

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘SMC’

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA No. 1200/Ahd/2017

AND

ITA NO.2879/ahd/2017

निर्धारण वर्ष/Assessment Year: 2012-13 and 2011-12

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| Lataben B. Salunke Shraddha Deep Marimata Lane Rajmahal Road Baroda 390 001 PAN : ADOPS 9996 G | Vs | ITO, Ward-4(1)(1) Baroda. |
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| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|--------------------------|
| Assessee by : | Shri Mukun Bakshi, AR |
| Revenue by : | Shri Dilipkumar S.DR |

सुनवाई की तारीख/Date of Hearing : 29/01/2020

घोषणा की तारीख /Date of Pronouncement : 04/02/2020

ORDER

Present two appeals are directed against orders of the Id.CIT(A)-4, Baroda dated 17.1.2017 and 8.9.2017 passed in the Asstt.Years 2012-13 and 2011-12 respectively. Since issues in both the assessment years are common, therefore, we heard them together and deem it appropriate to dispose of both these appeals by this common order.

2. Solitary grievance of the assessee is that the Id.CIT(A) has erred in confirming the addition of Rs.5,00,000/- in the Asstt.Year 2011-12 and Rs.27,50,000/- in the Asstt.Year 2012-13 respectively.

3. Brief common facts relating to this issue in both the years are that Shri Bhagwant A Salunke, late husband of the assessee had made a Will on 20.8.2009 whereby he has provided that a cash of Rs.35 lakhs was lying in his *Tijori* which he bequeathed to wife, Smt. Lataben Salunke. Out of that cash, Rs.27 lakhs been deposited in the saving bank account with Bank of India during the accounting year relevant to the assessment year 2012-13 and Rs.5.00 lakhs in the accounting year relevant to the Asstt.Year 2011-12. When source of these cash deposits in the bank was inquired, then the assessee deposed that it was inherited from her husband. In order to prove her case, she has produced a copy of the Will and witnesses who attested the Will. The AO has recorded their statement, but was not satisfied with version of the assessee. He disbelieved the explanation of the assessee, and made addition of Rs.27,50,000/- in the Asstt.Year 2012-13 and Rs.5,00,000/- in the Asstt.Year 2011-12. Appeal to the CIT(A) did not bring any relief to the assessee.

4. With the assistance of the Id.representatives, I have gone through the record carefully. Before adverting to the facts, I would like to note of section 69A, which reads as under:

“Where in any year the taxpayer is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the taxpayer offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, than the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the taxpayer for such year.”

5. In view of the above provision, let me discuss the facts of the present case. The assessee has explained how the money came to the possession of the assessee. The stand of the assessee is that her husband was running a coaching class and providing tuition to the students. He died on 27.9.2010 and before his death on 20.8.2009, he made a Will. According to this Will there were two residential house one at Shradeep and other at Suhas Co-op. Housing Society. As far as residential houses are concerned, these were bequeathed amongst legal heirs according to the mutually understanding after his death. He has also declared that a sum of Rs.35 lakhs was earned out of his professional fees income over a period of time lying in his *Tijori* and this would be given to his wife Smt.Lataben. Two witnesses attested this Will, gave their affidavits and also appeared before the AO. Their statements have also been taken. The version of the assessee has been belied by both the Revenue authorities on the basis of circumstantial evidence viz. in this day-to-day world nobody would keep cash amount at home where bank facility is available. The Id.CIT(A) doubted the genuineness of the Will on the ground it was not registered. The Id.CIT(A) also observed that a proper probate was not taken by the successor under the Will. To my mind, this objection loses their importance, the movement two independent witnesses who have attested the Will came forward and supported the version of the assessee. I have gone through the cross-examination done by the AO, and a perusal of that would reveal that nothing incriminating could be unearthed from these witnesses. They have supported the story and deposed that the Will was signed in their presence. They have disclosed that the cash was not counted before them, but deponents were appraised about this in the Will. As far as

non-registration of the Will is concerned, a Will would not become invalid on its non-registration. It will not lose its evidentiary value. Had it been registered then there could not any suspicion over it. That was one of the corroborative circumstances in favour of the genuine documents. The AO further ought to have appreciated that there were no other sources of income to the assessee, from where it could be construed that he assessee has introduced her escaped income from taxes, in this form. He has made reference to the sale of a house and sale proceeds, but then he has nowhere investigated that the assessee has received something more in the shape of cash, than the one disclosed by her in the sale or deemed under section 50C of the Income tax Act. Therefore, to my mind, no addition deserves to be made under section 69 of the Act. The assessee has explained the source of deposit. Accordingly, I allow both the appeals and delete addition of Rs.27,50,000/- and Rs.5,00,000/- in the Asstt.Year 2012-13 and 2011-12 respectively.

6. In the result, all both the appeals are allowed.

Pronounced in the Open Court on 4th February, 2020.

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**

Ahmedabad; Dated, 04/02/2020