

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.5371/M/2018
Assessment Year: 2013-14**

| | | |
|---|-----|---------------------------------|
| Mr. Shafaat M. Husain, 11, Jolly Maker Apts III, Cuffe Parade, Colaba, Mumbai – 400 005 PAN: AAAPH5013Q | Vs. | ACIT – 17(3) Mumbai - 400007 |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Ritu Kamal Kishor, A.R.
Revenue by : Shri T. Khalsa, D.R.

Date of Hearing : 07.07.2021

Date of Pronouncement : 02.09.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 04.07.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The assessee has raised the following grounds:

“1. a) The Ld. CIT (A) has erred in passing an order without giving an opportunity to explain the case. The same be considered and addition be deleted.

b) The Ld. CIT (A) erred in not accepting the plea of the new authorized representative of the assessee with regard to the date of hearing. The same be considered and an opportunity be given.

2. a) Without prejudice to the above, the Ld. CIT (A) grossly erred in not considering the amount of Rs. 4,39,07,574/- being inheritance from his father by way of will. The same be considered and addition be deleted

b) The Ld. CIT (A) has failed to consider that the assessee's father was a renowned painter and hence his credibility could not be doubted. The same be considered and addition be deleted.

c) The Ld. CIT (A) as well as the AO has failed to consider that the amount is received from the assessee's own brother. The same be considered and the additions be deleted.”

3. At the time of hearing ground No.1 is not pressed and therefore same is dismissed as not pressed.

4. The issue raised in ground No.2 is against the order of Ld. CIT(A) upholding the order of AO thereby confirming the addition of Rs.4,39,07,574/- as made by the AO under section 68 read with section 115BBE of the Act in the assessment framed under section 143(3) of the Act dated 31.03.2016.

5. The facts are that the assessee filed the return of income on 30.09.2013 declaring an income of Rs.39,60,540/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. The assessee is a celebrity painter and engaged in the business of print and painting and thus derived income from business and other sources. The AO issued notices from time to time, however, the compliance of the same were not made. Finally, a show cause notice was issued by the AO calling upon the assessee to show cause as to why the assessment should not be framed on the basis of available information, if the reply is not filed by 28.03.2016 as regards introduction of capital and various other items mentioned in para 4 of the assessment order. The Ld. A.R. attended proceedings on 28.03.2016 and he was asked to explain the source of credit in the capital account of Rs.4,39,07,574/- with all supporting evidences and bank accounts. Simultaneously, AO issued notice under section 133(6) of the Act to manager of Standard Chartered Bank, Fort

Branch, Mumbai calling upon the bank to furnish a copy of statement of account of the assessee No.23110423830. The AO on the basis of the said account came to a conclusion that on 16.05.2012 assessee has deposited a sum of Rs.4,39,07,574/- in his account. On 31.03.2016 the authorized representative of the assessee furnished a letter submitting therein that Rs.4,39,07,574/- was received from Estate of Mr. Maqbool Fida Husain. However, no supporting evidences were filed. The AO also noted that on 23.03.2016 the authorized representative filed a certificate from Mr. Mustafa Husain from Dubai about the remittance of Rs.4,39,07,574/- being given to Mr. Shafat Makul Husain out of father estate. Accordingly to the AO the source of money was not explained. Finally, the AO treated the said amount as unexplained cash for the reasons that the necessary ingredients of creditworthiness of the donor and genuineness of the transactions were not proved and resultantly added the same to the income of the assessee.

6. In the appellate proceedings the Ld. CIT(A) upheld the addition by observing and holding the impugned addition is covered under section 69A of the Act. The assessee furnished before the ld. CIT(A) copy of last Will and Testament of Late Shri M.F. Husain to testify that the source of deposit was out of heritage of Late Shri M.F. Husain. The ld. CIT(A) observed the explanation of gift was changed to receipt out of inheritance by virtue of Will of father and remain unsubstantiated and thus dismissed the appeal.

7. The Ld. A.R. vehemently submitted before us that the assessee is son of Late Shri M.F. Husain, a celebrity painter who

was world renowned and engaged in the business of printing and painting. The Ld. A.R. submitted that it has all along been submitted during the assessment as well as appellate proceedings that a sum of Rs.4,39,07,574/- deposited in the bank account of the assessee on 16.05.2012 in Standard Chartered Bank, Mumbai which was received by way of inheritance from the Estate of MF Husain. The Ld. A.R. submitted that assessee has furnished a letter of confirmation dated 10.03.2016 from Mr. Mustafa Husain, Dubai who is one of the three sons of late Shri M.F. Husain stating that a sum of Rs.4,39,07,574/- was given to Mr. Shafat Makul Husain by his father late Shri M.F. Husain as a part of inheritance share to the assessee vide letter dated 23.03.2016. The copy of the letter dated 23.03.2016 was also filed before the AO which is attached at page No.8 and confirmation at page No.9. However, the AO wrongly proceeded on the assumption that the said amount is unexplained cash credit on the ground that no details of the bank account from where the amount was remitted was furnished and thus identity, genuineness and creditworthiness were not proved. The Ld. A.R. while referring to the order of Ld. CIT(A) submitted that the Ld. CIT(A) affirmed the order of the AO under section 69A of the Act but not under section 68 as done by the AO. The Ld. A.R. submitted that the Ld. CIT(A) has grossly ignored the evidences filed before him in the form of last will and testament of late Shri MF Husain to corroborate that source of credit in the assessee's bank account was out of Estate of MF Husain and thus Ld. CIT(A) held that claim of gift later was changed to will which remained unproved and unsubstantiated. The Ld. A.R. submitted that the amount of

money received from the Estate of MF Husain was received through banking channel and same represented the inheritance receipt from the estate of his father who was a world renowned artist. The Ld. A.R. even referred to the profile of late Shri MF Husain a copy of which is enclosed at page No.13 to 19 of the paper book. The Ld. A.R. submitted that his paintings were sold at huge price which were shared among the six children. The Ld. A.R. also referred to the will left by the late Shri MF Husain the veracity of which is not doubted by Ld. CIT(A). The Ld. A.R. finally submitted that the assessee has furnished all the necessary documents before the authorities below which have not been disbelieved and therefore the finding of the authorities below are wrong and against the facts of the case as the assessee has proved credit by way of furnishing bill, letter of confirmation from the brother of the assessee and the fact of having remitted the amount through banking channel. The Ld. A.R. submitted that it is not the case of the Revenue that cash has been deposited in the assessee's bank account. The money has been received by way of foreign remittance in the bank account with proper inward foreign remittance. Thus the Ld. A.R. submitted that assessee has discharged onus cast upon it and the authorities below have failed to make any further investigation/inquiry to controvert the facts brought on record by the assessee. Finally, the Ld. A.R. submitted that in view of these facts the order passed by the AO as well as CIT(A) are erroneous. The Ld. A.R. also submitted that the Ld. CIT(A) has affirmed the addition but under different section under section 69A of the Act. The Ld. A.R. while taking us through the provisions of section 69A submitted that the provisions of

section 69A are applicable where the assessee is found to be owner of any money, bullion jewellery or valued article and such money, bullion jewellery or valued article is not recorded in the books of accounts if any maintained by the assessee for any source of income. The Ld. A.R. submitted that the money received by the assessee is duly reflected in the bank account and also in the books maintained therefore addition under section 69A of the Act is wrong and against the provisions of the Act. The ld AR relied on series of decisions in defense of his arguments namely Indo-Aden Salt Manufacturing & Trading Co. (P) Ltd. Vs CIT(1986) 159ITR 624(SC), RK Syal V ACIT (2000) 66 TTJ 656 (Chad.), Atmaram J Manghirmalani (HUF) vs. ITO (1998) 62 TTJ (Mumbai) 357 and Saraogi Credit Corporation (1976) 103 ITR 344 (Pat). The Ld. A.R. finally submitted that under these facts and circumstances when the money has been received under inheritance from father's estate under will and is exempt from tax, any addition under section 68/68A is wrong and has to be deleted.

8. The Ld. D.R., on the other hand, relied heavily on the order of authorities below by submitting that the assessee has failed to prove the source of money from where this money has been credited into bank account of the assessee. The Ld. D.R. submitted that before the AO the assessee had submitted that this was received as gift from father whereas before the Ld. CIT(A) his stand was changed that this was received by way of inheritance from Estate of late Shri MF Husain father of the assessee. The Ld. D.R. also submitted that mere remittance by banking channel would not prove the genuineness and creditworthiness as contemplated under section 68 of the Act.

Referring to the evidences furnished by the assessee before the Ld. CIT(A) in the form of will, letter of confirmation of Mr. Mustafa Husain certifying that amount was remitted in pursuance of will of late Shri MF Husain as share of inheritance would not prove the genuineness, identity and creditworthiness of a person who remitted the money into the assessee's bank account. The Ld. D.R., while strongly controverting various arguments put forward by the assessee's AR, submitted that the assessee has grossly failed to prove the source of these funds and therefore justified confirmation of addition by Ld. CIT(A). On the issue of addition being confirmed under section 69A of the Act by Ld. CIT(A), the Ld. D.R. submitted that same was not reflected in the books of accounts but only credited in the bank account of the assessee, therefore to plead that provisions of section 69A are not applicable is wrong and fallacious.

9. After hearing the rival submissions of both the parties and perusing the material on record, we find that in the assessee's bank account a sum of Rs.4,39,07,574/- were credited on 16.05.2012 which according to the assessee was received by way of share of inheritance from the estate of his father late Shri MF Husain and was remitted from Dubai where late Shri MF Husain had settled in the later part of his life. The assessee filed letter of confirmation dated 10.03.2016 from Mr. Mustafa Husain, Dubai who is one of the three sons of late Shri M.F. Husain certifying that the amount was given to the assessee by way of inheritance out of his father estate pursuant to his will. A copy of the confirmation and will is placed in the paper book at page No.8 & 9. In our opinion, the assessee has discharged the onus cast upon it by filing these evidences before the authorities

below and the authorities below have not carried out any further investigation to prove that the facts as placed by the assessee before the Revenue Authorities are unproved or false. The case of the assessee finds support from the decision of Apex Court in the case of Indo-Aden Salt Manufacturing & Trading Co. (P) Ltd. Vs CIT (supra) in which it has been held that where the assessee has disclosed primary facts then the burden shifts to the Revenue. In the instant case also the assessee has filed all the necessary evidences before the authorities below. However, no further investigation was carried out. In the case of Atmaram J Manghirmalani (HUF) vs. ITO (supra) it has been held that where cash gifts were given by account payee cheques and donar filed affidavits confirming the gifts then in absence of any evidence in the possessing of the department to the contrary gifted amount can not be added as undisclosed income. In the present case also Mr. Mustafa Husain from Dubai issued a confirmation dated 10.03.2016 stating that Rs.4,39,07,574/- was given to the assessee by his father Late Shri M.F. Husain as part of the inheritance share. In the case of Saraogi Credit Corporation (supra), it has been held that once identity of the person giving the money is established and other evidences are placed before the AO pointing that entry is not fictitious then initial burden lying on the assessee can be said to be fully discharged. Under these circumstances, we are not in agreement with the conclusion drawn by the Ld. CIT(A). Consequently, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order pronounced in the open court on 02.09.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 02.09.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.