

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.6504/Del/2016  
Asstt. Year: 2012-13

Smt. Ritu Singh, 21-B, Pocket-D, SFS Flats Mayur Vihar, Phase-III, Delhi – 110 096 PAN BIEPS0468M (Appellant)	Vs.	Income Tax Officer, Ward 60(4), New Delhi.  (Respondent)
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Assessee by:	Shri Hiren Mehta, CA
Department by :	Ms. Princy Singla, Sr. DR
Date of Hearing	09.02.2023
Date of pronouncement	24. 02.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 05.10.2016 of the Ld. Commissioner of Income Tax (Appeals)-19, New Delhi (**"CIT(A)"**) pertaining to Assessment Year (**"AY"**) 2012-13.

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

- “1. *BECAUSE the learned CIT(A) has erred in law and on facts in passing the appeal order dated 5.10.2016 particularly when the date fixed for hearing was on 6.10.2016.*
2. *BECAUSE the learned CIT(A) has erred in law and on facts in not considering Rs. 2,94,000/- being stamp duty paid in financial year 2002-03, as part of cost of acquisition of property No. 55, Block-C, Sector-44, Noida while computing long-term capital gain.*

3. *BECAUSE the learned CIT(A) has erred in law and on facts in sustaining the addition of Rs. 37,02,500/- under section 68 of the Income Tax Act, 1961.”*

3. The facts in brief are that the assessee is stated to be a social activist. She derives income from house property and interest. For AY 2012-13, she e-filed her return declaring income of Rs. 1,37,420/- on 25.10.2013 belatedly as against due date of 31.07.2012. The return was processed under section 143(1) of the Income Tax Act, 1961 (**the “Act”**). Subsequently the case was selected for scrutiny through CASS. Initially statutory notices issued by the Ld. Assessing Officer (**“AO”**) were not complied with. At last the Ld. AR of the assessee attended the assessment proceedings and filed the details/documents called for which the Ld. AO examined on test-check basis and placed on record. After discussion with the AR of the assessee, the Ld. AO completed the assessment on 23.03.2015 under section 143(3) of the Act computing the total income at Rs. 78,28,410/- including therein among others disallowance of Rs. 37,02,500/- being unexplained cash deposits and disallowance of Rs. 11,49,116/- being capital gain amount not deposited in bank.

4. The assessee filed appeal before the Ld. CIT(A). During appellate proceedings vide order sheet entry dated 07.06.2016 the Ld. CIT(A) required the assessee to submit certain information / evidence including show cause why exemption under section 54 be not proportionately reduced and income be enhanced as the exemption under section 54 is available in respect of only one property. Despite several opportunities given, no compliance was made. Therefore, the Ld. CIT(A) held that the assessee is not interested in pursuing the case and proceeded to decide the appeal ex-parte on merits. Before doing so, the Ld. CIT(A) in para 7 of his appellate order recorded that the Counsel of the assessee on last hearing intimated that the assessee had estranged relationship with her husband Shri Virendra Singh and divorce petition was filed in the family court. The settlement was reached and divorce was ultimately granted on 10.08.2015.

5. The Ld. CIT(A) first took up the issue of long term capital gain (**"LTCG"**) and denial of deduction of stamp duty of Rs. 2,94,000/- in its computation thereof. The Ld. CIT(A) discussed the matter in para 12 of his appellate order. According to him, despite being asked no evidence of payment of the said stamp duty was submitted nor any reply was filed to his show cause that exemption under section 54 is allowed in respect of only one house property so why not exemption provided under section 54 be not withdrawn in respect of second property. He, therefore, overlooking the stand of the assessee taken before the Ld. AO that the amendment restricting the benefit of exemption under section 54 to one house property only applies in relation to AY 2015-16 and subsequent years whereas the case of the assessee pertains to AY 2012-13, and holding in para 12.9 of his order that the said amendment is only clarificatory / declaratory and has retrospective operation, restricted the exemption under section 54 to only one house property of the assessee at 345 Block-C, Omaxe, Noida City, Greater Noida for Rs. 79,71,600/-. Accordingly, in para 20.20 he determined the LTCG at Rs. 98,81,868/- i.e. (Rs. 1,78,53,468/- as computed by the assessee – Rs. 79,71,600/- invested in the above Greater Noida property). The Ld. CIT(A) denied the claim of benefit of payment of stamp duty of Rs. 2,94,000/- for want of evidence filed before him in support.

6. The Ld. CIT(A) dealt with the issue of addition of Rs. 37,02,500/- in respect of unexplained credits in the bank account as under in para 13 of his appellate order:

*"13. Ground Nos. 2 & 3 are in respect of addition of Rs. 37,02,500/- in respect of unexplained credits in the bank account. The Assessing Officer observed that appellant had maintained three bank accounts with Bank of Maharashtra and there were cash deposits in the same aggregating to Rs. 37,02,500/-. When the appellant was asked to explain the source thereof, the Authorised Representative merely stated that these deposits were made by Shri Virender Singh, husband of appellant. Neither any evidence nor any confirmation from Sh. Virender Singh was filed. The Assessing Officer even issued a notice u/s 133(6) to Sh. Virender Singh but no reply or confirmation has been received from him. It has merely been stated that since the relationship between the husband & wife are not good, no evidence can be furnished. It is a fact that deposits have been made in cash in the account of the*

*appellant. No evidence could be produced by appellant to show that deposits were made by the husband in the bank account. Even the returns of the husband does not show that he was a man of means. Furthermore, the appellant and her husband had already reached an agreement on 06.06.2014, whereby the husband was required to pay a sum of Rs. 75 lacs as alimony to the wife for separation. There was no mention of the amount deposited in the bank account of wife. Once the settlement had been reached, the appellant should not have been in any problem to get a certificate from the husband to the effect that money in bank account was deposited by him. In such circumstances, it can be clearly concluded that deposits in the bank account remained unexplained and represent the undisclosed income of the appellant. The addition made by the Assessing Officer, is therefore, sustained.”*

7. Aggrieved, the assessee filed appeal before the Tribunal and all the grounds relate thereto.

8. The assessee has raised the following additional grounds of appeal before the Tribunal:

*“2.1 That on the facts and circumstances of the case and in law, the CIT(A) was not justified in holding in the appellate order that the exemption u/s 54 of the IT Act is available for purchase of only one house property.*

*2.2 That the CIT(A) has incorrectly held that the amendment to section 54 of the IT Act restricting the benefit of section 54 of the I.T. Act to purchase of one house property, which came into effect from 01.04.2015, has to be applied retrospectively.*

*2.3 That the CIT(A) was not justified in enhancing the income under the head long term capital gain to Rs. 98,81,868/- as against the income of Rs. 11,49,116/- assessed by the Assessing Officer by holding that as per section 54 of the I.T. Act only benefit of one residential house property of Rs. 79,71,600/- purchased by the assessee during the year can be allowed to the assessee.*

3. *That the action of the CIT(A) is vitiated in law as no show cause notice required to be given u/s 251(1)(2) of the IT Act has been issued before making enhancement u/s 251(1)(a) of the IT Act in the hands of the appellant.*

4. *That on the facts and circumstances of the case and in law the CIT(A) was not justified in upholding the action of the AO in partially disallowing the claim of Rs. 11,49,116/- made u/s 54 of the Act on the ground that the said amount was not deposited in the Capital Gains Account scheme before the due date of filing of return against the principle of law settled by High Court in the case of **CIT Vs. K. Ramachandra Rao 56 Taxmann.com 163 (Karnataka) and Venkata Dilip Kumar v. Commissioner of Income Tax,***

***Chennai 111 Taxmann.com 180 (Mad) and Delhi ITAT in the case of Dr. Kushagra Kataria Vs. DCIT 101 Taxmann.com 359 (Del.).”***

9. After hearing the Ld. Representative of the parties we have admitted the above additional grounds which are not only of purely legal in nature but they also arise out of the order of the Ld. CIT(A) and are inextricably linked with assessee's ground No. 2. In taking this view we are supported by the principle of law laid down by the Hon'ble Supreme Court in National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC) that where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

10. Ground No. 1 has touching grievance of the assessee that though vide the notice of hearing sent by the Ld. CIT(A) to the assessee on 23.09.2016 fixing the case for 06.10.2016, the Ld. CIT(A) passed the order one day before i.e. on 05.10.2016. The contention of the assessee is borne out from para 6 of the appellate order itself. To say the least, this is against all the cannons of natural justice. The assessee succeeds in this ground.

11. The ground No. 2 is taken along with the additional grounds for consideration. Let us be clear on facts.

i) The details of LTCG culled from the assessment order resulting in an addition of Rs. 11,49,116/- are as under:-

	<u>Amount</u>
Sale consideration of property (Flat No. 55, C-Block, Sector-44, Noida)	2,40,00,000
Less: Indexed Cost of acquisition	61,46,532
Long term capital Gain	<u>1,78,53,468.00</u>
Less: Property purchased	
1)345, Block-C, Omaxe NRI City, Greater Noida	79,71,600
2)32-D, SFS Flat, 3 <sup>rd</sup> Floor, Pocket-B, Mayur Vihar Phase-III	65,60,000

3) Less: Properties purchased before due date of filing return of income (Belated)	35,04,400
(allowed by AO upto payment made before due Date of filing original return i.e. 31.07.2012)	21,72,752
<b>Addition as per Assessment order</b>	<b>11,49,116</b>

ii) The details of properties purchased before filing belated return are as under:-

<u>Particulars of property</u>	<u>Date of purchase</u>	<u>Amount</u>
1) Mayur Vihar Phase-III	13.09.2012	17,52,200
2) Mayur Vihar Phase-III	19.10.2012	17,52,200
TOTAL		35,04,400

iii) The assessee filed her belated return on 25.10.2013 whereas the due date of filing belated return under section 139(4) of the Act for AY 2012-13 subsisted upto 31.03.2014.

iv) As per appellate order of the Ld. CIT(A) which resulted in addition of Rs. 98,81,868/-, the calculation of long term capital gain is as under:-

Sale consideration of property (Flat No. 55, C-Block, Sector-44, Noida)	2,40,00,000
Less: Indexed Cost of acquisition	61,46,532
Long term capital Gain	1,78,53,468.00
Less: Property purchased 1)345, Block-C Omaxe NRI City, Greater Noida	79,71,600
	<b>98,81,868.00</b>

v) As stated earlier, the Ld. CIT(A) negated the assessee's claim of payment of stamp duty of Rs. 2,94,000/- for want of evidence.

12. The Ld. AO found that the assessee sold her flat No. 55, C-Block Sector-44, Noida for a total consideration of Rs. 2,40,00,000/- and earned LTCG of Rs. 1,78,53,468/- which she claimed as exempt under section 54 of

the Act because she purchased two properties namely property No. 345, Block-C in Greater Noida for Rs. 79,71,600/- on 25.10.2011 and property No. 32-D, Mayur Vihar, Phase-III, Delhi for Rs. 65,60,000/- on 23.11.2011 aggregating in all to Rs. 1,45,31,600/- leaving capital gain balance of Rs. 33,21,868/- (Rs. 1,78,53,468/- - Rs. 1,45,31,600/-) as on 31.03.2012 i.e. end of the previous year relevant to AY 2012-13. According to the Ld. AO the assessee purchased other two properties in Mayur Vihar, Phase-III on 13.09.2012 and 19.10.2012 for Rs. 35,04,400/- (Rs. 17,52,200/- each) which dates fall after the due date of filing of return under section 139(1) of the Act. Therefore, the balance LTCG amount of Rs. 33,21,868/- was required to be kept in capital gain account with any nationalised bank for claiming exemption under section 54 of the Act. This was not done by the assessee. The Ld. AO issued show cause for denial of exemption, to which the assessee replied that out of total payment of Rs. 35,04,000/- the assessee had paid substantial amount of Rs. 21,72,752/- before the due date of filing the return for the financial year 2012-13 and submitted that the assessee is eligible for exemption under section 54 of the Act and relied on the decision in CIT vs. R. L. Sood (2000) 108 Taxman 227(Delhi). Rejecting the assessee's explanation / submission, the Ld. AO held that an amount of Rs. 11,49,116/- (Rs. 33,21,868/- - 21,72,752/-) not deposited in capital gain account before the due date of filing return under section 139(1) of the Act i.e. 31.07.2012 is ineligible for exemption under section 54 of the Act which he disallowed and added back to the income of the assessee (refer para 7.2, 7.3, 7.10 and 7.11 of the assessment order).

13. As stated earlier, the Ld. CIT(A) made disallowance of Rs. 98,81,868/- thereby making enhancement of Rs. 87,32,752/- to the addition of Rs. 11,49,116/- made by the Ld. AO. The Ld. CIT(A) was of the view that the benefit of exemption under section 54 of the Act is available to one house property holding that the amendment which came into effect from 1.4.2015 has to be applied retrospectively. It is this proposition of Ld. CIT(A) which is sought to be challenged in the additional grounds taken by the assessee before the Tribunal.

14. The Ld. AR submitted that the case of the assessee pertains to AY 2012-13 whereas the amendment which is effective from 01.04.2015 is applicable from AY 2015-16 and that the amendment is prospective in nature. He placed reliance on the decision of Mumbai Tribunal in Madhu B. Khatri vs. ITO in ITA No. 6613/Mum/2019 dated 01.07.2021; decision of Delhi Tribunal in Saroj Arora vs. ITO (2022) 138 taxmann.com 445 and decision of Hon'ble Madras High Court in Tilokchand & Sons vs. ITO (2019) 105 taxmann.com 151 (Mad.). The Ld. AR further submitted that the Ld. AO was not legally justified in disallowing Rs. 11,49,116/- on the ground that two properties at Mayur Vihar, Phase-III purchased on 13.09.2012 and 19.10.2012 for an aggregate sum of Rs. 35,04,400/- were purchased after due date of filing return i.e. 31.07.2012 and therefore the amount paid at Rs. 21,72,752/- only before the due date of filing return i.e. 31.07.2012 is allowable for exemption under section 54 of the Act. In this regard, the Ld. AR contended that the assessee filed her return for AY 2012-13 belatedly under section 139(4) of the Act on 25.10.2013 and therefore the entire sum of Rs. 35,04,400/- invested by the assessee towards purchase of the said two properties before filing the belated return under section 139(4) of the Act on 25.10.2013 is allowable for exemption under section 54 of the Act. In support he relied on the decision of Mumbai Tribunal in the case of Dr. Dharmista Mehta vs. ITO (2022) 144 taxmann.com 136. Without prejudice, the Ld. AR further contended that since the assessee had already made investment in two properties before the due date of filing belated return under section 139(4) of the Act and paid substantial amount, the exemption under section 54 can not be denied on the ground that balance amount of capital gain has not been deposited in the bank account with nationalised bank and in support cited the decision of Hon'ble Karnataka High Court in CIT vs. K Ramachandra Rao 56 taxmann.com 163; Venkata Dilip Kumar vs. CIT 111 taxmann.com 180 (Mad.) and decision of Delhi Tribunal in Dr. Kushagra Kataria vs. DCIT 101 Taxmann.com 359 (Del.). The Ld. AR also objected to the enhancement made by the Ld. CIT(A) without issuing show cause notice which is the condition precedent as per section 251 of the Act.

15. The Ld. DR supported the order of the Ld. CIT(A)/AO.

16. We have carefully considered the rival submission of the parties and perused the record. The facts are not in dispute. The Ld. AO made the addition of Rs. 11,49,116/- which represents the balance amount of LTCG which the assessee did not deposit in capital gain account scheme with nationalised bank within the due date of filing return of income under section 139(1) of the Act i.e. 31.07.2012. In appeal before the Ld. CIT(A) the assessee's grievance was that the Ld. AO declined the legitimate claim of deduction of stamp duty of Rs. 2,94,000/- in computing LTCG with reference to immovable property sold during the year and that the Ld. AO made partial disallowance of Rs. 11,49,116/- out of assessee's claim for deduction under section 54 of the Act allegedly for the reason that the amount of capital gain was not deposited into capital gain account scheme before due date of filing of return. During appellate proceedings, the counsel of the assessee vide ordersheet entry dated 07.06.2016 was required by the Ld. CIT(A) to show cause why exemption under section 54 be not proportionately allowed and income be enhanced to that extent as the said exemption is available in respect of only one property. This proposition of the Ld. CIT(A) eventually made him to enhance the LTCG to Rs. 98,81,868/- as against income of Rs. 11,49,116/- assessed by the Ld. AO. We have to consider the submissions of the assessee before us in the above factual matrix of the case of the assessee.

17. Let us first consider whether the Ld. AO was correct legally in allowing only partial exemption of Rs. 21,72,752/- out of capital gain balance of Rs. 33,21,868/- as on 31.03.2012 and disallowing exemption of Rs. 11,49,116/- under section 54 of the Act for the reason that the assessee paid Rs. 21,72,752/- only before due date of filing original return i.e. 31.07.2012 towards properties purchased before due date of filing belated return i.e. 31.03.2014. This contention of the Ld. AO has been assailed by the Ld. AR on the ground that the assessee had filed her return for AY 2012-13 under section 139(4) of the Act on 25.10.2013 well before 31.03.2014

upto which date she could file her belated return. We agree with the argument of the Ld. AR as the same is backed by several judicial pronouncements, the latest being the decision in the case of Dr. Dharmista Mehta vs. ITO (supra) rendered on 22.10.2022 by Mumbai Tribunal wherein after noticing the Hon'ble Supreme Court's decision in Prakash Nath Khanna vs. CIT (2004) 266 ITR 1 (SC); decision of Delhi Bench of the Tribunal in the case of Dr. Kushagra Kataria (supra), it held that sub-section (2) of section 54 clearly provides a pigeonhole in the sense that the investment by way of purchase or construction, without resorting to the capital gains account scheme, can be made till the date of belated return under section 139(4) or revised return under section 139(5) as the wordings used in section 54(2) is "section 139, and not section 139(1), which covers all sub-sections of section 139". Thus, where the assessee files belated return under section 139(4) or revised return under section 139(5) in respect of the assessment year in which he transfers old/existing house, he is entitled to deduction under section 54 to the extent of investment in new house upto the date of filing of belated return under section 139(4)/revised return under section 139(5) even though he made no deposits of un-invested capital gain in capital gains account scheme on or before the due date of filing ITR under section 139(1).

18. The decision in Dr. Dharmista Mehta's case (supra) applies squarely to the facts of the assessee's case before us. The Ld. AR has also placed reliance on the decision of Hon'ble Karnataka High Court in CIT vs. K. Ramchandra Rao 56 taxmann.com 163 wherein it is held that if the intention was to invest in either purchase or construction of a residential house, then the conditions under section 54F and under section 54 relating to deposit of money under capital gains account scheme would not apply. Since the assessee before us made investment of Rs. 35,04,400/- which was more than the balance LTCG of Rs. 33,21,868/- and paid the substantial amount of Rs. 21,72,752/- before the due date of filing belated return and thereafter paid full consideration, the disallowance for exemption under section 54 of Rs. 11,49,116/- made by the Ld. AO is not

sustainable.

19. It is observed that the Ld. AO did not have any qualm in so far as investment by the assessee in more than one house property is concerned. The controversy that exemption under section 54 is allowed in respect of only one house property and that the amendment by the Finance (No. 2) Act, 2014 in sub-section (1) of section 54 is clarificatory/ declaratory and has retrospective operation is raised by the Ld. CIT(A) which resulted in enhancement of LTCG of Rs. 87,32,751/- to the addition of Rs. 11,49,116/- made by the Ld. AO. Suffice is to say that the Ld. CIT(A) did not follow the mandate enshrined in sub-section (2) of section 251 of the Act and made the impugned enhancement without allowing reasonable opportunity of showing cause to the assessee against the said enhancement. The stand of the assessee has all along been that the amendment restricting the benefit of exemption under section 54 to one house property applies only in relation to AY 2015-16 and subsequent years whereas the case of the assessee pertains to AY 2012-13. The contention of the assessee is in consonance with the explanation to the said amendment given by the CBDT in Circular No. 1 of 2015 dated 21.01.2015 reported in (2015) 371 ITR (St) 22 the relevant portion of which is as under:-

*“20.3 Certain courts had interpreted that the exemption is also available if investment is made in more than one residential house. The benefit was intended for investment in one residential house within India. Accordingly, sub-section (1) of section 54 of the Income-tax Act has been amended to provide that the rollover relief under the said section is available if the investment is made in one residential house situated in India.*

*20.5 Applicability: - These amendments take effect from 1st April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent assessment years.”*

20. The Finance (No. 2) Act, 2014 itself mentions that in sub-section (1), the words “constructed one residential house in India” are substituted for “constructed, a residential house” w.e.f. 1<sup>st</sup> April, 2015. It is now well settled

that where the law specifies the date from which an amendment will take effect, it is such date that is relevant. If it is a substantive law, it can apply only prospectively. The normal rule is that the law which prevails is the law as on 1<sup>st</sup> April of the assessment year. In *Reliance Jute & Industries Ltd. vs. CIT 120 ITR 921 (SC)*, the Hon'ble Supreme Court observed that what applies is the law of the assessment year for the income of the previous year. This principle of law laid down by the Hon'ble Supreme Court has been reiterated by the Apex Court in *CIT vs. Sarkar Builders (2015) 375 ITR 392 (SC)*.

21. We, therefore, hold that the Ld. CIT(A) misdirected himself in forming his view that the amendment brought by the Finance (No. 2) Act, 2014 in sub-section (1) of section 54 w.e.f. 1<sup>st</sup> April, 2015 is retrospective being clarificatory in nature and that the amendment restricts the benefit of exemption under section 54 to purchase of one house property. The CBDT Circular No. 1 of 2015 dated 21.01.2015 explains that the amendment applies in relation to assessment year 2015-16 and subsequent years. Consequently, the amendment will not apply to the case of the assessee which pertains to AY 2012-13.

22. It may be stated that the Ld. AO did not record any finding on the claim of adjustment of stamp duty of Rs. 2,94,000/- in computing long term capital gain made by the assessee. The claim has not been entertained by the Ld. CIT(A) for want of evidence of payment. The Ld. AR has also not addressed us in this regard. As it is, now the claim has become only academic in nature. Accordingly, we decide all the additional grounds taken by the assessee before the Tribunal in favour of the assessee.

23. Ground No. 3 relates to addition of Rs. 37,02,500/- under section 68 of the Act made by the Ld. AO which has been sustained by the Ld. CIT(A). The Ld. AO has discussed this issue in para 5 of his order. The Ld. AO found that the following credit entries appear in the bank accounts of the assessee:-

Name of Bank	Account No.	Date of cash deposits	Amount(Rs.)
Bank of Maharashtra	60092672354	28.03.2012	3,00,000
Bank of Maharashtra	80002977215	24.08.2011	50,000
		25.08.2011	50,000
		15.11.2011	5,00,000
		23.11.2011	4,00,000
Bank of Maharashtra	68002573576	24.08.2011	4,02,500
		03.11.2011	5,00,000
		04.11.2011	5,00,000
		15.11.2011	5,00,000
		16.11.2011	5,00,000
		Total Cash =	37,02,500

24. On query raised by the Ld. AO, the assessee vide reply dated 16.02.2015 submitted that some cash was deposited in these bank accounts by her husband whose name, PAN No. and address was provided. The Ld. AO was not convinced as the money deposited by her and by her husband in these bank accounts had not been quantified. The Ld. AO issued and served notice under section 133(6) of the Act upon the husband of the assessee which was not complied with. However, the assessee vide reply dated 03.03.2015 stated that during the year total amount of Rs. 43 lakh was deposited by her husband in her bank accounts. It was also stated that family difference has arisen between the assessee and her husband and divorce petition has been filed in the court. Therefore, her husband is not providing the requisite information to harass the assessee and that she did not have any details or bank statement etc. of her husband.

25. The Ld. AO held that the assessee did not offer proper explanation as to the nature and source of the above cash deposits and added the same to the income of the assessee under section 68 of the Act.

26. On appeal filed by the assessee before the Ld. CIT(A), the assessee did not get any relief. The Ld. CIT(A) sustained the addition by observing in para 13 of the appellate order as under:-

*“13. Grounds Nos. 2 & 3 are in respect of addition of Rs. 37,02,500/- in respect of unexplained credits in the bank account. The Assessing Officer observed that appellant had maintained three bank accounts with Bank of Maharashtra and there were cash deposits in the same aggregating to Rs. 37,02,500/-. When the appellant was asked to explain*

*the source thereof, the Authorised Representative merely stated that these deposits were made by Shri Virender Singh, husband of appellant. Neither any evidence nor any confirmation from Sh. Virender Singh was filed. The Assessing Officer even issued a notice u/s 133(6) to Shri Virender Singh but no reply or confirmation has been received from him. It has merely been stated that since the relationship between the husband & wife are not good, no evidence can be furnished. It is a fact that deposits have been made in cash in the account of the appellant. No evidence could be produced by appellant to show that deposits were made by the husband in the bank account. Even the returns of the husband does not show that he was a man of means. Furthermore, the appellant and her husband had already reached an agreement on 06.06.2014, whereby the husband was required to pay a sum of Rs. 75 lacs as alimony to the wife for separation. There was no mention of the amount deposited in the bank account of wife. Once the settlement had been reached, the appellant should not have been in any problem to get a certificate from the husband to the effect that money in bank account was deposited by him. In such circumstances, it can be clearly concluded that deposits in the bank account remained unexplained and represent the undisclosed income of the appellant. The addition made by the Assessing Officer, is, therefore, sustained.”*

27. Aggrieved, the assessee has come up in appeal before the Tribunal and ground No. 3 and 4 relate thereto.

28. The Ld. AR submitted that family differences were going on between the assessee and her husband which finally ended up with divorce between them. Copy of petition for dissolution of marriage and copy of memorandum of understanding (“**MOU**”) dated 06.06.2014 filed before the Court appear at page 6 to 9 and page 3 to 5 respectively of the Paper Book filed by the assessee. Drawing out attention to the said MOU, the Ld. AR pointed out that the husband of the assessee was required to pay an amount of Rs. 75,00,000/- to the assessee towards permanent alimony. The Ld. AR submitted that the amount of Rs. 37,02,500/- received by the assessee during the year is part of lumpsum alimony of Rs. 75,00,000/- agreed between the assessee and her husband as per MOU. The details of alimony of Rs. 75,00,000/- received by the assessee during the period from 01.04.2011 to 31.03.2015 are at page 1-2 of Paper Book which also include the amount of Rs. 37,02,500/- received during the previous year relevant to AY 2012-13. The Ld. AR argued that lumpsum alimony received at the time of divorce is capital receipt not taxable in the hands of the recipient assessee

and relied on the decision of Hon'ble Bombay High Court in Princess Maheshwari Devi of Pratapgarh vs. CIT (1983) 12 Taxman 220 (Bom.). The Ld. AR also submitted that non-compliance to notice under section 133(6) by the husband of the assessee is due to hostility between the husband and wife and urged that no adverse inference be drawn.

29. The Ld. DR supported the orders of the Ld. AO/CIT(A).

30. We have given our careful thought to the issue involved and submission of the parties. We have also perused the material available in the records. Undoubtedly, the onus lies upon the assessee to explain the nature and source of credit entries of Rs. 37,02,500/- appearing in the bank accounts of the assessee during the year. Before the Ld. AO the assessee explained that the cash was deposited by her husband in her bank accounts and furnished his name, address, PAN No. etc.. So the assessee brought on record the identity of the creditor / depositor who had deposited the money in her bank account. The assessee expressed her inability to submit the confirmation of the creditor/depositor due to strained relations between her and her husband. The Ld. AO himself admits in para 5.6 of the assessment order that notice under section 133(6) issued by him at the given address was served upon Shri Virender Kumar Singh, husband of the assessee who had made the impugned cash deposits in the bank account of the assessee. So the identity of the creditor cannot be doubted and stands established. The Ld. CIT(A) has referred to the MOU executed on 06.06.2014 to resolve the matrimonial dispute between the assessee and her husband whereby the husband was required to pay a sum of Rs. 75 lacs as alimony to the assessee wife for separation. We have perused the said MOU as also the judgment of the Principal Judge Family Court rendered on 10.10.2014 copies of which have been placed in the Paper Book. The Ld. CIT(A) disbelieved the explanation of the assessee merely for want of confirmation of deposits from the husband of the assessee without appreciating the circumstances under which the assessee was placed wherein she could not force her husband to confirm the deposits made by him in her bank accounts. The assessee has brought on record date-wise cash deposited in

her bank accounts during the period from 01.04.2012 to 31.03.2015 as also the details of amounts received by the assessee as stridhan from 01.04.2012 to 31.03.2015. It is an admitted position that PAN of the creditor husband was given to the Ld. AO who could easily ascertain the creditworthiness of the assessee which was not done. The Ld. CIT(A) has not stated that he examined the ITRs of the husband but drew adverse inference that he was a man of no means which is contrary to the facts available in the records. Where the assessee gave the name and address of the creditor and furnished PAN No., merely issue of notice to the creditor and not pursuing the matter further by the Revenue, the Hon'ble Supreme Court held in CIT vs. Orissa Corporation (P) Ltd. 159 ITR 78 (SC) that the assessee had discharged the burden of proving the nature and source of credit entries that lay on the assessee. We therefore, hold that the impugned addition of Rs. 37,02,500/- under section 68 made by the Ld. AO and confirmed by the Ld. CIT(A) does not rest on sound legal footing. We delete the same.

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

**Order pronounced in the open court on 24<sup>th</sup> February, 2023.**

sd/-

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 24/02/2023

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating	

Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	