

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Shri Saktijit Dey, Hon'ble Vice President
&
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 527/Del/2023 : Asstt. Year: 2017-18

Deep Malik, B-1/55, Malviya Nagar, New Delhi 110017	Vs	The ACIT, Circle International Taxation 2(2)(1), New Delhi 110002
(APPELLANT)		(RESPONDENT)
PAN No. AGBPM 3842 M		

**Assessee by : Sh. Karan Kumra, CA
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 03.10.2023

Date of Pronouncement: 21.12.2023

ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by assessee against the order of Assessing Officer dated 27.01.2023 for the A.Y. 2017-18.

2. The assessee has raised the following grounds of appeal are as under:-

1. *That, the order passed by the ACIT Circle Intl. Tax. 2(2)(1) Delhi (AO) u/s 147 r.w.s. 144C(13) making an addition of Rs. 3,38,50,000 in the hands of the appellant is illegal, invalid and void ab initio. That the re-assessment proceedings initiated by the AO u/s 147 concluded by erroneous order u/s 147 r.w.s. 144C(13) are barred by limitation, as amendment to section 144C(15) was prospective and not retrospective*

2. *That on facts and circumstances of the case and in law, the issuance of notice u/s 148 dated 28.03.2021 and reopening proceedings u/s 147 only for verification is illegal, invalid and void ab initio and merits quashing*

3. That the AO grossly erred in law by not providing reasons for reopening to the assessee along with the notice u/s 148 or within a reasonable period of time as held by various courts and tribunals, thereby rendering the re-assessment proceedings to be illegal and invalid. That the DRP has grossly erred in not adjudicating on said issue.

4. That the AO and DRP have grossly erred in ignoring the fact that reasons recorded for reopening assessment and approval allegedly obtained were not electronically dated or digitally signed, and thus the authenticity, veracity and existence of said reasons and approval cannot be ascertained, given the inordinate delays in providing reasons to the appellant. That the DRP has grossly erred in not adjudicating on said issue and the AO has grossly erred in denying any information in this regard to the appellant.

5. That the AO and DRP have grossly erred in making an addition u/s 69 in the hands of the appellant by doubting the source of funds used for investment, whereas the said source of funds were evidently and apparently received in a previous year and not in the subject assessment year, and such source has been duly examined and accepted in the said previous year. That the AO has further contradicted the directions of DRP clearly stating that the AO did not raise any objections or rejected the evidence filed by the appellant, by first accepting the additional evidence and thereafter denying the appellant any benefit of such evidence.

6. That without prejudice, even though the AO had proposed an addition of Rs. 3,06,00,000 in the draft assessment order, the AO has grossly erred in facts by making an addition of Rs. 3,38,50,000/ in the impugned assessment order.

7. That the AO and DRP have erred, in law and on facts and circumstances of the case, by treating the investment of Rs. 3,06,00,000/- made by the appellant as unexplained u/s 69 of the Act in ignorance of the documentary evidence submitted by the appellant, contrary to the fact that the AO was aware of the investments made by the appellant even prior to reopening of assessment, and in ignorance of the fact that the appellant is not required to maintain books of accounts in the first place.

8. That the AO and DRP have erred, in law and on facts and circumstances of the case, by making an addition of Rs. 3,06,00,000/- u/s 69 of the Act without providing any show cause notice and thus violating the provisions of the Act and intent of legislature.

9. That the AO has grossly erred in alleging that the appellant did not submit bank statement showing receipt of Rs. 6,87,22,815, and that such credit did not appear in the bank statement for FY 2015-16, whereas the appellant had duly submitted the relevant bank statement vide reply dated 10.03.2022 clearly stating the receipt of

gift on 22.12.2015 i.e. in FY 2015-16, which was filed on the ITBA portal as well as via email to the AO. That the DRP has grossly erred in not adjudicating on said issue.

10. That the AO and DRP have grossly erred in law by not providing adequate opportunity of being heard to the appellant, thereby violating the principles of natural justice and thus the entire reassessment proceedings are illegal, invalid and void ab initio

11. That the AO has grossly erred in levying interest u/s 234A of the Act of Rs. 1,11,04,032 in the hands of the appellant whereas the appellant had duly filed his return of income.

12. That the AO has grossly erred in law and on facts by initiating penalty proceedings u/s 270A and 271F of the Act on the appellant.

3. Since, all these grounds are interrelated these are taken up together.

4. During reassessment proceedings the assessee was asked to furnish details immovable property purchased along with source of fund utilized to be supported by documentary evidence including the copy of bank statement. In response, the assessee submitted that he purchased two immovable properties during FY 2016-17 and the source of fund was acquisition of gift received by the assessee from his relative, Mother's brother.

5. The assessee submitted copies of the purchase deeds, the bank account statement of Standard Chartered Bank and Yes Bank.

6. The AO also required the assessee to establish relation between the donor and the assessee with documentary evidence. After considering the response of the assessee the AO observed in para 4 of as under:

"4. During the assessment proceedings the assessee has not submitted any gift deed with respect to fund utilized for acquisition of properties. The undated letter of Mrs. Santosh Kataria is not specifying and relationship between assessee's mother and donor. Further, undated affidavit without notarized or sworn in before magistrate doesn't have evidentiary value. Further, assessee has not provided the bank statement of donor to establish identity, creditworthiness and genuineness of transaction. The document submitted by the assessee is not sufficient to establish the relationship between the donor Mr. Raghuvinder Kumar Kataria and the assessee. The gift received by certain relatives is not taxable in the hands of donee as per provisions of the section 56(2)(x) of the Income Tax Act, 1961. In view of the above, assessee has made investment of Rs. 3,06,00,000/- for the purchase of immovable properties and sources of amount utilized for these transactions remained unexplained because no bank statement provided, failed to establish relationship with donor. Therefore, in my opinion, the value of investment deemed to be income of the assessee for AY 2017-18.

In view of the above discussion, the sources of funds utilized to buy the immovable property of R 61,00,000/- and Rs. 2.45,00,000/- are unexplained and liable to be taxed in the hands of assessee. Accordingly, an amount of Rs. 3,06,00,000/ appearing in the 26AS and utilized for the purchase of the immovable property is added to the total income of the assessee as unexplained investment us 69 of the Income Tax Act, 1961 r.w.s. 115BBE of the Act."

7. Before the Revenue authorities, the assessee has submitted that copy of the purchase deeds of immovable property along with copy of bank statement were submitted before the AO during reassessment proceedings.

8. A perusal of the statement of bank account no. 060791000000714 reveals that the opening balance of said account as on 01.04.2016 was Rs. 5,48,51,106.55 which was far more than the value of investment made during the year. Thus, the assessee had sufficient funds as at the beginning of the year to justify the investments made during the year. It is further submitted that in response to the AO's notice dated 03.03.2022 wherein the AO required the assessee to establish

identity, genuineness and credit worthiness of the donor, the assessee submitted all the required details.

9. During the proceedings Id. DRP the assessee filed additional evidences which were forwarded to the AO for examination and for submitting a remand report. The Remand Report the AO submitted to the Id. DRP is as under:

"(1) Bank statement: - The assessee has submitted copy of bank statement of Mr. Katarin Raghuvinder Kumar and /or Kataria Shital and further mentioned that fund was transferred on 21.12.2015. On perusal of the bank statement, it is observed that there are 03 debit transactions of USD 100042.26, 26118.26 and 1055692.26 on 21.12.2015.

(2) Documentary evidences to substantiate relationship - On erusal of the copy of passport of Late Smt. Santosh Kataria, it is found that name of the husband is "SHAM SUNDER KATARIA".

However, she herself has mentioned in the affidavit on plain paper dated nil submitted during assessment proceedings that name her husband is Late Sh. Shyam Sunder Kataria. Further, or perusal of the Gift deed dated 14.03.2019 executed by Mr. Raguvinder Kumar Kataria in favour o Mrs. Sumi Malik, Wo Mr. Harish Malik, it is mentioned that Mr. Raghuvinder Kataria is son c Late Sh. S.S. Kataria. However, in the PAN Card of the Raguvinder Kumar Kataria, the Father' name is Shyant Sunder Kataria."

10. Before the Id. DRP the assessee submitted his rejoinder which is as under:

"Vide para 9(1) the AO has commented that there are 03 debit transactions of USD 100042.26, 26118.26 and 1055692.26 appearing in the bank account of the donor on 21.12.2015. In this regard, we wish to submit that it is admitted and apparent from the assessee's bank statement filed during assessment proceedings that he received the gift of INR 6,87,22,815 being USD 1055650 (mentioned in narration) on 22.12.2015 as a single transfer from Mr. Raghuvinder Kumar Kataria. A copy of the assessee's bank statement already filed before the AO vide submission: dated 10.03.2022 clearly showed the said receipt on 22.12.2015. As against such receipt, the assessee furnished the bark statement of the donor which shows the transfer of USD 1055692.26 amongst other

payments. As apparent from the instructions given by the donor to his banker for effecting such transfer the email written by the donor to his banker seeking his bank statement and confirmation duly signed by the donor the donor had transferred USD. 1055650 to his nephew as gift on 21.12.2015. Such remittance was effected from the donor's account along with a nominal charge of approximately 0.004% and on the other hand USD 1055650 was credited to the assessee on 22.12.2015. Thus, it is apparent that the source of assessee's gift has further been proved by way of the donor bank statement as well. The AO has neither alleged that the donor's bank statement does not reflect the transfer or funds to the assessee, nor sought any clarification in this regard from the assessee. The AO has not rejected the additional evidence. It is obvious from the comments of the AO that the specific debit of USD 1055692.26 appearing in the donor's statement pertains to receipt of USD 1055650 in the assessee's account."

