

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 442/Rjt/2017
निर्धारण वर्ष/Asstt. Year: 2011-12

Shri Chandrashekhar Ayachi, BBZ-N-66, Bhai Pratap Circle, Gandhidham. C/o. Kalpesh S. Doshi & Company, 411, Cosmo Complex Mahila College Circle, Rajkot-360001. PAN: ABUPA6576E	Vs.	D.C.I.T, Gandhidham Circle, Gandhidham.
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(Applicant)		(Respondent)
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Assessee by :	Shri Kalpesh Doshi, A.R
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **19/04/2023**
घोषणा की तारीख / **Date of Pronouncement**: **28/06/2023**

आदेश / ORDER

PER WASEEM AHMED ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Jamnagar, (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-12.

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

1. *That, the learned CIT(A) has passed the order without affording proper opportunity of being heard.*
2. *That, the learned CIT(A) has wrongly confirmed the addition of Rs.40,64,021/- on account of unexplained gift u/s.68 of the IT Act.*
3. *That, the findings of the learned AO and CIT9A) are not justified and are bad-in-law. The appellant craves to add, alter, amend or delete any of the above grounds of appeal.*

3. In the present case, the assessee has shown receipt of gift from his brother-in-law amounting to Rs. 40,64,021/- only. However, the AO treated the same as unexplained cash credit u/s 68 of the Act, vide order dated 07/03/2014. On appeal, the Ld.CIT(A), upheld the order of the AO for want of documents to be furnished by the assessee in support of the gift received by him. It was stated by the Ld. CIT(A), that the assessee was given enough opportunities to furnish the necessary documents. But the assessee failed to avail the same. Thus, the Ld.CIT(A), in the absence of necessary documents treated the amount of gift as unexplained cash credit u/s 68 of the Act. Now, the assessee is before us.

4. At the time of hearing before us, the Ld. Counsel for the assessee fairly admitted that the assessee has not furnished the necessary details in support of the gift received from his brother-in-law. It was pointed out that the assessee failed to furnish the necessary details as the donor of the gift during the relevant point in time was based outside India. Thus, as per the Ld. AR, the delay in submitting the documents before the authorities below has occurred on account of non-cooperation from the third-party being donor. However, the Ld. AR further contended that the assessee now is in possession of necessary documents such as confirmation of the donor of the gift, ITR, passport, bank statement along with the bank statement of his wife in which he is a joint account holder and Financial Statement of the company based in Dubai in which donor is partner. According to the Ld. AR, the assessee has a strong case to succeed if the issue in dispute is resolved in the light of the above stated documents. Accordingly, it was prayed by

the Ld. AR, to restore the issue to the file of the Ld.CIT(A), for fresh adjudication as per the provision of law.

5. On the contrary, the Ld. DR did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provision of law.

6. We have heard the rival contentions of both the parties and perused the materials available on record. Considering the documents filed by the assessee before us in support of the gift received by him and reason for non furnishing the documents before the Ld.CIT(A), we find force in the argument advanced by the Ld. AR for the assessee. Accordingly, we set aside the issue to the file of the Ld.CIT(A), for fresh adjudication in the light of documents submitted by the assessee and as per the provisions of law. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

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

Order pronounced in the Court on 28/06/2023 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 28/06/2023
Manish (True Copy)