

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3417/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2015-16

Smt.K.Gomathi,  
No.3E, Sai Surya Apartments-  
West Wing, 3<sup>rd</sup> Main Road,  
Kamakotti Nagar, Pallikarani,  
Chennai.  
[PAN: AWKPG 3369 C]  
(अपीलार्थी/Appellant)

v. The Dy. Commissioner-  
of Income Tax,  
Central Circle-2(3),  
Chennai.  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Ms.T.V.Muthu Abirami, Adv.  
प्रत्यर्थी की ओर से /Respondent by : Mr.M.Rajan, CIT  
सुनवाई की तारीख/Date of Hearing : 17.10.2022  
घोषणा की तारीख /Date of Pronouncement : 19.10.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-19, Chennai, dated 27.09.2019 and pertains to assessment year 2015-16.

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

1. For that the order of the Commissioner of Income Tax (Appeals) is without jurisdiction, contrary to law, facts and circumstances of the case and at any rate is opposed to the principles of equity, natural justice and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) erred in considering the gift received by the appellant from her husband as taxable.

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4. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that gift received from relative is not taxable as per section 56(2).*

5. *For that the Commissioner of Income Tax (Appeals) erred in stating that the appellant surrendered her income when she could not explain the property acquire in her name. The Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had explained about how she acquired the properties in her name, in the sworn statement recorded on 01.05.2017, during the post search proceedings.*

6. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had erroneously offered the gift received from her husband as her income.*

7. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought to have assessed the income of the appellant correctly, when the error was pointed out by the appellant during the assessment proceedings.*

8. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer herself had pointed out that the appellant had received gift from her husband and yet held that such gift is taxable in appellant's hand.*

9. *For that the Commissioner of Income Tax (Appeals) failed to appreciate the evidences placed by the appellant in respect of the gift received by the appellant from her husband.*

**PRAYER**

*For these grounds and such other grounds that may be urged at the time of hearing, it is most humbly prayed that the Hon'ble Tribunal may be pleased to*

*(a) Consider the sum of Rs.46,79,055/-, being the gift received by the appellant from her husband as not taxable.*

*(b) Pass such other orders as this respected authority may deem fit.*

**3.** The assessee had also filed a petition for admission of additional grounds and taken a legal ground challenging validity of assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act, in absence of notice u/s.153A of the Act. The Ld.Counsel for the assessee contended that legal ground taken by the assessee is purely a question of law which goes to root of the matter and thus, the same can be taken at any time of the proceedings including proceedings before the Tribunal and thus, petition filed by the assessee may be admitted.

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**3.1** The Ld.DR, on the other hand, opposing the petition filed by the assessee for admission of additional grounds submitted that the assessee is not a searched person and the assessment has been framed based on information collected during the course of search in other case and thus, the AO has rightly proceeded with completion of assessment u/s.153C of the Act, and thus, there is no merit in legal ground taken by the assessee challenging validity of assessment proceedings.

**3.2** Having heard both the sides and considered petition filed by the assessee for admission of additional grounds, we find that there is no merit in legal ground taken by the assessee challenging validity of assessment proceedings in light of non-issuance of notice u/s.153A of the Act, because, as per the provisions of Sec.153C of the Act, where the AO satisfied that material collected during the course of search in other case indicates undisclosed income of any other person, then the AO shall record his satisfaction and proceed to issue notice u/s.153C of the Act, to frame assessment u/s.153C of the Act. In this case, as admitted by the AO herself, there was a search in the residence of Mr.G. Kumar u/s.132 of the Act, and during the course of search, certain materials belongs to assessee was found and seized. The AO of searched person being satisfied with materials collected during the course of search, handed over those materials to the AO having jurisdiction over the assessee along with satisfaction thereon and the AO having jurisdiction, proceeded in accordance with provisions of Sec.153C of the Act, and completed the

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assessment. In our considered view, there is no lacunae in initiation of proceedings u/s.153C of the Act, because, as per provisions of Sec.153C of the Act, the AO has to assess the undisclosed income, if any, of other person u/s.153C of the Act. Although, the assessee has relied upon the decision of the ITAT, Bengaluru, Bench 'B', in the case of Rajesh Kumar v. ACIT in light of the decision of the Hon'ble Karnataka High Court in the case of CIT v. IBC Knowledge Park (P) Ltd., reported in [2016] 385 ITR 346, but on analysis of said judgment, we find that there was a passing reference on the issue. However, the issue before the Hon'ble Karnataka High Court on assessment of undisclosed income in absence of incriminating material found as a result of search, when the assessments have been unabated/concluded as on the date of search. Therefore, we are of the considered view that the case law relied upon by the Counsel for the assessee, is not applicable to the facts of the present case and thus, the same is rejected. Therefore, considering the facts and circumstances of the case and also provisions of Sec.153C of the Act, we are of the considered view that there is no merit in the petition filed by the assessee seeking to raise additional grounds on the issue of non-issuance of notice u/s.153A of the Act. Hence, we reject the petition filed by the assessee for rising additional grounds of appeal.

**4.** The brief facts of the case are that the assessee is an individual and Proprietor of M/s.Cholan Technology. A search and seizure operation u/s.132 of the Act, was conducted on 15.07.2016 in the residence of Shri

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G. Kumar, husband of the assessee. During the course of search, some loose sheets were found and seized which contains one Sale Deed belongs to the assessee, Smt. K. Gomathi. During the course of post search proceedings, summons u/s.131 of the Act, was issued and sworn statement was recorded from the assessee. In response to the specific question Nos.7-10, she admitted that source for purchase of property is out of her past savings, agricultural income and from the savings of her husband Mr.G.Kumar. She further admitted that investment in purchase of four properties was not disclosed and also agreed to offer undisclosed income of Rs.46,79,055/-. Consequent to search, notice u/s.153C of the Act, was issued. In response to notice, the assessee has filed her return of income on 30.08.2018 admitting total income of Rs.50,01,810/- which includes undisclosed income of Rs.46,79,055/- offered during the course of search. The case has been taken for scrutiny and during the course of assessment proceedings, the assessee contended that although, she had offered undisclosed income towards source for purchase of property as unexplained, but source for purchase of property is out of gift of Rs.46,75,000/- received from her husband through cash as well as bank. The AO, however, was not convinced with the explanation furnished by the assessee and according to the AO, all along the assessee stated that she could not explain source for purchase of property and further, offered undisclosed income. However, after a period of two years, she had changed her arguments and claimed source for purchase of property out of gift

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received from her husband. The AO further noticed that although, the assessee claims to have received gift from her husband, but on verification of details, it was noticed that the so-called gift claims to have received from her husband, is in cash and thus, opined that the assessee has failed to prove the claim of gift with necessary evidences and thus, rejected the arguments of the assessee and assessed income as declared by the assessee amounting to Rs.50,01,810/-.

**5.** Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions on the issue which has been extracted at Para Nos.5.1 to 5.11 of the Ld.CIT(A)'s order. The assessee had also taken support from Circular No.14 (XL-35) of 1955 dated 11.04.1955 issued by the CBDT and argued that the Officers of the Department must not take advantage of ignorance of the assessee and should assess the income on the basis of materials, but not on the basis of admissions of the assessee.

**6.** Thus, the Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of various facts, rejected the arguments of the assessee and sustained the action of the AO in rejecting the claim of so called gift received by the assessee from her husband on the ground that the assessee could not explain source for purchase of property with necessary evidences. Further, the assessee has accepted the fact that purchase of four properties is with her business income and past savings,

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and same was not disclosed to Income Tax Department. She further admitted that additional income of Rs.46,79,055/- for the AY 2015-16. Therefore, the Ld.CIT(A) opined that the claim of the assessee that she had received gift from her husband is an afterthought to circumvent additions made towards source for purchase of property and thus, rejected the arguments of the assessee and sustained the additions made by the AO. The relevant findings of the Ld.CIT(A) are as under:

*6.1. I have gone through the assessment order, the grounds of appeal and the written submissions made in this regard. Briefly search was carried out at the residence of Sh. S.Ravi on 13/7/2016 and loose sheets pertaining to sale deed belonging to the appellant was also found and seized. The appellant is the proprietor of Cholan Technology and during her statement recorded u/s 131 she stated about 4 immovable properties (out of 19 properties) were not reflected in her books of accounts. She admitted the same as her unaccounted income and offered an amount of Rs.46,79,055/- as her, unaccounted income under the head income from other sources for A.Y 2015-16. Another two residential plots in Ariyalur worth Rs.15,32,455/- were also admitted as not reflected in books of accounts are stated that the surrender of Rs.46,79,055/- included this investment as well. In the original return for the Asstt.year under consideration filed on 3/08/2016 the appellant reported an income of Rs.3,22,750/- only. However, in response to notice u/s.153C dated 09/07/2018 appellant filed return dated 30/08/2018 for Rs.50,01,810/-. In this return the income surrendered was incorporated by the appellant and the assessing officer has assessed that income as such.*

*6.2. The appellant has herself filed the return in response to notice u/s 153C and incorporated the income surrendered. She surrendered her income when she could not explain the property acquired in her name and the same was not recorded in her books. Having committed twice to the income surrendered the appellant cannot go back with an afterthought scheme that it was gift from her husband. Had it been so it would have been mentioned in the first place? The return of the husband Sh.Ganesan for A.Y 2015-16 that was otherwise due on 31/07/2016 has been filed on 30-10-2018, that is much after the date of search and the husband has not been filing his returns regularly. The gift transaction was not reported in the original return as the properties stated to be purchased from the gift were not reflected in the books of account. It is a clear cut case of afterthought.*

*6.3. The assessing officer has assessed the income that has been returned by the appellant in response to the notice. In that circumstance how could it be said that the assessing officer erred in considering the gift received by appellant from her husband as taxable. The amounts have been taxed on the basis of seized material confronted to her during the recording of her sworn statement. She could not explain those properties as the same were not reflected in her books and she surrendered that same as unaccounted income from other sources. She filed the return incorporating the same surrendered income in response to notice u/s 153C*

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*and paid the taxes. In these circumstances how can the assessing officer be faulted with as taxing the gift received from her husband. That was never an issue before the assessing officer when he took up the case for assessment; he has merely accepted the admitted income.*

*6.4. The grounds of appeal of the appellant in the above context are not admissible. The appeal of the appellant is therefore DISMISSED.*

**7.** The Ld.Counsel for the assessee submitted that the Ld.CIT(A) is erred in sustaining the addition made towards income admitted and offered by the assessee towards source for purchase of property without appreciating the fact that although, there is an admission from the assessee, but there is no estoppel against law. Because, the law is very clear in as much as unless authority of law, no taxes can be collected. She further submitted that no doubt the assessee has admitted undisclosed income towards source for purchase of property and also filed her return of income in response to notice u/s.153C of the Act, and paid taxes, but fact remains that gift received from her husband, is not taxable. Therefore, the assessee has made a rightful claim before the AO and sought to exclude income offered towards gift received from her husband. The AO as well as the Ld.CIT(A) without appreciating the fact simply sustained the additions made by the AO.

**8.** The Ld.DR, on the other hand, submitted that search was conducted in the residence of Shri S.Ravi on 13.07.2016 and during the course of search, some loose sheets were found pertaining to the assessee. During the course of post search, investigation summons were issued to the assessee and a sworn statement was recorded and in response to a specific

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question, she had admitted that source for purchase of property, was not explained and further, agreed to offer undisclosed income of Rs.46,79,055/-. The assessee had also filed her return of income on 30.08.2018, almost two years after the date of search and disclosed additional income offered during the course of search. However, during the course of assessment proceedings, after a lapse of more than two years, took a 'U' turn and claimed that she had explainable source for purchase of property and said source is out of gift of Rs.49,75,000/-, received from her husband. If you go through the claim of the assessee, out of Rs.46,79,000/- sum of Rs.39,75,000/- gift was received by cash and the assessee could not explain the same with necessary evidences including declaration of cash in hand for the relevant assessment year, wealth tax returns filed by her husband. The balance amount of Rs.7 lakhs was also claimed to have been paid through proper banking channel, but no evidence was filed. Therefore, the AO as well as the Ld.CIT(A) has rightly rejected the claim of the assessee and their orders should be upheld.

**9.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Admittedly, during the course of search on 13.07.2016, a Sale Deed pertains to the assessee was found and seized in the residence of Shri S.Ravi. It is also an admitted fact that summons u/s.131 of the Act was issued and a sworn statement was recorded from the assessee. She was asked to furnish the details of source for purchase of property and in response, the assessee admitted

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four immovable properties purchased by her are not reflected in the books of accounts and also she could not satisfactorily explain source for purchase of said properties. She further admitted that she would offer undisclosed income of Rs.46,79,055/- towards source for purchase of property. The assessee had filed return in response to notice issued u/s.153C of the Act on 30.08.2016 and declared income of Rs.50,01,810/- which includes undisclosed income of Rs.46,79,055/- offered towards source for purchase of property. These facts are not undisputed and further, right from the date of search to the date of filing of return of income, the assessee had never claimed that she had received gift from her husband. However, only during the course of assessment proceedings, she claimed that she had erroneously offered undisclosed income towards purchase of property by mistaken of law. However, said source was out of gift of Rs.46,75,000/- received from her husband Mr.G.Kumar.

**10.** We have given our thoughtful consideration to the arguments of the assessee in light of reasons given by the AO as well as the Ld.CIT(A) to reject the claim of so called gift received from her husband and we find that right from the date of search on 15.07.2016 to the date of filing of return of income in response to notice u/s.153C of the Act on 30.08.2018, the assessee claimed that source for purchase of property is out of her business income, agricultural income and savings of her husband. She further claimed that four properties were not recorded in her regular books of accounts and also not disclosed in the return of income filed for the relevant

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assessment year. She had also agreed to offer undisclosed income of Rs.46,79,055/- and further, filed return of income and disclosed undisclosed income and paid relevant taxes. Therefore, from the above it is very clear that the assessee had admitted the fact of not disclosing four properties in her regular books of accounts and also could not explain source for purchase of four properties with necessary evidences. The assessee never claimed before the investigation as well as the AO that she had received gift from her husband. Therefore, the claim of so called gift from her husband during the course of assessment proceedings, can at best be treated as afterthought to circumvent the additions made towards undisclosed income offered during the course of search. Further, though the assessee claims to have received gift from her husband, but on perusal of details filed by the assessee, we find that a sum of Rs.39,75,000/- has been received in cash. The assessee has filed Income Tax Returns and financial statement for the relevant assessment year and claimed that her husband has opening cash balance of Rs.24,86,611/-, but she could not file any evidence to prove that her husband declared said cash balance in Wealth Tax Return filed for the relevant assessment year, because cash in hand in excess of Rs.50,000/- is liable for wealth tax. Therefore, the claim of the assessee that she had received cash gift of Rs.39,75,000/- from her husband cannot be accepted, because, she could not adduce necessary evidences. In so far as balance gift of Rs.7 lakhs received through bank, no evidence including bank statements of the assessee and her husband

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was filed to prove that said gift has been received through bank. Further, neither the assessee nor her husband filed any evidences during search and post search proceedings to claim gift paid and received by the parties. Therefore, we are of the considered view that the arguments of the assessee, she had received gift from her husband is only an afterthought that too more than two years from the date of search without any documentary evidences. Hence, we are of the considered view that the AO has rightly rejected the arguments of the assessee and accepted income declared including undisclosed income offered towards source for purchase of property. The Ld.CIT(A) rightly apprised the facts and sustained the additions made by the AO and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss appeal of the assessee.

**11.** In the result, appeal filed by the assessee is dismissed.

Order pronounced on the 19<sup>th</sup> day of October, 2022, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 19<sup>th</sup> October, 2022.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

**Sd/-**

(जी. मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF