No sec. 69A additions if jewellery found in search was within permissible limit as stipulated by CBDT in its circular

Summary – The High Court of Rajasthan in a recent case of Satya Narain Patni, (the Assessee) held that where jewellery found in possession of assessee's family was personal wearing of ladies and same was within permissible limit stipulated by CBDT Circular, no addition was to be made.

Facts

- Search and seizure operation was carried out at the premises of the assessee where certain incriminating books of account and documents were seized. During search proceeding, some cash, gold jewellery weighing 2202.5 gms. valued at Rs. 10,53,520 and some silver items were found. Considering the status of the assessee, statement given by various family members and the fact that there were four married ladies in the house including wife of the assessee, no jewellery was seized. However, the jewellery to the extend of 1600 gms. was treated as reasonable by the Assessing Officer which had been received by them at the time of their marriage and balance jewellery weighing 602.5 gms. was treated as unexplained in absence of any satisfactory explanation from the assessee. The value of balance jewellery determined at Rs. 2,88,176 was added back to the income of the assessee, treating the same as purchased out of undisclosed income. Accordingly, assessment order was passed.
- The assessee challenged the said order by submitting that entire jewellery was received by ladies/daughter-in-laws on/at the time of their marriage either from parental side or in-laws side.
- On appeal, the Commissioner (Appeals) substantially deleted the addition of jewellery to the tune of Rs. 2,88,176 made by the Assessing Officer and same was affirmed by the Tribunal.
- On appeal:

Held

- The Assessing Officer had not given any basis for restricting the claim of jewellery at 1600 gms. as reasonable while the Assessing Officer has simply mentioned about there being four ladies, but ignored that in addition to four ladies, there were four male members so also three children are considered, then even factually the claim of respondent assessee appears to be reasonable in the light of the aforesaid instruction dated 11-5-1994. If the circular is strictly followed, then to the extent of 2700. gms, no jewellery could be seized. [(500×4 (for ladies) + 100×7)(for male + children) =2700 gms.]. In the aforesaid facts, this Court fail to understand the basis of 1600 gms. held reasonable by the Assessing Officer.
- The Central Board of Direct Taxes keeping in view the status of the family, customs and practice of the community, came down with the said circular and one has to go with the weight and not with

the value as the value may fluctuate over the years. The Tribunal has also appreciated the fact on record that the marriage of three sons were performed in the year 1996, 2000 and 2003 and all the marriages including the assessee and three sons were performed prior to 2003. It is also on record that the statement of various family members were recorded and none has stated that these are not personal wearing jewellery and same were received by the respective ladies/daughter-in-law on/or at the time of their marriages either from the parental side or in-laws side and even subsequently at the time of birth of their children.

- On perusal of the circular of the Board, it is clear that in the case of wealth tax assessee, whatever gold jewellery and ornaments have been found and declared in the wealth tax return, need not be seized. However, sub-clause (ii) prescribes that in 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. Sub-clause (iii) also prescribes that 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.
- The circular of the CBDT, dated 11-5-1994 only refers to the jewellery 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 and it does not speak about the questioning of the said jewellery from the person who has been found with possession of the said jewellery. However, the Board, looking to the Indian customs and traditions, has fairly expressed that jewellery to the said extent will not be seized and once the Board is also of the express opinion that the said jewellery cannot be seized, it should normally mean that any jewellery, found in possession of a married lady to the extent of 500 gms. 250 gms. per unmarried lady and 100 gms per male member of the family will also not be questioned about its source and acquisition. At the time of wedding, the daughter/daughter-in-law receives gold ornaments jewellery and other goods not only from parental side but in-laws side as well at the time of 'Vidai' (farewell) or/and at the time when the daughter-in-law enters the house of her husband. Thereafter also, she continues to receive some small items by various other close friends and relatives of both the sides as well as on the auspicious occasion of birth of a child whether male or female and the CBDT, looking to such customs prevailing throughout India, in one way or the another, came out with this Circular and it should also mean that to the extent of the aforesaid jewellery, found in possession of the various persons, even source cannot be questioned. It is certainly 'Stridhan' of the woman and normally no question at least to the said extent can be made. However, if the authorized officers or/and the Assessing Officers find jewellery beyond the said weight, then certainly they can question the source of acquisition of the jewellery and also in appropriate cases, if no proper explanation has been offered, can treat the jewellery beyond the said limit as unexplained investment of the person with whom the said jewellery has been found.
- Admittedly, looking to the status of the family and the jewellery found in possession of four ladies, was held to be reasonable and therefore, the authorized officers, in the first instance, did not seize

the said jewellery as the same being within the tolerable limit or the limits prescribed by the Board and, thus, subsequent addition is also not justifiable on the part of the Assessing Officer and rightly deleted by both the two appellate authorities namely Commissioner (Appeals) as well as the Tribunal.

- It can also be observed here that prior to 1992, when the exemption limit under the Wealth Tax Act was about Rs. 1,00,000 or Rs. 1,50,000, then in most of the cases, returns were filed under the Wealth Tax Act because even in case of possession of 500 gms. per lady and the other assets, namely, capital investments in firms/shares, landed property, etc. being taxable return of wealth were invariably filed by the assessees. However, by the Finance Act, 1992 with effect from 1-4-1993 drastic change was introduced under the Wealth Tax Act where only some assets under section 2(ea) came within the purview of the definition of an 'Asset' under the wealth tax and by and large, the other assets, namely, liquid, capital investments in firms/shares, one house property, commercial assets were exempt and even the limit of other assets was raised to Rs. 15 lacs (for the assessment years 1993-94 to 2009-10) and thereafter, by and large, even the assessees, who were furnishing returns prior to 1-4-1992, in view of the drastic amendment made under the Wealth Tax Act, chose not to file wealth tax return as there was no liability for furnishing wealth tax returns. That does not mean that whatever assets were there in their possession, not disclosed under the Wealth Tax Act, remained undisclosed. May be, later on, on account of increase in the gold /silver prices, value of gems/stones, value of jewellery may have exceeded but that does not mean that if a person has not filed wealth tax return, then jewellery even to the said extent of 500 gms. prescribed by the aforesaid circular, became undisclosed. Admittedly, it is not the case of the revenue that the jewellery, so found, which has been prescribed hereinabove, was not admitted by the family members at the time of search. All the ladies in the family admitted that the jewellery found were all their own and some of the jewellery was lying in custody and control of their mother-in-law and in Indian conditions, it happens that the daughter-in -law keeps her jewellery with her mother-in-law or and head of the family and takes the same whenever required for some occasion in the family. Even otherwise, the jewellery is personal wearing in nature and the revenue has not placed any material on record to show that the items, which were found, were not personal wearing of the ladies.
- Thus, no substantial question of law arise out of the order passed by the Tribunal.