

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.372/Kol/2018
Assessment Year: 2013-14**

Subrata Bhuiya 58/B, Satchasi Para Road, Kolkata-700002. (PAN: AEAPB7608B)	Vs.	Assistant Commissioner of Income-tax, Circle-44, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri T. N. Dutta, Advocate
Respondent by : Shri P. P. Barman, Addl. CIT

Date of Hearing : 13.03.2023
Date of Pronouncement : 27.03.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-13, Kolkata vide appeal No. 307/CIT(A)-13/Kol/Cir-44/2015-16 dated 31.08.2016 (Corrigendum order passed by Ld. CIT(A)-13 dated 26.09.2017) against the order of Ld. ACIT, Circle-44, Kolkata passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 08.03.2016.

2. Grounds taken by assessee is reproduced as under:

“1. For that the order is arbitrary, Prejudice and against the weight of evidence on record and bad in law.

2. For the natural justice was denied to the appellant being every paper, record documents submitted during the course of heading which were not taken on record which were not mentioned in the said assessment order.

3. That the act of Ld. A.O was unjustified and erred in addition of Rs.41,99,150/- the entire capital introduction by the assessee under

concealment of Income and without bringing out on record any cogent reason and infirmities in the maintain of accounts of the assessee.

4. That the addition by way of Disallowance of certain expenditure amounting to Rs. 13,35,102/- as claimed bonafied by the assessee in the year of appeal by way of applying discretionary power not warranted by any law of prudence and having done so for malafied intention to harass the assessee.

5. That rejection of applicability of principal of mutuality as claimed by the appellant on arbitrary assumption of learned assessing officer.

6. For that entries addition on account disallowance by the learned A.O. be deleted at all being bad in law and not evidenced.

7. For that your relational crave leave to advance any ground / (s) as well written statement to be submitted at the time of appeal petition.”

3. At the outset, we note that in the order sheet entry dated 22.09.2022, it was observed that order of Ld. CIT(A) is dated 31.08.2016. A Corrigendum order was also issued by Ld. CIT(A) on 26.09.2017. In the appeal memo, date of communication of the order appealed against is noted as 01.02.2018. Thus, a gap of more than one and half years was observed in the said time line. For this, Ld. DR was directed to call for a report from the office of Ld. CIT(A) about the service of order on the assessee. In this respect, Ld. Sr. DR submitted a copy of “*Tear off acknowledgment slip*” on which a rubber stamp of date 01.02.2018 is affixed stating receipt of the order in the office of Pr. CIT, Kolkata-15. On the same document, a hand written note is placed which states that “*record shows at least one tear off acknowledgment bearing Acknowledgment No. 307/2015-16 was served on 01.02.2018 – apparently overwritten - very doubtful*”. On this note, Ld. Sr. DR could not state anything in clear terms. There is no delay in filing of the present appeal before the Tribunal from the date of 01.02.2018 which is claimed to be the date of communication of order appealed against. From the stamp affixture by the office of

Ld. Pr. CIT stating receipt of the order on 01.02.2018, we safely assume that assessee was also communicated for this order on 01.02.2018, thus, we take this appeal for adjudication.

4. Brief facts of the case are that assessee is in the business of manufacturing paint, varnish, thinner and ink used for industrial purposes mainly for Indian Railways, Defence and other Government institutions. Assessee filed its return of income on 07.09.2013, reporting total income of Rs.46,21,740/-. During the course of hearing, Ld. AO enquired about the introduction of capital by the assessee in its business for Rs.41,99,150/-. Ld. AO also sought details in respect of various expenses totalling to Rs.66,21,667/- claimed to have been incurred in the course of business, deductible for computing the total income. Assessee made his submission explaining the case. However, Ld. AO not satisfied with the same, made the addition of Rs.41,99,150/- towards addition to capital fund and ad-hoc disallowance of 20% of Rs.66,21,667/-. Aggrieved, assessee went in appeal before the Ld. CIT(A) who did not find favour with the assessee. Aggrieved, assessee is in appeal before the Tribunal.

4.1. Before us, Ld. Counsel for the assessee submitted that source of capital contribution is duly explained which comprises of the following:-

i)	By sale of ornaments of spouse (Rs.2770/- per gram x 704 gms.)	Rs.19,50,500/-
ii)	Gift from father out of sale of rice seeds and agriculture activity	Rs.10,77,150/-
iii)	From surrender value of mutual fund of LIC	Rs. 2,25,000/-

iv)	Out of personal savings and drawings from past	<u>Rs. 9,46,500/-</u> <u>Rs.41,99,150/-</u>
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4.2. Ld. Counsel referred to the remand report called by the ld. CIT(A) in the course of first appellate proceeding wherein details have been noted by the Ld. AO which is reproduced in the order of Ld. CIT(A). He submitted that gold ornaments of the spouse of the assessee Dr. Minati Dutta weighing 704 gms were sold @ Rs.2,770/- per gram totalling to Rs.19,50,500/- in the open market. These gold ornaments formed part of her 'Stridhan' which she had accumulated over past several years of her marriage. This 'Stridhan' was beyond the ambit of wealth tax. Ld. Counsel also stated that spouse of the assessee is assessed to tax and has income from business for last several years for which copies of income tax returns for AYs 2011-12, 2012-13 and 2013-14 along with her drawings and personal balance sheet were placed on record.

4.3. Ld. Counsel also referred to the details of purchase of gold ornaments during FY 2000-01 to 2012-13 along with some cash memos in support of purchase from certain jewellers namely, Aparna Jewellers, P. C. Chandra Jewellers, Ray Jewellers & Co. etc. Year wise details of purchase as contained in the remand report is tabulated as under:

Sl. No.	Financial Year	Weight of Gold(gm)	Value (Rs.)
1	2000-01	40.68	22,070
2	2001-02	47.05	24,910
3.	2002-03	15.19	10,270
4	2004-05	29.38	20,735
5.	2005-06	46.25	43,536
6	2007-08	218.43	2,59,948
7	2008-09	44.38	61,692
8	2012-13	114.50	4,37,971
Total		555.86	8,81,132

4.4. Ld. Counsel submitted that assessee had sold jewellery of his wife of 704 grams to M/s. Das Brothers Jewellers of 2E, Kali Krishna Tagore Road, Kolkata on 24.12.2012 for which proceeds were received in cash. In the course of remand proceeding, Ld. AO had issued summons to the jewellers from whom purchases were made by the spouse of the assessee out of which reply was received from M/s. Chandra & Bros. and Aparna Jewellers as stated in the remand report. According to the Ld. Counsel, considering the status of living standard of the assessee and his spouse as well as regular returns filed by her, quantity of gold ornaments upto 500 gms are considered to be acceptable in view of CBDT Circular No. 1916 dated 11.05.1994.

4.5. In respect of gift received from the deceased father of the assessee, Ld. Counsel referred to copy of gift deed placed at page 15 of the paper book wherein the source of gift is stated to be accumulated income from sale of rice seeds and oil seeds generated from agriculture land and funds standing to the credit of family cash balance. It is also stated in the gift deed that deceased father of the assessee is an income tax assessee having PAN AXNPD4574G and the gift is made out of his past savings from agriculture business. The gift deed was notarized on 18.04.2012. Thus, Ld. Counsel

contended that nature and source of gift from the deceased father of the assessee is adequately explained and no addition is called for. In respect of the other two components, Ld. Counsel did not furnish anything specific.

4.6. In respect of disallowance of expenditure @ 20%, Ld. Counsel stated that these expenses have been incurred in the conduct of business and are legitimate business expenditure which has resulted into increase in the turnover of the assessee from Rs.2.16 Cr. approximately during AY 2012-13 to Rs.15.38 Cr. during AY 2013-14. According to him, the entire expenditure claim is bona fide and the same has been subject to audit u/s. 44AB of the Act.

5. Per contra, Ld. Sr. DR placed reliance on the order of the authorities below and strongly contested that assessee has failed to provide satisfactory explanation on the capital contribution made during the year as well as failed to submit supporting documents in the form of bills and vouchers for the expenses claimed as deductible.

6. We have heard the rival contentions and perused the material on record. In respect of capital contribution by way of sale of gold ornaments of spouse during the year, from the remand proceeding, we note that assessee has given details of purchase of ornaments weighing 555.86 gms. The quantity sold is 704 gms which cannot be doubted in lieu of these purchase details as there are several occasions in family life when gifts in the form of gold ornaments are received. Considering the financial status and standing of

the assessee coupled with regular returns filed by the spouse of the assessee having income from business, sale of ornaments of 704 gms cannot be doubted and the capital contribution made from this is therefore, accepted as explained. We also refer to the CBDT Circular no. 1916 (supra) wherein gold ornaments up to 500 gms for a married woman are accepted as permissible. Thus, the addition made in this respect of Rs.19,50,000/- is directed to be deleted.

6.1. Further, in respect of capital contribution out of gift received from the deceased father of the assessee amounting to Rs.10,77,150/-, the contents of the gift deed as narrated by the Ld. Counsel explains the nature and source of the said gift made to the assessee. The deceased father was an income tax assessee having PAN. Considering these facts on record, capital contribution by way of gift from the deceased father is accepted and the addition made thereon is directed to be deleted.

6.2. In respect of other two components of surrender value from mutual fund of LIC and from personal savings and drawings of the past, nothing has been brought on record to demonstrate about the nature and source of these amounts. Accordingly, the addition made in respect of these two amounts is sustained.

6.3. In respect of ad-hoc disallowance made by the ld. AO and sustained by the Ld. CIT(A) by adopting rate of 20% in respect of expenses claimed by the assessee, we note that

assessee has claimed these expenses on the strength of vouchers which are self made and most of these expenses are not verifiable. Expenses include administrative and selling expenses, conveyance deed expenses, staff and welfare allowances, staff tea and Tiffin and staff food and clothe. The mode of payment of all these expenses is in cash. Assessee has merely submitted copies of ledger accounts from its books to substantiate the claim of these expenses. However, we do note that there is an increase in the turnover of the assessee as stated above, which is one of the reasons stated by the assessee for incurring these expenses. Before us also Ld. Counsel could not bring anything on record except for copies of ledger accounts forming part of the paper book. Considering the facts and circumstances of the case and the interest of justice and fair play, we find it proper to restrict the disallowance to the extent of 10% instead of 20% adopted by the Ld. AO and confirmed by the Ld. CIT(A). Accordingly, assessee gets a relief on the disallowance of these expenses up to 10% and the balance is sustained.

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

Order pronounced in the open court on 27th March, 2023.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27th March, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A)-13, Kolkata
 4. CIT, Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata