

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री ए.मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2780/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Mrs. Usha Krishnan,  
No.9/1, Eighth Street,  
Nanganallur, Chennai - 600 061.

v. The Income Tax Officer,  
Non Corporate Ward - 18(3),  
Chennai - 600 034.

PAN : AAHPU 1864 D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Quadir Hoseyn, Advocate &  
Dr. L. Natarajan, CA

प्रत्यर्थी की ओर से/Respondent by : Shri S. Nataraja, JCIT

सुनवाई की तारीख/Date of Hearing : 19.12.2017

घोषणा की तारीख/Date of Pronouncement : 28.12.2017

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 15, Chennai, dated 30.08.2016 and pertains to assessment year 2012-13.

2. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the only issue arises for consideration is addition of ₹43,35,870/- made under Section 68 of the Income-tax Act, 1961

(in short 'the Act'). According to the Ld. counsel, the assessee has received gifts from her husband and other close relatives. All the relatives who gifted money to the assessee were summoned by the Assessing Officer under Section 131 of the Act and on examination, they admitted the fact of gift given to the assessee. However, according to the Ld. counsel, the Assessing Officer rejected the claim of the assessee and made addition under Section 68 of the Act. According to the Ld. counsel, for the purpose of making addition under Section 68 of the Act, there should be credit in the books of account maintained by the assessee in the regular course. The assessee is admittedly working as Finance Manager in Amnet Systems Pvt. Ltd. The assessee is not maintaining any books of account, therefore, there cannot be any addition under Section 68 of the Act. Referring to the decision of Delhi Bench of this Tribunal in ITO v. Om Prakash Sharma in I.T.A. No.2256/Del/2009 dated 13.05.2011, the Ld.counsel submitted that on identical set of facts, when the assessee was not maintaining books of account, the Delhi Bench deleted the addition made under Section 68 of the Act.

3. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, further submitted that other than the salary income, the assessee

has no other source. Merely because the Assessing Officer doubted the creditworthiness of donors, that cannot be a reason for making any addition. Placing reliance on the judgment of Madras High Court in S. Hastimal v. CIT (1963) 49 ITR 273, the Ld.counsel submitted that Assessing Officer cannot make any enquiry regarding source of sources. If at all there was any doubt regarding the source of the donors, according to the Ld. counsel, the addition can at the best be made in the hands of the donors and not in the hands of the assessee. The Ld.counsel has also placed his reliance on the decision of Amritsar Bench of this Tribunal in Yadwinder Singh v. ITO (2016) 48 ITR (Trib) 328.

4. Referring to Section 68 of the Act, the Ld.counsel for the assessee submitted that in case the assessee could not offer any explanation in respect of the sum found credited in the books of account maintained by the assessee, an addition can be made under Section 68 of the Act. According to the Ld. counsel, in the case before us, the assessee has explained the source of the gift. Since the assessee was not maintaining books of account and the assessee has also explained the source and nature of the deposits

in the bank account, according to the Ld. counsel, there cannot be any addition under Section 68 of the Act.

5. Referring to the order of the CIT(Appeals), the Ld.counsel for the assessee submitted that if the assessee's husband could not produce necessary details for earning income, the addition can at the best be made only in the hands of the assessee's husband and not in the hands of the assessee. According to the Ld. counsel, the CIT(Appeals) has mainly confirmed the order of the Assessing Officer on the ground that the assessee's husband Shri V. Krishnan has not filed any return of income nor disclosed the cash receipts. This cannot be a reason, according to the Ld. counsel, for making addition in the hands of the assessee.

6. On the contrary, Shri S. Nataraja, the Ld. Departmental Representative, submitted that the assessee is an employee of Amnet Systems Pvt. Ltd. For the assessment year 2012-13, the assessee has disclosed a total income of ₹6,06,237/-. According to the Ld. D.R., the Assessing Officer found cash deposit of ₹43,35,870/- in the bank account of the assessee. The assessee explained before the Assessing Officer that a sum of ₹19,50,000/-

was received from close relatives and another sum of ₹23,85,870/- was received from the assessee's husband Shri V. Krishnan. According to the Ld. D.R., the Assessing Officer found that all the persons, who were said to have gifted money to the assessee, had Permanent Account Number and they have also confirmed the fact of giving gift to the assessee. However, none of them filed any return of income. There was no material evidence filed to substantiate the source of cash for them to give gift to the assessee.

7. The Ld. Departmental Representative submitted that on examination by the Assessing Officer under Section 131 of the Act, the donors failed to explain the source for making the so-called gift to the assessee, therefore, the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer. On a query from the Bench whether the assessee has any other source of income other than salary? The Ld. D.R. has fairly submitted that the assessee has no other source of income other than salary received from M/s Amnet Systems Pvt. Ltd. where she is employed. When the attention of the Ld. D.R. was drawn to the assessment order, more particularly at para 1 page 3, wherein the Assessing Officer observed that the assessee had admitted income from business for

assessment year 2012-13 and the statement of income for the assessment year 2013-14 was called for but not furnished, the Ld. D.R. clarified that the assessee is not doing any business. This statement recorded by the Assessing Officer may be a typographical error. The Ld. D.R. further clarified that the assessee's husband Shri V. Krishnan admitted business income for the assessment year 2013-14 and he had failed to furnish the statement of income called for by the Assessing Officer.

8. We have considered the rival submissions on either side and perused the relevant material available on record. The admitted source of income by the assessee is salary from M/s Amnet Systems Pvt. Ltd. It is not in dispute that the assessee is working as Finance Manager in M/s Amnet Systems Pvt. Ltd. There is no other source of income for the assessee. If the assessee had any business, then we may conclude that the income was generated out of unaccounted business. In this case, it is nobody's case that the assessee was doing any business. It is also nobody's case that the assessee was receiving any benefit over and above the salary from her employer. In such circumstances, this Tribunal is of the

considered opinion that the assessee has no other source for making cash deposit in the bank account other than salary.

9. Moreover, a sum of ₹19,50,000/- was claimed to have received as gift from her brothers and sisters. The confirmation letters were filed and they were also examined by the Assessing Officer. The Assessing Officer disallowed the claim of the assessee on the ground that the donors have not filed any return of income and the source of their income was not established. Similarly, the claim of the assessee that she received ₹23,85,870/- as gift from her husband Shri V. Krishnan was also rejected by the Assessing Officer on the ground that Shri V. Krishnan failed to file return of income for assessment year 2012-13. The fact remains that the assessee's husband is doing business. Therefore, the money generated out of his business was gifted to the assessee. Merely because the assessee's husband has not filed the return of income or filed the statement of income, that cannot be a reason to presume that the assessee's money was credited into bank account. Moreover, the assessee is not maintaining any books of account. As rightly submitted by the Ld.counsel for the assessee, bank passbook cannot be considered as books of account for

making addition under Section 68 of the Act. As rightly submitted by the Ld.counsel for the assessee, merely because the donors could not establish their creditworthiness or source for making gift to the assessee, that cannot be a reason for making addition in the hands of the present assessee especially when the assessee has no other source of income. Therefore, we are unable to uphold the orders of the lower authorities and accordingly, the orders of the lower authorities are set aside and the addition of ₹43,35,870/- is deleted.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 28<sup>th</sup> December, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> December, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai

4. Principal CIT- 6, Chennai

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF.