

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री मनीष बोरड, लेखा सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष
[Before Shri Manish Borad, Accountant Member & Shri Anikesh Banerjee, Judicial Member]

I.T.A. No. 1048/Kol/2023
Assessment Year: 2012-13

Asif Khan (PAN: ALGPK 3758 G)	Vs.	ITO, Ward-32(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	29.01.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	30.01.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, FCA
For the Respondent/ राजस्व की ओर से	Shri Kallol Mistry, JCIT, Sr. D.R

ORDER / आदेश

Per Anikesh Banerjee, Judicial Member:

The instant appeal of the assessee was filed against the order of Ld. Commissioner of Income-tax (appeals)-NFAC, Delhi [in brevity ld. 'CIT(A)'] dated 11.08.2023 passed u/s 250 of the Income Tax Act, 1961 (in brevity the 'Act') for assessment year 2012-13. The impugned order was emanated from

the order of the Id. Income-tax Officer, Ward-32(3), Kolkata (in brevity the 'AO') passed u/s 143(3)/147 of the Act dated 17.12.2019.

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

1. The order of the lower authorities are void, bad-in-law and invalid to the extent to which they are prejudiced to the interest of the appellant.

2. On the facts and in the circumstances of the case the lower authorities erred in law, in upholding the addition of Rs. 1,65,90,000/- by denying the claim of gifts to assessee made by his father on different dates i.e. on (i) 20.08.2009, (ii) 18.09.2009, (iii) 27.11.2009 (iv) 25.02.2010 @ Rs. 50,00,000/- each gift supported by declarations as affidavit in each of the above gifts, which subsequently deposited to the Bank Account of the assessee, in the next financial year with United Bank of India, Darga Road Branch, Kol, (A/C No. 008721030212) on the following dates and amounts:

i) 08.06.2011	Rs. 9,00,000/-
ii) 08.06.2011	Rs. 7,00,000/-
iii) 08.06.2011	Rs. 30,000/-
iv) 09.06.2011	Rs. 9,00,000/-
v) 09.06.2011	Rs. 9,00,000/-
vi) 09.06.2011	Rs. 9,00,000/-
vii) 09.06.2011	Rs. 9,00,000/-
viii) 09.06.2011	Rs. 9,00,000/-
ix) 09.06.2011	Rs. 5,00,000/-
x) 15.06.2011	Rs. 49,90,000/-
xi) 16.06.2011	Rs. 50,00,000/-
<i>Total</i>	<i>Rs. 1,66,20,000/-</i>

The AO without verifying the facts and reasons of the above deposits in the bank A/c, capriciously and forcibly added Rs. 1,65,90,000/- out of the above amounts with the total income of the assessee and the Ld. CIT(A) without appreciating the matter confirmed the addition.

3. On the facts and the circumstances of case, the said claims of gifts, made by the late father be allowed, and the addition may kindly be deleted.
AND

The appellant craves leave to amend, alter, modify, add to or rescind any or all the above grounds in future.

3. The brief fact of the case is that the assessee filed his return of income for the AY 2012-13 originally on 30.08.2012 declaring total income of Rs. 9,90,375/-. The case was reopened on the receipt of information from the ADIT(Inv)/Unit-2(1) about deposits with United Bank of India bearing A/c no. 008721030212 of Rs. 1,65,90,000/- in cash. During the course of assessment proceedings, the appellant stated that these were gifts received from his father. But the ld. AO was not satisfied with the submissions of the assessee and the documents submitted and he proceeded by treating the cash deposited in the bank account as unexplained money. The ld. AO passed the order u/s 143(3) r.w.s 147 of the Act dated 17.12.2019 by adding the amount of Rs. 1,65,90,000/- to the income of the assessee u/s 69A of the Act and assessing the total income at Rs. 1,75,80,375/-. The aggrieved assessee filed the appeal before the ld. CIT(A) but remains unsuccessful. Being dissatisfied with the appeal order filed appeal before us.

4. The ld. AR in argument first mentioned the legal ground and challenged the jurisdiction of the ld. AO for reopening the case U/s 148 of the Act. The ld.AR invited our attention to 'reason recorded' for initiating notice U/s 147 of the Act. The relevant observation is culled as follows: -

“Reason for initiating proceedings u/s 147 of the I.T.Act, 1961:-

In the instant case the assessee filed his/her Return of Income for the A.Y 2012-13 on 30/08/2012 declaring total income of Rs 9,90,380/-. The return of income was

processed u/s 143(1) on 08.12.2013 on the same income. No notice u/s 143(2) was found to have been issued in this case and no assessment u/s 143(3) or 147 has been made.

Subsequently, information has been received from ADIT(lnv.), Unit-2(1), Kolkata vide F No. ADIT(lnv)/Unit-2(1)/Kolkata/Asif Khan/2017-18/11612 dated 09.03.2018 that the assessee Shri Asif Khan deposited un-usual value cash of Rs.1,65,90,000/- during the period of 08/08/2011 to 15/06/2011. As per records it is observed that the assessee- maintained A/c number 008721030212 of United Bank.

Notice u/s 131 of the I.T. Act of 1961 was issued to the assessee and he explained the source of alleged funds deposited in his. bank account in cash. On perusal of ITD it is seen that assessee filed his ITR for A.Y 2011-12 of Rs 9,89,578/- and A.Y 2012-13 of Rs.9,90,375/- only.

In view of the above, I have reason to believe that the assessee's income to the tune of Rs.1,65,90,000/- has escaped assessment within the meaning of section clause (b) of Explanation 2 to section 147 of the I.T. Act, 1961.

Since, 4 years have already passed from the end of the relevant Assessment Year, necessary approval is required from the Ld. Pr. Commissioner of Income Tax-11, Kolkata, before issuing notice u/s 148 as per section 151(1) of the Income Tax Act, 1961.

Accordingly, the matter is being put up before Ld. Pr. CIT-11 (Through Addl. CIT, Range-3 Kolkata) for his kind perusal and necessary approval, if deemed fit.”

5. The ld. AR argued and mentioned that in recorded reason, the period is wrongly mentioned 08/08/2011 to 15/06/2011 by the ld. AO. The ld. AR further argued and placed that the satisfaction of the ld. AO is borrowed, no separate enquiry was conducted by the ld. AO after receiving the reply of notice U/s 131 and there are no tangible materials in record for reopening U/s 147 of the Act. So, the assessment U/s 148 is *non est*.

6. The Id. AR respectfully relied on the order **Ashis Natvarlal Vashi vs. ITO, wd-1, Navsari ITA No, 3522/AHD/2016, Date of pronouncement 19/04/2021**. Relevant paragraphs are reproduced as follows: -

“15. It is abundantly clear from the above noted precedents that Assessing Officer in the reasons recorded proceeded on the erroneous footing that the assessee has not filed return of income at all and when it is not in dispute that the assessee did file the return of income for the assessment year under consideration, which was duly acknowledged by the department, (That is, the assessee has filed the return of income which is placed on paper book page no.7), then, it has to be held that the entire reasoning thus proceeded on the wrong premises that the assessee had never filed the return. This, itself would be sufficient to annul the notice of reopening the assessment. Besides, mere cash deposit in the bank account would not disclose escapement of income. The assessee might have deposited the cash out of his sale of capital asset, sale of property and sale of investment, agricultural income etc. Therefore, we are inclined to hold the reassessment proceedings under section 147 of the Act as bad in law and hence, we quash the reassessment proceedings.”

7. The Id. DR vehemently argued and relied on the orders of revenue authorities. The relevant paragraphs of appeal order are reproduced as below: -

6.4 It is seen from the above facts that the appellant has given evasive replies and not submitted the necessary supporting documents to substantiate his claim that the aforesaid cash deposits were explained and duly recorded in his books. Even if it is assumed that the aforesaid amount was in the nature of capital receipt, the appellant ought to have recorded the sum in his capital account and as cash-in-hand in his balance sheet. However, he has not submitted copy of his capital account or balance sheet to support his claim made in the present appeal. Further, he has failed to explain the long gap between the dates of receiving the cash as gift from father and the dates of depositing the cash in the bank account. There is no clarification regarding why the substantial cash-in-hand was not utilised during the intervening period and why the unutilised cash was not deposited earlier in the bank account. Furthermore, no documents evidencing the creditworthiness of the donor of the gift have been submitted.

6.5 Finally, the appellant's contention that the year of taxability of the capital receipts would be AY 2010-11 and not AY 2012-13 is not tenable. This is because the issue at hand is the taxability of the cash deposits amounting to Rs 1,65,90,000/- made by the appellant in bank account during FY 2011-12. The A.O had held the cash deposits to be the appellant's deemed income on account of non-explanation with respect to their nature and source and non-recording of the same in the books of the appellant. The issue involved in the present appeal is not whether the gift, received during FY 2009-10, is taxable, as revenue or capital receipt. Therefore, the appellant's contention is unfounded.”

8. We heard the rival submission and considered the documents available in the record. The assessee is the regular filer of income tax return and during the impugned assessment year the assessee filed return under section 139 of the act. The cash deposited in the bank account was duly declared during the filing of the return. The reopening was initiated after 4 years of impugned assessment year. The deposited cash was duly received as gift by the assessee in earlier assessment year from his father. The cash in hand was deposited in the bank account in impugned assessment year. The assessee submitted the source of cash deposit which was received from his father as gift during the verification before issuance of notice u/s 147. Also the source of the cash gifted by the father which was originated from the agricultural income was also submitted before the revenue authority during the compliance of notice u/s 131 of the Act before issuance of the notice u/s 147 of the Act. In recorded reason the Id.AO was silent about that verification under section 131 of the Act after receiving the reply. The assessee complied with the notice issued u/s 131. But there is no further investigation from the end of the Id. AO. The Id. AO was fully satisfied on the report of the ADIT (Inv), Unit 2(1), Kolkata and no other investigation was initiated. The recorded reason is quite silent about the relevant tangible documents during proceeding for reopening. Only the report of the investigating authority is the documents for reopening. We relied on the order of **Ashis Natvarlal Vashi**(supra). The reopening was initiated on borrowed satisfaction,

not on belief of the ld. AO. The ld. AO recorded the reason which warranted him to hold the belief that the income chargeable to tax has escaped assessment thereafter the ld. AO usurped the jurisdiction to reopen the assessment. The source of the cash deposit was explained by the assessee in all stages of investigation. When the income is foundation on which he based his belief of escapement of income is absent, so AO's usurpation of jurisdiction to reopen of assessment is legally untenable & so, null in the eyes of law. So, we quash the reassessment made by the ld. AO without jurisdiction. The addition to amount of Rs. 1,65,90,000/- be deleted accordingly.

9. In the result, the appeal filed by the assessee in **ITA No. 1048/KOL/2023** is allowed.

Order is pronounced in the open court on 30th January, 2024

Sd/-
(Manish Borad/मनीष बोर्ड)
Accountant Member/लेखा सदस्य

Sd/-
(Anikesh Banerjee /अनिकेश बनर्जी)
Judicial Member/न्यायिक सदस्य

Dated: 30th January, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Asif Khan, 10A, Talbagan lane, Beniapukur, WB-700017
2. Respondent – ITO, Ward-32(3), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata