

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.559/PUN./2023
Assessment Years 2017-2018

Shri Tanaji Tulshiram Babar, 39, Ashish Apartment, Raviwar Peth, Pune - 411 002 PAN ABGPB7138M Maharashtra.	vs.	The Income Tax Officer, Circle-5, Income Tax Office, PMT Bldg., Shankar Seth Road, Pune. PIN - 411 037 Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Rajiv Thakkar
For Revenue :	Shri M.G. Jasnani

Date of Hearing :	09.10.2023
Date of Pronouncement :	12.10.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2017-18, arises against the National Faceless Appeal Centre [in short "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2022-23/1050794576(1), dated 15.03.2023, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *"On facts and circumstances prevailing in the case and as per provisions & scheme of the Income-tax Act, 1951 (the*

Act) it be held that addition of Rs.1,00,00,000/- made by the Id. AO and further upheld by the First Appellate Authority is unwarranted, unjustified and contrary to the provisions of the Act and facts prevailing in the case. The addition so made shall be deleted. The Appellant be granted just and proper relief in this respect.

2. The Appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.”

3. Learned counsel next referred to the CIT(A)'s detailed discussion affirming the Assessing Officer's action adding the amount in question of Rs.1 crore as under :

6.1 The observation of the AO and the submissions of the appellant are carefully considered. The AO has treated the amount received from the HUF as 'gift'. Since the same is not allowable under the provisions of section 56, proceeded to treat the same as income from other sources and taxed accordingly. However, the assessee's claim is that, it is only a 'loan' given by the HUF and it had still not been repaid and had demonstrated the accounting treatment earlier in the submissions before the AO and also during the appellate proceedings.

6.2 However, the AO has made a valid point in his assessment order which cannot be slighted. The same is reproduced below:

“3.4 Further, the stand taken by the assessee seems to be devoid of merit, as the schedule for unsecured loans for AY 2017-18, AY 2018-19 and AY 2019-20 in the books of the assessee, nowhere mentions this amount as unsecured loan. Also, the assessee could not submit a proof that, this amount in question has been repaid back by the assessee to the HUF during subsequent years, as per the stand taken in reply to show cause. Has it been really an unsecured loan taken by the Karta from HUF, the stand taken by the assessee would have been definitely acceptable as the same is permitted by law. But, in this case the amount in question has directly been credited to the capital account of the assessee and which is not as per the provisions of the Act. Basically this reply given by the assessee is an afterthought, when the case got selected on a specific issue. Therefore, this credit of an amount of Rs.1,00,00,000/- in the capital account of assessee from his HUF, is treated as income from other sources.”

6.3 There is merit in the argument of the AO as stated by him in the assessment order. The assessee's submissions during the appellate proceedings had been weak against these findings by the AO, which are as below:

- i) The amount had been received in Capital account (which is a basic accounting treatment for receiving the gift).
- ii) The books of HUF account does not reveal that it is a 'unsecured loan'. Audited balance sheet of HUF has not been produced in support of the claim of the assessee in para 2 to 4 of his submission.
- iii) Even till (FY 2021-22), neither 'no interest' nor 'part payment' thereof against the loan, had ever been undertaken.
- iv) The conformation of the HUF is ex-post facto
- v) The entire arrangement of claiming the receipt as loan is only an afterthought as pointed out by the AO.

6.4. Hence, I am of the opinion that the said amount of Rs.1,00,00,000/- only constitutes a 'gift' and not 'loan' on the above basis which had been relied on by the AO also. Accordingly, the order of the AO is upheld. The grounds of appeal are hereby dismissed.

4. It is in this factual backdrop that the first and foremost issue that arises before us is regarding correctness of the learned lower authorities action treating the impugned sum of Rs.1 crore received by the assessee from his eponymous HUF as taxable u/sec.56(2)(vii) of the Act. Learned counsel is fair enough in submitting that the Assessing Officer had gone by *Gyanchand M. Bardia vs. ITO* [2018] 98 taxmann.com 144 (Ahmedabad-Tribunal) that an "HUF" does not come within exemption category of relatives in sec.56(2)(vii) Explanation clause (e)(i)(A) to (G). Learned counsel next submits that although this tribunal's various decisions have also decided the issue against the department,

the assessee does not wish to press for the same as he had not received any gift so as to be taxed under the preceding statutory provision.

4.1. The assessee's next submission is that the impugned sum of Rs.1 crore represents unsecured loans by the assessee from the foregoing HUF and therefore, it could hardly be taxed as a gift not falling in the preceding exemption clauses. We find no substance in the assessee's instant latter submission as well once it is noticed from his balance-sheet [for the relevant accounting period 01.04.2016 to 31.03.2017] at page-50 comprising of his liabilities by way of unsecured loan wherein this sum in dispute at Rs.1 crore has nowhere been included. The said sum rather forms part of the assessee's capital account only. We thus uphold the learned CIT(A)'s findings in the preceding paragraphs on this latter account as well.

5. Faced with the situation, learned counsel sought to raise an additional argument that the impugned sum deserves to be treated as exempted in assessee's hands u/sec.10(2) of the Act. He sought to invite our attention to the assessee's additional evidence petition dated 31.03.2023 accompanied by a detailed paper book running into 93 pages. His case therefore, is that we ought to entertain this additional ground for the purpose of verifying the necessary facts. We are afraid

that such a course of action of afresh factual verification regarding an assessee's additional ground/submissions raised before the tribunal is no more available in light of National Thermal Power Co. Ltd., vs. CIT [1998] 229 ITR 383 (SC); as considered in All Cargo Global Logistics Ltd., vs. DCIT [2012] 137 ITD 287 (Mum.) (SB) holding that we can very well entertain such an additional ground/arguments going to the root of the matter provided all the relevant facts already form part of record. We thus decline the assessee's instant third/last argument as well.

No other ground or argument has been raised before us.

6. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 12.10.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 12th October, 2023

VBP/-
Copy to

1.	The applicant
2.	The respondent
3.	The NFAC, Delhi.
4.	The Pr. CIT-3, Pune.
5.	D.R. ITAT – 'B' Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.