

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER
(Through Video Conferencing)

ITA No.849/Del/2018
(Assessment Year: 2014-15)

Diwakar Sharma, C/o. Arun Ketan & Associates, 101, CSC, DDA Market, Pushpanjali, New Delhi PAN: AOHPS3660K (Appellant)	Vs.	DCIT, Central Circle, Noida (Respondent)
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Assessee by :	None
Revenue by:	Shri Rupesh Agrawal, Sr. DR
Date of Hearing	31/03/2021
Date of pronouncement	06/04/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the Id CIT(A)-4, Kanpur dated 09.12.2017 for Assessment Year 2014-15 raising following grounds of appeal:-
 - “1. That on the facts of the case and under the law, the Id. CIT(A) had erred in sustaining the addition of Rs. 32,40,469/-, made by the Id. AO on account of jewellery found during the course of search & seizure operation carried out u/s 132, while arbitrarily rejecting the explanation given by the assessee.
 2. That on the facts of the case and under the law, the Id. CIT(A) ought to have appreciated that since the assessee's family consisted of self, wife and son, the benefit of total 700 gms. (100gms. + 500gms. + 100 gms.) should have been allowed instead of only 100gms., as allowed by the Id. AO.
 3. That on the facts of the case and under the law, the Id CIT(A) ought to have given due weightage to the assessee's claim that part of the jewellery was acquired at the time of marriage (more than 20years ago) and also that remaining jewellery was acquired by him either out of gifts received on various occasions after the marriage or out of purchase made by him from time to time (as per the ITR's filed by him year after year, the income declared were substantial).
2. The brief fact of the case shows that the assessee is an individual deriving income from salary, house property and other sources. The assessee filed his return of income on 10.09.2015 declaring total income of Rs. 4,84,02,690/-. A search and seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on 09.10.2013 on the premises of the assessee of Shubhamna Buildtech Pvt. Ltd Group of cases. In view of the notice u/s 142(1)

was issued on 18.08.2015. During the course of search jewellery amounting to Rs. 11,30,814/- was found from his residence and some jewellery from his bank locker. The assessee explained that the above jewellery was acquired by the assessee at the time of his marriage and part was purchased after his marriage which is now more than 20 years. He submitted that the assessee is showing substantially higher income and withdrawals are also substantial, so same is not undisclosed income of the assessee. The Id AO noted that as assessee has not filed any evidence regarding purchase and source of payment of jewellery and the entire jewellery belongs to him and the others members of the family. The Id AO considered instruction 1916 dated 11.05.94 accepted only 100 gms out of jewellery for himself only and thus made the addition to the total income of the assessee. The assessment order u/s 143(3) was passed on 30.03.2016 considered the total income of Rs. 5,60,65,159/-.

3. The assessee preferred appeal before the Id CIT(A). The Id CIT(A) confirmed the above addition dismissing the appeal of the assessee. Therefore, the assessee is in appeal before us.
4. Despite notice to the assessee by the registered AD as per noting of ordersheet dated 01.02.2021 the case was fixed for hearing on 31.03.2021. Despite this none appeared before us. On earlier occasions also on 31.03.2020 31.09.2020 and 01.02.2021 none appeared on behalf of the assessee. In view of this, the appeal is decided on the merits of the case as per information available on record.
5. The Id DR heavily relied on the orders of the lower authorities.
6. We have carefully considered the contentions and perused the orders of the lower authorities. We have also considered the written submission made by the assessee before the lower authorities.
7. Brief facts of the case shows that during the course of search in locker No. 453 of HDFC Bank, New Delhi jewellery amounting to Rs. 2368185/- was found over and above jewellery worth of Rs. 11,30,814/- at the residence of the assessee. After granting the credit of 100 gms of jewellery to the individual assessee amounting to Rs. 258530/- the balance amount of addition of Rs. 3240469/- was made in the hands of the assessee on account of unaccounted jewellery. The Id AO denied the benefit of instruction No. 1916 with respect to the other family members for the reason that during the course of search the assessee stated that jewellery belongs to him. The assessee has also stated that he is filing high return of income and there is also high withdrawal therefore, the assessee's withdrawal may be treated as enough for investment in these jewellery. Even otherwise the assessee submitted that assessee should have been allowed the deduction of 500 gms for wife and 100 gms for his son also over and above 100 gms jewellery for him. He submitted that from this angle the addition of Rs. 3240469/- may further to be reduced by Rs. 15,51,180/-. We find that the

issue is squarely covered in favour of the assessee by the decision of the Hon'ble Allahabad High Court in 260 ITR 249, Hon'ble Madras High Court in 370 ITR 364, Hon'ble Allahabad High Court in 41 Taxmann.com 295, Hon'ble Rajasthan High Court in 366 ITR 325, Hon'ble Gujarat High Court in 339 ITR 351. In substance all these Hon'ble High Courts have held that jewellery specified under CBDT Circular No. 1916 dated 11.05.1992 is a reasonable quantity which could be not added in the hands of the assessee even though circular is for the purpose of none seizure of jewellery during the course of search. Hon'ble High Courts were also of the view that the instruction takes into account on quantity of jewellery which would generally be held by family members of assessee belonging to an ordinary Hindu house hold. The claim of the assessee is therefore supported by various high courts. In view of this we direct the Id AO to restrict the addition only in excess of jewellery found of instruction No. 1916 dated 11.05.1992 with respect to the family members of the assessee. The assessee is directed to furnish relevant details of family members of the assessee staying with him , which may be verified by the Id AO, after verification Id AO may grant reduction in addition to the extent of jewellery of family members as per above instruction of CBDT, and the excess addition thereafter may be deleted. In the result ground no 2 of the appeal of assessee is allowed.

8. Ground no 1 and Ground no 3 does not have any merit as there is no evidence before the lower authorities about acquisition of excess jewellery, merely high return cannot be any basis for explaining acquisition of such assets unless, there is some specific source of acquisition of such assets are shown. Thus those grounds are dismissed.
9. In the result appeal of the assessee is partly allowed with above direction.
10. Order pronounced in the open court on 06/04/2021.

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 06/04/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi