

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

SHRI M. BALAGANESH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 371/MUM/2021
(ASSESSMENT YEAR: 2009-10)

ITA No. 369/MUM/2021
(ASSESSMENT YEAR: 2010-11)

ITA No. 368/MUM/2021
(ASSESSMENT YEAR: 2011-12)

ITA No. 367/MUM/2021
(ASSESSMENT YEAR: 2012-13)

&

ITA No. 366/MUM/2021
(ASSESSMENT YEAR: 2013-14)

Mrs. Jyoti R Raut,
1204, Siddhivinayak CHS Ltd.,
Plot No. 3, Sector-14, Khanda Colony,
New Panvel - 410206
[PAN: AGFPR3954B]

..... Appellant

Deputy Commissioner of Income Tax,
Central Circle 1(1), 9th Floor,
Pratishtha Bhavan, Old CGO Annexe,
Maharishi Karve Road,
Mumbai - 400020

Vs

..... Respondent

Appearances

For the Appellant/ Assessee : Ms. Hiral Sejpal
For the Respondent/Department : Shri Achal Sharma

Date of conclusion of hearing : 07.06.2022
Date of pronouncement of order : 10.08.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. This is a bunch of 5 appeals pertaining to Assessment Year 2009-2010 to 2013-2014 preferred by the Appellant/Assessee against the separate orders passed by the Learned Commissioner of Income-Tax (Appeals) - 47, Mumbai [hereinafter referred to as 'the CIT(A)'] whereby the appeal filed by the Appellant/Assessee

against Assessment Order(s), dated 23.12.2016, passed under Section 143(3) read with Section 153A of the Income-Tax Act, 1961 [hereinafter referred to as 'the Act'] were dismissed.

2. The appeals were heard together and are also being disposed by way of common order as the Appellant has raised a common legal ground in all the appeals challenging the jurisdiction of the Assessing Officer make addition in assessment framed under Section 143(3) read with Section 153A of the Act in absence of any incriminating material found during the course of search. Apart from this, Appellant has also challenged the said disallowance on merits.

ITA No. 371/Mum/2021

3. We would first take up appeal for the Assessment Year 2009-10 wherein following grounds have been raised by the Appellant.
4. The relevant facts, in brief, are that search action was carried out the on the Balaji Group and the Appellant on 28.01.2015. The premises of the Appellant were searched. Subsequently, notice under Section 153A of the Act was issued to the Appellant on 06.06.2016 and in response to the same, the Appellant filed return of income under Section 153A on 29.06.2016 declaring total income of INR 2,38,158/- which was same as the returned income as per the return filed under Section 139(1) of the Act.
5. During the assessment proceedings, the Assessing Officer noticed that the Appellant has accepted gift of INR 2,50,000/- from her relative (i.e., her father), during the relevant previous year. The Appellant was asked to prove the identity and creditworthiness of the donor as well as genuineness of the transaction of gift. The

Appellant was asked to furnishing a copy of the gift deed, return of income, bank statements etc. The Appellant filed copy of gift deed and other documents to satisfy the Assessing Officer which included details of landholding of the donor and cultivation on agricultural land, as well as receipt showing the sale proceeds of agricultural produce. However, the Assessing Officer, rejected the same and made an addition of INR 2,50,000/- in the hands of the Appellant holding the same to be non-genuine gift liable to tax in the hands of the Appellant under Section 68 of the Act.

6. In appeal filed against the assessment order, before CIT(A) the Appellant, inter alia, contended that no additions could be made in the hands of the Appellant in the absence of incriminating material found during the course of the search. The CIT(A) dismissed the aforesaid contention and confirmed the addition on merits.
7. Being aggrieved, the Appellant is in appeal before us.
8. We have heard rival submission and perused the materials on record. There was a search and seizure action under Section 132(1) of the Act on 28.01.2015 in the premises of the Appellant pursuant to which proceedings under Section 153A of the Act were initiated. It is admitted position that on the date of the search the assessment for the assessment year under consideration was not pending and therefore, stood concluded or was unabated. As per the judgment of the Hon'ble Bombay High Court in the case of CIT Vs Continental Warehousing Corporation: 374 ITR 645 (Bom) the assessments, concluded/unabated as on the date of search, could be disturbed only if there was some incriminating material found during the course of search. A

perusal of the assessment order shows that no reference has been made by the Assessing Officer to any incriminating material while making the assessment. Further, despite specific ground raised in the Appeal, the CIT(A) has also not referred to any incriminating material while confirming the addition, and had made a general statement in paragraph 6 of the order which reads as under:

“6.0 I have considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. Though the assessee has claimed that no incriminating material as such was found during the course of search but that is not the correct position. From the facts of the case, it appears that during the course of search various Gift-deeds were found and seized from the premises of the assessee which indicated that the assessee had received non genuine gifts from relatives during the year. In fact the assessee had received following gifts during the past few years from her father Mr. Jaganath Palkar.

<i>Year</i>	<i>Amount (Rs.)</i>
<i>2009-10</i>	<i>2,50,000/-</i>
<i>2010-11</i>	<i>6,10,000/-</i>
<i>2011-12</i>	<i>7,50,000</i>
<i>2012-13</i>	<i>5,00,000/-</i>
<i>2013-14</i>	<i>1,33,000/-“</i>

(Emphasis Supplied)

9. We note that the Assessing Officer has, in paragraph 3.1 of the Assessment Order, recorded that the Appellant had received gift as seen from the details filed during the assessment proceedings. The relevant extract of aforesaid paragraph 3.1 reads as under:

“3.1 From the details filed by the assessee during the course of assessment proceedings, it is seen that she has accepted a gift of Rs. 2,50,000 from her father Sh. Jaganath Palkar during the year. The assessee, during the assessment proceedings, was asked to furnish a copy of Gift-Deed, return of income and bank statement of the donor and to prove the identity, genuineness and creditworthiness of the donor and the transaction of the gift. ” (Emphasis Supplied)

10. On perusal of paragraph 3.1 above, it is clear that the Appellant has filed details during the course of the Assessment Proceedings and on examination of those details the Assessing Officer got know that the Appellant had accepted gift. No reference has been made to any incriminating material during the assessment or appellate proceedings by the Revenue. Thus, we are of the considered view that the additions by the Assessing Officer were not made on the basis of any incriminating material found during the course of the search. The order passed by the CIT(A) is set aside and the addition of INR 2,50,000/- made by the Assessing Officer under Section 68 of the Act is deleted. Accordingly, Ground No. 1 raised by the Appellant is allowed and Ground No. 2 - 4 are disposed off as being infructuous. Appeal is allowed.

ITA No. 369/Mum/2021 (Assessment Year 2010-11),
ITA No. 368/Mum/2021 (Assessment Year 2011-12),
ITA No. 367/Mum/2021 (Assessment Year 2012-13), and
ITA No. 366/Mum/2021 (Assessment Year 2013-14)

11. In identical facts and circumstances, addition of (a) INR 6,10,000/- for Assessment Years 2010-11, (b) INR 7,50,000/- for Assessment Year 2011-12, (c) INR 5,00,000/- for the Assessment Year 2012-13 and (d) INR 1,33,000/- for the Assessment Year 2013-14 have been made by the Assessing Officer invoking provisions of Section 68 of the Act holding the gifts received from relatives (i.e.

Father/Brother) to be non-genuine. The Additions made were confirmed by the CIT(A). In appeal before us the Appellant has challenged the additions for Assessment Year 2010-11 to 2013-14 before us on identical grounds in respective appeals [Appeals ITA No. 369,368,367 & 366/Mum/2021]. Our findings in paragraph 10 above in respect of ITA No. 371/Mum/2021 for the Assessment Year 2009-10, would apply mutatis mutandis to the aforesaid appeal. Accordingly, Ground No. 1 raised by the Appellant in the respective appeals for the Assessment Years 2010-11 to 2013-14 is allowed, whereas all the other grounds raised are disposed off as being infructuous. The order of CIT(A) for the Assessment Year 2010-11, 2011-12, 2012-13 and 2013-14 is set aside, and the additions made by the Assessing Officer in the respective assessments are deleted.

12. In result Appeals for the Assessment Year 2010-11 to 2013-14 [ITA No. 369,368,367&366/Mum/2021] are allowed.

Order pronounced on 10.08.2022.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 10.08.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai