

अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA No.: 758/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2012-13

Shri Jagadeesan
Premanandh,
1, Nahar Jyothi,
33A 3rd East Street,
Kamaraj Nagar,
Thiruvanmiyur,
Chennai – 600 041.

The Income Tax Officer,
vs. International Taxation,
Ward 2(1),
Chennai.

PAN: ASRPP 0697D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 27.02.2023

घोषणा की तारीख/Date of Pronouncement

: 27.02.2023

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-16, Chennai in ITA No.141/CIT(A)-16/2019-20 dated 01.07.2022. The assessment was framed by the Income Tax Officer (International Taxation)-2(1),

Chennai for the assessment year 2012-13 u/s.144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 30.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of Rs.10.50 lakhs being cash deposit of 7.50 lakhs to assessee's ICICI Bank A/c.No. 035001509100 out of cash gift received from assessee's father and balance cash of Rs.3,00,000/- deposited on 02.01.2012 out of cash brought from Abu Dhabi during his travel to India. For this assessee has raised various grounds including that the assessment is ex-parte and the CIT(A) has not confronted the remand report of the AO dated 07.02.2022 pointing out discrepancies and on which basis rejecting the contention of the assessee.

3. When this case was posted for hearing today and called for hearing, none is present from assessee's side and assessee's counsel moved an adjournment petition. On the other hand, the Revenue was represented by Additional CIT, Shri AR.V. Sreenivasan.

4. At the outset, the Id.Senior DR pointed out that the appeal is barred by limitation by 3 days. We noted that the order of CIT(A) is dated 01.07.2022, which was received by assessee on 04.07.2022. The appeal before Tribunal was filed with a delay of 3 days on 05.09.2022. The assessee filed affidavit stating the reasons that the assessee was visiting holy places and to seek blessings of elderly people during his stay in India during this period. Hence, it was requested vide this petition and affidavit that the delay be condoned. The Id. Senior DR has not seriously objected and hence, going by the reason and due to smallness of delay, we condone the delay and admit the appeal.

5. Brief facts are that the assessee has not filed his return of income for the relevant assessment year 2012-13. Accordingly a notice u/s.148 of the Act dated 19.03.2019 was issued, for the reason that there is a cash deposit in the assessee's bank account of ICICI bank at Rs.10.50 lakhs. The assessee has filed return of income in response to notice u/s.148 of the Act and therefore assessment was framed u/s.144 r.w.s.147 of the Act. The assessee is a non-resident and as per ITS data, he has purchased immovable property for a total consideration of Rs.2,23,20,000/- on 25.10.2011 and also deposited cash amounting to Rs.10.50 lakhs

with ICICI Bank Ltd, Chennai. The AO issued show-cause notice, which was replied by the assessee explained the cash deposit of Rs.10.50 lakhs. The assessee explained that assessee's father was a retired government employee and gifted the sum of Rs.10.50 lakhs out of retirement amount to the assessee. The assessee was asked to submit documentary evidence in support of his claim of receipt of gift from his father, but no evidence regarding sources or source for receipt of gift by assessee from his father was submitted and hence, the AO treated the cash deposit in the bank account as unexplained money u/s.69A of the Act amounting to Rs.10.50 lakhs. Aggrieved, assessee preferred appeal before CIT(A).

6. The CIT(A) confirmed the action of the AO by observing in para 4.3 as under:

4.3 I have considered the matter. There was cash deposit of Rs. 10,50,000/- in assessee's bank account. Before the AO, it was submitted that cash deposit was out of gift received from assessee's father, who retired from government service. In support of the claim that there was cash gift, a gift deed dated 10.08.2011 was furnished. On examination of the same, it is noticed that there were apparent factual inconsistencies in the said deed. It is seen that cash deposits in assessee's bank account took place on 24th and on 29th August 2021. The gift deed dated 10.08.2011 mentioned of deposits in bank account on 24th and 29th of the same month. It is not understood as to how a gift deed executed on 10.08.2011 talks of cash deposit that took place several days later. Moreover, it is seen that the written submission

dated 22.07.2021 also contained the purported gift deed. The said gift deed included the signature of notary public dated 23.07.2021 it is not understood how a document containing signature of a notary public dated 23.07.2021 could be included with letter dated 22.07.2021 addressed to this office. Further, it is also seen that in the written Submission dated 22.07.2021, it was stated at para 5 that assessee's father gifted a sum of Rs. 7,50,000/- and that the balance of Rs. 3,00,000/- was deposited by assessee on 02.01.2012 out of cash brought during travel to India. However, in the gift deed, it is stated that a sum of Rs. 11,00,000/- was gifted to assessee by his father. Further, it is seen that there are no proofs of assessee's father having creditworthiness. Mere fact of being a retired employee drawing pension as well as claim of earning money from tuition do not establish credit worthiness of alleged donor.

Aggrieved, now assessee is in appeal before the Tribunal.

7. We have heard Id.Senior DR and gone through facts and circumstances of the case. We noted that out of the cash deposit of Rs.10.50 lakhs, the assessee explained before CIT(A) that his father Shri Jagadeesan had provided gift of Rs.7.5 lakhs vide a gift settlement dated 10.08.2011. Further, the assessee explained balance cash of Rs.3 lakhs as cash brought during his travel from Abu Dhabi to India. The submissions filed before AO are reproduced by CIT(A) and the relevant para 5 of the written submissions reads as under:-

5. Cash deposit of Rs.10,50,000/- During 2011-12, my father Mr. Jagadeesan had provided me a gift of Rs.7,50,000/- vide a gift settlement dated 10h August 2011. My father was a schoolteacher drawing pension income till his end of life. He used to take tuition classes for nearby students Out of his savings and cash earned through tuition income, he had deposited cash gift of Rs7,50,000/- to my ICICI Bank account No.035001509100. The balance cash ofRs.3,00,000 was deposited by me on 2nd January 2012 out of the cash brought during my travel to India. I am enclosing herewith the gift deed between my self and father for Rs 7,50,000/- for your review and records. We have not been allowed to submit the gift deed by the assessing officer during the first level hearing as we met her on last day given to us.

The main grievance of the assessee as per grounds of appeal is that the CIT(A) has requested the AO to give remand report and AO vide letter No.141/A-16/A.Y.2012-13 dated 07.02.2022 forwarded the remand report. We noted that the remand report which is used against assessee was never confronted to assessee as contended by assessee in his grounds of appeal. The inherent contradiction in the statement of assessee is that the assessee's father gifted Rs.7.50 lakhs or 10.50 lakhs which is not clearly spelt out either by the AO or the CIT(A). Even the documents are antedated as per the order of CIT(A) i.e., document containing signature of notary public is dated 23.07.2021 which is included with the letter dated 22.07.2021, which is not clear. Hence to clear the facts, the matter

needs to go back to the file of the CIT(A), who will go into the details and also provide opportunities of being heard to the assessee. The assessee will explain his case and will submit evidences before CIT(A), which can be forwarded to AO for taking remand report in case necessary by the CIT(A). In term of the above, order of the CIT(A) is set aside and matter remanded back to the file of the CIT(A).

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27th February, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 27th February, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |