

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.4/SRT/2022

निर्धारण वर्ष/Assessment Year: (2017-18)

(Virtual Hearing)

Pruthvi Mukeshbhai Dholakiya, 1201-1202, M. Riverview Heights, Pedar Road, Mota Varachha, Surat – 395006.	Vs.	The ITO, Ward-3(3)(5), Surat.
(Assessee)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ARZPD5135H		

Assessee by	Shri Mehul K. Patel, AR
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	17/07/2023
Date of Pronouncement	31/07/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (In short ‘NFAC’), Delhi, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 27.12.2019.

2. The grounds of appeal raised by the assessee are as follows:

*“(1) That on facts and in law the learned assessing officer and CIT(A) have grievously erred in not affording reasonable opportunity of hearing and not considering the submissions and evidences filed and on record of both the authorities.*

*(2) That on facts and in law the learned CIT(A) has grievously erred in confirming the addition of Gift received of Rs.2,50,000/- u/s 68 of the Act.*

*(3) That on facts and in law, the learned CIT(A) has grievously erred in confirming the addition of Rs.60,25,000/- made u/s 69C of the Act in respect of alleged Unexplained Expenditure.*

*(4) That the learned CIT(A) has grievously erred in confirming the charging of interest u/s 234B, 234C and 234D of the Act.*

*(5) The assessee craves leave to add, alter, amend any ground of appeal.”*

3. At the outset, Ld. Counsel informs the Bench that assessee does not wish to press ground no.1, therefore we dismiss the ground no.1 raised by assessee as not pressed.

4. At the outset, we note that appeal filed by the assessee is barred by limitation by seventy three (73) days. The Ld. Counsel for the assessee moved a petition requesting the Bench to condone the delay. The Ld. Counsel for the assessee submitted that at the time when the appeal was filed, the assessee had e-mail address as “pmdholakiya@gmail.com”, however, later, a new e-mail address was created as “rupaligold2015@gmail.com”. The order of learned CIT(A) was served on old e-mail address, which was discontinued the assessee, hence delay has occurred. The Ld Counsel further submitted that entire delay in filing the appeal is covered by the judgment of Hon'ble Supreme Court in the Miscellaneous Application No.21 of 2022, dated 10.01.2022, hence the delay should be condoned.

5. On the other hand, Learned Departmental Representative (Ld.DR) for the Revenue, fairly agreed that delay is attributable to the Covid-19 pandemic disease, which is covered by the judgment of Hon'ble Supreme Court (Supra) therefore delay may be condoned.

6. We have heard both the parties on the preliminary issue and noted that delay in filling the appeal in the assessee's case is squarely covered by the judgment of Hon'ble Supreme Court in Miscellaneous Application No.21 of 2022, in *Suo moto* writ No. 3 of 2020, dated 10.01.2022, therefore, we condone the delay and admit the appeal of the assessee for hearing.

7. Ground No.2 raised by the assessee, relates to addition on account of Gift received of Rs.2,50,000/- from Mother.

8. Succinct facts qua the issue are that ground no.2 raised by the assessee relates to addition of 2,50,000/- made on account of gift received from grandmother of the assessee. The assessing officer has dealt with this issue in the assessment order (supra). Observing that the assessee has received gift from grandmother, the assessing officer wanted supporting evidences in respect of such gift. However, in course of assessment proceedings the assessee kept quiet and did not furnish evidence in respect of gift received from his grandmother. Therefore, the assessing officer made the addition of Rs. 2,50,000/- as unexplained cash credit under section 68 of the Act.

9. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the action of the Assessing Officer. Before Id CIT(A) the assessee has furnished some documents however, Id CIT(A) did not consider these documents in right perspective and confirmed the addition made by the assessing officer. Aggrieved by the order of the Ld. Id. CIT(A), the assessee is in appeal before us.

10. We have heard both the parties. Learned Counsel for the assessee submitted that assessee has received the Gift from his grandmother at Rs.2,50,000/-. After giving the gift, the assessee's grandmother was died. The assessee submitted gift declaration before the Assessing Officer. The assessee also submitted Aadhar Card and death certificate of his grandmother. The declaration for gift is placed at paper book page no.11 of the assessee's paper book and death certificate of grandmother of the assessee is placed at paper book page nos.30. The Ld. Counsel submitted that the grandmother of the assessee has given the gift out of her personal savings and assessee has proved the *bona fide* of the gift by submitting the

gift deed, Aadhar Card and death certificate. We note that gift amount of Rs.2,50,000/- falls under exempted slab, that is, maximum amount which is not chargeable to tax, therefore exempt from tax. We note that during the assessment proceedings, the assessee has submitted the required details before the Assessing Officer to prove the genuineness of the gift. Hence, we delete the addition made by the assessing officer.

11. Ground No.2 raised by the assessee is allowed.

12. Ground No.3 raised by the assessee, relates to addition of Rs.60,25,000/- made by Assessing Officer under section 69C of the Act.

13. Succinct facts qua the issue are that during the assessment proceedings, the Assessing Officer has sought explanations from the assessee in respect of the expenditures as noted from details submitted by the assessee. The assessee failed to reconcile the difference found as per the ledger and as per the details available with the assessing officer which lead the assessing officer making the impugned addition of Rs.60,25,000/-.

14. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

15. We have heard both the parties. Learned Counsel for the assessee submitted that that Rs.30,25,000/- is the amount received from H. D. Brothers *vide* ledger account placed at paper book page no.33 and Rs.30,00,000/- has been received from Jyotirmay Jewels Pvt. Ltd. *vide* paper book page no.44. In both the cases, the amount has been mentioned in the purchase register of the assessee, *vide* page no.49 of the paper book. Since, the amount was received by cheque, therefore genuineness of the transaction should not be doubted. During the assessment proceedings, the assessee has

explained before the Assessing Officer about Rs.30,25,000/- and Rs.30,00,000/- as follows:

“2. Difference between purchase ledgers with details under purchase register – Your goodself found difference in two purchase ledgers, out explanations as below –

**H. D. Brothers**

<b>Particulars</b>	<b>Amount</b>
<i>As per summary of purchase register</i>	<i>2,02,41,875</i>
<i>As per purchase ledger</i>	<i>2,32,66,875</i>
<i>Difference</i>	<i>30,25,000</i>

*We hereby request your goodself, kindly go through purchase ledger of H. D. Brothers. Amount of Rs.30,25,000/- consist of sale invoice i.e. your assessee sold goods to H. D. Brothers on 11.05.2016 and total of credit side of purchase ledger includes receipts from H. D. Brothers of Rs.30,25,000/- on 11.05.2016. copy of sale invoice and ledger of H. D. Brothers highlighting the transaction enclosed herewith at Annexure –A.*

**Jyotirmay Jewels Pvt. Ltd.**

<b>Particulars</b>	<b>Amount</b>
<i>As per summary of purchase register</i>	<i>110,09,08,813</i>
<i>As per purchase ledger</i>	<i>110,39,08,813</i>
<i>Difference</i>	<i>30,00,000</i>

*We hereby request your goodself, kindly go through purchase ledger of Jyotirmay Jewels Pvt. Ltd. Amount of Rs.30,00,000/- consist receipt from Jyotirmay Jewels Pvt. Ltd. on 31.01.2017. Thus credit side of purchase ledger includes receipt of Rs.30,00,000/-. Copy of ledger of Jyotirmay Jewels Pvt. Ltd. highlighting the transactions enclosed herewith at Annexure – B.*

*Hope the above information may serve the purpose of the department in the matter of justice and oblige.”*

16. The Id Counsel further submitted that during the assessment stage, the assessing officer did not apply his mind and made addition without any base. On the other hand, the Learned Departmental Representative (Ld. DR) for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We note that regarding, difference in the summary of purchase register and purchase ledger in respect of H. D. Brothers, the assessee has filed the reconciliation before the Assessing Officer. The Assessing Officer did not find any mistake in the said reconciliation. Likewise, the assessee has also submitted the reconciliation for the difference amount of Rs.30,00,000/- in respect of Jyotirmay Jewels

Pvt. Ltd. and explained the Assessing Officer with help of the ledger account and the purchase register with supporting evidences. Besides, the transaction was done through banking channel. We note that Assessing Officer has not refuted or discredited these evidences and documents. The assessing officer does not mention why he is not accepting these evidences. On the contrary, the assessing officer has just brushed aside these evidences without even a word on why they are not acceptable. It is a well settled Law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises. Hence we are not inclined to accept the contention of the Assessing Officer in any manner and hence the addition so made is deleted. Hence this ground no.3 of the assessee is allowed.

17. Ground No.4 raised by the assessee relates to confirming the charging of interest u/s 234B, 234C and 234D of the Act, which is consequential in nature and therefore does not require adjudication.

18. In the result, appeal filed by the assessee is allowed

Order pronounced on 31/07/2023 in the open court.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सुरत /Surat

दिनांक/ Date: 31/07/2023

SAMANTA

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat