

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA
[Before Shri A. T. Varkey, JM & Shri Rajesh Kumar, AM]

I.T.A. No. 623/Kol/2020
Assessment Year: 2012-13

Anil Kumar Bhagat (PAN: AKNPB6520F)	Vs.	Income-tax Officer, Ward-1(2), Asansol
Appellant		Respondent

Date of Hearing	30.11.2021
Date of Pronouncement	15.12.2021
For the Appellant	Shri S. K. Tulsian, Advocate
For the Respondent	Shri Gautam Patra, Addl. CIT

ORDER

Per Shri A.T.Varkey, JM

This appeal has been preferred by the assessee against the order of the Ld. CIT(A), Asansol dated 03.09.2020 for AY 2012-13.

2. At the outset, the Ld. AR submitted that he is not pressing ground nos. 1, 2 and 3, so all these three grounds of appeal are dismissed.

3. So far as ground no. 4 is concerned , the issue involved is the addition of Rs. 5,00,000/- to the total income of the assessee as concealed income. During the year under consideration, the appellant an individual was engaged in the business of supply of building materials. No regular books of accounts are maintained and therefore the Return of Income (ROI) was filed on estimation on presumptive basis u/s 44AD of the Income Tax Act, 1961 (hereinafter referred to as the Act). During the course of the assessment proceedings, the AO taking note of Rs. 5 lakhs taken as loan in the account of assessee asked the appellant to prove the identity, genuinity and creditworthiness of the lender Mrs. Mira Bhagat. The evidences produced were not found to be satisfactory to the AO, who treated the said sum of Rs. 5,00,000/- as concealed income and added the same to the total income of the appellant.

4. On appeal before the Ld. CIT(A), it was explained by the appellant that the return of income for AY 2012-13 was filed on estimation under presumptive basis without maintaining any books of accounts. And that he had actually received the same as a gift (Rs. 5,00,000/-) from his wife M/s Mira Bhagat and due to inadvertent mistake on the part of their accountant the said gifted amount was shown as loan from his wife in the Balance Sheet. In support of the said gift and to establish the liquidity of cash vis-à-vis source of deposit, the appellant had filed gift declaration from her wife-donor along with copies of Acknowledgement of ROI filed by her for AYs 2009-10 to 2012-13, her statement of affairs and statement of Bank account of the appellant evidencing deposits of the said amount. A remand report was called from the AO in regard to the above evidences filed by the appellant in support of the gift received and according to the remand report of the AO, the assessee had changed his stand at the appellate stage, because during the scrutiny proceeding he had admitted the receipt of the said amount as loan from her wife. According to the Ld. CIT(A), no details of the bank account of Smt. Mira Bhagat were filed to verify the withdrawals and bank balance. He also felt it abnormal in having cash in hand to the tune of Rs. 5 lakhs for such a middle class family. On the above premise, he upheld the addition of Rs. 5,00,000/- to the total income of the assessee on the reasoning that the assessee could not clarify/establish the creditworthiness of Mrs. Bhagat to his satisfaction.

5. Aggrieved the assessee is before us.

6. We have heard both the parties. The sole ground before us is in relation to the addition of Rs. 5,00,000/- to the total income of the assessee. And which was made since the assessee could not establish the creditworthiness of his wife in giving cash to him/husband. According to Ld. A.R., the explanation of the appellant admitting the inadvertent mistake in treating the said sum received as loan instead of gift, which explanation has been branded as an afterthought by the AO in his remand report, although it is not the case of the either AO or Ld. CIT(A) that there is any contravention of provisions of Section 269SS of the Act and so according to him, the action of Ld. CIT(A) to confirm the action of AO is erroneous. Therefore, according to Ld. A.R., the amount received whether was a loan or gift is immaterial insofar as the assessment of this sum in the hands of appellant is concerned and pleaded that this is a case of wife helping the husband when it was

necessary for business and since she is a regular income tax assessee for so many years and is in receipt of income from her own profession, this sum of Rs. 5 Lakhs cannot be added in assessee's hand. Per-Contra, the Ld. D.R. supports the order of the authorities below and does not want us to interfere.

7. We note that the assessee had shown to have received Rs. 5 Lakhs from Mrs. Mira Bhagat as loan; so the AO asked the assessee to prove the identity, creditworthiness and genuineness of the transaction. However since the assessee failed to produce any evidence, the AO made the addition of Rs. 5 lakhs. On appeal, the assessee contended that Rs. 5 Lakhs was a gift from his wife Smt. Mira Bhagat. However such a stand of the assessee during the first appellate stage was alleged by the AO in his remand report to be an afterthought and the Ld. CIT(A) confirmed the action of AO. The question before us is the taxability of Rs. 5 Lakhs in the hands of assessee. We note that when confronted to explain the gift received from the wife, the assessee had filed, inter alia, the following documents:

- i) Copy of Gift Declaration by Smt. Mira Bhagat
- ii) Copies of Acknowledgments of ROI filed by Smt. Mira Bhagat for AYs 2011-12 and 2012-13 along with computation of income and balance sheet.
- iii) Statement of affairs of Smt. Mira Bhagat, donor.
- iv) Copy of Bank Statement of the appellant evidencing the deposit of amount of Rs. 5,00,000/-.

From the aforesaid documents we note that the donor has been regularly filing her ROI since past assessment years. As per Balance Sheet as at 31.03. 2011, relevant to AY 2011-12, Smt. Mira Bhagat was having cash of Rs. 5,61,507/- in her hands. Rs. 5 Lakhs being given to assessee in cash was also appearing in the Balance Sheet of Smt. Mira Bhagat drawn on 31.03.2012. Therefore, Smt. Mira Bhagat had sufficient cash balance with her to gift the same to her husband ultimately to meet his business exigency. We further note that authorities below did not find any fault/irregularity in the ROI/balance sheet having been filed by Smt. Mira Bhagat since past several assessment years. Therefore, according to us in the facts of this case once the source of gift is evidently explained being from none other

than the wife of appellant who was a regularly filing ITR's and was having independent source of income from knitting etc. and sufficient cash in hand is shown in the balance sheet of Smt. Mira Bhagat, we are of the opinion that credibility need not be doubted and we accept the genuineness of the gift given by Smt. Mira Bhagat to her husband/the assessee. So we order deletion of addition of Rs. 5 Lakhs.

8. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 15 December, 2021.

Sd/-
(Rajesh Kumar)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated: 15.12.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Anil Kumar Bhagat, 35, N.S. Road, Asansol, District-Paschim Bardhaman-723101
2. Respondent – ITO, Ward-1(2), Asansol
3. CIT(A)-Asansol (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata