

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ SMC ‘ Bench, Hyderabad**

BEFORE

SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.676/Hyd/2022		
Assessment Year: 2021-22		
Sumeet Agarwal, C/o. Katrapati & Associates, 1-1-298/2/B/3, 1 st Floor, Ashok Nagar, Street No.1, Hyderabad – 500 020. PAN : BOGPA6032R.	Vs.	Joint Commissioner of Income Tax (OSD), Central Circle – 1(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Sri Sashank Dundu, Advocate
Revenue by:		Sri Waseem UR Rehman.
Date of hearing:		20.03.2023
Date of pronouncement:		23.03.2023

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2021-22 arises from the order of Commissioner of Income Tax (Appeals) – 11, Hyderabad dated 26.10.2022 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

“1. The Learned First Appellate Authority, is not justified in conforming addition of Rs.20,00,000/- as unexplained cash credit u/s.69A made by the Ld.Assessing Officer.

2. The Learned First Appellate Authority, in the facts and circumstances of the case, is not justified in not appreciating the appellant's claim that the gifts from his grand parents and relatives at the time of his marriage, where the sources for cash seized.

3. The Learned First Appellate Authority, is not justified in conforming the action of the Ld. Assessing Officer in making the addition of Rs.20,00,000/- u/s.69A of the I.T Act and bringing the same to tax u/s.115BBE of the I.T Act.”

3. Facts of the case, in brief, are that the assessee is an individual engaged in the proprietary business of Jewellery manufacturing & selling in the name & style-of M/s.Ganesh Narayan Gems and Jewels. The assessee had filed his Return of Income for the A.Y. 2021-22 on 15.02.2022 admitting total income of Rs.5,78,540/-. In the present case, the Revenue had received information that the assessee was travelling to Hyderabad from Jaipur, was intercepted at the Rajeev Gandhi National Airport (RGIA), Hyderabad and was found to be carrying cash of Rs.20,00,000/-. Subsequently, summon was issued to the assessee and his statement u/s.131 was recorded wherein he stated that the cash found with him belongs to his father. Subsequently, his father was summoned and his statement was also recorded u/s 131, wherein he confirmed that the cash belongs to him, but however, failed to explain the sources with supporting evidences. In the absence of any satisfactory

explanation with regard to the cash found in the possession of assessee, a warrant u/s.132A of the I.T. Act was executed on 30.03.2021 and the unaccounted cash of Rs.20,00,000/- was seized.

3.1 Thereafter, notices u/s. 142(1)/ 143(2) of the Act were issued and duly served to the assessee. In reply to the said notices, assessee had submitted that the amount of Rs.20,00,000/- was received as cash gift from his grand parents and others on the occasion of his marriage and had filed an affidavit dated 10.03.2022 from his uncle, Sri Satish Agarwal and sales register of Mis.Ganesh Narayan Jems & Jewels. After perusal of the material available on record, finally, Assessing Officer had completed assessment interalia by making an addition of Rs.20 lakhs to the income returned and brought to tax, due to lack of verifiable documentary evidence with respect to nature and sources of cash seized.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal before the Id.CIT(A) who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before this Bench.

6. The first and foremost submission made by the assessee is that the grand parents of the assessee had passed away on 06.09.2020 and 12.09.2020 and that at the time of their death, they handedover an amount of Rs.15 lakhs to his uncle Shri Satish Kumar Agarwal to pass the money to him as marriage gift. In support of his contention, he filed an affidavit given by his uncle before the DCIT, Central Circle – 1(3), Hyderabad on 10.03.2022. The contents of the said affidavit read as under :

“.....

I have received an amount of Rs.15,00,000/- from my parents during their last days asking me to pass it over to my younger brother i.e., Shri Pradeep Kumar Agarwal's son Shri Sumeet Agarwal as his marriage gift. My father passed away on 06.09.2020 and my mother passed away on 12.09.2020. My brother's son marriage was held on 27.11.2020 in Jaipur, Rajasthan. During his marriage cash gifts of Rs.5 lakhs from various relatives were also received. My brother kept those cash gifts received with me as I am the elder member in the family. I have been informed by my brother that his son Shri Sumeet Agarwal is coming to Jaipur on dt.28.03.2021. On his return to Hyderabad, I was asked by my brother to pass on the cash of Rs. 20,00,000/- (including cash gifts) to Shri Sumeet Agarwal for his business needs. Accordingly, I handed over an amount of Rs.20,00,000/- to Shri Sumeet Agarwal on 30.03.2021 and he carried the same to Hyderabad.”

6.1. Ld. AR for the assessee submitted that as the marriage of the assessee was already fixed, the family members had decided to proceed with the marriage and accordingly, marriage was held on 27.11.2020 at Rajasthan and the marriage registration certificate available at page No.1 of the paper book, confirms that the marriage of the assessee took place on 27.11.2020. The ld. AR

of the assessee contended that the cash was given by the grand parents of the assessee during their life time to the assessee's uncle Satish Kumar Agarwal for handing over the same to the assessee at the time of marriage. Ld. AR draws the attention of Bench to the definition of Gift under section 56 of the Act which permits to receive gifts on the occasion of marriage. Secondly, it was contended that Rs.5 lakhs was received at the time of marriage and therefore, the same falls within the definition of Gift under section 56 of the Act.

7. Per contra, ld. DR had submitted that the affidavit filed by the assessee is a self-serving document and it is not admissible as there is no corroborative evidence. Even no evidence was filed by the assessee before the Assessing Officer or the ld.CIT(A) whereby the capacity of the grand parents were established and further, assessee failed to disclose the necessary details of persons, who gave money to him like names, PAN, address etc. at the time of marriage. It was also the submission of the ld. DR that the assessee had been taken contrary stands during the recording of statement u/s 131 and during assessment proceedings and appellate proceedings.

8. I have heard the rival submissions and perused the material on record. Undoubtedly, Rs.20 lakhs was recovered from the possession of the assessee when he was intercepted at Rajeev Gandhi International Airport, Hyderabad while travelling from Jaipur to Hyderabad and at that time assessee failed to give any

explanation with respect to the source of cash. At that time, assessee did not submit that the money was received by him either from his grand parents or from his uncle as gift on the occasion of marriage. This explanation was not submitted by the assessee even during the course of recording of statement u/s 131 of the Act.

9. Undoubtedly, before the Assessing Officer, the assessee had categorically submitted that the marriage was taken place on 27.11.2020 and cash of Rs.5 lakhs was received at the time of marriage. Undoubtedly, the assessee has not provided the details of persons who had given the cash gifts. The assessee had furnished an affidavit from his uncle Satish Kumar Agarwal wherein he acknowledges that he had handedover Rs.20 lakhs to the assessee. In the present case, the Assessing Officer has not brought on record any evidence to rebut the evidence by way of affidavit filed before him. Though no other evidence was filed during the assessment proceedings / appellate proceedings. However, I cannot completely disbelieve that the cash gifts were normally not given on the occasion of marriage. However, to accept the contention of the assessee that Rs.20 lakhs were received is beyond comprehension and hence, cannot be accepted more particularly when no cogent evidence was filed by the assessee. In my view, merely filing of the affidavit is not sufficient to prove the capacity and source of the persons who has given money to the assessee. Though, it is the case of the assessee before us that the grand parents were running sweet shop at Jaipur and grand

mother was also an income tax filer. However, the above said two facts were not brought to the notice of the lower authorities during the course of assessment. Undoubtedly, receiving and giving gifts is ceremonial at the time of marriage, in my view, considering the status of the assessee, who is an income tax assessee and status of his grand parents, it is very obvious and natural to receive gifts at the time of marriage from the relatives and friends. Considering the totality and peculiarity of the facts, I am of the view that the assessee is entitled to some relief and accordingly, I restrict the addition to Rs.10 lakhs (Rupees ten lakhs only). Thus, the gets relief of Rs.10 lakhs and the remaining amount of Rs.10 lakhs is confirmed. Thus, the appeal of the assessee is partly allowed.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 23rd March, 2023.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 23rd March, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Sumeet Agarwal, C/o. Katrapati & Associates, 1-1-298/2/B/3, 1 st Floor, Ashok Nagar, Street No.1, Hyderabad – 500 020.
2	Joint Commissioner of Income Tax (OSD), Central Circle – 1(3), Hyderabad.
3	Pr.CIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order