

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARATHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 2068/AHD/2017
निर्धारण वर्ष/Asstt. Year:2012-2013

Atul H. Patel, C/o JRS Patel & Co., TNW Business Centre, 3 rd Floor, Old Padra Road, Vadodara. PAN: ACWPP2438B	Vs.	I.T.O., Ward-4(2)(1), Vadodara
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(Applicant)		(Respondent)
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Assessee by :	Shri Parimal Sinh B. Parmar, A.R
Revenue by :	Shri V.K.Singh, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **11/04/2022**
घोषणा की तारीख /**Date of Pronouncement**: **29/04/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-4, Vadodara, dated 15/06/2017 arising in the matter of penalty order passed under s. 144 r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

2. The assessee has raised the following grounds of appeal:

1.0 ASSESSMENT ORDER PASSED LACKS JURISDICTION.

1.01 On the facts and circumstances of your appellant's case and in law, the Id. CIT (A) has erred in confirming action of Id AO of assuming jurisdiction while passing Assessment Order although fact of the matter is that appellant was Non Resident of India within meaning of section 6 of the Act for the year under consideration and hence, the jurisdiction does not lie with the Id AO who passed the Assessment Order. Further, the Hon'ble CIT (Appeals) also failed to appreciate the said fact without considering the factuality and materiality which were apparent from the evidences furnished before Hon'ble CIT (A). Appellant further states that the said ground of appeal has not been adjudicated at all.

1.02 Your appellant prays Your Honour to hold so now and treat the Order as Bad in Law.

2.0 ADDITION TO THE TUNE OF RS. 11, 44,000 /- AS UNEXPLAINED CASH CREDIT.

2.01 On the facts and circumstances of appellant's case as well as in law, the Hon'ble CIT (A) has erred in confirming the action of Id. AO by making addition to the tune of Rs.11, 44,000/- as unexplained cash deposit although it represents money received in the form of Gift from Father and Brother of appellant who stay in India and gifted money out of agricultural income earned by them. Appellant had furnished necessary details to identify and prove genuineness of the transaction as well as creditworthiness of the parties. The same has been completely ignored.

2.02 Your appellant therefore prays Your Honour to hold so now and delete the impugned addition.

3. The issue raised by the assessee in ground No. 2 is that the learned CIT-A erred in confirming the order of the AO by sustaining the addition of ₹ 11,44,000 as unexplained cash credit under the provisions of section 68 of the Act.

4. The facts in brief are that the assessee in the present case is an individual and claimed to be NRI being resident of Auckland, New Zealand since 2003. There was cash deposits in the bank account of the assessee amounting to ₹ 11,44,000.00, the source of which was not explained. Therefore the AO treated the same as unexplained cash credit under section 68 of the Act and made the addition to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A

6. The assessee before the learned CIT-A submitted that he has accepted gift of ₹ 6.44 lakhs and 5 lakhs from his father and the brother which was used for purchasing the residential property in Vadodara. According to the assessee, the father and the brother were engaged in the agricultural activity on the land held by them in their personal capacity as well as on the land of other parties. As per the assessee, the father and the brother were able to generate the annual agricultural income of ₹23 lakhs approximately. The assessee in support of his contention has filed the cash book, profit and loss account, 7/12 extract and gift deed.

7. The learned CIT-A called for the remand report from the AO who submitted that as per the gift declaration, the amount of ₹5 lakhs was received on 18 May 2011 and 6.44 lakhs on 27 October 2011. The assessee has deposited a sum of ₹2.18 lakhs out of the gift of ₹5 lakhs in the bank account dated 18 May 2011 and the remaining amount of ₹9.25 lakhs (balance out of ₹5 lakhs, 2.82 lakhs +6.44 lakhs) was deposited in the bank as on 7 October 2011, a date much before the date of receipt of the gift from the father i.e. 27 October 2011. Thus the AO in the remand report contended that the sources of cash deposited in the bank account cannot be out of the gift amount.

8. However the assessee in the rejoinder submitted that the gift was actually received on 7 October 2011 but there was typographical error in the gift declaration wherein it was wrongly mentioned as 27 October 2011. Thus, the assessee has filed the revised gift deed. According to the assessee, the source of money/cash deposited in the bank is duly explained and therefore no addition is warranted.

9. The learned CIT-A after considering the submission of the assessee, remand report and the rejoinder observed that the assessee has not furnished the details of his stay in India to work out the residential status. As such, the assessee has furnished the copies of the passport which is not sufficient enough to determine the residential status of the assessee.

9.1 According to the learned CIT-A, it is very unusual that a wealthy NRI is accepting gifts from his father and the brother who are claimed to be agriculturist. In other words, the donors of the gift do not have sufficient resources and the capacity to gift the wealthy assessee. Likewise, there was contradiction in the gift deed submitted by the assessee. Thus the learned CIT-A confirmed the order of the AO.

10. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

11. The learned AR before us filed a paper book running from pages 1 to 129 and contended that the father and the brother of the assessee were engaged in the activity of agricultural which can be verified from the 7/12 extract, profit and loss account of the donor, cash book of the donor, sales bills of the agriculture produce which have been filed on pages 16, 118, 119-126, 17 and 18-99 in the paper book.

12. The learned AR also filed a certificate from Talati to justify the crop produced which is available on record.

12.1 The learned AR further contended that the amount of gift received by the assessee was not doubted by the AO. What was doubted is this that the source of cash deposit is not arising from the gift received by the assessee. The reason for the doubt was that there was mismatch in the deed of the gift but the same was rectified. Thus, no adverse inference can be drawn against the assessee.

13. On the contrary, the learned DR vehemently supported the order of the authorities below.

14. We have heard the rival contentions of both the parties and perused the materials available on record. The amount of cash was deposited in 2 instalments.

A sum of Rs. 2,18,000 was deposited on 18 May 2011 whereas the balance amount of ₹9.25 lakhs was deposited on 7 October 2011. There was mismatch of the time in the amount of cash deposits in the bank out of the gift received by the assessee. Therefore it was doubted by the revenue that the amount of cash deposits is not out of the amount of gift received by the assessee. However, we note that the assessee has discharged his onus by submitting the details (including revised gift deed) that the cash was deposited out of the gift amount. Now the onus shifts upon the Revenue to disprove the contention of the assessee based on the documentary evidence. But we find that there was no contrary evidence brought on record by the revenue suggesting that the amount of cash deposit is not out of the gift amount. In other words, the revenue has not brought anything on record in support of its contention that amount deposited by the assessee is not out of the cash gift. To our understanding, merely the difference in time between the cash deposited in the bank viz a viz cash received as gift cannot authorize the revenue authorities to draw inferences against the assessee until and unless some documentary evidence are brought on record contrary to the arguments of the learned AR for the assessee. Admittedly, it is very unusual that a wealthy NRI is accepting the gift from his father and the brother. Generally, the practice is different in the society. As such the NRI make gift to the relatives. But we find that there is no prohibition for the NRI for accepting the gifts from the relatives. In the absence of any prohibition, no adverse inference can be drawn against the assessee based on the prevailing system in the society.

14.1 It is also interesting to note that the assessee has furnished sufficient documentary evidence of his father and the brother to justify the income in their hands from the activity of agricultural. But none of the authority below has made any cross verification from the concern parties in order to bring out the truth on the surface. To our understanding, the AO before drawing any adverse inference against the assessee, should have cross verified from the donors by issuing notice under section 133(6)/131 of the Act. Accordingly, we hold that no adverse inference can

be drawn against the assessee by holding that the amount of cash deposited by the assessee in his bank represents the unexplained cash credit under section 68 of the Act. Accordingly we set aside the finding of the learner CIT-A and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

14.2 As we have decided the issue in favour of the assessee on merit, we do not find any reason to adjudicate the issue raised by the assessee on the validity of the assessment framed under section 143(3) read with section 147 of the. As such the issue on technicality becomes infructuous. Accordingly, we dismiss the same.

15. In the result the appeal filed by the assessee is **partly allowed**.

Order pronounced in the Court on 29/04/2022 at Ahmedabad.

**Sd/-
(SIDDHARATHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
29/04/2022
Manish