

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.507/Bang/2024
Assessment year : 2015-16

Indira Ramaiah, No.44, Main Road, Raysandra Village Aneshwara, Devanahalli, Bangalore – 560 017. <b>PAN: AGNPR 7671M</b>	Vs.	The Income Tax Officer, Ward 1(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Ms. Shamala D.D., Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.05.2024
Date of Pronouncement	:	03.06.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the order dated 18.01.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2015-16 on the following grounds:-

“1. The learned Commissioner of Income tax (Appeals), NFAC, Delhi has erred in passing the appellate order in the manner passed. The appellate order as passed is bad in law and is liable to be quashed.

2. The learned Commissioner of Income tax (Appeals), NFAC, Delhi has also erred in confirming the reopening of assessment by learned Assessing Officer. The conditions precedent for issue of notice U/s. 148 of I.T. Act, 1961 having not been satisfied, the reopening of assessment was bad in law and hence the learned Commissioner of Income tax (Appeals) should have instead of confirming the assessment order, quashed the reopening of assessment.

3. In any case, the learned Commissioner of Income tax (Appeals), NFAC, Delhi has erred in confirming the assessment order passed by the learned Assessing Officer. On the facts and circumstances of the case, the learned Commissioner of income tax (Appeals), NFAC, Delhi should have quashed the order passed by Assessing Officer or atleast should have deleted the additions made by the Assessing Officer.

4.1 In any case, the learned Commissioner of Income Tax (Appeals), NFAC. Delhi has erred in confirming the addition made by the Assessing officer amounting to Rs. 14,33,573/- on account of purchase of jewellery as undisclosed investments u/s 69 of the IT Act. The addition 'as made/confirmed is without any basis and is liable to be deleted.

4.2 On the facts of the appellant's case, the appellant having not purchased any jewellery or made any investment in purchase of jewellery, the addition being contrary to the facts of the appellant's case is to be deleted.

4.3 In any case without prejudice, the authorities below have erred in folding that provisions of Section 69 would apply to tile case of appellant. On proper appreciation of facts of the case and law applicable, it will be clear that there being no investment at all by the appellant, the provisions of Section 69 would not be applicable and the addition made is to be deleted.

4.4 The Assessing Officer had also erred in holding that provision of Section 115BBE of the I.T. Act, would apply to the above addition and the learned CITA) has erred confirming in the same. On the proper appreciation facts and law applicable, the provisions of Section 115BBE will be not applicable, the

calculation of tax @ 30% U/s. 115BBE of the I.T. Act, 1961 being wholly erroneous is to be deleted.

5.1 The learned Commissioner of Income Tax (Appeals), - NFAC, Delhi has erred in confirming the addition made by the Assessing officer amounting to Rs. 1,55,64,500/- albeit u/s 56(2) of the IT Act instead of section 69 of the Act as done by the Assessing officer on the ground that purchase of property has been made without adequate consideration. The addition as made/confirmed is erroneous and without any basis and is liable to be deleted.

5.2 The authorities below have erred in not appreciating the fact that the appellant being one of the co-owner of the property, the provisions of section 56(2) of the Act were not applicable at all to the case of the appellant.

5.3 The learned Commissioner of Income Tax (Appeals), NEAC, Delhi has erred in invoking the provisions of section 56(2) of the Act on the ground that the appellant has purchased the property without adequate consideration. The property having been purchased for an adequate consideration, the provisions of section 56(2) of the Act are not applicable and the addition as confirmed is liable to be deleted.

6. In any case and without prejudice, the learned assessing officer has erred in confirming the addition made by the assessing officer by invoking the different provisions of the Act. Such an action is contrary to the law applicable and same to be negated.

7. The appellant denies liability to pay interest U/S 234A, 234B and 234C of the Act and the interest having been levied is erroneous and same is to be deleted.

8. In view of the above and on the grounds to be adduced at the time of hearing, it is requested that the impugned orders passed be quashed or atleast the additions as made/confirmed be deleted, levy of taxes at special rates u/s 115BBE be deleted and the interest levied be also deleted.”

2. The brief facts of the case are that as per Risk Management Strategy formulated by the CBDT through ITBA software under the

head 'NMS cases', it was noticed that the assessee had carried out following transactions during the impugned AY, but assessee has not filed return of income :-

S.No.	Information Code	Description	FY 2014-15 (in Rs.)
1.	CiB-183	Time deposit of Rs.1,00,000 and more	6,86,32,952
2.	TCS-206CK	TCS Statement – Cash sale of bullion and jewellery (Section 206C)	14,33,573
3.	TDS-194A	TDS Statement – Interest other than interest on securities (Section 194A)	5,29,974
4.	TDS-194IA(P)	TDS Statement – Payment of consideration for purchase of immovable property (Section 194IA)	1,55,64,500

