IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'F' : NEW DELHI)

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

ITA No. 2810/Del/2016
Assessment Year: 2013-14

RADHA MITAL, 10-11, NELSON MANDELA MARG, VASANT KUNJ, NEW DELHI **(PAN: AAMPM9282G)** **(APPELLANT)**	VS.	DCIT, CC-1, FARIDABAD **(RESPONDENT)**

ITA No. 2811/Del/2016
Assessment Year 2013-14

RUCHIE MITAL, 10-11, NELSON MANDELA MARG, VASANT KUNJ, NEW DELHI **(PAN: ADDPG0409P)** **(APPELLANT)**	VS.	DCIT, CC-1, FARIDABAD **(RESPONDENT)**

Assessee by : Sh. Hardik Bedi, Adv. &
Sh. P.K. Kamal & Sh. Lalit Mohan, CA
Revenue by : Ms. Paramita Tripathi, CIT(DR)

ORDER

PER H.S. SIDHU, JM

These two separate appeals filed by Ms. Radha Mittal and Ms. Ruchie Mittal against the respective impugned orders both dated 31.3.2016 of the ld. CIT(A)-3, Gurgaon pertaining to

same assessment year 2013-14. Since some of the issues involved in these appeals are common and identical, except the different in figure, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. The following grounds have been raised in ITA No. 2810/D/2016 in the case of Radha Mittal:

> 1 That the learned Commissioner of Income Tax (Appeals)-3, Gurgaon has erred both in law and on facts in upholding the order of assessment dated 31.01.2015 under section 153B(1)(b)/143(3) of the Act
>
> 1.1 That the conclusion of learned Commissioner of Income Tax (Appeals) that since appellant had furnished return of income after the end of the assessment year and not within the time allowed u/s 139(1) of the Act or before the end of relevant assessment year, therefore notice issued u/s 142(1) of the Act was a valid notice and assessment framed pursuant to the said notice is a valid and, assessment is based on erroneous interpretation of statutory provisions of law and therefore misconceived.
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> 1.2 That learned Commissioner of Income Tax (Appeals) has failed to appreciate that since

the original return of income filed by appellant was pending therefore, assessment framed in pursuance to a return filed in response to a invalid notice under section 142(1) of the Act was without jurisdiction.

2 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts by upholding an addition of Rs. 1,08,25,421/- out of addition made of Rs. 1,31,35,421/- representing alleged unexplained jewellery found and seized during the course of search and brought to tax under section 69A of the Act.

2.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that jewellery found and seized during the course of search was duly explained by the appellant/husband of the appellant both in the course of search and even during the course of assessment proceedings and as such, addition sustained in disregard of the said explanation is highly unjust and otherwise too, illegal and untenable.

2.2 That the observation of the learned Commissioner of Income Tax (Appeals) that no satisfactory explanation was tendered by the appellant or her husband during the course of search in respect of the jewellery has been arrived at without independent appreciation of

the statement recorded of the appellant and her husband at the time of search but is a result of mechanical borrowed conclusion from the order of assessment and therefore untenable.

2.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that mere non filing of wealth tax return cannot be a ground to reject the explanation tendered in support of the jewellery found and seized during the course of search.

2.4 That furthermore also the observation that there is no documentary evidence to support the acquisition of jewellery at the time of marriage is a so factually incorrect and contrary to record and untenable.

2.5 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that having regard to quantum and value of jewellery (3299gms), the same cannot be held to be excessive for a family of the status of appellant hailing from a respectable family from Bhatinda in Punjab in as much as collecting jewellery of 1000gms over a period of 65 yrs of marriage in the case of Smt. Shanti Mittal, 35 yrs of marriage in the case of appellant and 8 yrs of marriage in the case of Smt. Ruchi Mittal cannot be said to be substantial or unexplained.

3 That furthermore even the computation of learned Commissioner of Income Tax (Appeals) to restrict the relief to Rs. 23,10,000/- by holding that "as the CBDT circular and subsequent court judgment refer to gold jewellery 1100 gms (gross weight of gold) is valued @ Rs. 2100/- per gm (estimated value of gross wt. vis-à-vis value as per valuation report) and appellant gets a relief of Rs. 23,10,000/- on the of the same" is based on misconception of facts and law, arbitrary, unjustified and therefore untenable

4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts and material placed on record and, are otherwise unsustainable in law and therefore, addition so sustained by overlooking detailed submissions of the appellant supported by various evidences and judicial pronouncements relied is absolutely unwarranted.

5 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest under section 234A and under section 234B of the Act which are not leviable on the facts and circumstances of the case of the appellant.

3. The following grounds have been raised in ITA No. 2811/D/2016 in the case of Ruchie Mittal:-

> 1 That the learned Commissioner of Income Tax(Appeals)–3, Gurgaon has erred both in law and on facts by upholding an addition of Rs. 1,43,47,233/- out of addition made of Rs. 1,57,67,233/- representing alleged unexplained jewellery found and seized during the course of search and brought to tax under section 69A of the Act.
>
> 1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that jewellery found and seized during the course of search was duly explained by the appellant/father in law of the appellant both in the course of search and even during the course of assessment proceedings and as such, addition sustained in disregard of the said explanation is highly unjust and otherwise too, illegal and untenable.
>
> 1.2 That the observation of the learned Commissioner of Income Tax (Appeals) that no satisfactory explanation was tendered by the appellant or father in law of the appellant during the course of search in respect of the jewellery has been arrived at without independent appreciation of the statement recorded of the appellant and father in law of the appellant at the time of search but is a

result of mechanical borrowed conclusion from the order of assessment and therefore untenable.

1.3 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that mere non filing of wealth tax return cannot be a ground to reject the explanation tendered in support of the jewellery found and seized during the course of search.

1.4 That furthermore also the observation that there is no documentary evidence to support the acquisition of jewellery at the time of marriage is also factually incorrect and contrary to record and untenable.

1.5 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that having regard to quantum and value of jewellery (3299gms), the same cannot be held to be excessive for a family of the status of appellant hailing from a respectable family from Bhatinda in Punjab in as much as collecting jewellery of 1000gms over a period of 65 yrs of marriage in the case of Smt. Shanti Mittal, 35 yrs of marriage in the case of Smt. Radha Mittal and 8 yrs of marriage in the case of appellant cannot be said to be substantial or unexplained.

2 That furthermore even the computation of learned Commissioner of Income Tax (Appeals)

to restrict the relief to Rs. 14,20,000/- by holding that "as the CBDT circular and subsequent court judgment refer to gold jewellery 700 gms (gross weight of gold) is valued @ Rs. 2100/- per gm (estimated value of gross wt. vis-à-vis value as per valuation report) and appellant gets a relief of Rs. 14,20,000/- on the of the same" is based on misconception of facts and law, arbitrary, unjustified and therefore untenable

3 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts and material placed on record and, are otherwise unsustainable in law and therefore, addition so sustained by overlooking detailed submissions of the appellant supported by various evidences and judicial pronouncements relied is absolutely unwarranted.

4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest under section 234A and under section 234B of the Act which is not leviable on the facts and circumstances of the case of the appellant.

4. The brief facts of the case are that by virtue of the authorization of the Director of Income Tax (Investigation), Chandigarh, under section 132(1) of the Income Tax Act, 1961

(hereinafter referred as the Act) in the case of the assessee, the residential as well as office premises of CHD Developers Group of cases were subjected to search and seizure operations on 23.11.2012. A survey action u/s. 133A of the Act was also carried out at the business premises of the group companies. The assessee filed her return of income for the assessment year 2013-14 through e-filed on 28.3.2014 declaring an income of Rs. 6,67,370/- Notices u/s. 143(2) of the Act was issued on 25.9.2014 and notice u/s. 142(1) of the Act alongwith a questionnaire was issued on 25.11.2014, which were duly served upon the assessee and in response to the same, the AR of the assessee attended the proceedings from time to time. During the course of search in the case of M/s CHD Developers group at the residential premises at 10-11, Nelson Mandela Marg, Vasant Kunj, New Delhi of Sh. R. K. Mittal, Director of M/s CHD Developers Ltd. and other family members, and locker in the name of two assessees jewellery amounting to Rs. 2,89,02,655/- was found. The details of jewellery found is as under:

Name of person	*Jewellery found (In Rs.)*
Mrs. Ruchie Mittal and Sh. Gaurav Mittal, Plot No. 10-11, second floor, Nelson Mandela Marg, Vasant Kunj, new Delhi	*92,15,880/-*
Mrs. Radha Mitta and Sh. R. K. Mittal, Plot No. 10-11, second floor, Nelson Mandela Marg, Vasant Kunj, New Delhi	*65,84,068/-*
Mrs. Radha Mittal and Mrs. Ruchie Mittal Locker NO. 278, Axis Bank, Vasant Kunj, New Delhi	*1,31,02,707/-*
Total	*2,89,02,655/-*

4.1 The AO in the orders of assessment held that no satisfactory explanation was offered by the appellants in respect of the jewellery found from the residential premises/locker of the appellants. It is also noted that during the course of search statement was recorded of Sh. R.K. Mittal on 24.11.2012 u/s 132(4) of the I.T. Act wherein he offered Rs. 1.50 crores on account of unaccounted jewellery found from the residence in the hands of Mrs. Radha Mittal and Mrs. Ruchie Mittal (0.79 crores in each hands). It is further noted that Sh R. K. Mittal also disclosed an additional undisclosed income of Rs. 2.5 crores in his individual hands in the statement u/s 132(4) of the I.T. Act on account of unaccounted jewe lery found from locker no. 278, Axis Bank, Vasant Kunj, New Delhi and also to cover up any other incriminating document found and seized from corporate office of M/s CHD Developers Ltd. and since jewellery amounting to Rs. 1,31,02,707/ was found from locker no. 278, Axis Bank, Vasant Kunj, New Delhi, therefore out of Rs. 2.5 crores disclosed under miscellaneous head by Sh. R. K. Mittal u/s 132(4) of the Act, an amount to be extent of Rs. 1.31 crores is attributed to unaccounted jewellery found from locker no. 278, Axis Bank, Vasant Kunj, New Delhi. As a result the AO made an addition of Rs. 1,31,35,421/- in the hands of Radha Mittal and Rs. 1,57,67,233/- in the hands of Ruchie Mittal on account of unexplained jewellery u/s 69A of the Act and assessed the income of the respective assessee at Rs. 1,38,02,791/- and Rs. 1,64,07,163/- and completed the assessment u/s. 153B(1) of the Act vide order dated 31.01.2015. Aggrieved with the same, the Assessee appealed before the Ld. CIT(A).

5. Before the Ld. CIT(A) the assesee contended that investment in jewellery found from the residential premises of the assessee had been explained at the time of search by Sh. R. K. Mittal as having been acquired at the time of marriages of asessees and Smt. Shanti Mittal, mother in law of the assessees. It was contended that even jewellery found from the locker was explained to be belonging to the assessees, Smt. Anchal and other family members. It was submitted that marriages of Shanti Mittal had taken place 65 years prior to the search, marriage of the Radha Mittal has taken place 35 years prior to search and marriage of Ruchie Mittal had taken place 8 years prior to search. It was submitted that assessees belong to "Baniya" family from Punjab having sound financial status wherein receipt of jewellery on marriages and subsequent occasions like birth of child etc. from parents and in laws cannot be denied. It was contended that normal custom and tradition of the family was to receive jewellery on various occasions; and having regard to quantum and value of jewellery (3299 gms), the same cannot be held to be excessive for a family of the status of assessee. The assessee submitted that as the Department had conducted a search of all the financial dealings and no paper or document was found to indicate that this jewellery represented undisclosed income of the assessee for assessment year 2013-14. Reference was also made to Annexure A-4 found and seized from the residential premises of the assessees and on the basis thereof it was submitted that the total investment in jewellery in 2005 on marriage of Radha Mittal was of Rs.70,12,000/-; and if the value of the jewellery as computed by the revenue on the date of search is restated

by adopting the rates as in 2005 the same itself explains the jewellery found as a result of search. Apart from the above, it was submitted that the AO ought to have excluded jewellery as per instruction no. 1916 dated 11.5.1994 issued by the CBDT. As regards the surrender it was submitted that there was no surrender made by both the assessees. Reliance was placed on statement of Sh. R. K. Mittal in the course of search viz-a-viz the jewellery found from residence who inter-alia stated as under:

> "Q.22 During course of search jewellery/Diamond/Silver utensils were found in the bedroom of Smt. Radha Mittal, Smt. Ruchie Mittal and Smt. Shanti Mittal amounting to Rs. 1 57,99,948/- (One crore fifty seven lacs ninty nine thousand nine hundred and forty eight only) please explain the source of acquisition of this jewellery.
>
> Ans. The above said jewellery were recorded on account of gift at time of their marriages i.e. Smt. Radha Mittal 35years back, Smt. Ruchie Mittal 8 years back and Smt. Shanti Mittal 65 years back and proof regarding jewellery will be submitted later on.
>
> Q.23 Can you provide any documentary evidence for acquisition of above noted jewellery at this moment. If not where these are kept.
>
> Ans. I cannot provide documentary evidence at present because these are very old and I have

to trace out the record from different location such as Bathinda (my native place) etc……

…….

Q.30 Do you want say anything?

Ans.i) During the course of search at my residence 10-11, Nelson Mandela Road, Vasant Kunj, N. Delhi on 23.11.2012 one ledger was found bearing in the detail of marriage expenses (including purchase of jewellery) of my son Gaurav Mittal were mentioned. The amount of such expenses was approach 1.10 crores. Such expenses was incurred by my HUF R. K. Mittal HUF, during the F.Y. 2005-06. I as a karta of R. K. Mittal HUF now by surrender above marriage expenses of Rs. 1.10 crores and offer the same for additional tax in the previous year 2005-06 relevant assessment year 2006-07. The source of such expenses was income from real estate business which is be ng surrendered to buy peace of mind and avid any further litigation and subject to the condition that neither any penalty will be levied nor any provocation will be initiated.

ii) During the course of search at my residence, plot No. 10-11, Nelson Mandela Marg, Vasant Kunj, New Delhi 23.11.2012 the jewellery of Rs. 1.58 Crore was found which was mainly gifted to my wife at my marriage and to my daughter in law at my son's marriage. I on behalf of my wife surrender

50% of the jewellery valuing Rs. 0.79 Crore and balance 50% jewellery worth Rs. 0.79 Crore on behalf of my daughter in law. The above surrender is made by them to buy peace of mind and to avoid any further litigation and subject to the condition that neither any penalty will be levied nor any prosecution will be initiated.

iii) During the course of search at my residence, plot No. 10-11, Nelson Mandela Marg, Vasant Kunj, New Delhi on 23.11.2012 one locker key of locker at Axis Bank was seized and it may contain jewellery. Since the locker has not been open as yet we cannot estimate the value of jewellery. Further the documents have been seized at my residence as well as from the corporate office of CHD Developers Ltd., which may have certain transaction which I may be unable to explain. I therefore, offer an addition sum of Rs. 2.5 Crore in addition to amount disclosed as above and my regular income to buy peace of mind and to avoid any further litigation and subject to the condition that neither any penalty will be levied nor any prosecution will be initiated."[Emphasis supplied]

5.1 It was submitted that surrender made by Sh. R.K. Mittal perse cannot be made a basis to make any addition in the hands of assessees, since no addition has been made by the AO

on the basis of statement u/s 132(4) of the Act. It was further submitted as per the statement the jewellery ought to have been added of Rs. .79 lacs in the hands of Radha Mittal and Rs. .79 lacs in the hands of Ruchie Mittal and Rs. 1.31 crores in the hands of R.K. Mittal, husband of Radha Mittal wherein AO had taxed the entire jewellery in the hands of appellants.

