

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH  
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.227/SRT/2019

Assessment Year: (2015-16)

(Physical Hearing)

Mohammed Anis Gulam Mohammed Memon, 48, Memon Nagar Society, Nr. Bharucha Apartment, Khandakuwa, Rander, Surat - 395005	<b>Vs.</b>	The ITO, Ward – 1(3)(7), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ALJPM3607K		
(Appellant)		(Respondent)

Appellant by	Shri Suresh K. Kabra, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	24/08/2023
Date of Pronouncement	31/08/2023

**आदेश / ORDER**

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

Captioned appeal filed by assessee, pertaining to Assessment Year (AY) 2015-16, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-2, Surat [in short “the ld. CIT(A)”], in Appeal No.CIT(A)/Surat-2/10351/17-18, dated 30.01.2019, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 20.11.2017.

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

*“1) On the facts and circumstances of the case, as well as law on the subject, the Learned Commissioner of the Income Tax (Appeals)-2, Surat has erred in confirming the action of Assessing Officer in making addition of Rs.22,75,000/- u/s .69 of the Income Tax Act, 1961 on account of unexplained investment in property.*

2) *The appellant reserves right to add, alter and withdraw of any grounds of appeal.*”

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual and filed return of income, declaring total income of Rs.2,90,090/- on 25.03.2016. The assessee’s case was selected for scrutiny in CASS and accordingly notice u/s 143(2) of the Act was issued on 29.07.2016 and served upon the assessee through speed post. Further, notice u/s 142(1) of the Act, was issued on 29.07.2016 and served upon the assessee along-with notice u/s 143(2) of the Income Tax Act, 1961.

4. The Assessing Officer observed that during the year under consideration, the assessee has received income from trading of footwear. On verification of records, it was noticed by Assessing Officer that during the year under consideration, the assessee has purchased immovable property alongwith three other co-owners for a consideration of Rs.80,00,000/-. In this regard, Assessing Officer issued letter dated 04.08.2017 to the assessee and the assessee was specifically requested to furnish the details alongwith documentary evidences in respect of source of purchase of said property and mode of payment along with supporting evidences. In response, the assessee vides his letter dated 20.09.2017 submitted written submission before Assessing Officer, which are reproduced below:

*“In response to the above noted notice I had a good fortune to see your good self and handed over my submission on 21-08-2017 personally. After discussion the case was adjourned on 25-08-2017, but as it was Ganesh Chaturthi I was busy in holy rituals, and the assessee had also not submitted certain details, so, I could not see your good self, I am extremely sorry for the same, so, please bare with me and oblige.*

*As my client abruptly jumped in to a joint venture. But in the initial stage he had no idea of fund requirements and was also not in a position to cope up with the fund requirements also. Under such circumstances he*

*requested his mother for the help, and she just to bring him out from the strenuous condition, extended the helping hand, but with condition that the investments will be reflected in her statements of accounts and not in the statements of accounts of the assessee, Shri Mohammed Anis G. M. Memon. She being a lady, rather old aged lady, ill-health lady the Purchase Document: were not made on her name, but instead thereof the Purchase Documents reflect the name of Shri Anisbhai. His Mother files her Returns of Income. She had filed her Returns of income up to A.Y. 2015-2016. In connection with the captioned case I advised her to file her remaining Returns of Income for A.Y. 2016-2017 and 2017-2018 at her earliest.*

*I hope that my above contention will suffice your requirements. As I am not handling her Income Tax file directly, it will take some time to bring before your good self the copies of the said documents i.e. Returns of Income.”*

5. However, Assessing Officer rejected the contention of assessee and noted that the assessee failed to furnish the documentary evidence in respect of investment of Rs.22,75,000/- in purchase of property. Hence, Assessing Officer vide notice dated 15.09.2017, again asked the assessee to furnish the details along-with documentary evidences in respect of source of purchase of said property and mode of payment along with supporting evidences. The same is reproduced below:

