

Income Tax Search and Seizure: Seizure of undisclosed jewellery and its assessment thereupon- Legal Treatise



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Introduction:

The Central Board of Direct Taxes vide **Instruction no. 1916 dated 11-05-1994**, clarified that no seizure should be made by the Search Party of the Jewellery and Ornaments found during the course of search proceedings under Section 132 of the Income Tax Act, 1961, where the same have been duly declared in the Wealth-tax Returns filed by the taxpayer or where such ornaments are within the prescribed limits of 100, 250 or 500 grams as stated in the said instruction. The aforesaid instruction is reproduced herein under:-

"Guidelines for seizure of jewellery and ornaments in course of search

Instances of seizure of jewellery of small quantity in course of operations under section 132 have come to the notice of the Board. The question of a common approach to situations 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 be seized.*

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- (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 authorised 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. This should be reported to the Director of Income-tax/Commissioner authorising the search at 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.*

These guidelines may please be brought to the notice of the officers in your region.

Instruction : No. 1916, dated 11-5-1994."

Even where no seizure is made during the Search, following the spirit of the aforesaid instructions of the CBDT, in several cases, Assessing Officers, while finalizing the post-search assessments, make additions treating such Jewellery and Ornaments as undisclosed investment, on the ground that the taxpayer does not possess adequate evidence for acquisition of the same.

Issue for Consideration:

Instruction No. 1916 (F.No. 286/63/93-IT(INV.II), dated 11-5-1994, issued by the Central Board of Direct Taxes ('CBDT') directs the income tax authorities, conducting a search, to not seize jewellery and ornaments found during the course of search of varying quantities specified in the instructions, depending upon the marital status and the gender of a person searched. The guidelines

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are issued to address the instances of seizure of jewellery of small quantity in the course of search operations u/s. 132 that have been noticed by the CBDT. A common approach is suggested in situations where search parties come across items of jewellery for strict compliance by the authorities. The CBDT directed that 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.

The High Courts, under the circumstances, relying on the above referred instructions of the CBDT, has consistently held that the possession of the jewellery and ornaments to the extent of the quantities specified in the instruction is to be treated as reasonable and therefore explained and should not be the subject matter of additions in assessment of the total income of a person.

In case of ***CIT v. Satya Narain Patni [2014] 46 taxmann.com 440 (Rajasthan)*** the Rajasthan High Court held that the CBDT had clearly provided that prescribed limit of jewellery will not be seized, it would mean that taxpayer, found with possession of such jewellery, will also not be questioned about its source and acquisition.

In case of ***CIT v. Ghanshyam Das Johri [2014] 41 taxmann.com 295 (Allahabad)*** the Allahabad High Court held that if one goes with CBDT's Instruction No. 1916, dated 11-5-1994 and ratio laid down in case of ***Smt. Pati Devi v. ITO [1999] 240 ITR 727 (Kar.)*** then a married lady of reputed family is expected to own 500 gms of ornaments. Therefore, jewellery found in possession to that extent could not be treated as undisclosed investment.

Reliance further placed on the decision of Hon'ble Gujarat High Court in the case of ***Ratanlal Vyaparilal Jain reported in 339 ITR 351***. This decision was delivered on 19.07.2010, commenting about the CBDT Instruction No. 1916, the Hon'ble Court has observed as under:

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"Thus, although Circular has been issued for the purpose of non-seizure of jewellery during the course of search, the basis for the same recognizes customs prevailing in Hindu Society. In the circumstances, unless the revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery as stated in the Circular stands explained."

Similar view has been taken in the case of **Smt. Neena Syal reported in 70 ITD 62** by the Hon'ble ITAT Chandigarh Bench and **Mrs. Nawaz Singhania Vs. DCIT (ITAT Mumbai)**.

The jewellery of the assessee which is not seized in accordance with Instruction No. 1916 dated 11th May 1994, shall be treated as deemed explained gather further support from the decision of Special Bench of Ahmedabad ITAT in the case of **Rameshchandra R. Patel reported in 89 ITD 203**.

Reliance can also be placed on the decision Delhi Bench of the Tribunal in the case of **Mrs. Divya Devi v. ACIT in ITA No. 6397/Del/2012**, order dated 16-05-2014, wherein it is observed that it is true that the CBDT Instruction No. 1916, dt. 11th May, 1996 lays down guidelines for seizure of jewellery and ornaments. In the course of search, the same takes into account the quantity of jewellery which would generally be held by family members of an assessee belonging to an ordinary Hindu household. In the circumstances, unless the Revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery stated in the circular stands explained.

Furthermore reliance can also be placed on the decision of Hon'ble ITAT , Cuttack Branch in case of **N. Roja v. Assistant Commissioner of Income-tax [2020] 117 taxmann.com 90 (Cuttack - Trib.)**.

However, the Chennai High Court has sounded a slightly discordant note to this otherwise rational view accepted by various high courts.

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The Chennai High Court in the case of **V.G.P. Ravidas vs. ACIT, 51 taxmann.com 16 (2014)**, offered certain observations that are found to be inconsistent with the near unanimous view of the High Court that the possession of the jewellery and ornaments, to the extent of the quantities specified by the CBDT, should be held to be explained.

In this case, the assessee filed the original return of income for the assessment year 2009-2010 on 30-09-2009. The Assessing Officer, pursuant to a search u/s. 132, reopened the assessment and a reassessment was completed by him on 29-12-2010. The AO in so assessing the income, treated excess gold jewellery found and seized, of 242.200 gms. and 331.700 gms. respectively, as the unexplained income.

The assessee's appeals before the Commissioner (Appeals), were dismissed. The Tribunal confirmed the order passed by the Commissioner (Appeals). In the appeal before the High Court, the short question that arose for consideration was whether the assessee in both the cases was entitled to plead that the quantum of excess gold jewellery seized did not warrant inclusion in the income of the assessee as unexplained investment in the light of the Board Instruction No.1916 F.No.286/63/93-IT (INV.II)], dated 11-05-1994.

The Chennai High Court while dismissing the appeals, on the facts of the case before it, inter alia observed in paragraph 10 of its order as under;

*"10. The Board Instruction dated 11.5.1994 stipulates the circumstances under **which excess gold jewellery or ornaments could be seized and where it need not be seized. It does not state that it should not be treated as unexplained investment in jewellery.** In this case,*

The High Court also approved the observations of the Commissioner(Appeals) in paragraph 8 of its order as follows;

"8. The Commissioner of Income Tax (Appeals) as well as the Tribunal came to hold that since there was no explanation offered by the

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assessee before the Assessing Officer or Commissioner of Income Tax (Appeals) or Tribunal, their mere placing reliance on the Board Instruction No. 1916 [F.No.286/63/93-IT (INV.II)], dated 11.5.1994 will be no avail. In fact, the Commissioner of Income Tax (Appeals) has correctly held that the Board Instruction does not make allowance in calculation of unexplained jewellery and it only states that 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. Whereas, - -----"

The Hon'ble DELHI ITAT in case of **Nem Chand Daga V ACIT [2005] 1 SOT 515 (DELHI)**, held as under:-

"The instruction No. 1916 of the CBDT also cannot come to the help of the assessee for the simple reason that the instruction nowhere states that such jewellery found should be treated as explained and no addition towards the same should be made. The instruction only speaks that ornaments to the extent of 250 gms. in the hands of an unmarried lady and 100 gms. in the case of male person should not be seized. We, therefore, hold that the assessee failed to explain the source of acquisition of the impugned jewellery."

The Hon'ble Chennai ITAT in case of **Shri A. Ramalingam V ITO (ITA No.591/Mds/2016)**, held as under:-

"The exemption claimed by the assessee under CBDT circular is only for seizure of gold jewellery during the course of search operation. As rightly submitted by the Ld. Departmental Representative, it does not absolve the assessee from explaining the source for acquisition of such jewellery. Therefore, the CBDT circular would not come to the rescue of the assessee. The assessee is expected to explain the source for acquisition of jewellery found during the course of search operation"

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The divergent view of the Chennai High Court and certain tribunals as afore stated, suggest that the Instruction No. 1916 has a limited application and should be applied by the search authorities in deciding whether the jewellery & ornaments found during the search to the extent of the specified quantities be seized or not. Such divergent view of the judiciary appears to be suggesting that the scope of the instructions is not extended to the assessment of income and an assessee therefore cannot simply rely on the said instructions to plead that the possession of the jewellery to the extent of the specified quantity be treated as explained. An outcome of the observations of the High Court, is that an assessee is required to explain the possession of the jewellery in assessment of the income to the satisfaction of the AO independent of the fact that the jewellery was not seized and has to lead evidences in support of its possession though for the purposes of seizure, its possession was found to be reasonable by the search authorities.

Nothing can highlight the conflict better than the interpretation sought to be placed by the two different authorities of the Income tax Department. One of them, the search authority, does not seize the jewellery on the understanding that the possession thereof within the specified quantities is reasonable in the context of customs and practises prevailing in India while the another of them, the assessing authority, does not accept the possession as reasonable and puts the assessee to the onus of explaining the possession of the jewellery found to his satisfaction and failing which he proceeds to add the value thereof to his total income.

Conclusion:

The conflicting stand of the authorities belonging to the different departments of the same set up also highlights the pursuit of petty aims ignoring the larger interest of administration of justice by adopting a highly technical approach, best avoided in implementing the revenue laws. The Gujarat High Court in CIT vs. Ratanlal Vyaparilal Jain, the Allahabad High Court in Ghanshyam Das Johri's case, 41 taxmann.com 295 and the Rajasthan High Court in yet another case, Kailash Chand Sharma 198 CTR 271 have

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consistently held that the possession of the jewellery of the quantities specified in the instruction issued by the CBDT is reasonable and therefore should be held to be explained in the hands of assessee and should not be the subject matter of addition by the AO on the ground that the assessee was unable to explain the possession thereof to his satisfaction.

The Rajasthan High Court in Patni's case and the other High Courts before it, rightly noted that considering the practices and the customs prevailing in India of gifting and acquisition of jewellery and ornaments since birth and even before birth, it is not only common but is reasonable for an Indian to possess the jewellery of the specified quantity. The question of applying another yardstick for determining the reasonability in assessment does not arise at all.

The CBDT in fact goes a step further in its human approach to the issue under consideration, in paragraph (iii) of the said instructions, when it permits the search party to not seize even such jewellery that has been found to be excess of the specified quantities in paragraph(ii) where the search authorities are satisfied that depending upon the status of the family and community customs and practices, the possession of such jewellery was reasonable. The said paragraph reproduced here clearly settles the issue in favour of accepting what has not been seized as duly explained for the purposes of assessment as well.

"(iii) 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. This should be reported to the Director of Income tax/Commissioner authorising the search at the time of furnishing the search report."

This grace of the CBDT clearly confirms that the search authorities do make a spot assessment of the reasonability of possession. It is therefore highly improper, on a later day, for the assessing authority, to take a dim view of the reasonability. It is befitting

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that the AO allows the grace to percolate downstream to the case of assessment, as well. It's high time that the CBDT should issue clear directions to Assessing Officers not to make any additions in such cases. It needs to be pointed out that several judicial pronouncements have also granted relief to taxpayers relying on the aforesaid instructions. As such the matter is still open to debate with both sides of arguments. To avoid further unwarranted litigation, clarity in this regard is also required by way of a necessary specific piece of legislation or otherwise.

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ABOUT CA. MOHIT GUPTA

Mr. Mohit Gupta is a Fellow Member of the Institute of Chartered Accountants of India, a commerce graduate from prestigious Ramjas College, Delhi University and an alumni of St. Xavier's School, New Delhi. He is practicing as a Chartered Accountant for more than 15 years and managing the Direct Tax Advisory and Litigation practice of M/s. Dhanesh Gupta & Co., Chartered Accountants, New Delhi a renowned Chartered Accountancy firm in the core domain of direct taxation established in 1978.

His forte is handling Income Tax Search and Seizure matters, matters before the Income Tax Settlement Commission and other direct tax litigation matters. As on today, he has wide experience of handling Income Tax Search and Seizure Cases, representing matters before the Income Tax Settlement Commission, ITAT and other appellate tribunals. He has been contributing articles in various professional magazines/journals and addressing various seminars on topics relating to Income Tax Search and Seizure, Income Tax Settlement Commission and other allied tax matters. He has to his credit plethora of well researched articles out of which many have appeared in leading journals. In Addition to the above, Mr. Mohit Gupta is a Special Auditor of the Income Tax Department and has carried out numerous Special Audits across the country on being appointed by the Income Tax Department which have plugged tax evasions, tax base erosion and other tax manipulative practices and in turn facilitated the Income Tax Department to collect huge tax revenues. Mr. Mohit Gupta has also been appointed as Special Auditor under other tax statutes and by other Investigation Agencies of the Government of India. Mr. Mohit Gupta, authored the periodical Newsletter on Income Tax Search and Seizure. The said newsletter contained well researched write ups / articles and judicial developments on the matters of Direct Taxation. The newsletter was circulated both electronically and otherwise.

Recently, in the year 2016, Mr. Mohit Gupta have authored two comprehensive books on the Income Declaration Scheme'2016, titled as "Law Relating to Income Declaration Scheme'2016". His books provided at one place the entire gamut of the Law relating the Income Declaration Scheme '2016 and set to rest all the queries that arose before, during and after the course of making the declaration under the Income Declaration Scheme'2016. The books received an extremely overwhelming response from the readers including the proposed tax payers, tax administration, tax professionals, corporate houses and academicians. The said books were released by erstwhile Hon'ble Union Finance Minister, Shri. Arun Jaitley, Shri. Arjun Ram Meghwal, Minister of State for Finance and the Chairman of Central Board of Direct Taxes and many other dignitaries. He is about to release two comprehensive books on Income Tax Search and Seizure in few months time depending upon the normalization of the COVID situation. The release of the books have been kept on hold due to current COVID position. The first book is an in depth commentary on the Law relating to Income Tax Search and Seizure , while the second book is relating to addressal of controversial issues arising during search and seizure action, assessment and settlement commission thereupon as the case may be.

Due to his continuous desire to always rise on the learning curve, he always have a quest and quench to read more, learn more and perform even more.

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