



**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.599/DEL/2023
(Assessment Year: 2019-20)**

Mandeep Khurana,
E – 181, Sainik Farms,
Lane W – 6/A,
Delhi – 110 062.

vs.

ACIT, Central Circle 20,
New Delhi.

(PAN : AJKPK0359B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Rano Jain, Advocate

Ms. Mansi Jain, CA

Ms. Sakshi Rastogi, Advocate

REVENUE BY : Shri Arvind Kumar Trivedi, Sr. DR

Date of Hearing : 27.01.2025

Date of Order : 27.01.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals)-27, New Delhi [“Ld. CIT(A)”, for short] dated 13.01.2023 for the Assessment Year 2019-20.
2. Brief facts of the case are, a search and seizure operation under section 132 of the Income-tax Act, 1961 (for short ‘the Act’) was conducted by the Investigation Wing on 13.06.2018 in Gurpal Singh Khurana Group of

cases. The assessee's premises were also covered in the abovesaid search. The cases were centralized.

3. Assessee filed its return of income declaring income of Rs.6,80,000/- on 20.08.2019. Notices u/s 143(2) and 142(1) along with detailed questionnaire were issued and served on the assessee. The assessee is an individual, senior citizen and earned income under the head 'salary' and 'income from other sources'. During search and seizure operation, the locker nos.17, 132 & 194 of the assessee were searched and amount of jewellery which was valued at Rs.1,96,44,084/- was found. The details of the jewellery found and seized are given below :-

Sl.No.	Name of the Locker Holder	Premise	Jewellery found	Jewellery seized
1.	Harmeet Singh Khurana, Manu Khurana and Mandeep Khurana	Locker No.17, State Bank of India, M-2, Saket, New Delhi.	47,26,438/-	17,29,979/-
2.	Mandeep Khurana	Locker No.132, State Bank of India, M-2, Saket, New Delhi.	41,37,108/-	41,37,108/-
3.	Mandeep Khurana	Locker No.194, State Bank of India, M-2, Saket, New Delhi.	1,07,80,538/-	89,97,022/-
Total			1,96,44,084/-	1,48,64,109/-

4. In response to notice u/s 142(1), assessee submitted letter dated 14.03.2021. During assessment proceedings, assessee submitted relating to jewellery found from locker no.17 in which jewellery worth of Rs.47,26,438/- was found. In this regard, it was submitted that it belonged

to her elder son – Harmeet Singh Khurana, daughter-in-law – Smt. Manu Khurana and her two grand-daughters. Similarly, her son and daughter-in-law filed affidavit claiming the same. After considering the submissions of the assessee, jewellerys found in locker no.17 were not taxed in the hands of the assessee.

5. With regard to jewellerys found from locker nos.132 & 194, it was submitted that these jewellerys were received by the assessee on her marriage, birthdays and inheritance from her father, mother and in-laws. It was also claimed that certain part of the jewellery found from the locker nos.132 & 194 were declared by the assessee under VDIS, 1997 to the extent of Rs.8,66,943/-. In support of the same, assessee has not filed any valuation report or description of jewellery declared under VDIS. After considering the submissions of the assessee, the AO rejected the plea of the assessee and after giving the standard allowance holding of gold jewellery and ornaments to the extent of 500 gms. in the hands of the assessee and 100 gms. in the name of her husband as per CBDT Instruction No.1916 dated 11.05.1994 to the extent of 600 gms. and sustained the additions made from the jewellerys found from locker nos.132 & 194 as unexplained u/s 69 of the Act. The excess jewellery was valued at Rs.1,32,05,035/-.

6. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT (A) and filed detailed submissions which are reproduced at pages 13 to 29 of the appellate order. After considering the detailed submissions of the assessee, ld. CIT (A) dismissed the jurisdictional issues raised by the assessee and with regard to issues raised on merits, ld. CIT (A) dealt with the issue of valuation adopted by the Government registered valuer at Rs.3,000/- per gm. of 24 carat on the date of search instead of market price of Rs.2,950/- per gm. and also adoption of 23 carat purity in evaluation of the gold ornaments instead of purity of gold ornaments from 14 carat to 22 carat. Ld. CIT (A) rejected the above plea of the assessee with the observation that Government registered valuer is expert in this field and valuation report by the Government registered valuer cannot be doubted until and unless contradicted by the documentary evidences. The assessee challenges the purity of gold ornament at 23 carat adopted by the Government registered valuer, however, assessee has not produced any documentary evidences in terms of bills / invoices of purchases of jewellery found during the search.
7. Further with regard to jewellery already declared in the VDIS, ld. CIT(A) observed that assessee has filed an affidavit claiming disclosure of jewellery of Rs.8,66,943/- under VDIS, 1997. He observed that the relevant affidavit is not signed by the assessee and the affidavit is not on

any stamp paper and also not signed by any Notary Officer. He rejected the claim made by the assessee. Ld. CIT(A) has also rejected the plea of the assessee that assessee had inherited certain jewellerys which were kept in locker no.2977-B with the Delhi Safe Deposit Co. Ltd., Janpath, New Delhi since 14.07.1960 and it was claimed that after death of her father, the assessee has made joint holder of said locker along with her mother. After death of her mother, assessee operated this locker till 18.05.2018 and after surrender of the locker, put the relevant jewellery and ornaments in her locker maintained with SBI. Ld. CIT(A) has rejected this plea also with the observation that assessee has not submitted any document in support of her claim that she has operated the said locker and neither furnished copy of her mother's will in support of her claim nor any other document in support of her inheritance of jewellery from her mother.

8. Ld. CIT (A) also rejected the other plea made by the assessee that she has received part of the same as stridhan at the time of marriage, at the time of social functions and other festivals. He observed that exemptions have already been allowed by the AO in assessment proceedings based on the CBDT Instruction No.1916 dated 11.05.1994. Accordingly, he sustained additions made by the AO u/s 69 read with section 115BBE of the Act on account of unexplained jewellery.

9. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

“1. On the facts and circumstances of the case the order passed by Ld. CIT(A) -27 New Delhi, confirming the addition of Rs.1,32,05,935/- to the returned income by Ld AO central Circle -20 New Delhi is bad in law.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of Ld. AO of invoking the provision of section 143 (2), in consequence of the search at the third party and in invoking section 153A of the Income Tax Act for the immediately preceding 06 blocks years, despite that no search warrant executed in the assessee's name individually.

3. On the facts and circumstances of the case and in law, the Ld AO has erred, in not invoking the provisions of section 153C of the Act, where the jewellery & ornaments belonging to the assessee was seized during the search proceedings executed at third-party i.e. Shri Gurpal Khurana.

4. Without prejudice to above, the Ld. CIT(A) has erred in confirming the action of Ld. AO for taking the case under scrutiny for the reason that "case is pertaining to search and seizure" even when no search was carried out in assessee's own case. Further, the said selection of scrutiny case under section 143(2) is beyond jurisdiction as not followed the CBDT Instruction No. 04/2018 dated: 20th August 2018 for manual selection of Income Tax Returns for Complete Income Tax Scrutiny during the financial year 2018-19.

5. Without prejudice to the above, The Ld AO -ACIT Central Circle 20 New Delhi has erred in making an assessment without having jurisdiction over on assessee being central circle in absence of a search warrant executed in the name of assessee.

Regd: Valuation of Jewellery

6. On the facts and circumstances of the case and in law Ld. CIT(A) erred in confirming the action of Ld AO for taking the gold valuation @ Rs 3000 per gram as on 10/08/2018 i.e date of locker operations by search team instead of Rs 2,953/- per 10 gram, as per prevailing rate available in public domain, resulting over valuation of Rs.1,87,962/-.

7. On the facts and circumstances of the case and in law Ld. CIT(A) erred in confirming the action of Ld AO for taking uniform purities @ 23 carat for gold jewellery valuation, without going into purities of jewellery & ornaments by valued by Deptt valuer, despite the standard jewellery and ornaments are made between 16 to 22 carat gold looking to specific jewellery in the instance case.

8. Both the lower authorities further failed to appreciate the independent income tax valuer report for the released jewellery & ornaments valuation showing the over valuation by 9.85 % to 25.40 % , wherein the assessee has claimed average over valued by 16 % in absence of access to seized jewellery, resulting to overvaluation of Rs 23,86,823/-.

9. On the facts and circumstances of the case and in law Ld. CIT(A) erred in confirming the action of Ld AO for not granting the benefit of jewellery and ornaments declared in VDIS scheme 1997 and assessee submitted copy of VDIS Tax and acknowledgment of VDIS application and valuation report for a jewellery's valuation of Rs 99,61,411/-. The Ld CIT (A) further failed to appreciate that the assessee's late husband, who used to manage the tax affairs of the assessee died on 17/12/2020. Both the lower authorities further failed to appreciate that the assessee's affidavit and follow-up for VDIS certificate from the tax officer were not found untrue.

10. On the facts and circumstances of the case and in law Ld. CIT(A) erred in confirming the action of Ld AO for not granting the benefit of jewellery and ornaments received from her mother, kept in separate private locker with the Delhi safe company for a jewellery valuation of Rs 14,76,500/-.

11. On the facts and circumstances of the case and in law Ld. CIT(A) erred in confirming the action of Ld AO for not granting the benefit of jewellery and ornaments acquired in her long married life, Stridhan and status of the family for a jewellery valuation of Rs 8,85,900/-.

12. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the ground(s) of the appeal.

Humble Prayer:

I) To delete the addition of Rs. 1,32,05,935/- made under section 69 rws 115 BBE of IT Act.

ii) To quash the assessment and CIT (A) order and to pass an order.

iii) Any other appropriate Relief.”

10. At the time of hearing, ld. AR of the assessee brought to our notice relevant facts on record and submitted that four lockers were found during search proceedings and one locker was eliminated because that locker was belong to assessee's son and after giving jewellery allowance

as per CBDT Instruction No.1916 (supra). The addition made by the AO was Rs.1,32,05,935/-. She submitted the following explanation in the form of chart :-

After relief of Son's locker and CBDT Circular, addition :	1,32,05,935/-
Assessee explained the discrepancy as follows :	
1. On account of impurities in jewellery @ 16% which was taken by departmental valuer @ 5% only	23,86,823/-
2. On account of rates of gold taken @ Rs.3,000/- against Rs.2,953/- prevailing on that day	17,71,800/-
3. Declared under VDIS, 1997	99,61,411/-
4. Inherited and released from Delhi Safe Deposit	14,76,500/-
	1,55,96,534/-

11. With regard to impurities in jewellery, Id. AR submitted that Department Valuer has adopted 5% only instead of 16%. She submitted that because of this discrepancy, the value was excessively done to the extent of Rs.23,86,823/-. Further she submitted that the Department's Valuer has adopted Rs.3,000/- per gm. instead of Rs.2,953/- per gm. prevailed at the date of search. She submitted rates of gold chart at the purity level of 24 carat per gm. She brought to our notice page 91 of the paper book at purity level of 24 carat. Next she submitted that assessee has declared jewellery under VDIS, 1997 and declared the same at Rs.8,66,943/-. She brought to our notice pages 51 to 54 of the paper book wherein assessee has filed acknowledgement receipt under VDIS, 1997 and proof of depositing the relevant tax of Rs.2,70,487/- and also assessee has filed

affidavit in this regard that assessee has disclosed relevant jewellery during VDIS. She submitted that the relevant fair market value as on the date of search is Rs.99,61,411/-.

12. Assessee has submitted following case laws that in the absence of original certificate, taxpayers should be given fair chance to present alternative evidences, such as, affidavits or secondary documentation to support their claims :-

“Compilation of few cases - in the absence of the original certificate, taxpayers should be given a fair chance to present alternative evidence, such as affidavits or secondary documentation, to support their claims :-

1 Nitin P. Shah Alias Modi vs. Deputy Commissioner of Income Tax, [2005] 2761TR 397 (Gujarat High Court): - The petitioner claimed to have declared income under the VDIS 1997 but was unable to produce the original certificate of declaration.

The Gujarat High Court emphasized that taxpayers should be given an opportunity to prove their claims, even in the absence of the original VDIS certificate.

The court ruled that the assessing officer must consider all available evidence, including affidavits or alternative records, and adhere to the principles of natural justice.

The court directed a fresh assessment, ensuring the petitioner was given a fair chance to present their case.

2. Palitana Sugar Mills (P.) Ltd. vs. Additional Commissioner of Income Tax [2019] 103 taxmann.com 295 (Gujarat High Court) : The court emphasized the importance of providing taxpayers with an opportunity to substantiate their claims, especially when original documents are unavailable. It highlighted that affidavits and other

secondary evidence should be duly considered by tax authorities during assessments

3. Commissioner of Income Tax vs. Rajiv Enterprises [2016] 75 taxmann.com 305 (Gujarat High Court) The court ruled that the certificate granted by the Commissioner under VDIS was binding on the Assessing Officer. It emphasized that tax authorities could not dispute the validity of the certificate once issued, highlighting the finality and binding effect of the VDIS certificate

4. Balwant Singh vs. Commissioner of Income Tax: [2008] 304 ITR 125 (Punjab & Haryana High Court)-The court emphasized that when original records are not traceable despite genuine efforts, secondary evidence, including affidavits, can be considered. The court also stressed the principles of natural justice, requiring authorities to provide relief where sufficient evidence exists to substantiate the taxpayer's claim.

5. Suresh Chand Bansal vs. Commissioner of Income Tax [2010] 325 ITR 565 (Delhi High Court) the court held that if a taxpayer had genuinely made efforts to retrieve the necessary documentation (e.g., filing RTI applications) but was unable to do so due to no fault of their own, the tax authorities should not penalize the taxpayer. An affidavit supported by any corroborative evidence should be given due consideration.

6. Badrilal Pitambar Lal vs. CIT, [1994] 209 ITR 589 (MP High Court)- The Madhya Pradesh High Court held that an affidavit must be treated as valid evidence unless disproved. Authorities are obligated to accept affidavits unless they can present evidence to the contrary.

7. Mehta Parikh & Co. v. Commissioner of Income Tax (1956) 30 ITR 181 (SC)- Supreme Court's Ruling

Affidavits as Evidence:

The court held that when affidavits are filed and remain unchallenged by the department (i.e., the department does not cross-examine the deponents or present evidence to rebut the affidavits), they must be accepted as valid evidence.

No Arbitrary Rejection:

The court ruled that affidavits cannot be arbitrarily disbelieved. If the revenue authorities doubt their credibility, the burden is on them to disprove the claims made in the affidavits.

Principles of Natural Justice:

The court emphasized that the department must adhere to principles of natural justice. Once a taxpayer has discharged their burden of proof through affidavits and other supporting documents, it is incumbent upon the department to provide cogent evidence to contra dict the taxpayer's claims.

Reasonableness of Evidence:

The court also stated that the department must consider the surrounding circumstances and the reasonableness of the taxpayer's explanation before drawing adverse conclusions.

8. Smt. Tarulata Shyam vs. Commissioner of Income Tax: [1977] 108 ITR 345 (SC)-Tax authorities are bound to act fairly, especially when a taxpayer has exhausted all avenues to comply with the procedural requirements.

If a record has been destroyed or is unavailable due to the passage of time and departmental policy, taxpayers should not be penalized for their inability to produce it.

9. Badrilal Pitambar Lal vs. CIT Citation: [1994] 209 ITR 589 (MP High Court) - An affidavit submitted by the taxpayer should be treated as valid evidence unless there is evidence to the contrary.

10. Smt. Usha Rajagopalan vs. CIT:- [2008] 1 DTR 134 (Karnataka High Court)- The inability to produce documents that have been lost or are unavailable due to departmental reasons should not be held against the taxpayer.

The court ruled that when the department's own records are not maintained due to its policy of destruction after a specified period, taxpayers should not face adverse consequences.

11. Lalchand Gopal Das VS. CIT Citation: [1963] 48 ITR 324 (SC)- Where the taxpayer provides an explanation and supporting evidence that cannot be disproved, the department cannot arbitrarily reject the explanation or evidence.”

13. Further she submitted that the assessee has inherited certain jewellery from her parents which was maintained by the assessee from Delhi Safe locker to the extent of Rs.14,76,500/-. She submitted that assessee has maintained the abovesaid locker along with her mother and the same was closed by the assessee on 18.05.2018 and assessee has filed relevant closure details which is kept at page 74 of the paper book. She prayed that the valuation done by the Government valuer is excessive and plea of the assessee was rejected by the tax authorities relating to VDIS and inheritance of jewellery from her parents be allowed.
14. On the other hand, Id. DR of the Revenue submitted that since assessee is not pressing legal grounds raised in this appeal, she has persisted to submit the grounds on merits. Accordingly, he submitted that Government valuer has adopted Rs.3,000/- per gm. as per the rate existed on the date of valuation and he brought to our notice page 45 of the paper book, submitted that assessee also carried various gold coins and bullions at 24 carat. He submitted that the claim of the assessee that Government

valuer adopted Rs.3,000/- is not proper. He has valued only the gold coins and bullions at Rs.3,000/- per gm. and all other jewelleries at Rs.2,850/- per gm.. Therefore, the submissions of the assessee are factually incorrect.

15. With regard to impurity, he brought to our notice page 50 of the paper book. These jewelleries are not belonged to the assessee. With regard to jewelleries belonged to the assessee, assessee has not submitted any details of jewelleries with impurity. He submitted that the plea of the assessee may not be entertained and supported the findings of the Id. CIT (A). With regard to VDIS, he submitted that assessee has not submitted any specific item or evidences of declaration of jewellery under the scheme, therefore, there is no basis to claim the same and he supported the findings of the Id. CIT (A).
16. With regard to inheritance, he submitted that there is no evidence on record considering the fact that the assessee has surrendered the locker on 18.05.2018. Since there is no record of maintaining of such inheritance, he submitted that lower authorities have given relief to the assessee under the CBDT Instruction No.1916 (supra), therefore, there is no evidence to give a separate allowance of the same without there being any Will or supporting evidence.

17. Considered the rival submissions and material placed on record. We observed that certain jewellerys were found and seized during the search operations in the three lockers belonged to the assessee and first plea of the assessee was that impurity of jewellery was considered by the Department valuer at 5% only instead of 16%. After careful consideration of the submissions made by both the parties and also findings of lower authorities, we observed that the gold jewellerys are made from gold having 24 carat purity and when it is converted into gold jewellery, the purity normally is between 22 carat to 18 carat. We observed that Department valuer has adopted 5% allowance for impurity which comes to 22.8 carat whereas assessee claims that it should be purity of 20 carat. We find that this is subjective and assessee has not been able to give complete details of jewellery distinguishing jewellerys based on the impurity. Since the valuation was done by the Government approved valuer, we are not in a position to disturb the same in the absence of any clear cut submissions from the assessee based on the impurity of the jewellery from any other Government approved valuer. Unless the Assessee files a separate valuation also supported by a approved valuer based on the purities of each jewellery, there is no scope for the assessee to challenge the Department valuation. Therefore, we are

not in a position to disturb the same. Accordingly, this plea of the assessee is dismissed.

18. With regard to adoption of gold rate of Rs.3,000/- per gm. instead of Rs.2,953/- prevailing on that date, at the same time, we observed that Id. DR of the Revenue brought to our notice that the rate of gold was adopted at Rs.2,885/- at the date of search not Rs.3,000/-. The rate of Rs.3,000/- was adopted only for the gold coins and bullions with 24 carat. Since the rate adopted by the valuer and the rate prevailing on the date of search is very much available on record, we find it proper to direct the AO to adopt the rate as per the prevailing market rate on the date of search. We observe that there were three kinds of gold ornaments found : (a) gold coins; (b) gold jewellery; (c) diamond studded jewellery. For, (a) the value to be adopted of 24 carat, (b) the value to be adopted of 22 carat and (c) the value to be adopted of 18 carat. We direct the AO to verify the same and give proper valuation after due verification.
19. With regard to claim of jewellery declared under VDIS 1997, we observed that assessee has declared jewellery valued at Rs.8.66,943/- and paid the due tax and relevant payment of tax was also enclosed by the assessee. In our considered view, the assessee also filed an affidavit and also valuation report of the jewellery declared under VDIS, we are inclined to allow the claim of the assessee and direct the AO to convert

the value of Rs.8.66,943/- declared under VDIS @ gold prevailing on 31.12.1997. For example, in our view, it was approximately Rs.473/- per gm. Therefore, assessee held gold worth of Rs.8,66,943/- which is divided by Rs.473/- per gm. and should be allowed equivalent grams i.e. 1830 grams, accordingly, the quantity of 1830 grams be reduced from the additions. Accordingly, the relevant credit be allowed.

20. With regard to inheritance of the jewellery from the parents, we observed that assessee has maintained the locker along with her mother and on 18.05.2018 subsequently, surrendered the same. Since both parents were passed away before the locker was surrendered and there is no record of maintaining the same jewellery in the lockers found during search, the assessee has also not identified relevant jewelleries which were inherited by her by way of Will or any other evidence in support of her claim. Considering various case laws relied on by the assessee in support of alternative evidence, in our considered view, Will or list of jewelleries which were passed on to the assessee as inheritance was not supported and filed before the authorities to claim the same as secondary evidences. Mere assessee's own affidavit without there being any other evidence in support of her claim may not be entertained, therefore, we are inclined to reject the same.

21. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 27th day of January, 2025.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 27.01.2025

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-27, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI