

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **3090/Chny/2019**
निर्धारण वर्ष / Assessment Year: 2017-18

R. Muthukumar, Deputy Commissioner of
28A, LIC Colony, Industrial v. Income Tax,
Estate Post SIDCO, Central Circle -1,
Coimbatore – 641 021. Coimbatore.
[PAN: AFHPM-6834-J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. Girish Kumar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. Nilay Baran Som, CIT

सुनवाई की तारीख/Date of Hearing : 08.02.2024
घोषणा की तारीख/Date of Pronouncement : 08.02.2024

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 28.08.2019 and pertains to assessment year 2017-18.

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

"1. The CIT(A) is erred in upholding the assessment order which is against law, facts and circumstances of the case.

2. *The CIT(A) is not correct in upholding the order in making addition of Rs. 9,39,460/-, without considering the affidavits filed by the assessee and his family members,*
3. *The CIT(A) is not correct in upholding the levy of interests u/s. 234A, 234B and 234C.*
4. *Your appellant reserves his right to adduce any additional or alternate ground at the time of hearing.*
5. *In the circumstances it is prayed to set aside the assessment order or to delete the addition of Rs. 9,39,460/- and to delete the interests levied u/s. 234A, 234B and 234C of the I.T. Act and render justice."*

3. The brief facts of the case are that, a search was conducted u/s. 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), in the group case of M/s. Kirtilal Kalidas Jewellers Pvt. Ltd on 12.09.2016. The appellant was working as Assistant Vice-President, Retail Operations in the company. During the course of search, the assessee's residence was also covered and found that he had in possession of cash amounting to Rs. 10,39,460/-. The assessee was called upon to explain source, for which he did not given any satisfactory explanation. Hence, cash found amounting to Rs. 10 lakhs was seized and deposited into PD Account. Consequent to search, the case was taken up for assessment and during the course of assessment proceedings, the assessee could not explain source for cash found to be in possession, although, he claims that he had received gift from his wife amounting to Rs. 7,75,000/- and also received a sum of Rs. 3 lakhs from his father Shri. Ramalingam. The AO, made

additions towards cash seized during the course of search proceedings as unexplained money u/s. 69A of the Act. The assessee carried the matter in appeal before the first appellant authority. During the course of appellant proceedings, the assessee explained that source for cash found during the course of search was, out of gift received from his wife Smt. Hanspriya and also amount received from his father Shri. Ramalingam. The Ld. CIT(A), after considering relevant submissions of the assessee opined that, the assessee could able to explain source to the extent of Rs. 1 lakh and thus, allowed relief to the extent of Rs. 1 lakh and balance amount of Rs. 9,39,460/- has been confirmed. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, Shri. Girish Kumar, Advocate, referring to affidavit of Smt. Hamsapriya, wife of the appellant and her bank statement submitted that, she had withdrawn Rs. 4 lakhs on 29.08.2016 and also deposited Rs. 3 lakhs on 29.08.2016 leaving Rs. 1 lakh cash in hand. She had withdrawn further a sum of Rs. 3 lakhs on 29.08.2016. Therefore, out of her withdrawal she had given gift of Rs. 5 lakhs to her husband. Similarly, Shri. V. Ramalingam, father of the appellant has withdrawn a sum of Rs. 3 lakhs from his bank

account on 18.08.2016 and Rs.1 lakh on 12.08.2016, totaling to Rs. 4 lakhs, out of which he has given gift to his son. The appellant's mother-in-law Smt. Padmini Balasubramanian, has given gift of Rs. 1,39,460/-. The appellant has explained source for cash found during the course of search out of gift received from his relatives. But, the Id. CIT(A) ignored evidences filed by the assessee and sustained additions made by the Assessing Officer towards cash found during the course of search.

5. The Id. DR, Shri. Nilay Baran Som, CIT, on the other hand supporting the order of the Id. CIT(A) submitted that, the assessee could not adduce any supporting evidence for fortified gifts claimed to have been received from his wife, mother-in-law and father with known source of income. Therefore, the Assessing Officer has rightly rejected claim of the assessee and thus, the order of the Id. CIT(A) should be sustained.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to the impugned dispute are that, during the course of search in the residential premises of the assessee, cash amounting to Rs. 10,39,460/- was found. The appellant was called upon to explain source for cash deposits and

in response to a specific question in the statement u/s. 132(4) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), he gave a vague claim that cash belongs to himself and his family members, without specifying the name and details of the family members. At the time of assessment, the assessee claims that he has received gift of Rs. 5 lakhs from his wife out of her withdrawal from bank account. The assessee further claimed that, he had received gift of Rs. 4 lakhs from his father and source for his father is withdrawal from bank account. Similarly, the assessee claimed to have been received gift of Rs. 1,39,460/- from his mother-in-law. In so far as, gift received from wife, except affidavit and bank statement no other evidence has been filed to substantiate source of income for his wife. The Id. CIT(A), has given relief to the extent of Rs. 1 lakh by considering the cash withdrawal, but the substantive cash withdrawal of Rs. 3 lakhs on 29.08.2016 has not been considered by the Id. CIT(A). Since, the appellant could not able to establish source of his wife out of bank withdrawal, in our considered view, the assessee deserves for further relief of Rs. 3 lakhs towards gift claimed to have been received from his wife, as source for cash deposits found during the course of search. Thus, we direct the Assessing Officer to allow relief of Rs. 3 lakhs out of gift received from his wife.

7. Coming back to the gift claimed to have been received from his father, the assessee has filed affidavit from his father along with certain bank statements and claimed that his father has withdrawn Rs. 4 lakhs from bank account and out of which he has given gift to the assessee. On perusal of bank statement filed by the assessee, we find that it is difficult to ascertain the bank statement belongs to his father. Further, the assessee could not explain source of income for his father. But, fact remains that when the person has given affidavit stating that he has sufficient source of income to give gift, the same cannot be rejected without valid reasons. Therefore, considering the fact that, the amount received as gift is taxable to certain extent, we deem it to consider 50% of gift claimed to have been received from his father as genuine. Therefore, out of total amount of Rs. 4 lakhs gift from his father, we direct the Assessing Officer to consider a sum of Rs. 2 lakhs as genuine and allow credit for cash found during the course of search. As regards gift claimed to have been received from his mother-in-law, no evidence has been filed by the assessee including affidavit and bank statement. Therefore, we are of the considered view that the assessee could not furnish any evidences to claim gift claimed to have received from his mother-in-law. Therefore, we reject the claim of the assessee. To sum up, out of total additions

sustained by the Id. CIT(A) of Rs. 9,39,460/-, the assessee will get relief to the extent of Rs. 5 lakhs out of gift from his wife and father and balance amount of Rs. 4,39,460/- remains unexplained and thus, we direct the Assessing Officer to sustain additions towards cash found during the course of search to the extent of Rs. 4,39,460/-.

8. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the court on 08th February, 2024 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated: 08th February, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member