

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

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

**ITA No.3043(Bang)/2018
(Assessment Year : 2015-16)**

Shri Mohamed Samiulla Khan
No.1/2, NAAZ Complex,
N R Road, Near City Market,
Bengaluru-560 002
PAN No.ABYPK7388L

Appellant

Vs

The Deputy Commissioner of Income Tax Officer,
Circle-5,
Bangalore

Respondent

**Appellant by : Shri Raghavendra Chakravarthy, CA
Revenue by : Shri Manjeet Singh, Addl.CIT**

Date of hearing : 01-07-2020

Date of pronouncement : 03-07-2020

ORDER

PER N.V.VASUDEVAN, VICE PRESIDENT:

This is an appeal by the Assessee against the order of the Commissioner of Income Tax (Appeals)-5, Bangalore dated 17.09.2018 for the A.Y.2013-14.

2. The only issue arises for consideration in this appeal is as to whether the revenue authorities were justified in making an addition of Rs.3,21,07,666/- u/s 68 of the Income Tax Act,1961 (Act).

3. The facts and circumstances under which this appeal arises for consideration are that the Assessee is an individual. During the previous year relevant to assessment year 2015-16 there was an increase in the capital account of the Assessee by a sum of Rs.3,21,07,666/-. The AO called upon the Assessee to

explain the increase in the share capital of the Assessee. The Assessee explained that his son in law Shri Safdar Khatri had given a loan of Rs.3,21,07,666/- to the Assessee in the previous year relevant to assessment year 2012-13. During the previous year relevant to assessment year 2015-16 i.e. on 25-03-2015 Shri Safdar Khatri gifted unsecured loan to his father in law i.e. Assessee out of love and affection. The Assessee also submitted that in the balance sheet of the Assessee's individual account in the proprietor concern i.e M/s Alfa steel and M/s Silverline the Assessee had reduced a sum of Rs.3,21,07,666/- from unsecured loans and added the same to his capital account.

4. On the above plea of the Assessee, the assessing Officer (AO) took the view that the Assessee failed to prove the source of income and credit worthiness of his son in law Shri Safdar Khatri and therefore, a sum of Rs.3,21,07,666/- was liable to be added u/s 68 of the Act. Accordingly, the aforesaid sum was added to the total income of the Assessee.

5. On appeal by the Assessee the CIT(A) upheld the order of the AO observing that the Assessee failed to establish the credit worthiness of his son in law and mere furnishing of confirmation letters and copy of gift deed was not sufficient to discharge the onus that lies on the Assessee u/s 68 of the Act.

6. Aggrieved by the order of Id.CIT(A) the Assessee preferred the present appeal before the Tribunal. The Id counsel for the Assessee filed paper book before us. He brought to our notice that in the case of the Assessee for assessment year 2012-13 a notice u/s 148 of the Act was issued by the AO on 30-03-2015 recording the following reasons for issue of notice u/s 148 of the Act.

“ Your case was re-opened for the following reason:

On verification, it is found that you have received rs.3.21,07,666/- from your son in law on various dates during the FY: 2011-12 relevant to AY: 2012-13 and showed as unsecured loans till AY: 2014-15.

2. Further, it was found that the same amount of unsecured loan was waived on account of gift during the FY: 014-15 relevant to AY: 2015-16. From the details collected during the scrutiny

assessment proceedings for AY: 2015-16, it was found that you were not able to prove the source of income and credit worthiness of your son-in-law.

3. In view of the above, I have reasons to believe that the income to the extent of Rs.3,21,07,666/-chargeable to tax has escaped assessment in this case for the financial year pertaining to AY: 2012-13 within the meaning of the provisions of section 147 of the IT Act, 1961.

7. The Assessee filed all the required details in the assessment proceedings u/s.148 of the Act for A.Y.2012-13 and the AO passed an order of assessment dated 14-12-2018 accepting the explanation offered by the Assessee. The Id. counsel thus submitted that the Assessee has established the genuineness of the loan (cash credit) received by the Assessee from his son-in-law. Since the credit worthiness, capacity and genuineness of the transaction of loan by the Assessee's son-in-law to the Assessee has been established with regards to AY: 2012-13, the previous year relevant to AY: 2012-13 in which the cash credit was found in the books of accounts of the Assessee, the gift of the very same sum in the previous year relevant to AY: 2015-16 should be accepted. It was also brought to our notice that in the aforesaid proceedings that the Assessee had filed an affidavit of his son-in-law explaining the manner in which the monies totaling Rs.3,21,07,66/- was paid to the Assessee. The copy of the relevant affidavit of the Assessee and the supporting documents are placed at pages 26 & 27 of the Assessee's paper book. Copy of the bank statements, evidencing receipt of money from son-in-law is also established by the bank statements of the Assessee's proprietary account i.e. M/s Alfa Steel which are at page-68 to 70 of the Assessee's paper book. The Id. counsel for the Assessee submitted that in the light of the aforesaid documentary evidence which has been accepted by the AO in so far as the Assessee's assessment for AY: 2012-13 the gift in question during the previous year stands explained. In this regard our attention was also drawn to the copy of the gift deed by Assessee's son-in-law which is placed at page-26 of the Assessee's paper book. It was also highlighted that the order of assessment for A.Y. 2012-13 was passed after the impugned order of CIT(A). The Id. DR relied on the order of the Id.CIT(A).

8. We are of the view that that in the light of the order of assessment dated 14-12-2018 for AY: 2012-13 passed in the case of the Assessee accepting the genuineness of the loan given by the Assessee's son-in-law to the Assessee, the source, capacity and genuineness of the gif of the very same sum in the AY: 2015-16 stands established. The only reason assigned by the revenue authorities for rejecting the plea of the Assessee in AY: 2015-16 is that the credit worthiness and source of income of Assessee's son-in-law has not been established. The gift by the Assessee's son-in-law has never been disputed nor disbelieved. Since the AO has accepted the credit worthiness of the Assessee's son-in-law in Assessee's assessment for AY: 201-13, we are of the view that the sum in question which was added as unexplained u/s 68 of the Act for AY: 2015-16 has to be deleted. We hold and direct accordingly.

9. In the result, the appeal of the Assessee is allowed.

Order pronounced on 03-07-2020

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N.V.VASUDEVAN)
VICE PRESIDENT

Place: Bangalore
Dated: 03-07-2020
***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR
- 6.Guard File

By Order

Asst.Registrar