5.2 It was further submitted that letters had been furnished on 24.1.2013 and 5.7.2013 to DDIT, Panipat that surrender so made were merely estimated and tentative figures. The letter furnished on 24.1.2013 to DDIT, Panipat (Investigation) stated as under:

> "Search and Seizure proceedings were carried out at various business premises and residential premises of CHD Group on 23.11.2012. During course of search proceedings statement of undersigned was recorded under section 132(4) of the Act. In the said statement estimated additional income totaling Rs. 22.50 Crores was offered for taxation. The detail of estimated additional income submitted that time is as under:

Sr. No.	Nature of Income	Amount	Assessee
1	Income on account of project expenses	12.88 Cr	CHD Developers Ltd.
2	Income on account of Share Capital	04.50 Cr	Adhyant& Capital Institute
3	Income on account of investment in Jewellery	01.58 Cr	R.K. Mittal &Radha Mittal
4	Income on account of Marriage Expenses	01.10 Cr	R.K. Mittal HUF

5	Income on account of Miscellaneous Issues	02.50 Cr	R.K. Mittal, Radha Mittal and Gaurav Mittal

The above offer was made to account for all discrepancies as may be found in seized documents and for other discrepancies as found during search proceedings u/s 132 and post search proceedings. The above disclosure was made also to cover the possible difference of opinion and to purchase peace of mind and to settle the affairs amicably with the department. It is also brought on record that these figures were tentative and were based upon estimates only since at the time of recording of statement, undersigned himself was not aware of complete facts of additional income and thus offered the amount on rough idea basis. We would like to inform your goodself that the exact details of additional income will be submitted in 153A returns to be filed later on.

Finally, we assure your goodself of our extended cooperation and assistance wherever required during the course of post search proceedings."

5.3 Another letter dated 5.7.2013 read as under:

"4 Vide letter dated 23.01.2013 we have submitted that the offer of Rs. 22.50 cr. was made to account for all discrepancies as may

be found in seized documents and for other discrepancies as found during search proceedings u/s 132 and post search proceedings. This disclosure was made also to cover the possible difference of opinion and to purchase peace of mind and to settle the affairs amicably with the department. It was also brought on record that these figures were tentative and were based upon estimates only since at the time of recording of statement, Sh. R. K. Mittal himself was not aware of complete facts of additional income and thus offered the amount on rough idea basis. We have very categorically informed your goodself that the exact details of additional income of Rs. 22.50 crores will be submitted in 153A returns to be filed later on."

5.4 It was thus stated that since no taxes were paid and nor any income were offered in the returns such declaration made could not be a ground to make the addition in the hands of appellants. It was also submitted that at-best entire jewellery could not be brought to tax in the hands of the appellants but added bifurcated equally amongst all the members of the family.

5.5 The Ld. CIT(A) however did not accept the explanation on a/c of following reasons:

i) The contention is incorrect to the extent that entire alleged unexplained investment in jewellery has not been added in the hands of the appellants.

ii) The alleged unexplained investment in jewellery has been added both in the hands of the Radha Mittal and Ruchie Mittal

iii) Further, the addition in the hands of the appellants have been limited to jewellery found in their respective bed room and the half share of jewellery found in locker jointly held by her with mother in law

iv) The AO has given ample opportunities to the appellants with regard to this addition made during assessment proceedings, but not reply was filed by the appellant then.

v) Though surrender of the total jewellery found at the residence and locker as made by her father in law in three names (Sh. R. K. Mittal, Smt. Radha Mittal, Smt. Ruchie Mittal) but the same was not disclosed in the return filed.

vi) The order of the AO is well thought of and the addition has been made on basis which was confronted to the appellant, thereby ensuring that the addition made on account of alleged unexplained investment jewellery is brought to tax in the hands of appellant and Mrs. Radha Mittal

5.6 However he granted benefit 1100 gms in the hands of Radha Mittal and 700 gms in the hands of Ruchie Mittal in view of the instruction no. 1916 dated 11.5.1994 issued by CBDT and in light of the following tabulation:

Sr. No.	Name of the family member	Relationship with	Wt. of jewellery for	Benefit in whose

		beneficiary	which benefit given	hands
1	Sh. R. K. Mittal	Husband	100 gms	Smt. Radha Mittal
2	Smt. Radha Mittal	Self	500 gms	--do--
3	Smt. Shanit Mittal	Mother in law	500 gms	--do--
	Total		1100 gms	
4	Shri Gaurav Mittal	Husband	100 gms	Smt. Ruchie Mittal
5	Smt. Ruchie Mittal	Self	500 gms	--do--
6	Shri Arman Mittal	Son	100 gms	--do--
	Total		700 gms	

5.7 He further applied rate of 2100 per gms and granted relief of Rs. 23,10,000/-in the case of Radha Mittal and Rs. 14,20,000/- in the case of Ruchie Mittal. As a result addition of Rs. 1,08,25,421/- in the case of Radha Mittal and Rs. 1,43,47,233/- in the case of Ruchie Mittal were sustained and hence the assessees are in appeal before the Tribunal.

6. At the time of hearing, Ld. Counsel of the assessee Sh. Hardik Bedi, Adv. contended that Ld. CIT(A) while granting the benefits of jewellery of 1100 grms in the case of Radha Mittal and 700 gms in case of Ruchie Mittal has incorrectly applied the rate of 2100 per gram as against the average rate of jewellery seized @ 8758.83 per gms. It was further submitted that the claim of assessee as to quantity of jewellery seized is also in accordance with law. It was submitted that even as per quantity, the learned Commissioner of Income Tax (Appeals)

has fallen into error and overlook the binding judgments where higher quantity of jewellery stands accepted:

i) Radha Mitta

Sr. No.	*Name*	*Weight of jewellery as per appellant*	*Weight of jewellery as per CIT(A) order*
i)	*Radha Mittal*	*1,000*	*1,000*
ii)	*R. K. Mittal*	*100*	*100*
iii)	*Smt. Shanti Mittal*	*960*	*100*
	Total	*2,060*	*1200*

ii) Ruchie Mittal

Sr. No.	*Name*	*Weight of jewellery as per appellant*	*Weight of jewellery as per CIT(A) order*
ii)	*Smt. Ruchi Mittal*	*960*	*1,000*
iii)	*Gaurav Mittal*	*100*	*1,00*
iv)	*Arman Mittal*	*100*	*100*
	Total	*1,160*	*1,200*

6.1 It was further submitted that this claim of assessee is supported by following judgments:

Sr. No	*Judgment*	*Total Qty of Gold Allowed (Gms)*
i)	*202 Taxman 395 (Delhi High Court) (2011) Ashok Chaddha v. Income-tax Officer*	*906.90*
ii)	*ITA No. 5259/DEL/2017 dated 16.03.2018 (Delhi) Suneela Soni vs DCIT*	*1225.2*
iii)	*ITA No. 1540/DEL/2015 dated 04.05.2018 (Delhi) Sh. Vibhu Agarwal vs DCIT*	*2531.3*
iv)	*146 TTJ 207 (Del) Naveen Bansal (HUF) v. ITO*	*1000"*

6.2 It was further submitted that Ld. CIT(A) not granted benefit of material seized in the course of search in the shape of Annexure A-2 and Annexure A-4 showing that expenses were incurred at the time of marriage of son of Radha Mittal Shri Gaurav Mittal. It was also submitted that there is no material much less incriminating material to arrive at a reasonable conclusion much less a conclusive finding that jewellery acquired had held to be income from undisclosed sources was out of a specific sources not declared by the appellants to revenue. Reliance was placed on the following judgments:

i) 50 SOT 629 (Indore) Smt. Shankutala Somani vs. ITO)

ii) 307 ITR 348 (Del) CIT v Mohinder Lal Haryani

iii) 69 ITD 218 (Chd) (TM) Dr. (Mrs.) Kamlesh Datta v. ACIT

iv) 80 TTJ 945 (Pune) ACIT vs. P.C. Mundra

7. On the other hand, the ld. DR had relied upon the orders of the authorities below and requested that contention of the assessees be rejected in view of the following facts:

i) Jewellery weighing 3299.83 grams were found altogether from both the assessees (Smt. Radha Mittal bedroom 673.46 grams, Smt. Ruchi Mittal bedroom 491.67 grams and from locker of Radha and Ruchie Mittal 2134.70 grams). This quantum of jewellery is certainly substantial. Moreover the Ld. CIT(A) gave a very reasonable relief of 1100 grams

of gold jewellery in the case of Radha Mittal and 700 grams in the case of Ruchie Mittal.

ii) Smt. Radha Mittal was married for 35 years and Smt. Ruchie MIttal was married for 8 years only at the time of search.

iii) Though both the assessee have possessed wealth beyond the wealth tax limit they were not filing wealth tax return. This indicates that the investment in gold jewellery is unexplained.

iv) The admission made by Sh. R.K. Mittal husband of Radha Mittal u/s 132(4) of Rs. 0.79 crore each and further Rs. 1.31 crore from locker was not honoured by the assessees while filing the return of income. The surrender was retracted after two years of gap.

7.1 Further reliance was placed on the following judgments to contend that following decisions may kindly be considered with regard to addition u/s 69C of the Act:

i) R. Mallika v. CIT 79 taxmann.com 117 (SC)
CIT v. R. Mallika 219 Taxman 244 (Mad)
ii) Sukh Ram v. ACIT 285 ITR 256 (Del)
iii) Kahan Udyog v. CIT 219 Taxman 23 (Del) (Mag)
iv) S. Rudramuniyappa v. CIT 75 taxmann.com 241 (SC)
v) Karun Dutt Singh v. CIT 85 taxmann.com 177 (Ker)
vi) CIT v. Kuwer Fibers (P) Ltd. 77 taxmann.com 345 (Del)
vii) Ashokbhai H. Jariwala v. ACIT 80 taxmann.com 175 (Guj)
viii) Mahabeer Prasad Jain v. CIT 88 taxmann.com 9 (All)

7.2 Further reliance was also placed on the following judgments to contend that following decisions may ALSO kindly

be considered with regard to validity of statement recorded u/s 132(4) of the Act:

i) *Kishore Kumar v. CIT 234 Taxman 771 (SC)*
B. Kishore Kumar v. CIT 52 taxmann.com 449 (Mad)
ii) *Bhagirath Aggarwal v. CIT 351 ITR 143 (Del)*
iii) *Smt. Dayawanti v. CIT 390 ITR 496 (Del)*
iv) *M/s Pebble Investment and Finance Ltd. v. ITO 2017 TIOL 238 (SC)*
v) *M/s Pebble Investment and Finance Ltd. v. ITO 2017 TIOL 188 (Bom)*
vi) *Raj Hans Towers (P) Ltd. v. CIT 373 ITR 9 (Del)*
vii) *PCIT v. Avinash Kumar Setia 81 taxmann.com 476 (Del)*

8. For the sake of convenience, we first adjudicate the issues raised in the ground nos. 2 to 4 in the case of Radha Mittal and Ground nos. 1 to 3 in the case of Ruchie Mittal challenging the addition sustained on account of unexplained jewellery under section 69A of the Income Tax Act, 1961 in the foregoing paragraphs.

8.1 We have heard both the parties and perused the records, especially the orders of the authorities below and the case laws referred by both the parties. We find that in this case a search & seizure operation under section 132 of the I.T. Act was conducted at the business premises of M/s CHD Developers group of cases and as well as in the residential premises of the directors on 23.11.2012, in consequence to which the case of assessees were taken up for scrutiny. The AO called for an explanation during the assessment proceedings explaining the jewellery found during the course of search. In response to the

same, the assessee explained that jewellery belongs to the assessees having received as "streedhan" on the occasion of marriage and also received subsequently on occasions like birth of child etc. in pursuant to customs/tradition of family. According to the assessees the seized documents in the shape of Annexure A-4 shows that expenses were incurred at the time of marriage of Ruchie Mittal (assessee). The said documents reflects expenditure of Rs. 70,12,000/- was incurred in year 2005 and if the rate then prevailing of Rs. 8,000/- per gram and as against the rate on date of search of Rs. 30,000/- per grams is applied, the source of jewellery sustained of Rs. 2.51 crores stands explained. Thus investment in jewellery is explained from the seized documents that same was not acquired in the instant year. Neither the Ld. CIT(A) and, nor the AO have refuted the above claim. The ld. DR in his submissions has also not denied the above factual claim of the assessee. Even otherwise, in quantity terms, the total jewellery found during the course of search was 3299.83 gms. The ld. CIT(A) has allowed the benefit of 1100 gms in the case of Radha Mittal and 700 gms in the case of Ruchie Mittal as per CBDT Instruction No. 1916 dated 11.5.1994. No appeal has been preferred by the Revenue in respective of the quantity

accepted in the impugned orders. Thus the quantity in dispute is Rs. 1499.83 gms (3299.83-(1100+700). The said jewellery has been held to be unexplained without appreciating the fact that assessees had been married for 35 years and 8 years respectively. Moreover they were jointly residing with their mother in law Shanti Mittal who had been married for about 65 years. Apart from the above the family comprised of husband of both the assesses and one son of Radha Mittal, which explains the possession of jewellery. We also observe that CBDT Instruction No. 1916 dated 11.5.1994 vide para no. (iii) stipulates as under:

> "The authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure."

8.2 We find that the Delhi Bench of Tribunal in the case of Vibhu Agarwal v. DCIT in ITA No. 1540/D/2015 dated 4.5.2018 AY 2011-12 has accepted the jewellery value of 2531.3 gms following the instruction no. 1916 dated 11.5.1994 by holding as under:

> *"6.1 In view of above instructions, the excess jewellery found in the case of assessee, his*

parents, his wife, their children and the HUF was very nominal, and was very much reasonable, keeping in mind the riches and high status and more customary practices. Our aforesaid view is fortified by following decisions/judgments:-

i) *Judgment of the Hon'ble High Court of Delhi in the case of Ashok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi)/202 Taxman 395 wherein the Hon'ble H gh Court has accepted the jewellery of 906.60 grams in the case of married lady even without documentary evidence as the denying the explanation would tantamount to overlooking the realities of life by holding as under:-*
"As far as addition qua jewellery is concerned, during the course of search, jewellery weighing 906.900 grams of the value amounting to Rs. 6,93,582 was found. The appellant's explanation was that he was married about 25 years back and the jewellery comprised "streedhan" of Smt. Jyoti Chadha, his wife and other small items jewellery subsequently purchased and

accumulated over the years. However, the Assessing Officer did not accept the above explanation on the ground that documentary evidence regarding family status and their financial position was not furnished by the appellant. The Assessing Officer accepted 400 grams of jewellery as explained and treated jewellery amounting to 506.900 grams as unexplained and made an ad hoc addition of Rs. 3,87,364 under section 69A of the Act working on unexplained jewellery, by applying average rate of the total jewellery found. The relevant portion of the assessment order reads as follows:-

"a very reasonable allowance of ownership of gold jewellery to the extent of 400 grams is considered reasonable and the balance quantity of 506 grams by applying average rate, the unexplained gold jewellery is considered at Rs. 3,87,364 (506/900 x 6,93,582) u/s 69A of the Act."

The CIT (A) confirmed this addition stating that the Assessing Officer

had been fair in accepting the part of jewellery as unexplained. The ITAT has also endorsed the aforesaid view. Learned counsel for appellant Ms. Kapila submitted that there was no basis for the Assessing Officer to accept the ownership of the gold jewellery to the extent of 400 grams only as "reasonable allowance" and treat the remaining jewellery of Rs 506.900 as unexplained. She also submitted that another glaring fact ignored by the Assessing Officer as well as other authorities was that as the department had conducted a search of all the financial dealings which were within his knowledge and no paper or document was found to indicate that this jewellery belonged to the appellant and that it was undisclosed income of the assessment year 2006-07. In a search operation, no scope is left with the tax department to make addition on subjective guess work, conjectures and surmises. It was also argued that jewellery is "streedhan" of the assessee's wife,

evidenced in the form of declaration which was furnished by mother-in-law of the assessee stating that she had given the jewellery in question to her daughter. She argued that it is a normal custom for a woman to receive jewellery in the form of marriage and other occasions such as birth of a child. The assessee had been married more than 25-30 years and acquisition of the jewellery of 906.900 grams could not be treated as excessive.

3. Learned Counsel for the respondent on the other hand relied upon the reasoning given by the authorities below. After considering the aforesaid submissions we are of the view that addition made is totally arbitrary and is not founded on any cogent basis or evidence. We have to keep in mind that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. 'The learned counsel for the appellant/assessee is correct in her submission that it is a normal custom for woman to receive jewellery in the form of "streedhan" or on other occasions such as birth of a child etc. Collecting

jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and treat the other as "unexplained". Matter would have been different if the quantum and value of the jewellery found was substantial.

4. We are, therefore of the opinion that the findings of the Tribunal are totally perverse and far from the realities of life. In the peculiar facts of this case we answer the question in favour of the assessee and against the revenue thereby deleting the aforesaid addition of Rs. 3,87,364.

5. Appeal is allowed in the aforesaid terms."

ii) Hon'ble Jurisdictional High Court in the case of Sushila Devi in Writ Petition No. 7620 of 2011 dated 21.10.2016 has held as under:-

> *"The income tax authorities rationale or justification is entirely insubstantial. The assessee says that she was married in mid 1960s and her daughters were born in*

1967. She was 70 when these proceedings were started. The income tax authorities do not deny this. In the circumstances, the further explanation that the jewellery belonged to her and represented accumulations of gifts received from family members over a period of time, and also acquired during the subsistence of her marriage is reasonable and logical [para 9]. The assessee's explanation is justified and reasonable. Her contention that the gold jewellery was acquired through gifts made by relatives and other family members over a long period of time, is in keeping with prevailing customs and habits. The obdurate refusal of the respondents to release the jewellery constitutes deprivation of property without lawful authority and is contrary to article 300A of the Constitution of India. The petition has to succeed; a direction is issued to the income tax authority to release the jewellery within two weeks and in that regard intimate to the assessee the time and place

where she (or he representative) can received it [para 10]."

iii) ITAT, Delhi decision in the case of Suneela Soni vs. DCIT passed in ITA No. 5259/Del/2017 dated 16.3.2018 wherein the Tribunal has accepted the jewellery in excess of limits specified in the CBDT Instruction No. 1916, by following the decision of the Hon'ble Delhi High Court in the case of Ashok Chadha vs. ITO (Supra).

6.2 After perusing the aforesaid decisions of the Hon'ble Delhi High Court as well as the ITAT, Delhi, we are of the considered view that facts and circumstances of the present case are similar to the aforesaid decision of the Hon'ble Delhi High Court and Tribunal, hence, the issue in dispute is squarely covered by the aforesaid decisions.

6.3 Keeping in view of the aforesaid facts and circumstances of the case as well as the status of the family and on the anvil of the judgement of the High Court of Delhi in the case of Ashok Chadha vs. ITO (Supra) & of Sushila Devi in Writ Petition No. 7620 of 2011 dated 21.10.2016 and the ITAT Delhi decision in the case of Suneela Soni vs. DCIT passed in ITA No. 5259/Del/2017 dated 16.3.2018, the explanation given by the assessee's counsel is accepted. Accordingly the orders of the authorities below are cancelled and addition made by the AO and partly

confirmed by the Ld. CIT(A) on account of balance jewellery weithting 1050 gms of gold as unexplained is hereby deleted."

8.3 Moreover it is germane to mention here that the Ld. CIT(A) while granting the benefit of jewellery of 1100 gms in the case of Radha Mittal and 700 gms in the case of Ruchie Mittal and 700 gms in the case of Ruchie Mittal has incorrectly applied the rate of 2100 per gram as against the average rate of jewellery found @ 8758.83 per gms. The judgment of Jurisdictional High Court in the case of Ashok Chaddha 202 Taxman 395 directly applies here wherein the Assessing Officer himself accepted the aforesaid method and was also accepted by the Hon'ble High Court as would be evident from the following observations:

"As far as addition qua jewellery is concerned, during the course of search, jewellery weighing 906.900 grams of the value amounting to Rs.6,93,582 was found. The appellant's explanation was that he was married about 25 years back and the jewellery comprised "stree dhan" of Smt. Jyoti Chadha, his wife and other small items jewellery subsequently purchased and accumulated over the years. However, the Assessing Officer did not accept the above explanation on the ground that documentary evidence regarding family status and their financial position was not furnished by the appellant. The Assessing Officer accepted 400

grams of jewellery as explained and treated jewellery amounting to 506.900 grams as unexplained and made an ad hoc addition of Rs. 3,87,364 under section 69A of the Act working on unexplained jewellery, by applying average rate of the total jewellery found. The relevant portion of the assessment order reads as follows:-

> *"a very reasonable allowance of ownership of gold jewellery to the extent of 400 grams is considered reasonable and the balance quantity of 506 grams by applying average rate, the unexplained gold jewellery is considered at Rs. 3,87,364 (506/900 × 6,93,582) u/s 69A of the Act."*

8.4 The ld. DR has relied on the statement recorded of Sh. R. K. Mittal u/s 132(4) of the Act. It is however not denied that there was no surrender made by any of the assessees. Further even as per the statement of Sh. R.K. Mittal (husband of Radha Mittal) disclosure was made of Rs. .79 lacs in the hands of Radha Mittal, Rs. .79 lacs in the hands of Ruchie Mittal and Rs. 1.31 crores in the hands of R.K. Mittal husband of Radha Mittal. Contrary to the above additions were made on account of unexplained jewellery u/s 69A of the Act in the hands of assessees and no addition has been made in the hands of R.K.

Mittal. Moreover Ld. CIT(A) granted benefit of Rs. 23,10,000/- in the case of Radha Mittal and Rs. 14,20,000/- in the case of Ruchie Mittal which has also not been disputed by revenue. In any case even otherwise it is a matter of record that no taxes were paid by the assessees or R.K. Mittal in respect of the above statement and such a statement were never acted upon either by the assessees or by R. K. Mittal. Also letters had been furnished on 24.1.2013 and 5.7.2013 i.e. within 2 months of search that declaration by R.K. Mittal was merely estimated and tentative figures. Having regard to the above each of the judgments relied upon by the ld DR on the validity of statements recorded are inapplicable to the facts of the assessee. In absence of any surrender made by the assessees u/s 132(4) of the Act no obligation was imposed upon them to offer the impugned sums as income. Also judgments u/s 69C of the Act are distinguishable on the facts of the assessees. These judgments essentially relate to cash seized which were held to be unexplained which is not the case of the assessee. In the case of Karun Dutt Singh v. CIT 85 taxmann.com 177 (Ker) it was noted that AO made addition to assessee's income in respect of gold ornaments recovered from him after rejecting explanation that it belonged to his employer company since

Director of employer company denied to have given ornaments to assessee for sale or as samples. There is no denial in the instant case either by the assesses or R.K.Mittal or any other person. The consistent explanation has been that acquisition of jewellery is as "streedhan" on marriage or other occasions and same could not be said to be unexplained jewellery. The basis that assessees have not filed wealth tax returns cannot be a ground to make an addition in view of the judgment of Roshan Di Hatti v. CIT 107 ITR 938 (SC). Having regard to the foregoing we hold that additions were made in the hands of assessee are not in accordance with law and therefore the same are deleted and accordingly, the ground no. 2 to 4 raised in Radha Mittal's case and ground no. 1 to 3 in Ruchie Mittal's case stand allowed.

9. However, the ground No. 1 was not pressed in the case of Radha Mittal's case and therefore the same is dismissed as such and Ground 5 in the case of Radha Mittal's case and Ground 4 in the case of Ruchie Mittal's case are relating to levy of interest which are consequential in nature.

10. In the result, the ITA No. 2810/Del/2016 (AY 2013-14) in Radha Mittal's case stands partly allowed and ITA No. 2811/Del/2011 (AY 2013-14) in Ruchie Mittal's case is allowed.

Order pronounced on 09-07-2018.

Sd/-	**Sd/-**
[L.P. SAHU] **ACCOUNTANT MEMBER**	**(H.S. SIDHU)** **JUDICIAL MEMBER**

Dated : 09-07-2018

SR BHATANGAR

Copy forwarded to:

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

AR, ITAT
NEW DELHI.