

IN THE INCOME TAX APPELLATE TRIBUNAL, PATNA (VIRTUAL HEARING)

Before Sri Sanjay Garg, Judicial Member

I.T.A. No.204/Pat/2018
Assessment Year: 2002-03

Dr. Neeraja Sharma.....Appellant
Kavi Raman Path,
Boring Canal Road,
Patna -800001.
[PAN :AMRPS5713R]

ACIT, Circle-1, Patna.....Respondent

Appearances by:

Shri Sudhir Kumar Narayan, Advocate, appeared on behalf of the appellant.
Shri Ajay Kumar, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 20, 2021

Date of pronouncing the order : January 20, 2021

Hearing through Video Conferencing
ORDER

The present appeal has been preferred by the assessee for the assessment year 2002-03 against the order dated 05.06.2018 of the Commissioner of Income Tax(Appeals)-1, Patna (hereinafter referred to as the 'CIT(A)').

1. In this appeal, the assessee has taken the following grounds of appeal:

1. *For that on the facts and circumstances of the case the learned commissioner of Income-tax (Appeal) has erred in sustaining the addition of Rs. 1,70,396/- made by the assessing Officer U/s 69 of the I.T Act, 1961.*

2. *For that on the facts and circumstances of the case the learned commissioner of Income-tax (Appeal) has erred in sustaining the addition of Rs. 20,000/- made by the assessing Officer U/s 68 of the I.T Act, 1961 by disallowing the claim of the appellant of having received the same as gift from mother- in- law.*

3. *For that the appellant craves leave to add, alter. Modify, vary, delete any ground of appeal before or at the time of hearing, if necessary.*

2. Apart from the above grounds of appeal, the assessee vide another application dated nil has also pleaded for adjudication about a clerical error made by the CIT(A) in sustaining the addition of Rs.4,79,000/- u/s 69 of the Income-Tax Act.

3. Ground No.1 – In this ground, the assessee has contested the confirmation of addition of Rs.1,70,396/- made by the Assessing Officer u/s 69 of the Income Tax Act. The Assessing Officer during the reassessment proceedings for the year under consideration i.e. assessment year 2002-03, noted that the assessee along with the return of income had also filed balance sheets from assessment years 1998-99 to 2002-03. However, these balance sheets were not filed with the original returns of income which were processed u/s 143(1) of the Income Tax Act. The Assessing Officer further noted that the assessee had shown opening capital of Rs.14,60,937/- as on 31.03.2001 which included cash in hand of Rs.1,70,396/-. The Assessing Officer noted that since the balance sheets were not filed with the original return so this was an afterthought of explanation of opening cash in hand of Rs.1,70,396/- which he considered as unexplained income of the assessee. In the first appellate proceedings before the Id. CIT(A), the assessee pleaded that this amount of cash in hand was shown in books of account as on 31.03.2001, therefore, the said amount even otherwise could not be added for the assessment year under consideration i.e. assessment year 2002-03. However, the Id. CIT(A) rejected the above contention of the assessee observing that no such books of account were found from the premise of the assessee during the survey operation carried out by the Income Tax authorities. He, therefore, confirmed the addition so made by the Assessing Officer.

3.1 Thus the assessee has come in appeal before us. I have heard the rival contentions and gone through the record. The assessee has shown cash-in-hand as on 31.03.2001 of Rs.1,70,396/-. The assessee in response to the notice for filing return of income in the reassessment proceedings has attached balance sheets to explain about his income/investments. None of the lower authorities has pointed out any defect either in the books of account or in the balance sheet. The impugned additions has been made only on the ground that the balance sheets were not filed along with original return of income. However, it is not the case of the lower authorities that such balance sheets were mandatorily required to be filed along with the return of income. When the reassessment proceedings have been initiated, the assessee to explain better picture of its accounts not only produced the books of account but also filed balance

sheets. Under the circumstances, to reject the balance sheet without pointing out any error in the same, in my view, is not justified. In view of this, the impugned additions are not sustainable in the eyes of law and the same are ordered to be deleted.

4. Ground No.2 – The assessee has contested the confirmation of additions of Rs.20,000/- made by the Assessing Officer u/s 68 of the Income Tax Act on account of rejection of the claim of the assessee of receipt of gift amount of Rs.20,000/- from her mother-in-law. The assessee in her reply has explained that the said amount of Rs.20,000/- was received from her mother-in-law. The assessee also explained the source of cash of her mother-in-law as agricultural income. The assessee, thus, has explained not only the identity but also creditworthiness of the donor. The Assessing Officer has rejected the above plea of the assessee simply on the ground that there is no corresponding withdrawal from the bank account by the donor. May it be so, but the claim of the assessee is that the amount was gifted by her mother-in-law out of the cash balance lying with her out of agricultural income. In view of this, the addition made by the lower authorities on this account is not sustainable and the same is ordered to be deleted.

5. The next contention raised by the ld. counsel of the assessee is relating to clerical error crept in the impugned order of the CIT(A). In his appeal before the CIT(A), the assessee at Ground No.4 of the said appeal had contested the additions of Rs.4,79,000/- u/s 68 of the Income Tax Act. The ld. CIT(A) in para 6.4 of his order observed as under:

6.4 In the present case, it is a matter of record that the appellant had bought a readymade built flat and also that the A.O, in the course of the assessment proceedings of the case, had not brought anything on record to suggest that the appellant had made any improvement or investment after purchasing the flat in question. Therefore, respectfully following the judgments, it is held that A.O has no jurisdiction to make any further addition in this regard on the basis of report of the valuation cell of the Department. Accordingly, the A.O is directed to make the addition so made on this account.

6. A perusal of the above reproduced observations of the ld. CIT(A) is that the ld. CIT(A), in fact, deleted the additions made on this issue but inadvertently has written that the Assessing Officer is directed to make the addition instead of directing to

delete the addition. This is a clerical error apparent on record. Therefore, this ground of the assessee is taken as allowed and the Assessing Officer is directed to delete the addition of Rs.4,79,000/- made on account of difference between the investments shown and the value determined by the DVO.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 20th January, 2021.

Sd/-
[Sanjay Garg]
Judicial Member

Dated : 20.01.2021
RS

Copy of the order forwarded to:

- 1. Dr. Neeraja Sharma*
- 2. ACIT, Circle-1, Patna*
- 3. CIT(A)-*
- 4. CIT- ,*
- 5. CIT(DR),*

True copy

By order

Sr. Private Secretary