

**आयकर अपीलीय अधिकरण “एफ ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

**माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.6012/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2014-15)

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आयकरअपील सं./ I.T.A. No.6013/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2015-16)

<b>Shri Bharat Patodia</b> B-602, Plot No. C/3 Millenium Orchid, Sector-12, Kharghar, Navi Mumbai-410210	<b>बनाम/</b>	<b>DCIT CC 1(1),</b> R. No. 903, 9 <sup>th</sup> floor, Old CGO Building, M. K. Road, Mumbai-400 020
	<b>Vs.</b>	
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AFNPP-9577-K</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Ms. Hiral Sejal– Ld. AR
<b>Revenue by</b>	:	Shri Narendra Jangpangi– Ld. CIT-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	26/07/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	06/08/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 The grievance of the assessee in aforesaid appeals for Assessment Years (AY) 2014-15 & 2015-16 is common. It is admitted position that adjudication of any one appeal shall equally apply to the other appeal also. For the purpose of adjudication, the appeal for AY

2014-15 is taken as the lead year which arises out of the order of learned Commissioner of Income-Tax (Appeals)-47, Mumbai [CIT(A)], dated 31/07/2018 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 153A of the Act on 22/12/2016. The assessee is aggrieved by confirmation of certain additions in the impugned order.

1.2 Having heard rival submissions and upon perusal of relevant material on record, our adjudication would be as given in succeeding paragraphs.

2. The material facts are that pursuant to search action on Balaji Group on 28/01/2015, the premises of the assessee were also covered under the search. In response to notice u/s 153A, the assessee offered returned income of Rs.6.45 Lacs which was the same as offered u/s 139(1). The assessee was saddled with various additions which are adjudicated as under: -

### **3. Gifts**

3.1 The assessee received gifts of Rs.0.98 Lacs from his brother-in-law namely Ramesh D. Gajera. Similar gift of Rs.0.98 Lacs was received from cousin brother Shri Kishore D. Gajera. The assessee filed gift deed and evidence of land holding in support of donor's agricultural income. However, in the absence of return of income and bank statement of donors, the gifts were added to the income of the assessee u/s 68.

3.2 The assessee also received gift of Rs.1 Lacs from his mother namely Smt. Santaben Vashrambhai Patodiya which was supported by gift deed and land holdings. However, bank statement was not filed. Further, donor had reflected income of Rs.1.78 Lacs only. The donor had

gifted amount of Rs.4.94 Lacs to various other family members during the year. Therefore, rejecting assessee's explanation, these gifts were added to assessee's income as unexplained cash credit u/s 68.

3.3 During appellate proceedings, the assessee submitted bank statement of Shri Ramesh D. Gajera and an affidavit from him stating the reasons for non-filing of return of income. The source of gift by donor was said to be agricultural income earned by the donor which was sought to be fortified on the strength of affidavit of the donor. Regarding gift from Shri Kishore D. Gajera, the assessee submitted bank statement of the donor. Regarding gift from mother, it was submitted that the mother had sufficient capital balance which was formed from her lifetime savings. The same was evident from the Balance Sheet of the mother as placed on record.

3.4 A remand report was sought on additional evidences as submitted by the assessee during appellate proceedings. However, Ld. AO, without commenting on merits, opposed admission of additional evidences. The Ld. CIT(A), considering the factual matrix, admitted the additional evidences but rejected the grounds on merits. It was observed that the mother of the assessee advanced gifts to various other members and there was no concrete income in her return of income. The mother was stated to have contributed an amount of Rs.10.47 Lacs towards household expenses which was highly improbable. No agricultural income was offered by the mother in her return of income. In the bank statement of Shri Ramesh D. Gajera, there were only cash deposits followed by immediate transfer of gifts which would reveal that accommodation entries were provided in the form of gifts. The donor had

very low opening and closing bank balances. No documents were submitted in support of agricultural income of the donor. The cash deposits did not match with harvesting season of various crops. Similar facts were noted in bank statement of Shri Kishore D. Gajera. Therefore, all these facts and circumstances would lead to irresistible conclusion that the assessee had introduced his unaccounted income through gifts in a regular and systematic manner. Relying upon various judicial pronouncements holding the field, the gifts received by the assessee were held to be bogus. Aggrieved, the assessee is in further appeal before us.

3.5 Upon perusal of documents on record, we find that the mother of the assessee has declared income of Rs.1.78 Lacs during the year as miscellaneous income. However, upon perusal of her Balance Sheet as on 31/03/2014, as placed on record, it could be seen that she has capital balance of Rs.1287.32 Lacs which has been invested in various forms. This capital balance is arrived at after reducing Gifts of Rs.4.94 Lacs and withdrawals of Rs.10.47 Lacs. The source of gift, in our opinion, could not solely be the current year's income particularly in view of the fact that the mother of the assessee was an old lady and living in a joint family. There is no adverse material to disprove the gifts. Therefore, the conclusion drawn by Ld. CIT(A) could not be sustained and we are inclined to delete the addition of Rs.1 Lacs.

3.6 So far as the two other donors are concerned, we find that both of them are agriculturists which is supported by their land holdings. The amounts of gifts are less than Rs.1 Lacs in each of the cases which was below exemption limit of Rs.2 Lacs. Therefore, there would be no

obligation on the donors to file the return of income. The gifts are duly supported by the affidavits of the donors. The details of agricultural land have been well enumerated in their respective affidavits. Regarding allegation of immediate cash deposit, the donors being agriculturist working in remote village would receive the proceeds of agriculture in cash. The cash deposit need not match with harvesting season since there is no such requirement under law. Therefore, these two additions would stand deleted. We order so.

#### **4. Low Household Drawings**

4.1 Upon perusal of drawings details, it transpired that the assessee, his wife, son and HUF of the family declared aggregate drawings of Rs.1.56 Lacs which include children's education expenses and LIC payments, The assessee did not furnish complete details of expenses on various items, expenses during functions and festivals, travelling etc. It was concluded that the overall drawings were too low to run a family. Accordingly, the yearly drawings were estimated at Rs.4.40 Lacs and the difference of Rs.2.83 Lacs was added to the income of the assessee.

4.2 During appellate proceedings, it was submitted that mother was the head of the family who was bearing all the expenses of the family. She was earning income by stitching clothes which fall into basic exemption limit and therefore, there was no need for her to file the return of income. She owned agricultural land which was used to grow various crops which were ultimately consumed by the family. Therefore, the withdrawals were low. She was stated to have withdrawn sum of Rs.10.47 Lacs during the year.

4.3 The Ld. CIT(A) observed that no agricultural income was reflected in the return of income and it was highly improbable that the mother earned more than Rs.10 Lacs of agricultural income from agricultural land worth of Rs.1.19 Lacs. She had gifted various amounts to other family members during the year. The amounts of gifts and household expenses aggregated to more than Rs.15 Lacs during the year. The action of Ld.AO was based on cogent material on record which could not be disputed by the assessee. Therefore, the additions were confirmed. Aggrieved, the assessee is in further appeal before us.

4.4 After going through the observations of Ld. CIT(A) and material on record and in view of our observations in preceding para 3.5, we are of the view that the drawings made by the mother as well as gifts given by her are duly supported by her Balance Sheet as on 31/03/2014. It could be seen that she has capital balance of Rs.1287.32 Lacs which has been invested in various forms. This capital balance is arrived at after reducing Gifts of Rs.4.94 Lacs and withdrawals of Rs.10.47 Lacs. The assessee's drawings in all the earlier years are less than Rs.2 Lacs which is evident from detail of household expenses as placed on record for various years. This being the case, this addition is not sustainable and hence, we delete the same.

## **5. Interest on Unsecured Loans**

5.1 The assessee paid interest of Rs.1.99 Lacs on unsecured loan of Rs.14.60 Lacs taken in AY 2013-14 from Mr. Anil A. Bhuva. Since the loan was added back to assessee's income in earlier AY, the interest paid in this year was also disallowed and added back to assessee's

income. The Ld. CIT(A), terming the addition to be consequential in nature, confirmed the addition.

5.2 Upon perusal of appellate order for AY 2013-14 as placed on record, we find that the adjudication of this addition has been held to be academic in nature in view of the fact that the assessee's legal ground was allowed. The department could not prefer any further appeal due to low tax effect. Thus, there are no concrete findings on the issue of quantum additions of unsecured loans. Since, this issue has attained finality in AY 2013-14 in assessee's favor, the consequential addition of interest, as made in this year, stand deleted. This ground stand allowed.

## **6. Sundry Creditors**

6.1 The assessee was asked to file the details of year-end sundry creditors of Rs.1.35 Lacs. The assessee submitted that the sundry creditors were for the business covered u/s 44AD. Therefore, the assessee was not required to maintain books of accounts and the name, address & PAN of the creditors was not available. The same was, consequently, added to the income of the assessee. The action of Ld. AO, upon confirmation by Ld. CIT(A) is in further challenge before us.

6.2 We find that in terms of Sec.44AD, the income is computed on presumptive basis and there is no need to maintain books of accounts. Therefore, the impugned addition, as made u/s 41(1), in our considered opinion, could not be sustained in the eyes of law. By deleting the same, we allow this ground of appeal.

7. The appeal stands allowed in terms of our above order.

**8. ITA No.6013/Mum/2018, AY 2015-16**

8.1 The facts as well as issues are substantially the same in this year. The assessee was saddled with addition of low household drawings for Rs.2.72 Lacs on similar factual matrix. Following our adjudication in AY 2014-15, this addition stands deleted.

8.2 The second addition is for gift of Rs.0.99 Lacs received by the assessee from his cousin brother Shri Mahesh D. Patodia. Since the creditworthiness of the donor could not be proved, the same was added to the income of the assessee. The Ld. CIT(A) confirmed the same by observing that gift was immediately preceded by an equivalent of cash deposit in the bank account of the donor. No details of agricultural income were filed and the cash deposits were not matching with the harvest season. The donor did not have any agricultural land in the Balance Sheet.

8.3 Upon perusal of documents on record, we find that the gift is supported by the affidavit and proof of land holding of the donor. The donor has declared income of Rs.2.67 Lacs besides having agricultural income of Rs.2.24 Lacs which is reflected in the return of income. This being the case, the genuineness of the gift could not be doubted in the absence of any adverse material. By deleting this addition, we allow this ground of appeal. The appeal stand allowed.

**Conclusion**

9. Both the appeals stand allowed.

*Order pronounced on 06/08/2021.*

**Sd/-**  
**(Amarjit Singh)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 06.08.2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.