3. Notice u/s 148A(b) of the Act dated 23.03.2022 was issued to the assessee to file reply on 30.03.2022, but the assessee did not reply. Another notice u/s 148A(d) and u/s. 148 on 31.03.2022 was issued with the approval of competent authority. Thereafter the case was transferred to Faceless Unit to complete the assessment. The assessee filed return of income on 23.08.2022 in compliance of notice u/s 148 declaring total income at Rs.13,91,210 and submitted that assessee has received income from time deposits in the past from her father's account and renewed during the year. The assessee submitted point wise reply which is incorporated in the AO's order as under:-

S. No.	Issue	Amount (lakh)	In reply
1.	Time deposit of Rs.1,00,000 and more	686.33	The deposits reported by the bank were deposits renewed from the past years and none of these deposits are new or fresh deposits. Each of these deposits was starting as old as financial year 2007-08. The source of these deposits was from my father bank account and transfer from my father bank account to my account. Thus the deposits were out of transfer my father bank account by way of inheritance / succession / gifts from my father. These deposits were accumulated over a period of several years as old as 2007 none during the year. Thus the source of these deposits were clearly explained.
2.	TCS Statement – Cash sale of bullion and jewellery (Section 206C)	14.34	During the year in issue, the assessee did not make any such purchase as reported in the Income Tax Notice. Assessee came to be aware of the transaction only upon receipt of notice. It appears that someone had misused used her PAN Card details and other credentials without her knowledge. Assessee did not make any such investment in jewellery as claimed in the income Tax notice.
3.	TDS Statement – Interest other than interest on securities (Section 194A)	5.29	The entire interest was received out of the deposits made as explained above from Corporation bank and was duly reported in the Income Tax Return filed.
4.	TDS Statement – Payment of consideration for purchase of immovable property (Section 194IA)	155.65	During the year the assessee jointly purchased an immoveable property, at Tower 6 Apt #154 of the residential complex 'Pebble Bay', along with the Mr Srinivasan Mahesh (IT PA No AOEPM3625M), No.44, Main Road Raysandra Village, Aneshwara Devanahalli , Bangalore 560017 for a total consideration Rs.3,11,29,000 of which the assessee 50% share is Rs 1,55,64,500. The share of the assessee

			was paid by the joint owner from his accounted sources. Please attached a letter received from the Co-purchaser explaining the transaction (Annexure-2).
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4. The assessee also filed confirmation from Mr. Srinivasan Mahesh on payment of Rs.1,55,64500/- in which it has been stated that loan is interest free and it is still outstanding. After considering the entire submissions of the assessee, the AO noted in respect of cash jewellery purchase of Rs.14.34 lakhs there is contradictory statement of assessee at one place that she was not aware of the transaction and PAN of assessee has been misused by somebody else without her knowledge, while later she submitted that jewellery of Rs.14.34 lakhs was purchased by her relative Shri Puttarangaiah for a function as he did not have PAN during purchase and filed a confirmation letter on a simple paper from Shri P. Venkatachalaiah, S/o. Shri Puttarangaiah. The AO did not accept this argument and noted that there is no bank details, bills of jewellery and confirmation is only on simple plain paper. Accordingly it was treated as undisclosed investment u/s. 69 of the Act.

5. In respect of time deposit, the AO accepted submissions of the assessee. Further, in respect of investment on purchase of immovable property at Tower 6, Apt # 154, Pebble Bay, Bangalore to the tune of Rs.1,55,64,500 (50% share) along with Srinivasan Mahesh for a total consideration of Rs.3,11,29,000, the share of assessee was paid by the joint owner Mr. Srinivasan Mahesh from his accounted sources and it was given as interest free loan outstanding as loan as on date. In this

regard notice u/s. 133(6) was issued to Srinivasan Mahesh for confirmation with supporting documents, but there was no response from him. Notice u/s 142(1) dated 28.02.2023 was issued to the assessee to submit relevant details of bank account of Srinivasan Mahesh with highlighted loan transactions, copy of his ITR and balance sheet shown as Debtor which the assessee failed to produce. The AO noted that assessee could not prove genuineness of her claim while it is onus of the assessee. He also noted that assessee had sufficient balance with her saving account and taking loan from others was not accepted. The AO noted that it is established that assessee had purchased the immovable property from her undisclosed income and invested in purchase of said immovable property as a joint holder and treated her share of Rs.1,55,64,500 it as undisclosed investment u/s. 69 of the Act and made addition. The AO also noted that there is variation in interest income of Rs.2,13,016 and made addition.

6. Aggrieved from the assessment order, the assessee filed appeal before the CIT(Appeals) . The assessee filed detailed Statement of Facts and written submissions which is incorporated in the order of CIT(A). The CIT(Appeals) dismissed the legal issue as well as on merits. Aggrieved, the assessee is in appeal before the ITAT.

7. The Id. AR reiterated the submissions made before the lower authorities and has filed paperbook containing pages 69 to 130. The Id. AR submitted that assessee's relative, Mr. Puttarangaiah (since deceased) purchased jewellery for a function using PAN of assessee as

he did not have PAN which is duly reported in Form 26AS by Titan Co. Ltd. Payment was made in cash by Puttarangaiah out of his agricultural income and savings. She submitted confirmation of Mr. P. Venkatachalaiah S/o. Puttarangaiah is filed in this regard, since Mr. Puttarangaiah expired.

8. In respect of purchase of property, the Id. AR submitted that the property was purchased in the joint name of assessee and Srinivasan Mahesh with 50% share and entire amount has been paid by Srinivasan Mahesh residing outside India. The assessee is daughter of Mr. Ramaiah who was closest friend of Srinivasan Mahesh for many years and the amount of assessee's share is interest free loan which is outstanding as on date. In this regard, confirmation from Srinivasan Mahesh is filed. She submitted that both the parties agreed that loan is outstanding and source is explained and there is no doubt regarding source of payment made by Srinivasan Mahesh. The Id. CIT(Appeals) has accepted that it does not come u/s. 69 since source was disclosed and assessee filed bank statement of Srinivasan Mahesh from which the purchase price of immovable property was paid. The CIT(A) has considered the share of assessee u/s. 56(2) which is also wrong and it cannot be treated as a gift as prescribed u/s. 56(2) because it is a loan which is still outstanding. Therefore addition u/s. 69 cannot be sustained.

9. On the other hand, the Id. DR relied on the order of lower authorities and submitted that assessee took different stand before the

AO. As per Form 26AS and invoice copy and PAN, name of assessee is appearing and it was in the knowledge of assessee. It is not acceptable that PAN of assessee has been utilised by somebody else. Even if the purchase Puttarangaiah is relative of assessee, then assessee should have produced the financial creditworthiness of the jewellery buyer. During the course of assessment proceedings the assessee did not substantiate the credential of the buyer and not submitted any single document in support of agricultural income of the buyer. Therefore it cannot be said that jewellery was purchased by other person. Further in respect of joint purchase of property, Srinivasan Mahesh has paid the entire amount from Canara Bank for purchase of property which is registered in the joint names and TCS is collected by the assessee & paid which is appearing in the Form No. 26AS. The confirmation received from co-owner is also not acceptable that amount is still outstanding as loan and there is no proof for any benefit derived from the said property. It also cannot be accepted that huge amount is given to anybody interest free. Therefore the CIT(Appeals) has rightly treated it as gift u/s 56(2) of the Act.

10. Considering the rival submissions, we note that assessee has carried out substantial transactions during the year and she did not file her return of income. After receiving notice u/s. 148, return was filed. In regard to purchase of jewellery by Mr. Puttarangaiah, the assessee could not substantiate with credible evidence of agricultural income or savings of jewellery buyer in regard to cash purchase and the confirmation is from Mr. P. Venkatachaliah, his son. The assessee has

also not submitted the death certificate of Mr. Puttarangaiah. It is pertinent to mention here that the onus to prove the genuineness of the transaction, creditworthiness and identity lies with the appellant and it is to be discharged with reasonable explanation which has not been put forward unequivocally by the appellant. The bill is also in the name of assessee. Considering the totality of the facts, we concur with the order of the CIT(Appeals). Accordingly we reject this ground of the assessee.

11. Further in respect of addition of Rs.1,55,64,500/-, property has been purchased in the joint name of assessee and Srinivasan Mahesh with 50% share. We note from the confirmation submitted by Srinivasan Mahesh dated 09.01.2023 that the amount was paid from Canara Bank account No.1239101027204 and it was given to Ms. Indira Ramesh as interest free loan which is outstanding for many years. From the entire documents, we do not find anywhere any loan agreement or stipulated time under which the amount is to be paid or correspondence made between both the parties from the date of purchase of property upto 09.01.2023 and also till date of hearing before us. During the course of hearing it was asked who is/are the beneficiary of the property and if any income is derived from that property and if any amount is remitted to Srinivasan Mahesh or any utility cost is borne by the second joint holder or property is lying vacant, electricity bill , water bill or property tax payment, but the assessee could not submit any document. Even the statement of affairs of Srinivasan Mahesh to prove that assessee is a debtor in his books

was not furnished. As per the Sale Deed, the assessee is the first owner of the immovable property which clearly bestows beneficial ownership to her. However there is no definite share defined in the purchase deed but the assessee has deducted TDS on purchase of property of Rs. 1,55,645/- which is 1% of Rs. 1,55,64,500/- and transaction amount is also the same as reported in Form No. 26AS, in view of this the assessee's share is 50% in the purchased property. The assessee has got benefit without any payment more than the prescribed limit as per section 56(2) of the Act. The Id. CIT(Appeals) has rightly considered it as income from other sources u/s. 56(2) since payment of share of the appellant is without consideration. We reject the argument of the Id. AR that loan is still outstanding and it is liability of the assessee, since it is not substantiated with cogent evidence. Accordingly we dismiss the grounds of assessee.

12. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on this 3<sup>rd</sup> day of June, 2024.

Sd/-

( GEORGE GEORGE K. )  
VICE PRESIDENT

Sd/-

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 03<sup>rd</sup> June, 2024.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.