose name has been written. For instance in the copy of the bill purported to be issued by M/s. Tribhovandas Bhimji Zaveri on 18/11/95 invoice no. 41373, the bill is made out in the name of Irfan Abdul Kader which is typewritten. However, in the copy produced before me, the name Tahsin Irfan C/o. Irfan Abdul Kader has been inserted by hand to suggest that the jewelry mentioned therein belongs to Tahsin Irfan. Looking at the submissions filed before me it is apparent that the appellant has attempted to create evidences to claim that the jewelry found belonged to different persons of the family and were from accounted sources. .

5.11.3. As regards the reliance on the CBDT Circular, it is to be noted that the same is for the guidance of the Investigation Officers for the purpose of effecting seizure of jewelry. Whether the jewelry is accounted for or not, has to be demonstrated independently and the CBDT instruction cannot be treated as an automatic explanation of the jewelry found. During the course of appellate proceedings a remand report had been called from the A.O. in this regard vide CIT(A)'s letter dated 13/03/13. A remand report was submitted by the DCIT.CC.44 through Addl.CIT CR 10 dated 03/12/13. A copy of this report was forwarded to the appellant for information and rejoinder. In the remand report the AO submitted that the total jewelry found during the course of search comprises of gold jewelry of 6594.800 gms.nett valued at Rs. 68.83.972/- apart from diamond jewelry and silver. The jewelry of entire family 2635.200gms and certain purchases to the tune of 914.77gms were also submitted by the assessee. As much as 3044.83 gms of gold jewelry was found in locker at various banks during the course of search. It was the appellant's submission that jewelry found from the locker was in the name of his wife Mrs. Faridabai. It was claimed that there were two bills of M/s. Tribhovandas Bhimji Zaveri in the name of Farida AbdulKader. The AO noted that bill; dated 28/08/92 showed invoice no. 15911 and second bill dated 08/09/92 showed invoice no. 11860, The purchase of gold is from one showroom only. He pointed out that normally invoice numbers will be in ascending order but the copy of alleged bills furnished by the assessee is contradictory and its authenticity is doubtful. In the case of Asif Abdul Kader Fazlani, son of the assessee has shown the purchase of the jewelry from M/s. Tribhovandas Bhimji Zaveri through cheque but has shown that the bills are pending. Jewelry was purchased on 03/12/05 and 17/12/05 and the amount is claimed to be paid by cheque but the bills are pending. This again is quite strange that the amount is paid but the bills are shown as pending as on date. In the case of Irfan Abdul Kader Fazlani, son of the assessee who is an NRI, perusal of the purchase bill dated 18/11/95 from M/s. Tribhovandas Bhimji Zaveri shows that the bill does not bear signature and therefore genuineness of this bill is not

established. Further bill shows that it was typed in the name of Irfan Abdul Kader but afterwards the name of Tahsin Irfan C/o. Irfan Abdul Kadar has been written by hand and the correction is not initialed. Various other discrepancies are pointed out by AO in his remand report (reproduced earlier). The AO has also pointed out that the Wealth Tax Returns of family members were filed in 2010 which is after the search, and cannot be given credence.

5.11.4. The statement of the appellant was recorded on 09/05/08 wherein he had admitted undisclosed income of Rs. 77,26,700/- in respect of the jewelry found which was unaccounted. It is noted that this was much after the search action on 29-4-2008. Though later the appellant tried to retract from the statement recorded during search, it is the fact that the jewelry found during the search was not reflected in the jewelry declared in the Income tax Return by the various family members. Even if the aspect that no wealth tax returns were filed is kept aside for a moment, it is to be appreciated that the specific jewelry found to be unexplained are also not reflected in the balance sheet of the various family members. It is only later that the appellant brought in a claim that the unexplained jewelry were the gifts received for the past several years. There is no evidence that the unexplained jewelry found during search was received during the marriage of the 4 sons. The only evidence furnished was a certificate from Kazi indicating the date of marriage but nothing to indicate jewelry received. At the cost of repetition, it is noted that the balance sheet of family members does not reflect the jewelry found to be unaccounted and in excess. The appellant in his detailed statement on oath u/s. 132(4) dated 8/9 May 2008 had accepted that jewelry was unaccounted and had offered the value of unaccounted jewelry as his undisclosed income. Thereafter, he has retracted his statement conveniently. It is observed that no complaints were made to the Chief Commissioner of Income-tax or to the Director General of Income-tax or to the CBDT regarding any kind of coercion, pressure, threat or undue influence if any, used by the authorized officers during search & seizure and seizure when the statement was recorded. Since the appellant could not explain the source of acquisition of the excess jewelry found, he had admitted to the undisclosed income. Therefore, during the course of search, he made a statement and the authorized officers believed him and left his premises. The appellant cannot be allowed to deny the truth of his statement at the belated stage of his assessments.

5.11.5. Even Section 115 of Evidence Act says that when one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between him and such person or his representative to deny the truth of that thing. In this case, the appellant has altered the position of the Investigation Wing of the Department by his admission during the course of search and seizure action. As a corollary, the Department need not locate the source of jewelry in appellant's possession. The appellant's reliance on his retraction is the devise to frustrate the statutory officers doing their statutory functions. Such retractions are against common law. They are also against the provisions of Section 115 of Evidence Act. The Hon'ble Supreme

Court in the case of Chuharmal V. CIT 172 ITR 250. 255(SC) has held that what is meant by saying that the Evidence Act does not apply to Income-tax assessment that the rigor of the rules of evidence contained in the Evidence Act is not applicable but that does not mean that when the Taxing Authorities are desirous of invoking the principles of the Evidence Act in proceedings before them, they are prevented from doing so. Besides, Section 115 of the Evidence Income Tax Act, 1961 incorporates a statutory principle of common law based on the maxim *allegans contraria non est iudendus* (persons alleging contradicting facts should not be heard). In this case the appellant altered the position of the Investigating Authorised Officers during the course of search and seizure by his admission of unaccounted jewelry. It is not incumbent upon the authorized officers to locate the source of unexplained jewelry in the possession of the appellant. Reliance is placed on the following decisions :

1. M.GanapathyMudaliar 53 ITR 623 (S.C.)
2. A Govind Rajalu Mudaliar 34 ITR 807 (S.C.)

The case laws relied upon by the Ld.AR on the retraction of appellant's statement after the search and seizure was over and other issues are not applicable to the facts of the present case. On the issue of retraction of statement I further rely upon the Hon'ble ITAT, Mumbai's decision in the case of Hiralal Maaanlal 96 ITD 113.

5.11.6. In respect of the remand report of the AO, in the rejoinder the appellant submitted that all the transactions are incorporated in the books of accounts but I find that the same is not proved and is contrary to the documents produced in post search investigations. It was reiterated that the Wealth Tax Returns were not filed based on the valuation report as on 31/03/01 as none of the family members were liable to wealth tax as it was below the taxable limit. In view of the above discussion I am of the opinion that the appellant has not been able to establish that the jewelry found at the time of search to be unexplained is from the disclosed sources in the earlier years. I therefore uphold the order of the A.O. and the ground of appeal no. 10 is dismissed.

8. As regards the second issue, the Id. CIT held as under:

The appellant has given explanation that while sitting in the office, he had feeling of giddiness and suffocation and he feared for his life and so he wrote that "in case of my death, Patel (Poona Civil Contractor) 70 lacs loan to be converted in Donation for Rashid Khan School". It was explained that Shri Patel does construction work of buildings and roads. They had plan for constructing a building for Sopariwala Exports for which Shri Patel was paid Rs. 70 lacs. Rs. 45 lacs was paid from Sopariwala Exports and Rs. 25 lacs was paid from Rational Arts and Press Pvt. Ltd. While the proposal was changed and it was decided to carry out construction activity in Rational Arts and Press Pvt. Ltd hence, Rs. 45 lacs paid from Sopariwala Exports was returned by Mr. I.M.Patel on 06/02/07 and the balance Rs. 25 lacs is adjusted against his bill for construction work done in Rational Arts and Press Pvt. Ltd. In the submission filed on 11/02/14, the appellant

further added that Rs. 45 lacs from Sopariwala Exports was advanced in F.Y. 2003-04 and 2004-05 and was received back in 2006-07. As regards the remaining Rs. 25 lacs, there is a running account in the name of Mr. I.M.Patel in which the total amount paid is Rs. 38 lacs.

5.12.1. It is seen that when the appellant was asked to explain the seized documents pages 43 & 44 of document A-3 recovered and seized from office premises of M/s. Sopariwala Exports Pvt. Ltd. & Others at 21A, 21st floor, Nirmal, Nariman Point, Mumbai on 29/04/08, in the statement u/s. 132(4) recorded on 30/04/08 in reply to question no.17 he stated that "regarding amount of Rs. 70 lacs not recorded in our books of accounts rest of the details will be submitted later on ." The statement of Shri Arif Abdul Kader Fazlani was recorded u/s. 131 on 27/05/08, the relevant portion of which is as follows:

"Q.No.19: Please go through page 44 and explain the same.

Ans: This page is written in the hand of my father Shri Abdul Kader Abdul Latif Fazlani. The first item of the page refers to Rs. 70 lacs loan to be converted into donation for Rashid Khan School. There were the necessary details with regard to confirmation of the loan of Rs. 70 lacs given to Shri Patel as mentioned therein along with name and address of Shri Patel.

Q.No.20: Please refer to the statement of Shri. Abdul Kader Abdul Latif Fazlani dated 29/04/08 by way it was mentioned that the sum of Rs.70 lacs was not reflected in the books of accounts of Shri.Abdul Kader Abdul Latif Fazlani Further today it has been asserted by Shri Abdul Kader Abdul Latif Fazlani in your presence that the payment has been made by account payee cheque and therefore statement given earlier was not with reference to accounts maintained in this regard. Please explain.

Ans: I undertake to furnish complete particulars in this regard to substantiate the claim."

5.12.2. It is noted that the document was recovered from the office premises on 29/04/08. The amount advanced to Shri I.M.Patel from Sopariwala Exports is only Rs. 45 lacs and is repaid on 06/02/07 as per the appellant's submission. In trying to explain the documents found, the appellant has tried to collate two different set of accounted transactions to make up for Rs. 70 lacs mentioned in the seized documents. Whereas Rs, 45 lacs is mentioned in the ledger account in the case of M/s. Sopariwala Exports, it is not the same as Rs. 70 lacs mentioned in the loose paper. Further, the running account on account of construction in M/s. Rational Art & Press P. Ltd. is not in the nature of loan and has been brought in the explanation only to make up the total amount of Rs. 70 lacs. Further even the running account in M/s. Rational Art & Press P.Ltd. in the name of Shri I.M.Patel adds up to Rs. 38 lacs and not Rs. 25 lacs of loan. Further the loan of Rs. 45 lacs in M/s. Sopariwala Exports was repaid in 2006-07 itself and the question of referring to the same by the appellant as recorded in the seized documents on subsequent date does not arise. The AO is correct in noting that the loan of Rs. 45 lacs is from the firm and it being an accounted transaction, there would be no basis for the assessee to give direction that such amount should be converted into donation. The

only inescapable conclusion is that Rs. 70 lacs of loan referred to in the seized documents is a different undisclosed unaccounted loan from the appellant to Shri I.M.Patel. Further, I am unable to accept the retraction of statement recorded u/s 132(4) for the same reasons as mentioned in respect of jewelry in earlier part of this order. The genuineness of the paper to be in the handwriting of the appellant is undisputed, in view/ft the above facts and circumstances, the ground of appeal no. 11 is dismissed.

9. Against the above order, the assessee is in appeal before us.

10. We have heard both the counsel and perused the records. The learned counsel of the assessee summarized his submissions as under:

On the issue of addition of jewellery :

Legal Propositions :

1. At the time of statement declaration was given as there was no immediate explanation available. Infact, the declaration was retracted at the time of giving the statement only. [Pls see submission before AO dtd 29/11/2010 Pg 3]. Further, at the time of filing return of Income and Assessment proceedings, Jewellery found was duly reconciled. Thus, addition cannot be made merely on the basis of declaration.

2. The entire jewellery found during search was disclosed in wealth tax returns of family members to whom it belonged. The disclosure in wealth tax return was same as disclosed by Assessee during Assessment proceedings. The same Assessing Officer reopened the Wealth-tax returns of all family members. Detailed submission was made during wealth-tax proceedings justifying the return of wealth. The reassessment proceedings in case of all family members were dropped after considering the submissions. Wealth tax returns are accepted in subsequent years. [P.Book II Pg 247-404]

3. Hence, once explanation of assessee regarding jewellery as belonging to various family members is accepted under wealth tax, a different view may not be taken under Income-tax Act.

4. A. Total Jewellery found during Search [residence and locker] Chart [Pg 24] prepared on basis of panchnama. [Pg 25-29]

- Gold 6594.800 gms Rs 68,83,972/-
- Diamond Rs 71,00,395/-
- Silver Rs 54,000/-
- Total Rs 1,40,38,367/-

B. Total Jewellery Seized - Chart Pg 30- details as per panchnama [Pg 32-37]

- Gold 1808.0 gms Rs 18,52,245/-
- Diamond Rs 58,74,455/-
- Total Rs 77,26,7007/-

C. Details of jewellery disclosed in Wealth tax return as on 31.3.2008 - Chart [pg 38]. Wealth Tax Returns for valuation date 31.3.2008 for all family members [Pg 57-105].

Jewellery disclosed was as per (i) Valuation report as on 31.3.2001 of Tribhovandas Bhimji Zaveri in the case of family members [Pg 39-50] (ii) Jewellery purchased by family members after 1.4.2001 [Pg 51-56] and (iii) Gifts received during occasion of marriage and birth.

D. Family member wise Purchase details including purchase bills prior to 1.4.2001 and also payment details for purchase of jewelry was filed, [pg. 108-187]

5. From the details at Sr. No. 5 it can be seen that jewelry as on 1.4.2001 as well as purchase of jewelry by family members was proved by third party bills and valuation report as well as payments were made by cheque and duly reflected.

6. Neither the A.O. nor the CIT(A) have examined the third parties before holding third party evidences as unreliable. Both AO and CIT(A) erred in holding third party documents as non-reliable on account of certain clerical errors for which Assessee cannot be held responsible.

7. If, valuation report as on 31.3.2001 which was found in the course of search and purchases are accepted then balance jewellery are within the limits of Gold Jewellery as per Guidelines. [Pg 189-190]. Hence, no addition is called for.

8. Both AO and CIT(A) failed to appreciate that wealth tax returns were not filed after 2001 as net taxable wealth was below the minimum wealth tax limits.

9. Case laws relied by the CIT(A) are not applicable to the facts of the appellant. Once the assessee has given explanation in the course of assessment proceedings. Hence, it cannot be termed as retraction.

10. In CIT vs. Shri Rakesh Ramani [2018] 256 Taxman 299 (Bom)(HC) the Court observed that : (Pg. No. 405-410) (Para 11 Pg. 409)

"There is no requirement in law that evidence in support of its case must be produced only at the time when the seizure has IS~*. been made and not during the assessment proceedings."

In view of above submissions, Appeal of the assessee on this ground may be allowed.

On the issue of Rs.70 lacs loans the ld. Counsel of the assessee has held as under:

LEGAL SUBMISSIONS

"1 The noting doesn't mention payment of Rs 70 Lacs by cash.

2 Noting doesn't mention that loan was paid by assessee personally.

3 Ledger A/c of IM Patel in books of Sopariwala Exports from 1/4/2002 to 31/3/2005 showing payment of Rs 45 lacs by cheque, [pg 222-223].

4 Ledger A/C showing repayment in 2007 [Pg 224]

5 Balance sheet of sopariwala exports as on 31.3.2005 showing loan to IM Patel [Pg 232]. As on 31.3.2007 [Pg 240-241] showing repayment.

6 Ledger a/c Of IM Patel in books of rational art and press pvt ltd [Pg 245-246]

7 Thus, the noting was duly explained by Assessee.

8 CIT vs. Shri Rakesh Ramani (2018) 256 Taxman 299 (Bom.)(HC) Pg. No. 405-410

9. Noting is dumb documents, hence addition cannot be made on the basis of dumb document, when explanation is given burden shift on the revenue.

CIT vs. Vatika Landbase P. Ltd. (2016) 383 ITR 320 (Delhi)(HC) (Pg. No. 411 - 429)

10. Without prejudice to above, loan was paid in earlier years and hence no addition can be made in this year.

In view of above submissions, Appeal of the assessee on this ground may be allowed.

11. Per Contra, the Id. Departmental Representative (Id. DR for short) relied upon the order's of the authorities below.

12. We have heard both the counsel and perused the records. As regards the issue of addition on account of jewellery is concerned we find that the assessee has claimed that the jewellery found in search has been duly reconciled before the authorities below, by referring to certain evidences of purchase, wealth tax return filed and also due credit in accordance with the CBDT circular for the reasonable holding. The submissions of the assessee have been rejected on the ground that the purchase evidences filed have some defects. Furthermore, the wealth tax returns have been ignored as the same were said to have been filed subsequently. Furthermore it has been held that the assessee has not been able to give necessary evidence that the jewellery was acquired at the time of several marriages claimed. Furthermore, no credit in accordance with CBDT circular has been given holding that the same is only for guidance purpose.

We find that as regards the rejection of wealth tax return is concerned, the Id. Counsel of the assessee has submitted that the concerned Wealth Tax Officer has duly examined the issue and issued notices and thereafter withdrawn the proceedings. In this view of the matter, in our considered opinion, rejection of Wealth Tax return is not

justified. As regards the discrepancies noted in the purchase vouchers is concerned, we find that no verification whatsoever has been done from these parties who have sold the jewellery. Hence, in our considered opinion, de hors any enquiry in this regard, these purchase evidences cannot be rejected. As regards the benefit of holding of jewellery as per the CBDT circular is concerned, we find that assessee is entitled to the necessary credit as per the number of family members as mentioned in the said CBDT circular. It is settled law that the CBDT circulars are binding of the revenue authorities. As regards the observation that the assessee should have given the exact corroborative evidence of the jewellery obtained on the occasion of marriages, we find that being an unreasonable demand, is not at all sustainable.

In the background of aforesaid discussion, we remit this issue to the file of the A.O. The A.O. is directed to consider the issue afresh in light of the aforesaid observation. Needless to add, the assessee should be granted adequate opportunity of being heard.

13. As regards the second issue, we find that the addition has been done on the basis of a loose sheet found in which Shri Abdul Kader has written that in the event of his death, Rs.70 lacs loan given to Patel (Poona Civil Contractor), Pune should be converted into donation to Rashid Khan School. Thereafter, statement u/s. 131 of the Act has been obtained from the Son of the aforesaid person, who has stated that the handwriting was of his father and the details will be submitted later. While reproducing his statement it has been mentioned that the said person had submitted that the said loan was given by account payee cheque. Hence, the Revenue has no evidence for the addition whatsoever

except for the loose sheet. As explanation for the loose sheet, the assessee has explained the disturbed state mind of Shri Abdul Kader. It has further been submitted that it was never mentioned that the said loan was in cash. Furthermore, as per the statement recorded u/s.131 itself, the said person has reiterated that the said loan was given in cheque. Furthermore, the assessee has given explanation that the said sum was given for construction activity earlier. Evidence of loan given of Rs.45 lakh in the past has been shown. This has been repaid. For the rest there is a running account in the name of the said person in which there is a balance of Rs.38 lacs. Hence, in our considered opinion, the explanation given by the assessee is reasonable and cogent. The Id. CIT has observed that the retraction should not be allowed. Firstly, no cogent evidence in the course of search has been found that the cash loan during the year has been given by Shri Abdul kader to Shri I. M. Patel Civil Contractor, Pune. This Shri Abdul Kader has made it abundantly clear in the statement recorded itself that the said loan was not in cash. Furthermore, the accounting details and the treatment shown by the assessee corroborate the assessee's submission in this regard. Hence, this addition is deleted.

14. In the result, this appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 05.12.2018

Sd/-

(Sandeep Gosain)
Judicial Member

Mumbai; Dated : 05.12.2018
Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

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