11. The Id. DRP held that, with respect to the observations of the AO regarding the evidence filed by the assessee to substantiate relationship between the donor and the Assessee, the assessee has submitted that the AO has reproduced the various connotations of the donor's father's name being Shyam Sunder Kataria or S. S. Kataria as the short form of initials of his name. The Id. DRP held that, the AO has Page 4 additionally commented that the donor's PAN also mentions his father's name to be Shyam Sunder Kataria. It was also held that, the AO has neither raised any objections, nor rejected the evidence filed by the assessee, nor sought any clarifications from the assessee.

12. The Ld. DRP held that, since the basis of addition made by the AO was non furnishing of requisite document during the assessment proceedings, the panel, in the interest of natural justice and with the objective to arrive at true determination of taxable income of the assessee, considers it appropriate to take the additional evidence filed by the assessee on record. It was

held that the AO has observed that in the bank statement of Mr. Katarin Raghuvinder Kumar and /or Kataria Shital and further mentioned that fund was transferred on 21.12.2015. On perusal of the bank statement, it is observed that there were debit transactions of USD 1000042.26, 26118.26 and 1055692.26 was found on 21.12.2015. No adverse conclusion has been made or any infirmity pointed out by the AO on this document. As regards the evidence filed by the assessee to substantiate relationship the AO has observed that as per copy or passport of Late Smt. Santosh Kataria, name of the husband is "SHAM SUNDER KATARIA". However, she herself has mentioned in the affidavit on plain paper dated nil submitted during assessment proceedings that name her husband is Late Sh. Shyam Sunder Kataria. Further, on perusal of the Gift deed dated 14.03.2019 executed by Mr. Raguvindeer Kumar Kataria in favour of Mrs. Sumi Malik, W/o Mr. Harish Malik, it is mentioned that Mr. Raghuvinder Kataria is son of Late Sh. S.S. Kataria. The Id. DRP held that, in the PAN Card of the Raguvindeer Kumar Kataria, the Father's name is Shyam Sunder Kataria but the AO has not contested the inadequacy or infirmity of the evidence filed by the assessee.

13. Holding thus, the panel directed the AO to incorporate the findings and observations contained in the remand report dated 22.09.2022 in the final order and decide the issue on consideration of these evidences and pass a speaking order.

14. The AO made the addition of Rs. 339,90,181 which is more than in the addition proposed of Rs. 306,00,000/- in the draft Assessment Order.

15. Heard the arguments of both the parties and perused the material available on record.

16. We have given credence to the following facts:-

- Copy of UK passport of donor to prove his identity, date of birth and age of 72 years
- Details of his personal residence and complete residential address.
- Copy of duly signed letter of confirmation from the donor stating that he had gifted a sum of Rs. 6.87.22,815/- to his sister's son i.e. the assessee on 22.12.2015 to prove the genuineness of the transaction.
- A perusal of the bank statement of the assessee showing receipt of funds, also showing the details of remittance received by the assessee in his NRE account on account of said gift.
- Documentary evidence to prove that the assessee and donor are both UK citizens and nonresidents and thus the documentary evidence to support and substantiate documents generally applicable in India such as gift deeds were neither relevant nor executed between them. A signed letter of confirmation was submitted before the AO.
- Details of PAN of donor in India to prove his identity and credit worthiness.
- Details of investments held by Donor in India in Bharti Airtel which were sold for approximately Rs. 2150 crores in 2005 to prove his credit worthiness.

- The relationship between the assessee's mother and the donor was established with a joint reading of the said affidavit along with the copy of Indian passport of the assessee's mother Smt. Sumi Malik.
- Copy of assessment order u/s 147/143(3) framed by colleague of the Ld. AO himself duly scrutinizing and accepting the sale of investments by the donor in AY 2007-08. In the instant case, the sale of investment being considered was to the tune of Rs. 19,80,37,899 as against gift of Rs. 6.87 crores, to establish the credit worthiness of the donor.
- Copy of ITRs of the donor for AY 2016-17 and 2017-18 declaring income of Rs. 4,12,79,631 and Rs. 20,11,631 respectively to establish the credit worthiness of the donor.

17. Hence keeping in view in the facts narrated above, we hold that no addition is called for in this case.

18. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 21/12/2023.

Sd/-
(Saktijit Dey)
Vice President

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 21/12/2023

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI