

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI C.N. PRASAD, JM AND SHRI MANOJ KUMAR AGRAWAL, AM

आयकर अपील सं./I.T.A. No.4905/Mum/2016
(Assessment year -2009-10)

Shri Anandasayanam P Pillai, Flat N0.702, Bhakti Residency, Plot No.06, Sector -11, Sanpada, Navi Mumbai-400705	<u>बनाम/</u> Vs.	Commissioner of Income Tax, Thane-1
स्थायी लेखा सं./जीआइआर सं./PAN : ABAPP3607P		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	S/Shri H G Dharmadhikari and D A Bhalerao
प्रत्यर्थी की ओर से/Respondent by	:	Shri Vaibhav Jain

सुनवाई की तारीख /Date of Hearing	:	21.11.2016
घोषणा की तारीख /Date of Pronouncement	:	30.11.2016

आदेश / ORDER

PER C.N. PRASAD, J. M:

This appeal is filed by the assessee against the order of CIT(A), Thane, dated 11/05/2016 for the assessment year 2009-10.

2. The first issue in the appeal of the assessee is that the Id. CIT(A) erred in sustaining the addition of Rs.82,849/- in respect of investment made in recurring deposits amounting to Rs.67,500/- and interest thereon of Rs.15,349/- treating it as unexplained investment.

3. The brief facts of the case are that the assessee who is an individual deriving income from salary and consultancy charges filed return of income on 30.7.2009 declaring income of Rs.1,84,360/-. The assessment was completed under section 143(3) of the Act on 27.12.2011 determining the income of the assessee at Rs.8,43,782/-. While completing the assessment, the AO added an amount of Rs.82,849/- representing the investment of Rs.67,500/- in recurring deposits and interest thereon of Rs.15,349/- as unexplained investment. In the assessment proceedings, the assessee submitted that the investment in recurring deposits was made during the assessment year 2007-08 to 2009-10 from his past savings and withdrawals. The contentions of the assessee were rejected by the AO observing that the cash flow statement filed by the assessee did not reflect the opening cash balance, therefore, there were no past savings. He also observed that the investment of Rs.67,500/- in assessment year 2009-10 out of withdrawals Rs.1,08,835/- is also not acceptable, in view of the remaining insufficient balance for household expenses keeping in view the standard of living of the assessee. He also observed that there is no supporting evidence for the claim of the assessee that the assessee's wife also invested in recurring deposits from her past savings and further the maturity amount has been credited to assessee's capital account only and thus he concluded that the investment in

recurring deposits belongs to the assessee only. This was treated as unexplained investment in the hands of the assessee.

4. On appeal, the Id. CIT(A) sustained the addition by observing that except filing a copy of acknowledgement of return in respect of his wife's return of income for the assessment year 2009-10 showing the taxable income of Rs.73,930/- there is nothing on record to link this income to the amount that had deposited in the recurring deposits account in the joint account of the assessee and his wife. He also observed that neither any source of income of assessee's wife has been mentioned nor copy of bank account of the appellant's wife has been filed to show the availability of cash savings with her for depositing in recurring deposits. Coming to the withdrawal made by the assessee, the Id.CIT(A) held that the assessee has withdrawn an amount of Rs.1,08,835/- during the year under consideration and this amount is hardly sufficient for meeting the assessee's house hold expenses and therefore the investment of Rs.67,500/- in recurring deposit account is not explained from the drawings of the assessee thus he sustained the addition made on account of unexplained investment.

5. The Id.counsel for the assessee submits that lower authorities have failed to consider the withdrawals made by the assessee's wife and deposits of the same into recurring deposit account which was jointly held with the assessee. The Id. Counsel submits that the assessee's wife had

earned total income of Rs.2,63,930/- during the current year and showed taxable income of Rs.73,930/-. The Id.counsel submits that the AO having considered the withdrawals made by the assessee and at the same time, he failed to consider the withdrawals made by the assessee's wife to explain the sources for the deposits into recurring deposits. Therefore, therefore, the Id. Counsel for the assessee submits that there is sufficient source of income with the assessee and his wife for making the recurring deposits and in fact deposits were made out of their income and hence no addition is justified as unexplained investment.

6. The Id. DR strongly supported the orders of authorities below.

7. We have heard the rival contentions and perused the material placed before us including the orders of authorities below. The AO treated the investment made by the assessee in recurring deposits account which was jointly held by assessee along with his wife amounting to Rs.67,500/- along with the interest of Rs.15,349/- as unexplained investment for the reason that the assessee has not shown past savings in cash flow statement. He also observed that out of total withdrawals of Rs.1,08,835/- made by the assessee, it cannot be accepted that Rs.67,500/- could be made in to deposits. Keeping in view of the fact that the remaining amount is insufficient to meet household expenses looking at the standard of living of the assessee. The Id. CIT(A) observed that the assessee not provided details of sources of assessee's wife and no link to

the investment in recurring deposits account from such sources of income and sustained the addition.

8. Taking note of the facts and circumstances of the case, we are of the view that the assessee should succeed on this issue. Revenue is not denying the fact that the recurring deposit account is in the name of both the assessee and his wife and the deposit is only of Rs.67,500/-. The assessee has shown withdrawals of Rs.1,08,835/-. Even if we consider that this amount is entirely used for the house hold expenses still deposit could have been presumed to be made out of the income of the assessee's wife who earned income of Rs.2,63,930/- and taxable income of Rs.73,930/- during the current year which is more than the investment of Rs.67,500/- made in recurring deposits. Hence, we hold that the assessee has sufficient source of income for the deposits of Rs.67,500/- made in the recurring deposits account jointly held with his wife. Hence, we delete the addition of Rs.67,500/- and the interest thereon of Rs.15,349/- from the taxable income of the assessee. This ground of appeal is allowed.

9. The next issue in appeal is that the Id.CIT(A) erred in sustaining the addition of Rs.26,931/- towards unexplained cash credit. The AO while completing the assessment made an addition of Rs.12,000/- and Rs.14,931/- being credits made by the assessee towards loans received. When the AO asked the assessee to submit the details, the assessee

submitted that Rs.12,000/- is out of excess cash deposited in petty cash and Rs.14,931/- is the difference in new car loan and old car loan amount from HDFC loan. It was the submission of the assessee that the difference amount of Rs.34,034/- in HDFC car loan is credited partly in SB account at Rs.19,103/- and partly received in cash at Rs.14,931/-. The submissions of the assessee was not accepted by the AO and treated the credit in cash account amounting to Rs.14,931/- and Rs.12,000/- as unexplained cash credit.

10. On appeal, the Id. CIT(A) sustained the addition by rejecting the submissions of the assessee that Rs.12,000/- was out of excess cash deposited in petty cash and it is only contra entry in the assessee's bank account as no separate evidence was submitted and other amount of Rs.14,930/- was also sustained by the Id. CIT(A) observing that no documentary evidence has been filed by the assessee in support of his contention. The Id. Counsel reiterated the submissions as made before the lower authorities.

11. The Id. DR supported the orders of lower authorities.

12. We have considered the rival submissions and perused the material placed before us. We are of the view that the assessee has not substantiated his claim with evidences before the lower authorities or even before us. Hence, we sustain the orders of the lowers authorities. This ground is rejected.

13. The last issue in the appeal is that the Id. CIT(A) erred in sustaining the addition of gift of Rs.4 lakhs received by assessee from his father.

14. During the course of assessment proceedings, the AO noticed that the assessee has credited Rs.4 lakhs in his capital account and had claimed that he received gift from his father. The assessee was asked to prove the genuineness of the transaction and creditworthiness of the donor in respect of the gift claimed to be received from his father. The assessee filed a copy of **DECLARATION FOR GIFT OF MONEY** made by Mrs. Ramatilgam Padmanaban Pillai Myladumpari the mother of the assessee. Declaration for gift of money given by his mother was filed in support of his contention that he has received gift. The AO observed that the gift deed is dated 20.10.2011 and the gift was given by his mother and not by his father. He observed that this is a confirmation of gift dated 20.10.2011 and gift of Rs.4 lakhs was stated be received by the assessee in the financial year 2008-09 relevant to the current assessment year . He also observed that the capital account in which it has been mentioned that the gift was received by the assessee from his father and not mother as claimed by the assessee in the assessment proceedings. The AO also observed that the details of payment received by way of gift are not furnished either by the assessee nor it is mentioned in the gift deed submitted before him. Therefore, the AO concluded that in view of these discrepancies it cannot be said the transaction of gift is genuine. Coming to

the creditworthiness of the donor, the assessee filed 7/12 extract of agricultural land and submitted that his mother is agriculturist and she is not assessed to tax and the money was given out of accumulated savings from agricultural produce. It was also submitted that it was the last wish of his father that the legal heirs be given some amount from his wealth and therefore an amount of Rs.4 lakhs was given as gift to the assessee. The AO observed that except filing a copy of 7/12 extract, no other details showing agricultural income or agricultural activities like copy of sale bills of agricultural produce, details of crop, cultivation details and expenses hereof, bank account of assessee's mother etc have been submitted by the assessee to prove the correctness of the claim of agricultural income. The AO also observed that the copy of 7/12 extract filed by the assessee does not show crops cultivated in the said land. Therefore, the AO concluded that the assessee failed to prove the creditworthiness of the donor.

15. On appeal, the Id. CIT(A) sustained the addition agreeing with the view of the AO that the assessee did not prove the genuineness of the transactions and creditworthiness of the donor.

16. The Id. counsel for the assessee reiterated the same contentions as made before the lower authorities. He also submitted as under :

"5.4 It is an admitted fact that the appellant had disclosed the source of income i.e. from the agricultural income of his father. In such scenario the AO should have discharged the burden issuance

of summons under section 131 to the donor of the gift i.e. appellant's mother.

5.5 Thus, in view of the above it is submitted that having knowledge, the AO has failed to issue summons and thereby to verify the credibility of the donor of the gift. Therefore, by passing the evidence submitted by the assessee on technical ground and on the basis of assumptions and presumption the addition of income of Rs.4 lakhs in the taxable income of the appellant is untenable in the light of following judgment:

a) Rajputana Steel Casting Pvt Ltd V/s DCIT, order dated 2.11.2012 passed in ITA No.3289/AHd/2011 by ITAT (Ahd);

b) CIT Orissa V/s Orissa Corporation Pvt Ltd AIR 1986 O 1849;

c) CIT V/s Arun Kumar Kothari in ITA No.80/2010 dated 7.9.2012 Raj HC"

17. We have heard the rival contentions and perused the orders of authorities below. In the course of assessment proceedings the assessee produced the gift deed declaration for gift of money given by the assessee's mother confirming the gift of Rs.4 lakhs given to his son. It is the contention of the assessee that his father's last wish that some amount was to be given to his heirs out of his accumulated wealth and accordingly, his mother handed over Rs.4 lakhs to the assessee towards gift after expiry of his father on 17.3.2008. The assessee's contention is that confirming such gift a declaration was given by his mother having handed over the gift of Rs.4 lakhs to him. It is therefore, submitted that the gift is genuine gift. The assessee further contended that his parents are staying in a small village where banking facilities are not available and

the main source of their income was from agricultural income, which was received in cash. The assessee contended that as the money was given to the assessee by his mother in cash no formal gift was prepared but confirmation of gift deed was prepared by his mother in November, 2011. It is also submitted that the assessee's parent are having 39 hectars of land without water facilities and 12 hectars of land with water facilities and also another land of 1.96 aces. It was submitted that in the said agricultural land assessee's father cultivated coconut, groundnut and sugar cane.

18. The Id. Counsel for the assessee further submitted that initial burden of proving genuineness of transaction, creditworthiness of the creditors and identity of the donor has been discharged by the assessee by providing gift deed and the 7/12 extract of agricultural land which shows that the donor's possession /owns agricultural land and the source for the gift. It was also contended that the gift is only from father and not from 3rd party and there is no formal gift deed written when the gift was given but confirmation was made later by way of declaration of gift from mother. It was the contention of the assessee that the AO should have issued summons to the donor mother who was then alive when he has any doubt about the genuineness of the transaction and creditworthiness of the creditor and identity of the donor and could have examined the donor mother. The

assessee further submits that both father and mother of the assessee are no more as on today. The Id. Counsel submitted that at the time of assessment the mother of the assessee was alive.

19. It is not denied by the revenue that the parents of the assessee are owning agricultural land to the extent of 10 acre (39 hectars without water facilities 12 hectars with water facility). Therefore, it cannot be completely brushed aside that there is no creditworthiness to the donor to give the gift. We agree with the assessee that the gift deed declaration of gift made by his mother cannot be treated as non genuine since the contention of the assessee that this gift was given by his father as his last wish and the cash was not proved to be false. Coming to the creditworthiness of the creditor /donor since donor is having sufficient wet land and dry land it cannot be doubted earning of agricultural income. The creditworthiness cannot be doubted. Both the parents of the assessee are passed away and therefore the assessee may not be in a position to establish the fact of the parents cultivating the land when they were alive. Therefore, taking the totality of facts and circumstances into consideration and in view of the smallness of the gift we cannot hold that the gift is not genuine. In the circumstance, we hold that the gift is genuine and addition on account of gift is deleted. This ground is allowed.

20. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 30th Nov, 2016

Sd

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(मनोज कुमार अग्रवाल/
Manoj Kumar Agrawal)

(सी. एन. प्रसाद /C.N. Prasad)
(न्यायिक सदस्य / Judicial Member)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 30. 11.2016
SRL,Sr.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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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