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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 19.12.2025

+ **ITA 386/2023**
ITA 387/2023

REKHA KHAITAN

.....Appellant

Through: Ms. Kavita Jha, Sr. Advocate with
Mr. Himanshu Aggarwal, Mr. Kumail
Abbas and Ms. Kanika Sethi,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 19 DELHI

..... Respondent

Through: Mr. Vipul Agrawal, SSC Ms. Sakshi
Shairwal and Mr. Akshat Singh, JSC,
Mr. Gaoraang Ranjan and Ms.
Harshita Kotru, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE TEJAS KARIA

V. KAMESWAR RAO, J. (ORAL)

1. These two appeals filed by the Assessee/Appellant has challenged the common order passed by the Income Tax Appellate Tribunal, Bench 'F', New Delhi ("ITAT") dated 13.06.2023 ("Impugned Order") whereby the ITAT has allowed the appeal filed by the Revenue/Respondent being ITA No. 2831/Del/2022 relatable to Assessment Year ("AY") 2019-20 and dismissed the appeal filed by the appellant/assessee being ITA 2520/Del/2022.

2. The facts noted from the record reveal that a search and seizure action



under Section 132 of the Income Tax Act, 1961 (“Act”) was conducted on 19.01.2019 in the case of Gautam Khaitan group of companies at various residences and office premises. The Appellant herein is the widow of late O. P. Khaitan and the mother of Gautam Khaitan. The jewellery belonging to the Appellant weighing 5066.69 grams was seized from the residence on 19.01.2019 and 9092.56 grams from bank locker on 21.01.2019.

3. On 29.08.2019, the Appellant filed a return of income declaring total income of Rs.1,57,590. A notice under Section 153A of the Act was issued to the Appellant on 23.09.2020 for search assessment. Notice under Section 143 (2) of the Act was issued on 18.12.2020 followed by the Notice under Section 142(1) of the Act directing the Appellant to explain source of jewellery of Rs.7,64,46,500/- found from the residence and bank locker of the Appellant.

4. Prior to the search, the Appellant had filed her Wealth Tax Return (“WTR”) on 18.09.2015 for AY 2015-16 declaring the jewellery weighing 11,198.25 grams, which was the last available WTR in view of the repeal of Wealth Tax Act, 1957 with effect from 01.04.2016.

5. Subsequent to filing the WTR, the Appellant had purchased the jewellery weighing 130.6 grams on 20.12.2017 and 17.95 grams on 19.01.2018 through invoices.

6. After taking into consideration the WTR and invoices, the Assessing Officer (“AO”) issued a show cause notice dated 31.05.2021 seeking explanation of jewellery weighing 558.74 grams worth Rs.2,71,57,132/- and as to why the same should not be considered as unexplained jewellery and added to income for AY 2019-20 as per Section 69B of the Act.

7. The Appellant provided an explanation that the balance jewellery of



558.74 grams may have been received as gifts from family and friends on various occasions after 2015-2016, and thus, would not form part of the WTR. It was also claimed that the Appellant having been married for over 60 years, gifts were exchanged on festivals and customary celebrations. Reliance was placed on CBDT Circular dated 11.05.2014 (“CBDT Circular”) to claim that the balance 558.74 grams should be considered as explained.

8. The AO made calculations of the explained and unexplained items of the jewellery and concluded that the remaining jewellery amounting to Rs. 38,01,414/- as per Table I weighing a net weight of 1426.97 grams and Rs. 76,13,640/- as per Table II weighing a net weight of 467.95 grams totalling in weight to 1634.59 grams worth Rs. 1,14,15,054/-. Based on the valuation report of Departmental Valuation Officer (“DVO”) of this remaining unexplained quantity of jewellery the AO made the additions under Section 69B of the Act read with Section 115BBE of the Act.

9. On an appeal by the Appellant, the CIT(Appeals) [“CIT(A)”] partly allowed the appeal in terms of Instructions No. 1916/1994 vide order dated 21.09.2022 and restricted the addition to Rs.38,60,667/- instead of Rs.1,14,150,54/- on the basis of value of unexplained jewellery weighing 770.9 grams at an average value of Rs. 5008/- per gram after giving allowance to the Appellant of 1450 grams of jewellery under Clause (ii) of the CBDT Circular and 100 grams under Clause (iii) of the CBDT Circular.

10. Both the Appellant and the Respondent / Revenue filed their respective appeals before the ITAT.

11. The Revenue in its appeal before ITAT had raised the following grounds:



“1) The Ld. CIT(A) has erred on facts and in law, in considering the intention of CBDT instruction 1916/1994, while giving the benefit of limits specified over and above the explained jewelry considered.

2) The Ld. CIT(A) has erred on facts and in law in restricting the addition of Rs. 1,14,15,054/- to Rs. 38,60,667/- on account of unexplained jewelry without considering the fact that the assessee had not submitted any documentary evidence which can prove the sources of the money which was used by the assessee to purchase the jewelry.

3) The Ld. CIT(A) has erred on facts and in law in restricting the addition on account of unexplained money u/s 69A of the IT Act, 1961 from Rs. 1,14,15,054/- to Rs. 38,60,667/- by not considering that Wealth Tax Return which shows the item wise disclosure of the jewelry items but it is not completely matching with the items found during the search.

4) The Ld. CIT(A) has erred on facts and in law in changing the nature of unexplained which was in the form of unexplained investment u/s 69B of the I.T. Act, 1961, to unexplained money u/s 69A of the I.T. Act, 1961.

5) (a) The order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves to add, alter or amend any/all of the ground of appeal before or during the course of the hearing of the appeal.”

12. Whereas the Appellant in her cross appeal had raised the following grounds:

“1. That on the facts and circumstances of the case and in law, the order dated 21.09.2022 passed u/s. 250 r.w.s 143(3) of the Income Tax Act, 1961 (“Act”) by the Commissioner of Income Tax (Appeals)-27, Delhi [“Ld. CIT(A)”] partly confirming/upholding the order dated 14.06.2021 passed by the DCIT, Central Circle-



19, New Delhi ("AO") is bad in law.

2 That the Ld. CIT(A) erred in confirming an addition of Rs. 38,60,667/- on account of unexplained u/s. 69B of the Act.

3 The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal."

13. The ITAT vide Impugned Order while allowing the appeal of the Revenue and dismissing the appeal of the Appellant has stated as under:-

14. Thus, this bench is now required to determine as to how far the assessee was entitled for further benefit in respect of 770.9 grms of the jewelry in terms instruction no. 1916 or if benefit extended by the Ld., CIT(A) was wrongly done. In this context, it can be observed that Ld. AO has not given any benefit of the Circular and has observed in the concluding part of the assessment order as under :

"Also, the assessee has quoted the CBDT guidelines and stated that married ladies entitled to 500 gm of gold ornaments, unmarried ladies 250 gms and male members 100 gm of gold items. But this argument has been not found acceptable because the instruction is mainly with regard to non-seizure of the and further in the assessee case by following this instruction the department has already released of more than Rs.5,25,32,394/- and no further relaxation can be given of the instruction no. 1916."

14.1 What transpires from the order of Ld. CIT(A) is that he has not gone on the question of applicability of Instruction No. 1916 and straight way benefited the assessee for herself and her family, to the extent of 1950 gms as mentioned para 4.8 and reproduced above. Pertinent to mention is that at serial no. 6, extra allowance for the family is mentioned to be 500 gms.

14.2 The Bench is of considered view that the Board's



instructions dated 11.05.1994 stipulate circumstances under which excess gold or ornaments could be seized and where it need not to be seized by authorized officer. It will be beneficial to reproduce the relevant clauses of the Circular as follows;

“Instances of seizure of jewellery of small quantity in the course of operation under section 132 have come to the notice of the Board. The question of a common approach to situation 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 wealth-tax return only need to 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 customs 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 Income tax/ Commissioner authorizing the search all 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.”

14.3 It is quite clear from the aforesaid instructions that clause (i) will be applicable in case of present assessee as she is a wealth-tax assessee and direction is that gold jewellery and ornaments found in excess of



the gross weight declared in the wealth-tax return only need to be seized. Clause (ii) is not applicable, under which Ld. CIT(A) has benefitted the assessee. Clause (iii) merely extends discretion in hands of authorized officer and not to assessing officer and also that the same is subject to clauses (i) and (ii) only.

14.4 Further, the intention of Circular is to respect the customary jewelry of Indian women on her person. Circular does not lay down a minimum weight of jewelry in the hands of any person to be considered explained for all purposes and intent. Ld. CIT(A) seems to have also failed to appreciate the same and put anything in form of reasons as to why he is benefiting the assessee with the Circular.

14.5 Then the plea of assessee that the excess 770.9 grms, was all “stridhan” is rather a self destructive plea to take benefit of Circular No. 1916 which Ld. CIT(A) failed to appreciate. If jewelry found at premises or locker was all stridhan of the assessee, then extending benefit of Circular to other members of the family, in the hands of assessee was not justified. Stridhan is the individual property of a woman and it cannot be said to be held by other members of family unless specially entrusted to them. Which is not the case of assessee as all the recoveries were from her possession and at every level so far she has claimed it to be her stridhan only.

14.6 Further, the Ld. AO mentions that following this instruction the department has already released jewelry worth more than Rs. 5,25,32,394/-. There is no explanation or contradiction of this on the part of assessee. Ld. CIT (A) has also not taken note of it. Ld. CIT(A) has thus fallen in error in out rightly giving benefit of Circular to the extent of 1950 Gms., to the family as a whole, while the assessee claimed it was all her own stridhan.

14.7 Further, the Bench is of considered opinion that when the assessee was filing regular wealth tax returns



till the year 2015-16, when it was discontinued by the Government and the relevant assessment year is 2018-19, then for the intervening period, Assessee cannot take a very general defence, as made before Ld. AO and reproduced in para no. 4.1 page no. 12 of the assessment order, that 'may be' the balance amount of 558.7 gms of jewelry have been received as gifts from family and friends on various occasions after A.Y. 2015-16 and thus not forming part of assessee's WTR.

14.8 In a case like the present where assessee was claiming to have regularly filed WTR, and has managed to explain certain jewelry to be subsequently purchased or received from HUF, then anything beyond that cannot be subjected to Circular and covered up. The period after last WTR and search was not so vast as to give presumption that assessee may have forgotten as to from whom the jewelry was received as gift. Rather women seldom would forget who gifted the jewelry and what was the occasion. The Bench is of considered opinion that more specific plea and explanation ought to be given by an assessee filing WTR, when explanation is sought to discharge burden u/s 69B under the Act, to explain jewelry beyond that mentioned in WTR, which Assessee failed. Thus giving benefit on the basis of status of family, as stridhan or in the hands of other family member in terms of Circular by the Ld. CIT(A) had no legal basis.

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17. Consequently the grounds no 1 and 2 raised in appeal of Revenue deserve to be allowed while grounds raised in the appeal of Assessee have no substance. The appeal of Revenue is allowed and of Assessee is dismissed."

14. The present Appeals were admitted vide order dated 01.05.2024 on the following question of law:



“Whether the impugned addition under Section 69B of the Act is legally sustainable on account of the respondent's failure to discharge primary statutory onus/ jurisdictional facts thereunder (i.e. amount expended on jewellery exceeded recorded in books) and its sole reliance on the Departmental Valuation Officer's report”

15. Ms. Kavita Jha, learned Senior Counsel for the Appellant/Assessee states that no incriminating material was seized during the search action and the seizure of the jewellery 14,159.25 grams is invalid as the Appellant / Assessee was not required to maintain books of accounts and the conditions of Section 69B of the Act were not satisfied by the Respondent / Revenue.

16. It is her submission that the consequential action(s) including the impugned addition of Rs.1,14,15,054/- in terms of the assessment order under Sections 143(2) and 69B of the Act for the AY 2019-2020, is unlawful, as no satisfaction was arrived at in terms of those provisions. It is also submitted that in Paragraph No. 4.13 of the Impugned Order, Section 69A of the Act is wrongly mentioned instead of Section 69B of the Act.

17. On the other hand, Mr. Vipul Agrawal, learned Senior Standing Counsel for the Respondent/Revenue would submit that a total of 4230.88 grams net weight of jewellery was recovered from the premises of assessee and her bank locker during search under Section 132 of the Act. The AO has computed the same as unexplained jewellery.

18. According to Mr. Agrawal, CIT(A) perversely on a wrong reading of the CBDT Circular gave the benefit over and above the jewellery disclosed in WTR, thereby reducing the addition to Rs. 38,60,667/-.

19. He states, it is not in dispute that the difference in the weight of the jewellery mentioned in the order of the AO and the order of the CIT(A) is



because the AO has considered net weight of the jewellery and CIT(A) has considered gross weight of the jewellery.

20. Mr. Agrawal has relied upon the following judgments in support of his submissions that a wrong/erroneous mentioning of a provision shall not vitiate an order:

- (i) ***N. Mani v. Sangeetha Theatre and Others***, (2004) 12 SCC 278;
- (ii) ***Ram Sunder Ram v. Union of India and Others***, (2007) 13 SCC 255;
- (iii) ***Bharathi Cement Corporation Pvt. Ltd. v. Commissioner of Income Tax and Others***, 2012 SCC OnLine AP 571 and;
- (iv) ***Gingee Agricultural Producers Co-operative Marketing Society v. Limited Deputy Commissioner (CT), Cuddalore and another***, 2024 SCC OnLine Mad 8389.

21. Having heard the learned counsel for the parties and perused the record, an issue has arisen as to whether the reference made to Section 69A of the Act in Paragraph No. 4.13 of the order of the CIT (A) as referred to at paragraph 6 of the Impugned Order is justified. The counsel for the parties are at *ad idem* that the same is a typographical error as the concerned provision is Section 69B of the Act and not Section 69A of the Act.

22. If that be so, the judgments as referred to by Mr. Agrawal for the proposition that mentioning of a wrong Section shall not vitiate the order cannot be disputed. It follows the judgments have no applicability because the counsels agree that reference to Section 69A of the Act is erroneous and it should have been Section 69B of the Act.

23. Having said that, the issue now is whether the Impugned Order has considered the applicability Section 69B of the Act. A bare perusal of the Impugned Order shows that there is no finding with respect to the satisfaction of the conditions of Section 69B of the Act by the Respondent /



Revenue. Accordingly, it would be appropriate to remand the matter for fresh consideration.

24. The question then arises is whether the case is to be remanded back to the CIT(A) or the ITAT.

25. We are of the view that the matter be remanded back to the ITAT for consideration of the appeals filed by both the parties against the order of the CIT(A). The ITAT shall decide the issues raised by the parties in their respective appeals afresh, in accordance with law, as expeditiously as possible as the Appellant is a senior citizen.

26. Accordingly, the common Impugned Order dated 13.06.2023 is set aside. The appeals are disposed of with the aforesaid directions.

V. KAMESWAR RAO, J

TEJAS KARIA, J

DECEMBER 19, 2025

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