

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “SMC-B”, BANGALORE**

**Before Shri George George K, Judicial Member**

IT(IT)A No.434/Bang/2022 : Asst.Year 2017-2018

Sri.Abdul Hameed Gulam Hussain C/o.Sona Plaza, OT Road Shimoga – 577 202 <b>PAN : AIMPA9990R.</b>	v.	The Income Tax Officer Ward Intl.Taxation 1(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Ms.Sunaina Bhatia, Advocate  
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

<b>Date of Hearing : 15.06.2022</b>	<b>Date of Pronouncement : 15.06.2022</b>
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**ORDER**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 08.02.2022. The relevant assessment year is 2017-2018.

2. The grounds raised read as follows:-

*“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The learned CIT[A] is not justified in upholding the addition of Rs.8,50,000/- as unexplained cash credit U/s 69 of the Act, rejecting the bonafide explanation tendered under the facts and in the circumstances of the appellant's case.*

*2.1 The addition made u/s.69 of the Act is opposed to law and facts of the appellant's case in as much as, the cash deposit made by the appellant was duly explained with regard to the cash flow statement filed along with proof of Gift received from his mother and other relatives and opening cash balance and thus, from out of known and explainable sources of funds and hence, the addition made deserves to be deleted.*

*3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-D of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.*

*4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”*

3. The brief facts of the case are as follows:

The assessee is an individual. For the assessment year 2017-2018, the return of income was filed on 08.03.2018 declaring an income of Rs.5,18,320. The case was selected for scrutiny under CASS. Accordingly, notice u/s 143(2) of the I.T.Act was issued and served on the assessee. During the course of assessment proceedings, the A.O. directed the assessee to furnish cash flow statement. On verification of the cash flow statement, it was noticed that the assessee had adopted opening cash balance of Rs.33,50,000 as on 01.04.2016. However, on perusal of the bank account statement during the financial year 2015-2016, there was withdrawal of only Rs.25,00,000 from Canara Bank. In this connection, the assessee was directed to submit a proper explanation with the documentary proof for the difference of Rs.8,50,000, which was later deposited during the financial year 2016-2017 on various dates in the bank. The assessee submitted the reply vide email dated 12.12.2019, wherein it was stated as under:-

*“1. In response to point no.1 in annexure in the above said notice, I had a cash in hand as on 01.04.2016 of Rs.33,50,000/-. The cash in hand shown was accumulation*

*of opening cash as on 01.04.2015 of Rs.1,00,000/-, cash withdrawal from Canara bank Rs.25,00,000/- and gift of Rs.4,00,000/-received in cash from my mother on 25.03.2016 on the occasion of my forthcoming marriage anniversary and cash gifts from family and relatives for the occasion of performing Umrah by me, my wife and my son and after deducting personal and other expenses during the financial year 2015-16. Gift declaration and Umrah travelling passport entry copy enclosed herewith for your kind consideration. To clarify the difference of cash on hand, cash flow statement for F.Y. 2015-16 is enclosed herewith which is sufficient evidence to prove in respect of cash difference of Rs.8,50,000/- as per your notice.”*

4. The A.O., however, rejected the explanation of the assessee and added a sum of Rs.8,50,000 to the total income of the assessee.

5. Aggrieved, the assessee filed an appeal before the first appellate authority. The CIT(A) confirmed the view taken by the A.O. The relevant finding of the CIT(A) reads as follows:-

*“7. The submissions of the assessee are considered once again. The Assessee claims that he had an opening cash balance of Rs.1,00,000/- on account of previous years cash withdrawals. Similarly, the assessee has claimed that he has received a cash gift of Rs.4,00,000/- from his mother and Rs.3,50,000/- from his relatives. It is seen that the assessee is an NRI and is working abroad. The mother of the assessee is an old lady who lives on interest from fixed deposits kept with the bank. She is not in a position to have any cash earnings and to give any cash gifts to her NRI son. Moreover, the claim of cash gifts from various family members is also not substantiated. The AO has gone to great length to verify and counter the self-serving claims of the assessee w.r.t. opening cash balance as well as gifts from his mother and relatives. The assessee has not been able to file any compelling evidence against the reasoning and conclusion drawn by the AO in the assessment order. On account of reasons as above, I do not find any justification to interfere with the order of the AO. The grounds are held unsubstantiated.”*

6. Aggrieved, the assessee has filed this appeal before the Tribunal. The assessee has filed a paper book comprising of

28 pages enclosing therein the acknowledgment of having filed return of income along with the computation of total tax and annexures for the relevant assessment years, copies of the bank statement with IDBI Bank, ICICI Bank for the period from 01.04.2015 to 31.03.2017, the reply submitted to the Assessing Officer, copy of the declaration of the gift, cash flow statement for the assessment year 2016-2017 and 2017-2018, the written submissions filed before the first appellate authority, etc.

8. The learned Standing Counsel strongly supported the orders of the Income Tax Authorities.

9. I have heard rival submissions and perused the material on record. The total addition of Rs.8,50,000 was made by the A.O. The assessee's explanation is that the assessee has cash in hand of Rs.1,00,000 out of accumulation and drawing in the past years, gift of Rs.4,00,000 received from his mother on 25.03.2016 and other cash gifts from family members and relatives on the occasion of his wedding anniversary and performance of Umrah. The assessee has furnished the declaration of his mother, wherein she had categorically stated that she has given gift of Rs.4 lakh on the occasion of her son's wedding anniversary. However, the declaration made by assessee's mother was disbelieved since she was not an assessee under the Income-tax Act and she was only having interest income out of fixed deposits for meeting her day to day expenses. The explanation of the assessee cannot be brushed aside because on the occasion of his wedding anniversary and performance of Umrah in Muslim community

there are gift given by the family members / relatives and friends. Therefore, on the facts of the instant case, I am of the view that out of the total addition made of Rs.8,50,000, a sum of Rs.4,00,000 can be termed as explained with reference to the opening balance. Accordingly, I delete an addition of Rs.4 lakh and sustain Rs.4.50 lakh. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 15<sup>th</sup> day of June, 2022.

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 15<sup>th</sup> June, 2022.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru.
4. The CIT (Intl.Taxation), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore