

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.353/SRT/2018

(निर्धारणवर्ष / Assessment Year: (2012-13)

(Virtual Court Hearing)

Babubhai Bhagwanbhai Vaghani, 21, Tapi Bag Co-op. Society, Varachha Road, Surat-395006.	Vs.	The ITO, Ward-3(3)(1), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACQPV3773K		
(Assessee)		(Respondent)

Assessee by : Shri Sapnesh Sheth, CA

Revenue by : Ms Anupama Singhla, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 06/09/2021

घोषणाकीतारीख/Date of Pronouncement: 20/09/2021

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee pertaining to assessment year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-3, Surat [in short “the Id. CIT(A)”] in Appeal No. CAS/3/97/2015-16 dated 21.02.2018, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 25.03.2015.

2. Grounds of appeal raised by the assessee are as follows:

“1) The Id. Commissioner of Income Tax (Appeals) has erred in law and on facts in not properly appreciating facts and legal aspects of the case and has erred in confirming addition of Rs.40,25,000/- made towards gift received from brother of the Assessee namely Arvindhbai Vaghani.

2) The Id. Commissioner of Income Tax (Appeals) has erred in law and on facts in not properly appreciating facts and legal aspects of the case and has erred in confirming addition of Rs.2,00,000/- made towards estimated household expenses.

3) It is therefore prayed that the above action of the Id CIT(A) be quashed and income as per return of income filed by the Assessee may kindly be restored.

4) The different grounds of appeal as listed hereinabove are without prejudice to each other.

5) The Assessee craves leave to add, amend, alter, delete, substitute or modify any or all of the Ground or Grounds of Appeal.”

3. The appeal filed for Assessment Year 2012-13, is barred by limitation by one day. The assessee has moved a petition requesting the Bench to condone the delay. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

4. Now, we shall take Ground no.1 raised by the assessee which relates to addition of Rs.40,25,000/- made towards gift received from brother of assessee namely, Arvindbhai Vaghani.

5. We advert to the relevant facts. During the assessment proceedings, the Assessing Officer noted that in the books of accounts, the assessee has claimed a gift received to the tune of Rs.40,25,000/- from Shri Arvind B. Vaghani. The assessee was asked to explain the genuineness of the gift. In response, the assessee submitted before the assessing officer, the copy of affidavit and copy of bank statement, passport, copy of employer's return of remuneration etc. However, Assessing Officer was of the view that merely filing of copy of bank book, copy of affidavit and copy of passport is not sufficient to prove that gift was made to the assessee, therefore the Assessing Officer made addition to the tune of Rs.40,25,000/-.

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the action of the assessing officer. Aggrieved, the assessee is in further appeal before us.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Learned Counsel submits

before us that person making the gift (Doner) is brother of assessee residing in Hong Kong, as evident from his Hong Kong Passport. The affidavit of Gift says that the donor is giving this gift to his brother assessee. The employers return of remuneration and pensions filed with Inland Revenue Department Hong Kong by the Employer BBDM (HK) Ltd on 30.04.2012, shows that Brother (Doner) has been paid salary of 3,84, 400 HK Dollars during the F Y 2011-12 , which in the existing rate in March 2012 works out in Indian rupees to Rs. 20,23,104/-. It is also seen that the bank account of Doner shows a receipt of Rs 29 lakhs from one Shri Pareshbhai Mendapara on two occasions 4/10/2011 and 16.11.2011. The Ld Counsel has also produced confirmation for this amount from Parshbhai Mendapara which shows that this is a loan given to Pareshbhai Mendapara and same was repaid during the year. The ld Counsel also submitted that since the gift has been made through banking channel therefore genuineness of the transaction should not be doubted and addition made by the Assessing officer may be deleted.

8. On the other hand, ld DR for the revenue submits before the Bench that just because the transaction is through banking channel does not mean that it is a genuine transaction. It is seen that donor has yearly income of Rs.20 lacs but he claims to give a gift of 40 lacs to his brother. Thus, ld DR states that Doner does not have sufficient fund to make such huge gift. Besides, Ld. DR has also primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

9. We note that during the course of assessment proceedings, Assessee had duly submitted his bank statements and relevant ledgers along with 'Affidavit cum declaration' dated 12.02.2015 along with copy of passport, bank statement and Income tax return filed for FY 2011-12 in Hong Kong wherein subject transaction entered into with the above party through proper banking channel were duly reflected. We note that following documents and evidences submitted by the assessee, explains the genuineness and creditworthiness of the gift (transaction):

- Affidavit of Gift
- Bank statement of the party from which amount was received as gift
- Passport as party is residing in Hong Kong (Place of issue of passport)
- Copy of employer's return of remuneration and pensions showing the details of income of the party for the year under consideration in foreign country
- Contra confirmation of the Pareshbhai Mendapara who had refunded the loan given by the donor from which majority part of the gift was received by the Assessee.

Thus, we note that assessee had duly submitted various documents like Affidavit of Gift, Bank-statement of the party from which amount was received as gift (who happens to be brother of the Assessee), Passport as party is residing in Hong Kong (Place of issue of passport), Copy of employer's return of remuneration and pensions showing the details of income of the party for the year under consideration in foreign country, Contra confirmation of the Pareshbhai Mendapara who had refunded the loan given by the donor from which major part of the gift was received by the Assessee. Thus, based on this factual position, we note that assessee has explained genuineness and creditworthiness of the gift and has also explained the source of funds.

Hence, we have no hesitation to conclude that assessing officer did not bring any evidence on record to show that documents submitted by the assessee are false and untrue. We note that whole addition made by assessing officer was based on mere guess work, conjunctures and surmises in a perfunctory manner which has no place in tax jurisprudence. In sum and substance, action of the assessing officer is neither sustainable on facts nor in law, hence we delete the addition of Rs.40,25,000/-.

10. Ground No. 2 raised by the assessee relates to addition of Rs.2,00,000/- made by assessing officer towards estimated household expenses.

11. We have heard both the parties on this issue. We note that the AO could have ventured into estimation only after rejecting the books of accounts of the

assessee u/s 145(3) and thereafter by best judgment assessment u/s 144 of the Act. Here in this case, the AO has not passed any order u/s 144 of the Act. The AO thus without rejecting the books of account of the assessee has gone for estimation on suspicion and conjectures that assessee's drawing are not sufficient. Learned Counsel submits that assessee is also engaged in agricultural activities and most of the household expenses are met from agricultural produce/income, thus, going for adhoc disallowance of percentage basis of the household expenses, by the AO is arbitrary in nature and cannot be sustained, hence we delete the addition of Rs.2,00,000/.

12. In the result, the appeal filed by the assessee is allowed.

Order is pronounced on 20/09/2021 by placing result on Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सुरत /Surat

दिनांक/ Date: 20/09/2021

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Surat
6. Guard File

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By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat