

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA no.2890/Mum./2023

(Assessment Year : 2020-21)

Asst. Commissioner of Income Tax
Room No. 439, 4th Floor, Aayakar
Bhavan, M. K. Marg, Mumbai-400020.

..... Appellant

v/s

Dilip Bhagwatlal Dalal
G-56, Tarabaug Estate, 297, Rajaram
Mohan Roy Marg, Charni Road,
Mumbai-400004.
PAN – AAEPD3660R

..... Respondent

Assessee by : Shri Ravindra Poojary
Revenue by : Smt Smitha V. Nair

Date of Hearing –08/04/2024

Date of Order – 06/05/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 23/06/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2020-21.

2. In this appeal, the Revenue has raised the following grounds: -

"1. Whether on the facts and the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.1,01,85,001/- made by the AO u/s 68 of the Act, since assessee hasn't furnished documents in order to justify the

sources of gifts rendered by the gift rendered to the gift receiver as the onus lies on the assessee to prove its claim of gift.

2. Whether on the facts and the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.1,01,85,001/- made by the AO u/s 68 of the Act, since assessee has failed to satisfy all the three conditions viz. identity, creditworthiness and genuineness of the transaction in respect of the gifts received by the assessee?"

3. The only dispute raised by the Revenue is against the deletion of the addition of Rs.1,01,85,001 made by the AO under section 68 of the Act.

4. The brief facts of the case, as emanating from the record, are: The assessee is an individual and is deriving income from the business in derivatives (F&O) trading transactions in shares and income from consultancy fees, income from capital gains, and other sources. For the year under consideration, the assessee filed its return of income on 24/12/2020 declaring a total income of Rs.2,74,02,080. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) were issued and served on the assessee. During the assessment proceedings, it was noticed that the assessee has received the gift of Rs.1,01,85,001. Accordingly, the assessee was asked to furnish the details of such gift along with registered gift deed. In response thereto, the assessee submitted that the gifts totalling Rs.1,01,85,001 has been received from his brother, mother, sister, and father's HUF. The assessee was asked to establish the relationship with the gift giver, the creditworthiness of the gift giver such as a copy of ITR, relevant bank account statement justifying receipt of the gift, relevant ledger accounts of the gift giver, and treatment in assessee's books of accounts. The assessee furnished the gift deed, which mentions the name, address, and PAN of the gift-givers. The assessee also furnished a copy of the gift ledger as per his books of accounts and his bank statement for the period 01/04/2019 to 31/03/2020. During the assessment proceedings, the assessee also submitted that the gifts have been received from blood relations and out of their own source of income duly mentioned in the gift deed. As regards the creditworthiness of the gift givers, the assessee furnished the copy of their ITR and the computation of income.

5. The Assessing Officer ("AO") vide order dated 18/09/2022 passed under section 143(3) read with section 144B of the Act did not agree with the submissions of the assessee and held that the source of gift advanced by the gift givers to the assessee is unacceptable. The AO further held that the assessee has not furnished documents in order to justify the sources of gifts received by the assessee. Accordingly, the AO treated the gift amounting to Rs.1,01,85,001 as unaccounted cash credit under section 68 of the Act and added the same to the total income of the assessee. The relevant findings of the AO are reproduced as under: -

"2.5 The reply of the assessee has been perused and the reply of the assessee was duly considered. In respect. of Gift received by the assessee of Rs.1,01,85,001/- during the F.Y. 2019-20 relevant to the A.Y 2020-21, the reply of the assessee has been duly considered and duly perused, the claim of the assessee in its reply is found to be not tenable as the sources of the gift amount advanced by the gift giver to gift, acceptor found unacceptable as for e.g. the return of income of income filed by Smt. Urmila Dalal for the A.Y. 2020-21 in which Smt. Dalal has shown return income of Rs.1,21,100/- and whereas she has given a gift of Rs.1,50,000/- to the assessee during the F.Y.2019-20 relevant to the A.Y. 2020-21. Similarly, the gift donor M/s. BhagwatlalMohanlalDalal (HUF) has shown a returned Income of Rs.2,47,930/- whereas it has given a gift of Rs.1,50,000/- to the assessee. The assessee hasn't furnished documents in order to justify the source of gifts rendered by the gift renderer to the gift receiver as the onus lies on the assessee to prove its claim of gift received. Hence the gift received amounting: to Rs.1,01,85,001/- is treated as unaccounted has credit u/s 68 of the IT Act, 1961 and added back to the total income of the assessee as the sources of gifts rendered by the gift donors to the gift receiver couldn't be proved as the onus lies on the assessee to prove genuineness of its claim of gits received from the blood related Gift renders. Penalty proceeding 271AAC is also initiated separately for this act."

6. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee and deleted the addition made by the AO on the basis that the AO has made huge additions but has not made any reference with regard to identity, creditworthiness, and genuineness of the gift givers. The learned CIT(A) further held that the AO has not made any effort to rebut the submissions made by the assessee. The learned CIT(A) also held that the AO has made additions without giving any reasons for the same. The relevant

findings of the learned CIT(A), vide impugned order, are reproduced as under:-

"6. All the grounds of appeal are interlinked and are mainly against addition of Rs.1,01,85,000/- on account of unexplained gifts received from blood relatives. The main operative Para 2.5 of the orders silent in respect of gift of Rs.97,35,000/-received from Sunil B Dalal (Brother) and Rs.1,50,000/-received from Pragnya Shah (Sister). The AO has made huge addition but has not made any reference with regard to identity, creditworthiness and genuineness. No effort has been made to rebut the submission made by the appellant. The appellant has filed PAN, address, copy of ITR, copy of gift deed. The appellant has stated that registry of gifts other than immovable property is not required in Maharashtra. Thus the appellant has given all required details at the time of assessment and during appellate proceedings. The AO has made addition without giving any reasons for the same. Therefore, the addition of Rs.97,35,000/- on account of gift from real brother, Sunil B Dalal and Rs.1,50,000/- real sister, Pragnya Shah, is deleted. The AO has made addition of gifts of Rs.1,50,000/- each received from Urmila Dalal (Mother) and B. M. Dalal (HUF) by stating that their income as per ITR for the year is only Rs.1,21,000/- and Rs.2,47,930/- respectively. No effort has been made to ascertain and examine capital available and also credit in the bank accounts. The appellant has submitted all possible documentary evidences and details as stated in above paras. in view of these facts the addition of Rs.1,50,000/each in respect of unexplained gift from Urmila Dalal (Mother) and B.M. Dalal (HUF) is also deleted. - "The grounds of appeal are accordingly 'Allowed'."

Being aggrieved, the Revenue is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee received gift total amounting to Rs.1,01,85,001 from the following parties:-

Sl. No.	Name of the party	Amount (in Rs.)	Relation with the assessee
1.	Sunil B. Dalal	97,35,001	Brother
2.	Urmila Dalal	1,50,000	Mother
3.	Pragnya Shah	1,50,000	Sister
4.	B.M. Dalal HUF	1,50,000	HUF
	Total	1,01,85,001	

8. In the present case, it is evident from the record that the impugned addition was made by the AO under section 68 of the Act. Therefore, in order to come out of the rigours of section 68 of the Act, the assessee is required to

establish the identity and creditworthiness of the gift givers and the genuineness of the transaction. In order to satisfy the aforesaid criteria, as required under section 68 of the Act, the assessee furnished the copy of gift deeds, the copy of ITR filed, bank statements, and the PAN card of the gift-givers. It is evident from the record that in respect of none of the parties, identity is in dispute. Therefore, only the creditworthiness of the gift givers and the genuineness of the transaction need to be examined in the present case.

9. In respect of the first party, i.e. Mr. Sunil B. Dalal, the assessee submitted that he is his real brother. From the perusal of the gift deed dated 15/07/2019 entered into between the assessee and Mr. Sunil B. Dalal, forming part of the paper book from pages 29-30, we find that the donor is the younger brother of the assessee and out of natural love and affection gave Rs.97,35,000 as a gift to the assessee. From the perusal of the ITR acknowledgement of Mr. Sunil B. Dalal, for the assessment year 2020-21, forming part of the paper book on page 31, we find that Mr. Sunil B. Dalal earned a total income of Rs.37,48,84,100 during the year under consideration. Therefore, we are of the considered view that Mr. Sunil B. Dalal had sufficient creditworthiness to gift Rs.97,35,000 to the assessee. From the perusal of the assessment order, it is evident that the AO has also not disputed the creditworthiness of Mr. Sunil B. Dalal. Further, in view of the fact that the donor/gift giver is the younger brother of the assessee, the genuineness of the transaction cannot also be doubted in the facts of the present case in the absence of any contrary material being brought on record by the Revenue.

10. In respect of the gift of Rs.1,50,000 received from Smt. Urmila Dalal, the assessee submitted that Smt. Urmila Dalal is his mother. From the perusal of the gift deed dated 09/09/2019 entered into between the assessee and his mother, forming part of the paper book from pages 32-34, we find that out of love and affection, the mother of the assessee gave the Rs.1,50,000 as a gift to the assessee through the cheque. As per the assessee, his mother gifted a small amount of Rs.1,50,000 out of her past savings along with current year income. Further, nothing has been brought on record to doubt the genuineness of the transaction of grant of gift by a mother to her son. The fact that the

assessee's mother had a total income of Rs.1,21,100, as per her return of income for the assessment year 2020-21, also supports the claim of the assessee that the gift of Rs. 1,50,000 was out of her past savings along with the current year income. Therefore, we find no basis for doubting either the genuineness of the transaction or the creditworthiness of the donor.

11. In respect of the gift of Rs.1,50,000 received from Smt. Pragnya Shah, the assessee submitted that she is his real sister. From the perusal of the gift deed dated 09/09/2019 entered into between the assessee and Smt. Pragnya Shah, forming part of the paper book from pages 36-38, we find that out of natural love and affection gift of Rs.1,50,000 was given to the assessee by his sister. From the perusal of the copy of the ITR acknowledgement and statement of income for the assessment year 2020-21, forming part of the paper book from pages 39-42, we find that Smt. Pragnya Shah had an interest income of Rs.8,45,318, which resulted in a total income of Rs.7,74,920 as per her return of income. Thus, we are of the considered view that in view of the aforesaid facts the creditworthiness of Smt. Pragnya Shah cannot be doubted to give a gift of Rs. 1,50,000 to the assessee. Further, in the absence of any contrary material being brought on record by the Revenue, the genuineness of the gift of Rs. 1,50,000 to the assessee by his sister cannot also be doubted.

12. As regards the gift of Rs.1,50,000 received from B.M. Dalal HUF, it is the claim of the assessee that the karta of the HUF is his father, and the said HUF by way of cheque gave Rs.1,50,000 to the assessee as a gift out of love and affection vide gift deed dated 09/09/2019, forming part of the paper book from pages 43-45. From the perusal of the copy of the ITR acknowledgement and statement of income for the assessment year 2020-21, forming part of the paper book from pages 46-48, we find that B.M. Dalal HUF had a total income of Rs.2,47,930 during the year under consideration. Further from the balance sheet of B.M. Dalal HUF, forming part of the paper book on page 48A, we find that B.M. Dalal HUF had cash in hand of Rs.10,28,953. From the capital account of B.M. Dalal HUF, we find that the HUF earned commission and brokerage of Rs.1,26,830 and long-term capital gains of Rs.1,40,000 during the year under consideration. Therefore, in view of the aforesaid, we are of the

considered opinion that the creditworthiness of B.M. Dalal HUF has been sufficiently proved. Further, in the absence of any contrary material being brought on record by the Revenue, the genuineness of the gift of Rs. 1,50,000 to the assessee by his father's HUF cannot also be doubted.

13. It is evident from the record that the AO has not brought any material on record to controvert the submissions made by the assessee. Therefore, in view of the aforesaid findings, we are of the considered view that the learned CIT(A) rightly deleted the addition made by the AO. Accordingly, we find no infirmity in the findings of the learned CIT(A) vide impugned order. As a result, the grounds raised by the Revenue are dismissed.

14. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 06/05/2024

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 06/05/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy

By Order

Assistant Registrar
ITAT, Mumbai