

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI KAVITHA RAJAGOPAL , JUDICIAL MEMBER**

**ITA No.370/Mum/2021
(Assessment Year :2015-16)**

Mrs. Jyoti R. Raut 1204, Siddhivinayak Chs. Ltd., Plot No-3, Sector-14, Khanda Colony, New Panvel, Panvel, Maharashtra 410206	Vs.	DY CIT, CC-1(1) Mumbai 9th Floor, Pratishtha Bahavan, Old Cgo Building Annexe, Maharshi Karve Road, Mumbai, Maharashtra 400020
PAN/GIR No.AGFPR3954B		
(Appellant)	..	(Respondent)

Assessee by	Ms Hiral Sejpal
Revenue by	Shri Achal Sharma CIT DR
Date of Hearing	08/09/2022
Date of Pronouncement	30/09/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No. 370/Mum/2021 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)- 47, Mumbai in appeal No. CIT(A)-47/12880/16-17 dated 15/10/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the I.T. Act, 1961 dated 23/12/2016. of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/12/2016 by the Id. Dy.

Commissioner of Income Tax, Central Circle 1(1), Mumbai. (hereinafter referred to as Id. AO).

2. At the outset we find that there is a delay of 77 days in filing of appeal by the assessee. We find the same falls during the Covid period and hence, in view of the relaxation provided by the Hon'ble Supreme Court, the delay is hereby condoned and appeal is admitted for adjudication.

3. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made u/s.68 of the Act in respect of jewellery in the sum of Rs.11,25,900/- in the facts and circumstances of the instant case.

3.1. We have heard the rival submissions and considered the materials available on record. We find that assessee is an individual engaged in the business of construction activity deriving income from business and also deriving income from house property, capital gains and other sources. The return of income for the A.Y.2015-16 was filed by the assessee on 31/08/2015 declaring total income of Rs.21,15,210/-. There was a search and seizure action conducted in Balaji group of cases on 28/01/2015 wherein the premises of the assessee was also covered. Accordingly, the assessee's case was centralized with DCIT, Central Circle-1(1), Mumbai vide order of PCIT-2 Thane dated 08/03/2016.

3.2. During the course of assessment proceedings, the Id. AO noticed that assessee had credited a sum of Rs.11,25,900/- to her capital account as gift. The assessee was asked to prove the genuineness of the said gift. In response thereto, the assessee stated that the gifts were received from

her grand mother Smt. Sugandabhai Pandurang Dhandar by way of jewellery weighing 417 gms which is equivalent to Rs.11,25,900/-. The Id. AO also acknowledged the fact that assessee vide letter dated 29/11/2016 filed few papers showing agricultural land holdings of grand mother and her family members. It was submitted by the assessee that her grandmother is an agriculturist and derived only agriculture income and had given her jewellery weighing 417 gms as gift to the assessee. The assessee also furnished a copy of gift deed in non-judicial stamp paper before the Id. AO. The Id. AO however, did not agree to the contentions of the assessee and proceeded to treat the amount credited in the capital account as unexplained cash credit u/s.68 of the Act in the sum of Rs.11,25,900/- and sought to tax the same in terms of provisions of Section 115BBE of the Act on the following reasons:-

- i. In the declaration of gift, no reason or occasion has been mentioned for grant of gift.
- ii. Secondly, the gift deed so furnished, though written on a stamp paper of 100/- is not registered anywhere.
- iii. There is no corroborative evidence furnished to prove the ownership of the impugned jewellery in the hands of the donor.
- iv. The assessee has not furnished any IT/WT return to prove that the donor actually held the impugned jewellery with her.
- v. The assessee has neither disclosed this jewellery in the Balance Sheet while filing the Income Tax Return nor has filed a Wealth Tax Return in respect of this jewellery claimed as received under 'Will'.
- vi. Despite searching the residential and business premises of the assessee, no such gift declared was found by the search team which shows that the gift deed so furnished is only an afterthought.
- vii. During the course of search, statement of the assessee as well as Shri. Ravindra S Raut was recorded, but none of them mentioned about

receipt of this gift from her grandmother in the shape of jewellery, even on being questioned the source of jewellery found at their residence.

viii. Though the assessee has filed evidences of land holding in the name of the donor and her family, the quantum of income enjoyed by the donor or the shape in which savings held by the donor is also not known.

3.3. We have gone through the gift deed which is placed on record in pages 1-2 of the paper book. The said gift deed also contains list of gold jewellery weighing 417 grams given by grandmother to the assessee out of natural love and affection. We find that assessee had placed evidences with record of agricultural land holdings of grandmother from pages 4-21 of the paper book. It is pertinent to note that what is received as gift by the assessee from her grandmother is only jewellery weighing 417 gms equivalent to Rs.11,25,900/-. This was stated to be given by grandmother out of her Streedhan. In our considered opinion, the fact of ownership of agricultural lands by the grandmother has got absolutely no relevance to prove her capacity of giving gift of jewellery to the assessee. The same would, however, enable the grandmother to prove the source of acquisition of jewellery, if any, in her hands. Now, we have to confine our discussions only to genuineness of gift of jewellery of 417 gms stated to be received as gift from grandmother by the assessee. To support this, the assessee has furnished gift deed from the grandmother together with an affidavit in non-judicial stamp paper confirming the fact of gift. In the said affidavit, it had been categorically stated by the donor i.e. grandmother that the said gift has been given out of her Streedhan. She has also stated that she is deriving only agricultural income from the agricultural lands owned by her and the said income being exempt, she has not filed her income tax returns. We find that the Id. CIT(A) had disputed the fact of owning of agricultural lands by the grandmother. This fact has been duly countered by the Id. AR before us by filing the relevant

evidences justifying ownership of agricultural lands by the assessee and her family members in the paper book together with the evidence of crops cultivated thereon and extent of holdings. From the perusal of the same, the assessee's name is very much recorded as agricultural land owner in the Maharashtra land revenue records together with the extent of holding and crops cultivated by her. Hence, the explanation given by the grandmother in her affidavit the she is owning agricultural lands, deriving agricultural income and the said income being exempt from tax and accordingly, she not filing her income tax returns, deserve to be accepted. Hence, the first contention of the Id. CIT(A) to confirm the action of the Id. AO is hereby dismissed. Now, what remains is the existence of gold jewellery with the grandmother. We find from the gift deed and from affidavit of the grandmother that the subject mentioned jewellery were brought by her as Streedhan at the time of her marriage and that jewellery was gifted to the assessee herein out of natural love and affection. For the grandmother giving gift to the granddaughter i.e. assessee herein, in our considered opinion, no occasion need to be proved. It is out of natural love and affection. Why the grandmother had gifted only to one lady member of the family i.e. assessee herein and not to other lady members, as pointed out by the Id. CIT(A) in his second contention, is not the lookout of the Revenue. It is the will and desire of the donor i.e. grandmother. We find that the gift deed has been duly accepted by the donee i.e. assessee herein and the gift is complete in all aspects. In any case, we find that this gift is only received by the assessee from grandmother which has been accepted by the grandmother in her gift deed as well as in her affidavit. Hence, the same would be exempt from tax in terms of Section 56(2)(vii) of the Act as the same falls within the meaning of "relative". It is not in dispute that what is received as gift is only jewellery weighing 417 gms. Hence, what is received is only

gift in kind. Accordingly, the provisions of Section 68 of the Act *per se* could not be invoked in the instant case. It is trite law and the bare reading of the provisions of Section 68 of the Act are very clear that the said provisions could be made applicable only for sums received in cash or cheque or demand draft for which satisfactory explanation could not be given by the assessee. In the instant case no cash or cheque has been received by the assessee as gift. The assessee has received only jewellery weighing 417 gms as gift as stated supra from her grandmother. In view of the aforesaid observations, we have no hesitation in deleting the addition made in the sum of Rs.11,25,900/- by the Id. AO. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 30/09/2022 by way of proper mentioning
in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/09/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai