

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No.3397/Mum/2023  
(Assessment Year: 2012-13)

Prince Rodde 702, Palms 2 Royal Palms, Mayur Nagar, Aarey Colony, Goregaon East, Mumbai-400 065	Vs.	ITO, Ward 16(1)(3), Mumbai Earlier known as ITO Ward 34(4), New Delhi
PAN/GIR No. AHTPR 3015 Q		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Bharat Kumar
Respondent by	:	Shri Surendra Kumar Meena
Date of Hearing	:	05.02.2024
Date of Pronouncement	:	13.02.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13.

2. The assessee has challenged the order of the Id. CIT(A) upholding the addition of Rs.21,58,671/- made u/s. 69 of the Act by the Id. Assessing Officer ('A.O.' for short). The assessee has also challenged the non granting of TDS credit of Rs.44,423/-.

3. The brief facts are that the assessee is an individual and had not filed his return of income for the year under consideration. The assessee's case was reopened u/s. 147 of the Act for the reason that the assessee has deposited cash amount to Rs.16,24,900/- in his Standard Chartered Bank account and, hence, Rs.26,92,442/- is said to have escaped assessment.

4. The ld. Assessing Officer ('A.O.' for short) issued and served notice to the assessee u/s. 148 of the Act dated 30.03.2019. The ld. A.O. then passed the assessment order dated 28.12.2019 u/s. 147 r.w.s. 144 of the Act on best judgment for the reason that the assessee has been non compliant and had failed to explain the source of the cash deposit made in the assessee's bank account. The ld. A.O. added the impugned amount of Rs.16,24,900/- to the total income of the assessee u/s. 69 of the Act as 'unexplained investment'.

5. Aggrieved the assessee was in appeal before the ld. CIT(A) who had upheld the addition made by the ld. A.O. on the ground that the assessee has failed to substantiate the nature and source of the impugned cash deposit.

6. The ld. CIT(A) has also directed to give credit of Rs.44,423/- being the TDS on salary drawn for the impugned year.

7. Further aggrieved the assessee is in appeal before us, challenging the order of the ld. CIT(A).

8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has deposited only Rs.12,24,900/- in his Standard Chartered Bank account during the year under consideration and further stated that the said deposits are out of cash withdrawals on several dates from the assessee's account. The Id. AR further stated that the assessee's parents had gifted Rs.9,50,000/- from their savings to the assessee which was subsequently recorded in a gift deed dated 29.11.2022. The Id. AR reiterated that the assessee has very well proved the nature and source of the cash deposits made in his account and prayed that the impugned addition be deleted. The Id. AR further stated that the TDS credit though was granted by the first appellate authority was not given effect to and prayed that the ground no. 2 be allowed with suitable directions.

9. The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said facts and stated that the assessee has failed to prove the nature and source of the cash deposits to the satisfaction of the Id. A.O. The Id. DR further stated that the assessee has been non compliant before the lower authorities and had failed to substantiate his claim. The Id. DR relied on the orders of the lower authorities.

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has deposited Rs.12,24,900/- on various occasion upto 31.03.2012 and Rs.4 lacs upto 26.05.2011 in assessee's account maintained in Standard Chartered Bank. The Id. A.O. made an addition on the cash deposit of Rs.16,24,900/- and Rs.5,33,771/- which is the salary received by the assessee other than as a government employee and treated the same as 'unexplained cash credit' u/s. 68 of

the Act. The assessee is said to have filed additional evidences before the first appellate authority under Rules 46A of the I. T. Rules which was rejected by the Id. CIT(A) on the ground that the assessee inspite of sufficient opportunity before the Id. A.O. has failed to furnish the same during the assessment proceeding. The assessee's contention that the assessee has received salary receipts of Rs.10,67,542/- and gift of Rs.9,50,000/- from his parents Shri Ashwani Roddey and Smt. Sunita Roddey for the purpose of purchasing a residential house property were not considered by the lower authorities. The lower authorities also rejected the assessee's claim for the reason that the gift executed by the parents of the assessee was notarized in November, 2022 which was after 10 years from the time when the assessee had received the said amount and also after three years from the date of the assessment order. It was also pertinent to point out that the assessee vide his submission has stated that the assessee was unable to furnish the details during the assessment proceeding for the reason that the assessee's brother-in-law was undergoing a kidney transplant where the donor was his aged father-in-law which had impacted the assessee emotionally and caused a financial stress. The assessee also stated that owing to the paucity of time, the assessee was unable to file complete details along with the documentary evidence before the lower authorities and stated that the Id. CIT(A) has failed to admit the additional evidence filed by the assessee before the first appellate authority.

11. In the above factual matrix, the documentary evidences in support of the assessee's submission was considered by us. The Id. AR brought our attention to the bank statement of the assessee where there has been a substantial withdrawal during the year

under consideration along with certain deposits made in assessee's account. The gift deed executed by the assessee's parents has also corroborated the assessee's contention that Rs.9,50,000/- was gifted to him by his parents whose source of income was from coaching classes conducted by the assessee's parents. The assessee further submitted that the family expense of the assessee was meted out by the assessee's wife's income.

12. Upon perusal of the materials available on record and the assessee's submission, we are of the considered view that the assessee has explained the nature and source of the cash deposits found in the assessee's account, thereby discharging the initial onus casted upon him. The Revenue has not brought on record any material which is adverse to the claim of the assessee. In the absence of such contradiction, we deem it fit to allow ground no. 1 raised by the assessee and direct the ld. A.O. to delete the impugned addition made in the hands of the assessee u/s. 69 of the Act. Ground no. 1 is hereby allowed.

13. With regard to ground no. 2, it is observed that the ld. CIT(A) in his order has already granted relief to the assessee, which was not given effect by the ld. A.O. We, therefore, direct the ld. A.O. to grant credit of TDS amount to Rs.44,423/-.

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

*Order pronounced in the open court on 13.02.2024.*

Sd/-

Sd/-

(Om Prakash Kant)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 13.02.2024

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai