

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC, "B" BENCH : BANGALORE**

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1675/Bang/2019
Assessment year : 2016-17

Shri Arehalli Byregowda Gangadharagowda, No.42/4, M/s Mohith Enterprises Kempegowda Circle, Ramanagara-562 159. PAN – APBPG 4073 M	Vs.	The Income-tax Officer, Ward-1, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Akshay Mehta, C.A
Respondent by	:	Shri Ganesh R Ghale, Advocate Standing Counsel to Dept.

Date of hearing	:	06.11.2019
Date of Pronouncement	:	11.11.2019

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the assessee is directed against the order dated 27/5/2019 passed by Id CIT(3), Bengaluru and it relates to the asst. year 2016-17.

2. The assessee is aggrieved by the decision of Id CIT(A) in confirming the addition of Rs.20 lakhs made by the AO u/s 68 of the Act.

3. The facts relating to the issue are that the assessee had introduced the sum of Rs.20 lakhs on 1/4/2015 as his capital in

the books of account. When questioned about the sources of the funds, the assessee submitted that he has received the above said amount as gift from his father.

4. The facts relating to the addition are narrated as under by Id CIT(A):-

“4.1 In relation to the same the appellant submitted that the amount of Rs.20,00,000/- was gifted to him by his father in cash and the same was introduced by him in his capital and as such gets reflected in the cash book as on 01.04.2015. The appellant submitted that his father was an agriculturist and he had given him gift out of his past savings. The appellant also submitted an affidavit from his father in this regard . Accordingly the AU asked the appellant to prove the creditworthiness of the donor and genuineness of the transaction. The appellant was also asked to show cause as to why addition under Section 68 should not be made in his case.

4.2 In response to the same the appellant submitted that his father owned 1 acre 18 guntas and 6 acre 5 guntas of land at two different locations. The appellant further submitted that the savings of his father were in cash and he had used the same to create a fixed deposit account on 05.03.20 13 and the amount was withdrawn on maturity oil The appellant submitted that the affidavit given by his father ill regard should he accepted and no addition should be made in his case. However this contention of the appellant was not accepted by the AO. The AO noted that RTC of the land furnished by the appellant showed that his father owned land of 1 acre 20 guntas and 14 guntas only as against the appellant claim of land holding of about 7 acre. The AO further noted that with a land holding of 1 acre 20 guntas, the annual income from cultivation of mulberry leaves

could not exceed Rs.10,000/- per acre per year. Even if there was sericulture and sale of cocoons, the income could not exceed Rs 50,000/- per acre per annum. The AU also observed that appellant had not given any proof of any agriculture activities having been carried out by his father so as to estimate the actual agriculture income earned by him. The AO also noted that if the appellant's father had sold cocoons, the same being not an agriculture activity, his father would have earned non-agriculture, income, however no evidence in that regard was furnished by the appellant. As regards cash withdrawals made by the father from the bank account, the AO observed that the source of such deposits was not explained and further the said withdrawals were made from the bank account on 06.03.2014 whereas the appellant had shown the receipt of cash of Rs.20,00,000/- on 01.04.2015 i.e. after a gap of more than one year. The appellant was not able to explain such a huge gap between the cash withdrawals and the receipt of the gift from the ' father. The AU thus held that capacity of the appellant's father to gift an amount of Rs.20,00.000/- and genuineness of the transaction was not proved. Considering this aspect the AO treated the amount of Rs.20,00,000/- as undisclosed income of the appellant.”

5. Before 1d CIT(A), the assessee submitted that his father earned about 1.5 lakhs to 2 lakhs p.a and was saving Rs.50,000/- p.a for the last 35 years. It was submitted that the father of the assessee has used the same to make gift of Rs.20 lakhs. Since the said claim was not substantiated, the 1d CIT(A) rejected the same. The assessee further submitted that his father has made deposits in the bank accounts to the tune of Rs.10 lakhs in March 2013 and those matured on March 2014. It was submitted that the father of the assessee had withdrew a sum of Rs.10 lakhs from the bank

account in March 2014 and used the same to make gift of Rs.20.00 lakhs to the assessee. Since there was a gap of one year from the date of withdrawal of the cash to the date of making gift, the ld CIT(A) rejected the above said explanation also. Ld CIT(A) held that the assessee has failed to prove the onus placed upon him u/s 68 of the Act and accordingly confirmed the addition of Rs.20 lakhs made u/s 68 of the Act.

6. Before me, the ld AR reiterated the submissions made before ld CIT(A). The ld AR invited my attention to the bank account copies placed at page 17 and 18 of the paper book and submitted that the father of the assessee had made fixed deposits in March 2013 and same were encashed in March 2014 and he has withdrawn Rs.10 lakhs from the said maturity proceeds and used the same along with the other savings to make the gift to the assessee. With regard to the remaining amount of Rs.10 lakhs claimed to have been available with the father of the assessee, the ld AR submitted that the father of the assessee used to save Rs.50,000/- p.a out of his agricultural income and the same has been accumulated over the years.

7. On the contrary the ld DR submitted that the assessee is making self serving statements without any supporting evidences.

8. I have heard the rival contentions and perused the record. There should not be any dispute that the initial responsibility to prove the cash credit u/s 68 of the Act is placed upon the shoulder of the assessee. It is well settled proposition that the assessee has

to prove three main ingredients viz. the identity of the creditor, the credit worthiness of the creditor and genuineness of the transactions. In the instant case, since the assessee has received gift from his father, the identity of the donor stands proved. However, the assessee could not entirely prove that his father was having credit worthiness to make gift to the tune of Rs.20 lakhs to the assessee. From the bank statements of the father of the assessee, I noticed that his father had held fixed deposits, which got matured in March 2014. The maturity proceeds have been credited to the bank account of the father and he has withdrawn a sum of Rs.10 lakhs there from in March, 2014. Though the assessee has introduced the capital in his books on 01/4/2015, that does not mean that the assessee has received gifts from his father only on that date. The possibility of receiving gifts earlier to that date cannot be ruled out. Accordingly I am of the view that the amount of Rs.10 lakhs withdrawn by the father of the assessee from his bank account could have been utilized for making gift to the assessee. Accordingly I am of the view that the assessee can be considered to have establish the sources of gift to the extent of Rs.10 lakhs.

9. With regard to remaining amount of Rs.10.00 lakhs, I notice that the assessee has not furnished any documentary proof to prove the sources thereof for his father. Hence merely oral statement that the father of the assessee was saving a sum of Rs.50,000/- and was keeping the same as cash with him is not reliable, as it lacks substance and not supported by any material. Accordingly I

confirm the addition to the extent of Rs.10 lakhs and grant relief to the tune of Rs.10 lakhs. I order accordingly.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on **11th November, 2019.**

**Sd/-
(B.R Baskaran)
Accountant Member**

Bangalore,
Dated, the 11th November, 2019.

/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
15. Dictation note enclosed