

CBDT Instruction 1916

Income Tax Instruction No.1916

The Central Board of Direct Taxes has issued Guidelines/ Instruction No. 1916 dated 11th May, 1994 in the matter of seizure of jewellery, which reads :

Instances of seizure of jewellery of small quantity in the course of operation under section 132 have come to the notice of the Board. The question of a common approach to situation 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 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 authorising the search all 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.

What arguments can be put forward during search proceedings, in case, jewellery found in possession is more than the limits set in CBDT instruction 1916?

I. Taking advantage of the CBDT instruction:

Point no. iii lays down that the AO may exclude a larger quantity of jewellery from seizure keeping in view the status of family, customs and practices, other circumstances. This plea may be taken by the assessee under genuine circumstances.

II. Court judgements:

A few court judgements also can come to the rescue:

The Hon Supreme Court in its landmark decision in the case of Pratibha Rani vs. Suraj Kumar 1985 (2) SCC 70 has laid down the following terms:

“A Hindu married woman is the absolute owner of her Streedhan property and can deal with it in any manner she likes and, even if it is placed in the custody of her husband or her in-laws they would be deemed to be trustees and bound to return the same if and when demanded by her.

In Sushila Devi Vs CIT (Delhi High Court)

Appeal Number : W.P.(C) 7620/2011, it was held that the gold jewellery acquired through gifts made by relatives and other family members over a long period of time, is in keeping with prevailing customs and habits and so cannot be seized even if it is above the limits laid down in the CBDT instruction.

III. Constitutional mandate:

Right to property is a constitutional right under Article 300A of the Constitution of India though not a fundamental right. The deprivation of the right can only be in accordance with the procedure established by law.

Thanks