

## **Implications of Jewellery Found during the course of search u/s 132 of Income Tax Act, 1961 ('The Act')**

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### **1. Brief Background:**

Section 132 of the Act confers highest power to the income tax department ('Department') to invade into the privacy of a person. As per this section, a search and seizure action can be carried out, *inter alia*, in the case of any person who is in **possession of any money, bullion, jewellery** or other valuable article or thing and such money, **bullion, jewellery** or other valuable article or thing **represents either wholly or partly income or property which has not been disclosed or would not be disclosed for the purpose of the Act**. The department has power to seize any such money, bullion, **jewellery** or other valuable article, if found unexplained at the time of search. Most commonly, during the course of search action, jewellery is seized from either the residential premises or the bank locker. However, in many of the cases, searched person(s) are not aware of the benefits available to them under the Act. In this article, we will elaborately discuss all the possible benefit available to the searched person(s) in respect of jewellery found during the course of search.

### **2. Power of authorised officer to Seize Jewellery during the course of search under section 132 of the Act**

The **power of the authorised officer to seize** jewellery during the course of search **is derived from clause (iii) of sub-section (1) of section 132**, which reads that the **Authorized Officer should seize any such books of account, other documents, money, bullion, jewellery, or other valuable article or thing found as a result of such search**. However, as per the proviso to the said clause, any bullion, jewellery or other valuable article or thing, **being stock-in-trade of the business**, found as a result of such search **shall not be seized** but the authorised officer shall make a note or inventory of such stock-in-trade of the business. It is pertinent to note that the seizure of jewellery mainly depends upon two situations:

- (a) when assessee has disclosed such jewellery in wealth tax return
- (b) when assessee has not disclosed such jewellery in wealth tax return

2.1 **The Hon'ble Orissa High court in the case of Puspa Ranjan Sahoo Vs Assistant Director of Income-tax (INV) [2012] 26 taxmann.com 83** has referred to Circular No. 8 of 2003 dated 18-9-2003, Instruction No. 7 of 2003 dated 30-7-2003 and held that under section 132 of the Act, **no power/authority is vested with Assessing Officer to seize any bullion, jewellery or valuable article or thing being stock-in-trade** even if he comes to conclusion that said stock-in-trade represents wholly or partly undisclosed income or property of assessee.

### 3. **Guidelines as per Instruction No. 1916 dated 11<sup>th</sup> May. 1994**

3.1 In the matter of seizure of jewellery, the Central Board of Direct Taxes ('CBDT') has issued guidelines vide Instruction No. 1916 dated 11th May, 1994. As per the said guidelines, CBDT has laid down instances as to when jewellery found need not be seized. Such instances are as under:

- (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.

3.2 In nutshell, CBDT has clarified that no seizure of gold jewellery found during the course of search, should be made by the Authorised Officer, when,

- (a) Searched person has disclosed jewellery in its wealth tax return,
- (b) Where the jewellery is within the prescribed limit i.e 500 grams for married lady, 250 gram for unmarried lady and 100 grams for male members.
- (c) Authorised Officer may exclude a larger quantity of jewellery from seizure having regards to status and customs of community to which they belongs.

It is pertinent to note that CBDT has laid down guidelines for the 'seizure' of the jewellery found during the course of search. **However, it has been in various judicial pronouncement** (discussed here under) that although CBDT instruction is a guideline for not carrying out seizure during the course of search, it inter-alia indicates the intention that **the jewellery to the extent specified in instruction should be treated as explained jewellery in the hand of searched person.**

#### 4. **Judicial Pronouncements interpreting aforesaid CBDT's Instruction/guideline on seizure of jewellery:**

4.1 Hon'ble Courts, on number of occasions, have interpreted the aforesaid CBDT Instruction , to hold that the source of purchase of jewellery found from searched person to the extent of specified in the said instruction stood explained and therefore can't be treated as undisclosed investment.

- (a) **Gujarat High court** in the case of **CIT v. Ratanlal Vyaparilal Jain (2011) 339 ITR 351** has held that even though the circular had 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. It is up to the Revenue to shows anything to the contrary or else, **it can safely be presumed that the source to the extent of the jewellery stated in the circular stands explained.**
- (b) **Allahabad High court in the case of Commissioner of Income-tax, (Central), Kanpur vs. Ghanshyam Das Johri [2014] 41 taxmann.com 295**

- (c) **Rajasthan High court** in the case of **Commissioner of Income-tax, Alwar vs. Satya Narain Patni [2014] 366 ITR 325**
- (c) **Rameshchandra R. Patel [2004] 89 ITD 203, Hon'ble ITAT Ahmedabad Bench (TM)**
- (d) Surat ITAT in the case of SMT. Kasturben m. Pithavadiwala in ITA No 70 to 72/AHD/2017 dated 11/02/2020

#### 4.2 **Excess Jewellery Found than prescribed in the CBDT Instruction :**

Keeping in mind the high status and customary practices prevailing in one's community various courts have held that EXCESS JEWELLERY (more than the prescribed limit as per clause (ii) of Board's Instruction) found during the course of search will not be considered as unexplained as per the clause (iii) of the Instruction. It has been held that married ladies receiving jewellery in the form of 'stree dhan' during her long married life on various occasion like birth of child, birthdays, marriage anniversaries, etc., and accumulated over a period of years are to be exclude.

- (a) **Delhi High court in the case of Ashok Chaddha [2011] 14 taxmann.com 57** wherein the Hon'ble High Court has accepted the jewellery of 906.60 grams in the case of married lady even without documentary evidence. The court stated that collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. The court has held that it is a normal custom for woman to receive jewellery in the form of "stree dhan" or on other occasions such as birth of a child etc.

**Hon'ble Delhi High Court** following the decision of Ashok Chaddha (supra) in the case of **Sushila Devi [2016] 76 taxmann.com 163** has held that the gold jewellery which is acquired through gifts made by relatives and other family members over a long period of time, is in keeping with prevailing customs and habits.

- (b) **Hon'ble Ahmedbad ITAT in case of Smt Jayshreeben Patwa ITA No. 598/Ahd/2011 dated 01/03/2013**
- (c) **HYDERABAD ITAT** in the case of **R. Umamaheswar v. Deputy Commissioner of Income-tax [2015] 38 ITR(T) 790** has held that the gold jewellery in excess of what is specified in the instruction, found during the course of search can reasonably be treated as explained, being the streedhan of the Assessee's wife, having been

received by her on the occasion of marriage as well as subsequent occasions over the period.

- (e) **ITAT DELHI BENCH 'A' in the case of Vibhu Aggarwal v. Deputy Commissioner of Income-tax, CC-06, New Delhi [2018] 93 taxmann.com 275** has held that where gifting of jewellery possessed by each of family members was customary and jewellery was gifted to Assessee and his wife by their parents and grandparents and other relatives at time of their marriage, and also on several occasions after that, such as birth of their two children, marriage anniversaries, etc., excess jewellery found was nominal, keeping in mind high status and more customary practices and stands explained.
- (f) **Delhi ITAT in case of Radha Mital and Ruchie Mital Vs. DCIT in ITA No: 2810/Del/2016** dated 09/07/2016 held that Jewellery found in excess of limited prescribed by the above circular as explained **on the ground that jewellery belongs to the assesseees having received as "streedhan" on the occasion of marriage and also received subsequently on occasions like birth of child etc** *in* pursuant to customs/tradition of family. The Assessee belonging to 'Baniya' family have been married since 35 years and 8 years. Further they were jointly residing with their mother *in* law Shanti Mittal who had been married for about 65 years. Apart from the above the family comprised of husband of both the assessee and son. Thus looking to the tradition of family Hon'ble Tribunal has accepted the Jewellery in excess of limit prescribed by the above circular was in view of the fact that the same being received as **Streedhan during the course of Marriage and subsequent marriage.**

It is also pertinent to consider the decision of **Hon'ble Madras High Court in the case of V.G.P. Ravidas.v. ACIT (2015) 370 ITR 364 and V.G.Selvaraj.v. ACIT (2015) 370 ITR 364** wherein it is held that the CBDT Instruction enable Assessing Officer to exclude a larger quantity of jewellery and ornaments from seizure, only if there are circumstances to come to conclusion that status of family and custom and practices of the community require holding of such jewellery. If Assessee does not offer any such explanation, the instruction will not be applicable and excess jewellery may be seized and considered as unexplained investment.

## 5 OTHER IMPORTANT ASPECTS:

- 5.1 **Whether credit for jewellery prescribed as per CBDT Instruction is over and above the purchased Jewellery reflecting in books of account of the Assessee? – Yes.**

Recently, **JAIPUR ITAT in the case of Ram Prakash Mahawar v. Deputy Commissioner of Income-tax, Central Circle Alwar [2020]** 115 taxmann.com 241 has observed that the CBDT Instruction No. 1916 allows the specific quantity as reasonable and stands explained, which, indeed does not include the jewellery which is otherwise explained by proof of documents of acquisition as well as declared/recorded in the books of account of the Assessee. Therefore, the benefit of said Instruction would not take away the benefit of the jewellery acquired and reflected in books of account of the Assessee.

**5.2 Whether seizure is possible when gross weight of jewellery disclosed in regular returns is in excess of gross weight of jewellery found in search?**

**Mumbai ITAT in the case of Mrs. Nawaz Singhania v. DCIT [2017]** 88 taxmann.com 327 has held that where gross weight of jewellery disclosed by family in their regular returns was in excess of gross weight of jewellery found in search, no seizure was possible and, thus, no addition to income would consequently be permissible. It has also pointed out that jewellery may be frequently converted into different design depending on the needs and status of the family as well as customs and practices of the community and therefore, comparison of item to item may not be possible with the weight disclosed in regular returns.

Following the Nawaz Singhania's decision (supra), **ITAT CHANDIGARH in the case of Shri Rakesh Bansal, VS The Asstt. CIT, Central Circle-II, CHANDIGARH 2020 (1) TMI 982** has held that no addition is called for when total gold jewellery available with the Assessee as shown in the Wealth Tax Return and obtained on maturity of Gold Bond Scheme which is more than the gold Jewellery weighing found during the course of search.

**5.3 Whether source of jewellery found being part of the ancestral / inheritance jewellery attained through WILL, needs to be proved? – Yes.**

As stated earlier, CBDT Instruction provides that during the search, no seizure of gold jewellery and ornaments to the extent of 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family shall be made. It is submitted that legitimate holding of jewellery to the extent is fully protected if source of such jewellery is explained. In case of jewellery is claimed to be as per WILL, the Assessee has to provide corroborative evidence substantiating that WILL executed prior to search. In the matter of ancestral / inheritance jewellery, assessee has to provide copy of will to substantiate jewellery in possession.

In the case where the Jewellery is **received by Assessee in inheritance** than such jewellery should be considered to have been explained. In such situation it can be argued that the term “**person**” **contained in the circular CBDT Instruction No. 1916 would refer not only to living member of the family but also deceased members.** Thus the jewellery of such deceased which according to Hindu Traditions is kept safe with legal heir / inheritor should be considered as explained. Thus no adverse inference should be taken in case the jewellery is received by the person searched by way of inheritance. Recently **facts of the case before Delhi ITAT in case of Suneela Soni Vs. DCIT vide ITA No: 5259/DEL/2017 dated 16/03/2018** was that jewellery found from the joint lockers(in name of husband and father in law) was explained to be belonging to Late mother in law of the assessee and considering ratio of decision of Ashok Chadha(Supra),

**5.4 Whether Diamond Jewellery or Gold Bar (Bullion) found during the course of search can be included within the prescribed limit as stipulated in Board’s Instruction? – No.**

5.4.1 The prescribed limit in the Clause (ii) of CBDT Instruction No. 1916 dated 11<sup>th</sup> May, 1994, specifically deals with the gold jewellery and ornaments. Therefore, benefit of instruction is not available in respect of diamond studded in the gold jewellery or diamond jewellery. Similarly, benefit of instruction is also not available in respect of Gold Bar (Bullion) or gold coins found during the course of search. However, if it is substantiated that such gold bar or coin were made by melting old jewellery and source of such jewellery is explained along with the remaking bill then it will be considered as explained.

5.4.2 However the dispute may arise as to whether **the diamond studded in the gold jewellery will be covered as per the CBDT Instruction No. 1916 dated 11<sup>th</sup> May, 1994.** It can be argued that the gold jewellery found from the persons searched if covered within the permissible limits prescribed as per CBDT Instruction No.1916 than the diamond studded in such gold jewellery will be given benefit on the ground that such diamond jewellery is equated with the gold jewellery. The diamond jewellery included in the gross weight of the jewellery found from the persons seared if covered within the limit prescribed

by above circular than no adverse view should be taken against Assessee. e Delhi ITAT in case of **Kumkum Kanodia Versus DCIT vide ITA No: 5260/Del/2014 dated 20/11/2018** observed that merely because the jewellery is studded with the diamond of 47.18 carat in the instant case, the same cannot be added in the hands of the assessee when such jewellery formed part of the gross weight of the jewellery found from the premises of the assessee which is within the permissible limits prescribed as per CBDT Instruction No.1916 dated 11th April, 1994.

5.4.3 **Indore ITAT** in case of **SHRI DINKAR LAXMAN MUJUMDAR Vs. DCIT in ITA No: 593/Ind/2017 dated 18/10/2018** has allowed benefit of above circular to the silver article found during the course of search considering the customs of the Indian culture .

5.5 **In which year, addition of the unexplained jewellery should be made?**

Section 69A provides that where in any financial year, an assessee is found to be the owner of any jewellery which is not recorded in the books of account and the explanation offered by assessee about the nature and source of acquisition is not satisfactory, then value of such jewellery would be deemed to be income of the assessee in the year in which the assessee was found to be the owner of the jewellery. Meaning thereby, in terms of section 69A, Assessee would be treated in possession of jewellery, when jewellery was found and seized by revenue, and would be taxed as unexplained investment in the year in which it was found i.e. mostly in the year of search.

5.6 **Whether application to release the seized jewellery can be made? – Yes.**

If during the course of search, any jewellery or ornaments seized by the authorised officer, then in view of the proviso to section 132B(1) of the Act, an application to the assessing officer shall be made within thirty days from the end of the month in which the asset was seized. In the said application for release of seized jewellery, Assessee has to explain the nature and source of jewellery and other valuables found during the course of search to the satisfaction of the Assessing Officer.



**6. Conclusion:**

- 6.1 It is worthwhile to mention here that generally bank locker is opened either in the name of lady member or jointly with lady member of the family. In such cases, to operate the bank locker, a warrant u/s 132 is required and due to issuance of search warrant in the name of lady member, assessment of six assessment years u/s 153A shall be re-opened. In other words because of the issuance of warrant u/s 132 of the Act, to operate the said bank locker , lady member would require to face notices for six years assessment years u/s 153A. In case, if such locker is opened in only in the name of male members, and jewellery found from such locker partly or fully belong to any lady member then such lady member may face proceeding u/s 153C of the Act. In such case notice for specific years and not all six assessment year will be issued.
- 6.2 Further, if during the course of search, any jewellery is found from the possession of the Assessee, then he has to explain such jewellery to the satisfaction of the authorised officer with proper documentary evidences.
- 6.3 The necessary facts relating to gold ornaments, how the same are acquired by family etc , whether such gold is acquired through gift or inheritance etc need to be mentioned in statement recorded u/s 132(4) of the Act as such statement carried weight and has more evidentiary value in search proceedings as well as subsequent assessment proceedings. In some cases it is observed that jewellery found from the locker of a person/from room of a person, actually belong to other family member of the group. In such cases, the proper facts should be brought-out in the statements recorded during and in post search proceedings mentioning the name of the person to whom said jewellery actually belong to and if require, necessary affidavits may be filed.

Keeping in view of the guidelines laid down by the CBDT Instruction No. 1916 dated 11<sup>th</sup> May, 1994 for seizure and subsequent judicial pronouncements by various higher authorities interpreting the instruction, one may take the benefits of it to explain the jewellery found during the course of search keeping in mind the facts and circumstances.