

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

+ **ITA 12/2006**

Reserved on: 4<sup>th</sup>, November, 2009

Date of Decision: 23<sup>rd</sup> December, 2009

SMT. URMILA GAMBHIR  
LEGAL HEIR OF LATE SHRI SUBHASH GAMBHIR  
1/14, WEST PATEL NAGAR, NEW DELHI-8 ..... Appellant

Through: Mr. Prem Nath Monga, Adv.

versus

COMMISSIONER OF INCOME TAX, NEW DELHI  
..... Respondent

Through: Mr. Sanjeev Sabharwal, Adv.

% **CORAM:**

**HON'BLE MR. JUSTICE A.K. SIKRI**

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

## **J U D G M E N T**

***A.K. SIKRI, J.***

1. The Appellants are the legal heirs of late Sh. Subhash Gambhir who was the assessee in this case. He was one of the Promoter Directors of M/s. D.D. Industrial Corporation Limited (hereinafter referred to as "the company"). On 29<sup>th</sup> August, 1996 a search was conducted by the Revenue department under Section 132 of the Income Tax Act at the residential premises of the assessee i.e. 1/14, West Patel Nagar, New Delhi as well as at the premises of the company at its registered office at Karampura, New Delhi. Certain

documents were found and seized during the search which included Annexure A-6, a loose sheet of paper and jewellery from the bank lockers was also seized. After the search, the Assessing Officer (AO) issued notice dated 12<sup>th</sup> February, 1997 under Section 158BC of the Act to the assessee. Similar notice dated 11<sup>th</sup> December, 1997 was issued to the company as well. Enquiries were thereafter made, particularly regarding Annexure A-6 which was, as mentioned above, a sheet of paper and contained following hand written text:

“Architect	140.00
Mutation	150.00
Brokerage	650.00
Expenses for Register	172.09
K. Lal (M.M. Suri)	50.00
Registration for name etc.	100.00
Cost of L.	50500.00
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	51,762.00
	=====”

2. According to the Assessing Officer the figures were in hundreds and the dot in between the figures had no meaning. For example, against the Architect where the figure of 140.00 is mentioned, it actually meant Rs.14,000/-. In this way the total consideration in respect of agricultural land purchased by the assessee in village Bhigan, Tehsil Gannaur, District Sonapat was Rs.51,76,200/-. The Company submitted its reply dated 23<sup>rd</sup> July, 1997 *inter alia* stating that the company had purchased the said agricultural land which was duly recorded by it in its books of account. It never made any investment of Rs.51,76,200/- nor Annexure A-6 mentions such a payment.

3. The Assessing Officer, however, issued letter dated 16<sup>th</sup> September, 1997 requiring the company to show cause as to why Rs.51,76,200/- be not treated as company's unexplained investment. The company was also required to produce certain persons whose names were mentioned in Annexure A-6 page 34. In this letter A.O. also mentioned about another loose paper pages 4 and 5 of Annexure A-6 which according to the A.O. revealed the rate of land Rs.17 to 20 lacs per acre.

4. On 19<sup>th</sup> September, 1997, the company made detailed reply to the A.O.'s letter dated 16<sup>th</sup> September, 1997 categorically denying any such investment of Rs.51,76,200/- in the purchase of land. The company also explained that page no.34 of Annexure A-6 had no relation with pages 4 and 5 of Annexure A-6. No photocopies of pages 4 and 5 of Annexure A-6 which were only shown to the counsel of the company was made available to the company. The company denied pages 4 & 5 of Annexure A-6 suggesting land rate @17 to 20 lac per acre. In support of its case, the company also submitted affidavits of the vendors of the land from whom the pieces of Agricultural land were purchased as per details given in its earlier letter dated 23<sup>rd</sup> July, 1997 appearing at pages 47 to 51, particularly page 49. The company also placed on A.O.'s record the report dated 29<sup>th</sup> July, 1997 of the valuer for the valuation of the land purchased. This valuation was done as on January, 1997. The explanation, however, was not to the satisfaction of the A.O. who passed orders dated 31<sup>st</sup> October, 1997 in the case of the company making addition of Rs.51,76,200/- on protective basis.

5. On 15<sup>th</sup> September, 1997, the A.O. issued letter to the assessee on the basis of Annexure A-6 requiring him to explain as to why addition of Rs.34,71,135/- (Rs.51,76,200 (-) Rs.16,97,065/-) be not treated as undisclosed income for the assessment year 1996-97. The assessee replied to the same on 19<sup>th</sup> September, 1997 giving similar explanation which were given by the company in the case of the assessee. On 30<sup>th</sup> September, 1997, the A.O. passed order under Section 158-BC on the Appellant *inter alia* making addition of Rs.51,76,200/- on account of undisclosed income being the investment in the purchase of land at village Bhigan. The A.O. also made further addition of Rs.8,86,794/- as the Appellant's undisclosed income from alleged investment in the purchase of jewellery relating the same to the assessment year 1997-98.

6. As far as addition on account of jewellery is concerned, the assessee's explanation was that the jewellery found with him included jewellery worth Rs.10,96,379/- which belonged to his mother-in-law Smt. Raj Rani Kapoor and was kept with him for safe custody. The assessee had also furnished reconciliation of jewellery found from the premises and jewellery owned by the assessee and his family members vide his letter dated 16<sup>th</sup> September, 1997, however, explanation of the assessee was rejected by the A.O. resulting in the aforesaid addition.

7. The additions made by the A.O., as aforesaid, were challenged in appeal before the Income Tax Appellate Tribunal (ITAT). The ITAT by a common order passed both in the case of the assessee and the company upheld the two additions made in the case of the assessee as his undisclosed income under Section 158B(b) of the Income Tax Act.

The A.O. also had made the protective addition of Rs.51,76,200/- in the hands of the company which was deleted by the ITAT. Against the order of the ITAT, present appeal is preferred in which following two questions of law were framed while admitting the appeal:

- “A. Whether on the facts and in the circumstances of the case and on the true interpretation of Section 158 BB(b) of the Act, there was any material for the ITAT in upholding that loose paper Annexure A-6 page 34 in the total of which was Rs.51762/- found on search represented the sum of Rs.51,76,200/- was the assessee’s undisclosed income for the block period relating the same to the assessment year 1996-97.
- B. Whether on the fact and in the circumstances of the case, the ITAT was right in law to hold that the sum of Rs.8,86,794/- representing the alleged unexplained investment in the purchase of jewellery found on search represented the appellants undisclosed investment for the Asst. Year 1997-98.”

We now take up discussion on these questions.

**Re: Question No.1**

8. The learned counsel for the Appellant submits that the impugned order passed by the ITAT is erroneous in point of law and is legally vitiated. The impugned order passed by the ITAT has also been questioned as perverse and legally unsustainable in the eyes of law. The Appellant contends that Annexure A-6, page 34 is a loose sheet of paper unsigned, undated, it gives no particulars of any land, area, size or location or Khasra No. of any land. It is a vague document and admits of no such interpretation of purchase of any

land for value Rs.51,76,200/- by the Appellant. The scribbling on a loose sheet has no evidentiary value in the eyes of law. There is no search material with the A.O. to support this loose sheet of paper to sustain addition of Rs.51,76,200/-. The document does not speak for itself and is a dumb document unsupported in material particulars of any search material and needs to be rejected having no evidentiary value. There is no warrant to read 51762/- as Rs.51,76,200/-. Reliance is placed on **296 ITR 619 (Del.)-CIT** vs. **Girish Chaudhary**, which is a Division Bench judgment of this Court against which even SLP filed by the revenue in the Supreme Court has since been rejected vide order dated 15<sup>th</sup> February, 2008. It was argued that the Appellant had made no purchase of any agricultural land. It was the company which purchased Agricultural land, which was duly recorded in the books as per its Balance Sheet as on 31<sup>st</sup> March, 1996. The details of the investment in land, including the names and addresses of the vendors and the price paid was duly disclosed by the company in its letter dated 23<sup>rd</sup> July, 1997 addressed to the A.O. who issued show cause to the company. The vendors of the land had even filed affidavits in support of the transactions, correctness which have remained uncontroverted. The assumption that the Appellant as one of the Promoter Directors made investment in the purchase of agricultural land for the company was totally misplaced and unfounded, based on no evidence, but on surmises and conjectures on which no assessment could be founded in law. The ITAT, it is contended, merely reproduced the A.O.'s order and concluded by para 22 of their order by saying that Annexure A-6, page 4 and 5 supported the Revenue's case for reading Annexure A-6 page 34 to be

Rs.51,76,200/-, the land rate in the area was Rs.17 to 20 lacs per acre and the land purchased in the name of the company being approximately the same area, the A.O. was justified in making addition. The Appellant contends that the impugned order of the ITAT is based on no facts or evidence. Annexure A-6, pages 4 and 5 was not made available to the assessee even though stated to be found and seized from assessee's residence. Reliance therefore on such a document thus totally vitiated the impugned order passed by the ITAT. Even the company was not given copy of any such document.

9. The learned counsel further pointed out that the said document was not even made available to the ITAT by the Revenue, nor was it made available to this Court even after time was taken by the learned Senior Standing Counsel for the Revenue to do so. The impugned order of the ITAT which takes support from Annexure A-6, pages 4 and 5 to sustain its conclusion vide para 22 of its order is thus legally vitiated. It is a blatant case of violation of principles of natural justice. The order of the ITAT is also perverse. Independently Annexure A-6 page 34 has no legs to stand on being a dumb document which otherwise also lacks all the necessary details to sustain any addition. Learned counsel has also relied upon the decision of the Supreme Court in the case of **Central Bureau of Investigation vs. V.C. Shukla-(1998) 3 scc 410 (SC)**. It is further pointed out that the letter dated 15<sup>th</sup> September, 1997 issued by the A.O. to the Appellant requiring it to explain about Annexure A-6, page 34. This notice to the assessee by the A.O. makes no mention of Annexure A-6 page 4 and 5 and yet the ITAT has taken support of this document to reach its conclusion vide para 22 of its order. This further vitiates the

impugned order of the ITAT which also needs to be declared as perverse.

**10.** Mr. Monga also argued that Section 158BB(b) read with Section 69 casts burden on the Revenue to prove any undisclosed income which may be attributed to the assessee. This burden in the present case has not been discharged by the Revenue. The Revenue has by reaching its conclusion acted only on surmises and conjectures without there being any such material to support its findings and conclusions. No material has been found to show that the assessee in the present case has invested any amount in the purchase of land. The fact that the assessee happens to be one of the Promoter Directors of the company and, therefore, could be deemed to have invested some amount which is interpreted to be a fabulous figure of over Rs.51 lacs for the purchase of land in the name of juristic person which is totally different under the law is too far fetched to sustain the conclusion reached by the ITAT which is final fact finding authority and has to act on some material and not to go by irrelevant and erroneous consideration, basing their conclusion on mere conjectures and surmises. The ITAT has to act judicially and has to weigh all the pros and cons of the case for and against the assessee to reach its conclusion. Learned counsel has in this regard referred to the case of ***Lalchand Bhagat Ambica Ram vs. Commissioner of Income-tax, Bihar and Orissa-37 ITR 288 (SC)***. It is submitted that this having not been done by the ITAT in the present, the impugned order is legally vitiated and cannot be sustained in the eyes of law. There being thus no cogent and reliable material found on search, the impugned addition of Rs.51,76,200/- could not legally be sustained.



**11.** Learned counsel for the Respondent has refuted the statement referred to the decisions of the authorities below had taken view on the facts on record which should not be interfered with. The detailed submission in this behalf shall be taken note of while discussing the issue.

**12.** To summarize, the contention of learned counsel for the Appellant is that Annexure A-6 which is a loose sheet of paper is a dumb document with no evidential value and, therefore, could not have been relied upon by the authorities below for arriving at any conclusion much less for the authorities on making additions in the income of the assessee; there was no causing connection between that paper and purchase of agricultural land at village Bhigan, Tehsil Gannaur, District Sonapat; there was no basis for arriving at figure of Rs.51,76,200/- even on the basis of the said document; in any case the deed regarding that land was in the name of the company and addition could not have been made at the hands of the assessee; the said document was not made available to the ITAT by the Revenue and, therefore, reliance thereupon amounted to violation of principles of natural justice; the burden was on the Revenue to prove any undisclosed income at the hands of the assessee, which was not discharged by the Revenue.

**13.** It is not in dispute that these very arguments were raised by the assessee before the A.O., in the appeal before the CIT(A) and thereafter before the ITAT as well. The ITAT has discussed the order of the A.O. in detail, on the basis of which the A.O. made the additions. What is not in dispute is that a document including Annexure A-6 were found and seized from the premises of the

assessee during the search. The assessee did not disown this document or stated that it did not belong to him. His explanation was that this document had no connection with the purchase of the land by M/s. D.D. Industrial Corporation Limited at village Bhigan, Tehsil Gannaur, District Sonapat. It is only a rough estimate of the cost of setting up of a new project in and around Gurgaon and that this paper did not have any description of khasra number of any land and it also did not contained address of any person. In this backdrop, the A.O. dealt with the aforesaid contention to find out as to whether the document has any connection with purchase of land by M/s. D.D. Industrial Corporation Limited at village Bhigan, Tehsil Gannaur, District Sonapat or it related to setting up of a new project in and around Gurgaon only. Since there was no denial that the said paper was related to the purchase of the property, it was for the assessee was to demonstrate how it was related to the proposed purchase of land in and around Gurgaon. The A.O. found that the assessee had failed to furnish any details of land which he proposed to purchase in and around Gurgaon. No project details, which he was planning to have at the said land, had been furnished by the assessee. He had also failed to produce Mr. K. Lal (M.M. Suri) against whom 50.00 is mentioned in the said sheet of paper. He also observed that nature of the figures in the paper clearly suggested that they were not appropriate expenses to be paid but expenses actually incurred on various accounts mentioned in the said paper. Commenting upon the figures mentioned, which could only be in hundreds, the A.O. opined that it was highly improbable that the architect fee would only Rs.140/-, mutation charges would be only Rs.150/- and the brokerage

would be only Rs.650/-. Therefore, he concluded that the figures were in hundreds. Proceeding further on that basis, according to him cost of land was Rs.50,50,000/- and other expenses Rs.16,08,500/- and in this manner total cost of land came to Rs.66,58,500/-. If the brokerage of Rs.65,000/- is to be taken into consideration, it comes within the range of 0.75 to 1% of the cost of land which was keeping in view of the prevalent brokerage. Further, significant finding arrived at by the A.O. and noted by the Tribunal are as under:

**“12.** The AO further observed that the assessee in his statement recorded on 19.10.96 admitted having met and discussed regarding project with Shri K. Lal from the office of Shri M.M. Suri, consultant for the projects. However, the assessee and any of his company had not shown any expenses on a/c of consultancy charges paid to Shri K. Lal. No consultant would provide consultancy without charging the fees. The payment of Rs.5000/- shown at page 34 of Annexure A-6 to Shri K. Lal would show the relationship between the assessee, paper and Shri K. Lal. This would further prove that this paper relate to the land purchased for DD Industrial Corpn., which had started its activities subsequent to the search. The assessee itself had admitted having discussed regarding negotiation with foreign company and its components for project at Gannaur with Shri K. Lal in the month of May & June 96 in his reply to question 7 & 8 of the statement recorded on 19.11.96. Thus the AO observed that this proved the close nexus between Shri K. Lal, the page and the land at village Bhigan.

**13.** The AO also observe that page 36 of Annexure AA-140 was the site plan for the said land and no expenses of this a/c had been shown to have incurred in the books. The expenses/payment to architect and Shri K. Lal as reflected in page 34 of Annexure A-6 would further substantiate that this paper related to the unaccounted

expenditure of the assessee on a/c of purchase of land at village Bhigan for DD Indl. Corpn. The assessee failed to furnish the details of the persons who had made this site plan. When specifically confronted in question no.14. The assessee replied that one Shri S.K. Arora had made this plan.

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**15.** The AO further noted that page 4 & 5 of Annexure A-6 which were the sketches of the land in village Bhigan showed the land rate was thus arranging from 17 lakhs to 20 lakhs per acre. Thus the AO observed that this also proved that the consideration of Rs.1600,000/- for 4 acres of land shown by the assessee in its books of a/c was understated value of land. The unexplained investment had been shown in page 34 of Annexure A-6.”

**14.** On that basis he arrived at a finding that the said sheet of paper was connected with purchase of loan at village Bhigan, Tehsil Gannaur, District Sonapat in the name of M/s. D.D. Industrial Corporation Limited. Since the company was incorporated in January, 1996 only and it had not started its functions, there was no occasion of generation of unaccounted or accounted income for the company. For this reason he made actual additions in the income of the assessee who was the promoter of the said company and protective assessment was made in the name of the company.

**15.** CIT as well as ITAT have confirmed the aforesaid findings. The ITAT observed that once it is found that slips were found from the possession and control of the assessee, then onus was upon the assessee to prove the contents of the slips, since these contents of the slip was within the knowledge of the assessee and he fails to discharge this onus.

**16.** The discussion in this behalf is summed up in the following manner:

“**22.** On consideration of the matter we are of the view that these papers pertain to the land in the village Bhigan and the rates shown were ranging between Rs.17 lacs and Rs.20 lacs per acre and not as claimed by the assessee. The finding given by the AO on examination of the matter that figure shown at page 3 & 4 of Annexure A-6 is hundred appears to be correct. We find in agreement with the reasoning assigned by the AO in arriving at the said conclusion. We, therefore, uphold the order of the AO passed in this regard. Since the addition made substantively in the hands of Late Subhash Gambhir is upheld, we direct to delete the addition made protectively in the company (M/s. D.D. Indl. Corpn.)”

**17.** It is clear from the above that after analyzing facts/material, findings of facts are arrived at to the effect that the said sheet of paper relates to actual transactions and did not depict or reflect rough estimate of the cost of setting up of a new project in and around Gurgaon, explanation sought to be given by the assessee, which he failed to establish. In the facts and circumstances of the case, we, therefore, cannot treat it to be a dumb paper and are unable to accept this contention of the learned counsel for the assessee. Concurrent findings are arrived at by all the three authorities below and it is not a case where these findings can be treated as perverse. In view thereof, reliance placed upon the judgment of this Court in ***Girish Chaudhary*** (supra) or the judgment of Supreme Court in ***V.C. Shukla*** (supra) and ***Lalchand Bhagat Ambica Ram*** (supra) would not be of any assistance. This question is thus answered in the affirmative i.e. in favour of the Revenue and against the assessee.

**Re: Question No.2**

**18.** In so far addition on account of jewellery is concerned Mr. Monga submitted that during the course of search proceedings, the Appellant was found to be in possession of jewellery worth Rs.54,70,063/- both at residence and bank lockers. Vide letter dated 25<sup>th</sup> July, 1997 in reply to the A.O.'s query, the total shortfall of jewellery including the silver utensils was valued at Rs.6,44,416/- which was surrendered as undisclosed income of the Appellant in the return filed pursuant to notice under Section 158 BC of the IT Act. It is further submitted that in reply to the A.O.'s letter dated 15<sup>th</sup> September, 1997, the shortfall explained was of Rs.6,07,698/-. The A.O. while framing assessment under Section 158 BC made addition of Rs.8,86,794/- relating to the assessment year 1997-98 estimating unexplained jewellery at Rs.15,31,210/- giving credit of surrender at Rs.6,44,416/-, he further added Rs.8,86,791/- as assessee's undisclosed income for the block period. It is stated that in the appeal filed before the ITAT Appellant objected to the addition of Rs.8,86,791/- and contended that its explanation *inter alia* of jewellery worth Rs.10,96,370/- belonging to his mother-in-law deserved to be accepted in view of evidence produced and if that was accepted, the difference calculated at Rs.15,31,210/- as alleged unexplained jewellery would not be there. The ITAT without appreciating the correspondence between the Appellant and the A.O. and without taking into account the material placed on the record estimated the addition at Rs.8,86,791/- as Appellants undisclosed income on the ground that they agreed with the A.O.'s finding that the possession of jewellery belonging to Smt. Raj Rani, the mother-in-law of assessee

had already been considered by the Revenue in framing assessment in the case of Urmila Gambhir D/o Smt. Raj Rani. It is thus argued that the ITAT did not have the benefit of the A.O.'s order passed in the case of Smt. Urmila Gambhir as no such document was placed on their record. The finding recorded by the ITAT is simply based on the A.O.'s order without application of its own mind and addition confirmed without taking into account any material at all. The entire evidence in the shape of correspondence exchanged between the A.O. and the assessee on the issue has been ignored from consideration by the ITAT. It is also submitted that the ITAT has acted arbitrarily, capriciously and failed to follow the law laid down by the Supreme Court in *Lalchand Bhagat Ambica Ram* (supra). It is further submitted that the impugned order on this issue is thus legally vitiated resulting in the miscarriage of justice and also in violation of principles of natural justice.

**19.** We find that the addition of Rs.8,86,794/- on account of unexplained jewellery is worked out by the AO on the basis that during the course of search at the residence and other locker of the assessee, the following jewellery was found:

1/14 West Patel Nagar	22,43,506.00
1/14 West Patel Nagar	3,33,053.00
Locker at Punjab & Sind Bank Patel Nagar (in joint name with His wife)	14,68,195.00
Bank of India, Karol Bagh (in the name of Urmila Gambhir And her brother Sharavan Kapoor)	14,25,309.00
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	54,70,063.00
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**20.** The value of the jewellery as per wealth tax return of Shri Subhash Gambhir, his wife Smt. Urmila Gambhir and his unmarried daughter was as under:

Subhash Gambhir (Valuation report dated 31.3.95	15,46,783.00
Smt. Urmila Gambhir-wife-do-	14,05,927.00
Ms. Bhavna Gambhir-daughter 31.3.92	52,641.00
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	30,05,351.00
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**21.** The assessee was thus required to furnish the source of jewellery. The assessee vide his letter dated 25<sup>th</sup> July, 1997 stated that out of jewellery found at the residence and the locker with the Bank of India, Karol Bagh Branch held by his wife jointly with his brother, jewellery amounting to Rs.10,96,379/- belongs to his mother-in-law, Smt. Rajrani Kapoor. The assessee further submitted that this jewellery was received by his mother-in-law by way of will left by the father of his mother-in-law, who expired in 1977. Thus he submitted that this jewellery should be reduced out of total jewellery of Rs.54,70,063/-. The assessee gave the details of working of total gold in terms of quantity which has been extracted at page 3 of the assessment order. The Assessing Officer has mentioned that the assessee had surrendered the amount of Rs.6,44,000/- that is [Rs.1,92,066 + Rs.4,45,000/- + Rs.7,350/-] as his unexplained investment in the jewellery. This amount had been shown by the assessee as his undisclosed income for the assessment year 1997-98 in his return of income in Form 2B. The Assessing Officer after taking into consideration the above reply of the assessee and the facts of the case and also the locker in Bank of India, Karol Bagh branch, held by



Smt. Urmila Gambhir, wife of the assessee jointly with her brother and that certain papers belonging to her mother found in the same locker treated the jewellery of Rs.14,25,309/- exclusively in the hands of Smt. Urmila Gambhir as per details given below:-

i) Total value of jewellery filed by Urmila Gambhir in Wealth Tax return for A.Y. 1995-96	14,05,927.00
ii) Total appreciated value of above jewellery as on 29.8.96	18,38,520.00
iii) Total jewellery found in the locker in Bank of India	14,25,309.00
iv) Value of the jewellery belonging to mother of Smt. Urmila Gambhir and kept in the locker along with certain papers	1,72,887.00
v) Value of jewellery belonging to the assessee (iii-iv)	12,52,422.00
vi) Value of the jewellery in excess of jewellery found in the locker belonging to Urmila Gambhir to be considered in the assessment proceedings of the assessee i.e. Shri Subhash Gambhir (ii-v)	5,86,098.00

**22.** The contention of the assessee that the jewellery amounting to Rs.10,96,379/- belonging to his mother-in-law was mixed in the jewellery found at the residence and in the locker of Indian Bank, Karol Bagh was rejected by the Assessing Officer by observing that the same did not require any further consideration as this issue had been considered in the hands of Smt. Urmila Gambhir. The Assessing Officer further observed that the contention of the assessee regarding wealth tax return filed by his mother-in-law and will found at the time of search in the locker had duly been considered while arriving at the above figure. Thus, he worked out the unexplained investment in the jewellery in the hands of the assessee at Rs.40,44,774/- and after

reducing the value of jewellery at Rs.25,13,564/- as shown in the wealth tax return of Shri Subhash Gambhir, Smt. Urmila Gambhir and Miss Bhavana Gambhir and also taking appreciation factor as on 20<sup>th</sup> August, 1996 into consideration arrived at the unexplained jewellery of Rs.15,31,210/-. From the unexplained jewellery of Rs.15,31,210/-, the Assessing Officer further reduced the surrendered amount of Rs.6,44,416/-. Thus the total addition made on account of unexplained jewellery came to Rs.8,86,794/-.

**23.** It is thus clear that jewellery which was found during search was of the value of Rs. 54,70,063/- out of this the assessee and his wife and unmarried daughter had disclosed the jewellery worth Rs.30,05,351/- in the wealth tax returns. In these circumstances, the assessee was supposed to give satisfactory source of jewellery worth Rs.24.65 lacs. As per the A.O. he could not give the explanation to the extent of Rs.8,86,794/-. The A.O. while holding so, did not accept the contention of the assessee that jewellery amounting to Rs.10,96,379/- belonging to his mother-in-law was mixed in the jewellery found at his residence and in the locker. In fact this is the only bone of contention. If this aspect is accepted then entire jewellery stands accounted for. The ITAT has simply affirmed the findings of the A.O. without discussing the explanation of the assessee in this behalf. Entire discussion on this behalf in the order of the Tribunal reads as under:-

**"27.** After having heard the parties and perusal of the records, we find no infirmity in the impugned order inasmuch as the claim of the assessee that the jewellery amounting to Rs.10,96,379/- belonging to her mother in law and has been mixed up in the jewellery found during search has been duly considered in the hands of Smt.

Urmila Gambheer. Further the appreciation has been given to the value of the jewellery declared in the wealth tax return of the above named persons. Hence, this ground of the assessee is dismissed.”

**24.** The A.O. in the assessment order had only stated that this aspect was dealt with in detail while considering the case of Smt. Urmila Gambhir. There is no independent discussion by the A.O. in the assessment order passed by him in the case of the assessee. Because of this reason, grievance of the assessee is that the order of the Tribunal is without reasons and ITAT did not have the benefit of A.O.’s order passed in the case of Smt. Urmila Gambhir as no such document was placed on their record. The entire evidence in the shape of correspondence exchange between the A.O. and the assessee on the issue has been ignored from consideration by the Tribunal. This is a formidable argument put forth by the learned counsel for the assessee as is clear from the aforequoted portion of the Tribunal’s order on this aspect.

**25.** We, therefore, have no option but to set aside the order of the Tribunal insofar as question No.2 is concerned on the ground that this aspect was not duly considered and dealt with in the impugned order and remit the case back to the Tribunal on this aspect.

**26.** The upshot of the aforesaid discussion is that this appeal is partly allowed. Parties are left to bear their respective costs.

**A.K. SIKRI, J.**

**SIDDHARTH MRIDUL, J.**

**DECEMBER 23, 2009/dv**