*“In your case, the assessment proceeding for A.Y. 2015-16 is under progress. It is noticed that you have not fully complied with the notices issued in your case, till date. On 21.8.2017, your Authorised Representative Shri Pankaj Danawala, CA appeared before the undersigned and filed part submission. During the course of hearing, it was requested to furnish complete supporting evidences along-with source and share in investment in the property under question. You are, therefore, once again requested to furnish the details along with documentary evidences in respect of source of purchase of said property and mode of payment along with supporting evidences; on or before 25-09-2017. Your hearing is fixed on 25-09-2017 at 10.00 AM. Please note that this notice is being issued u/s. 142(1) of the Act. Non-compliance of this notice shall lead to penalty u/s 271(1)(b) and finalization of your assessment u/s 144 of the Act.”*

6. In response to the said notice, the assessee vide his reply dated, 25.09.2017, submitted before Assessing Officer, which is reproduced as follows:

*“In response to the above noted notice I had a good fortune to see your good self and handed over my submission on 20-09-2017 personally. After discussion the case was adjourned to 25-09-2017. As per our discussion and as per your requirements, and also in connection of my earlier submission of 20-09-2017, I have much pleasure to place before your good self the I. T. Records of Smt. Khatijabibi Gulam Mohamed Memon, mother of the assessee.*

*Smt. Khadijabibi Gulam Mohamed Memon is a working business woman, and filing her Returns of Income since so long. As per her Affidavit, which is attached here with also, she had spared Rs.10,25,000/- (Rupees Ten Lakhs, Twenty Five Thousand Only) in the A. Y. 2014-2015 and remaining Rs.12,50,000/- (Rupees Twelve Lakhs, Fifty Thousand Only) in the A. Y. 2015-2016. The same is reflected in her Balance Sheet of the respective years. **Moreover, as per her situation and as per her wish in the purchase documents instead of her name the name of her son Shri Anisbhai is reflected, simply because of her ill-health and old age.***

*In support of the above contention, I am pleased to submit before your good self the copies of the following documents for your kind record and perusal. They are:-*

- i) Copy of Return of Income filed for A. Y. 2014-2015.*
- ii) Copy of Return of Income filed for A. Y. 2015-2016.*
- iii) Her Affidavit in this regard.*

*I hope that my above submission will suffice your office requirements.”*

7. After going through the above reply of assessee, the Assessing Officer observed that entire fund invested for purchase of property was claimed to be received from the mother of the assessee therefore, it was noticed by the assessing officer that the entire purchase consideration was paid by cash to the seller parties, though the assessee and his mother having their own bank accounts. **The assessee has stated that assessee's mother is a working business woman and due to her ill-health and old age and as per her wish, the purchase document registered in the name of the assessee. The assessee's mother stated in her affidavit that the amount given by her should be returned back to her whenever the sale proceeds of**

**the property occurred.** On verification of balance sheet of the assessee, it was noticed by assessing officer that the fund so received from his mother was not found in the nature of loan or as a gift and the transaction to be non-genuine.

8. Therefore, Assessing Officer further issued notice to the assessee on 03.11.2017 to explain the transaction, which is placed at page no.4 of assessment order. After taking into consideration, the assessee's submission, the Assessing Officer noted that Smt. Khadijabibi Gulam Memon, (mother of the assessee) has not appeared before assessing officer, in response to summons u/s 131 of the I.T. Act. One of the reasons put forth by her, was that she is a pardanashin muslim lady, so it is very difficult for her to present before some unknown male member for interrogation. It is the fact that summons u/s 131 was issued as per Income tax Act, 1961 and the Income Tax Act is applicable in the case of Smt Khadijabibi also. Further, the request of the assessee's mother for one week time to attend the office was also considered, but till 20.11.2017, neither the assessee produced his mother in compliance to summons u/s 131 nor filed any reply to show-cause notice dated 03.11.2017. Therefore, Assessing Officer observed that assessee's mother deliberately tried to avoid investigations by the Income Tax Authorities by not complying to summons u/s 131 and thereby failed to prove the genuineness of business activities carried out by her and the source of such cash given to her son for investment in purchase of property. Hence, in this case, the investment of Rs.22,75,000/- in property was found by Assessing Officer to be unexplained in the hands of assessee. Therefore, Assessing Officer noted that all the ingredient of section 69 of the Act is squarely applicable in the case of the assessee. The assessee has

made investment of Rs.22,75,000/- and fails to explain the source of such investment with concrete evidences. Therefore, unaccounted and unexplained investment of Rs.22,75,000/- in the property was added back to the total income of the assessee.

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 Assessing Officer. Therefore, assessee is in further appeal before us.

10. Shri Suresh K. Kabra, Learned Counsel for the assessee, argued that assessee has purchased property out of fund provided by his mother to the tune of Rs.22,75,000/-. The assessee's mother is very old woman and she born in 01.04.1947, therefore due to continuous ill-health she could not appear before the government authorities, therefore she had given Rs.22,75,000/- to his son to purchase the property in her son's name. The Ld. Counsel also submitted that amount of Rs.22,75,000/- has not been shown by the assessee in his balance sheet. The said amount of Rs.22,75,000/- has been shown in the assessee's mother balance sheet and the income tax return and capital account of the assessee's mother, wherein the amount of Rs.22,75,000/- was getting reflected. The Ld. Counsel also submitted that the assessee's mother also filed an affidavit before the Assessing Officer, stating that she had given Rs.22,75,000/- in cash to his son to purchase the property. The sources from which assessee's mother had given the money has been reflected in the income tax return filed by the assessee's mother for AY.2014-15 and AY.2015-16. Therefore, Ld. Counsel contended that during the assessment proceedings to prove the genuineness of Rs.22,75,000/-, the assessee has produced

the copy of income tax return, copy of computation of total income, copy of balance sheet of his mother for AY.2014-15 and 2015-16. Apart from this, the assessee has also produced the affidavit of his mother stating that the money belongs to her mother and not to assessee. Since, she (assessee's mother) is not capable to appear before the government authorities for registration etc. as she is in continuous ill-health position and therefore property was purchased in the name of his son out of the funds provided by the assessee's mother. Therefore, Ld. Counsel contended that genuineness of amount of Rs.22,75,000/- should not be doubted. The Ld. Counsel also submitted that amount of Rs.22,75,000/- does not relate to the assessee, under consideration, however, it relates to assessee's mother, therefore no addition should be made by the Assessing Officer in the hands of the assessee.

11. On the other hand, Learned Departmental Representative (ld. DR) for the Revenue submitted that Assessing Officer has issued the summons during the assessment proceedings to the assessee's mother under section 131 of the Act. However, the assessee's mother did not appear before the Assessing Officer, therefore matter may be remanded back to the file of the Assessing Officer with the direction to the assessee, to produce his mother before the Assessing Officer for verification. Apart from this, the ld. DR also submitted that assessee has not proved the genuineness of the transactions and therefore addition made by the Assessing Officer may be upheld.

12. I have heard both the sides and gone through the relevant material on record. Before me, the assessee has submitted the following documents and evidences to prove his claim, Viz: (i) Copy

of Income Tax Return, ITR Form computation, profit and loss account, capital account and balance sheet for the AY.2014-15 Khadijabibi Gulam Mohamed Momon, (vide Pb.1 to 6), (ii) Copy of ITR, Computation, profit and loss account, capital account and balance sheet for the A.Y.2015-16 Khadijabibi Gulam Mohamed Momon (vide Pb.7 to 9), (iii) Copy of sale deed dated 05.07.2024 (vide Pb.10 to 65), (iv) Copy of submission dated 20.09.2017 before ITO (vide Pb.66 to 67), (v) Copy of submission filed dated 25.09.2017 before ITO (vide Pb.69 to 70), (vi) Copy of submission filed dated 25.09.2017 before ITO (vide Pb.70 to 71), (vii) Copy of affidavit Sr.No.816/17, dated 22.09.2017 submitted to Assessing Officer (vide Pb.72 to 75), (viii) Copy of submission dated 16.01.2019 before CIT(A) (vide Pb.76 to 78).

13. From the above documents, evidences and submissions made by the assessee, before the lower authorities, it is vivid that assessee has submitted copy of income tax return, computation of total income and profit and loss account and also Balance Sheet for the assessment year 2014-15 in respect assessee's mother. The assessee has also submitted before assessing officer, the copy of income tax return, computation of total income, balance sheet, profit and loss account, capital account for AY.2015-16 of the assessee's mother Khadijabibi Gulam Mohamed Momon. The Ld. Counsel also submitted before me the copy of sale deed dated 05.07.2014 wherein the property was registered in the name of assessee, on behalf of his mother Khadijabibi Gulam Mohamed Memon. The Balance sheet, Profit and loss accounts submitted by the assessee, in respect of her mother (Khadijabibi Gulam Mohamed Momon) for AY.2014-15 and 2015-16, clearly show that the money of Rs.22,75,000/- belongs to the

assessee's mother and does not belong to assessee himself. I note that during the AY.2014-15, as per balance sheet of assessee's mother, she has shown investment in project of her son (Mohammed Anis Gulam Mohamed Memon) to the tune of Rs.10,25,000/-. Further, in the Balance Sheet of the assessee's mother, as on 31.03.2015, the assessee's mother has shown in her Balance Sheet as on 31.03.2015, the investment in project account of Mohammed Anis Gulam Mohammed Momon, to the tune of Rs.22,75,000/-. I note that the whole exercise is to be based on facts and it is the duty of the assessing officer to marshal all the facts and come to a logical conclusion about the income of the assessee for the year under consideration, which the assessing officer has failed to do so. I note that assessee has submitted so many documents and evidences before assessing officer and assessing officer (AO) has not made any adverse finding in any of these documents even, though all the details were furnished by the assessee before him. The AO ought to have examined all these details and refuted / rejected them, with a cogent adverse findings and discernable line of reasoning, in order to arrive at a conclusion and to make the addition u/s 68 of the Income Tax Act, however, AO has failed to do so. For this, I rely on the Judgment of Hon'ble Supreme Court in case of Sreelekha Bannerjee (491 ITR 122), wherein it was held that:

*“ ..... before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...”*

14. I have also gone through the affidavit submitted by the assessee's mother which clearly corroborates with the Balance Sheet, Profit and loss account, capital account of assessee's mother for

AY.2014-15 and 2015-16. Thus, it is clearly proved that the money of Rs.22,75,000/- belongs to assessee's mother and does not belong to assessee, under consideration. After going through the affidavit submitted by the assessee's mother, I note that it is kind of conditional **will** of assessee's mother. The mother can specify how her assets, including money, should be distributed among her beneficiaries. In this case, she wants to hand over her money to her son and also stated that after the project of his son gets completed, the son will return the money to his mother. I note that mother has given the money to her son out of his accumulated savings by exercising her **will**. I note that the mother would outline the conditions under which her son will receive the money by way of **will**. These conditions could be specific life events, milestones, or actions that the son needs to fulfil. Therefore, I note that said amount of Rs.22,75,000/-, received by the assessee as per his mother's **will**, hence, it should not be taxable in the hands of the assessee.

15. No doubt, the property was registered in the name of assessee, as per **Will** of his mother. That is, on behalf of assessee's mother, the property has registered in assessee's name, as I have noted that due to continuous ill-health of assessee's mother, she cannot appear before the government authorities for registration and other formalities etc. I have also examined the source of assessee's mother Khadijabibi Gulam Mohamed Memon and noted that she had adequate income in her Balance Sheet and Profit and loss account to provide the money of Rs.22,75,000/- to her son. Therefore, based on the facts and circumstances, as narrated above, I delete the addition of Rs.22,75,000/-.

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

Order is pronounced on 31/08/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 31/08/2023

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat