

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 4803/Mum/2023 (A.Y. 2017-18)

Meena Bharat Gohil Room No. 60, New Bhawan Chawl, Cotton Green, Veer Tanaji Malusare Marg, Kala chowki S.O. Mumbai-400 033. PAN : AJNPG2509G (Appellant)	Vs.	ITO, Ward-20(2)(2) Piramal Chamber Mumbai. (Respondent)
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Assessee by	Shri Satya Prakash Singh
Department by	Shri R.R. Makwana
Date of Hearing	04.06.2024
Date of Pronouncement	24.06.2024

ORDER

1. This appeal is filed by Mrs. Meena Bharat Gohil (the assessee/appellant) against the appellate order by the National faceless appeal Centre (NFAC, Delhi (the learned CIT – A) for assessment year 2017 – 18 dated 7/11/2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of the income tax act 1961 (the act) dated 24/12/2019 passed by the income tax officer Ward – 20 (2) (2), Mumbai (the learned AO) was dismissed.
2. Assessee aggrieved with the same is in appeal before us challenging the order passed by the learned that appellate authority for passing the order can the addition under section 69A in respect of Rs. 4,605,000/- cash deposited during demonetization in the bank account of the assessee despite providing sufficient explanation with

evidence. Thus, the order passed by the learned CIT – A is not sustainable.

3. The brief fact of the case shows that assessee is an individual who filed its return of income on 8/1/2018 declaring total income of Rs. 297,770/- showing income from business and income from other sources. This return was processed earlier but later on picked up for scrutiny by issue of notice under section 143 (2) of the act on 18th/8/2018. Subsequently notice under section 142 (1) was also issued.
4. It was found that the assessee has deposited cash of Rs. 46 lakhs in her bank account. The explanation was that property was sold at Rs. 36 lakhs which were received from Ms. Nilam Shivaji Pasalkar and Rs. 10 lakhs are out of gifts on loan from family members. For confirmation of the sale of movable property notice under section 133 (6) was issued on 12th/12/2019 however same was not responded to by the buyer of the property and therefore the explanation about any cash telling remained unexplained. With respect to gifts and loans from family members of Rs. 10 lakhs, no explanation was offered with any documentary evidence and therefore the learned assessing officer was of the view that Rs. 46 lakhs deposited in cash in the bank account of the assessee is unexplained income of the assessee. Therefore, the same was added under section 69A of the act. Accordingly, the assessment order under section 143 (3) of the act was passed on 24/12/2019 total income of Rs. 4,902,770/- wherein the addition of Rs. 4,605,000/- was made on account of unexplained cash deposited during demonetization period which is also taxed under section 115BBE of the act.
5. The assessee aggrieved with the same preferred an appeal before the learned CIT – A. Assessee was given 5 opportunities for hearing however none appeared and therefore the learned CIT – A dismissed the appeal of the assessee for non-prosecution and further on the

merits it was stated that no additional evidence etc. have been filed and therefore based on the facts available on record the addition was confirmed. Accordingly, the appeal of the assessee was dismissed.

6. Assessee aggrieved with the same preferred appeal before us. The learned authorized representative submitted that the details of cash deposit in bank account was provided to the learned assessing officer. He explained that the details of the cash deposit of Rs. 4,605,000/- was received on account of the sale of property as well as gifts from the relatives and loan from the husband et cetera. Complete chart that cash was deposited in the bank account on 6/12/2016 of Rs. 5 lakhs, on 15/12/2016 of Rs. 1,100,000, on 19/12/2016 of Rs. 15 lakhs and on 21/12/2016 of Rs. 15 lakhs. He submitted that against each of the cash deposit the assessee has given a detailed explanation to the learned assessing officer. He further submitted that there are 19 lakhs of cash withdrawal from the bank account of the assessee which has not been considered by the learned AO for giving benefit to the assessee. Assessee submitted the bank passbook of the assessee with Union Bank of India wherein the details of deposit and earlier withdrawals are available. He stated that there is also an affidavit of the gift received from Brother along with their permanent account number to show that she received gift from her relatives. He also submitted that in the explanation assessee also gave a reason that she is already assessed to tax for many years and out of those taxable income saving is available with her of Rs. 3 lakhs which is also part of the cash deposit. For this proposition she submitted the income tax returns of the assessee. For this reason, it was submitted that the learned assessing officer is incorrect in making an addition without discussing what else in evidence the assessee could have produced before him where the gifts are received from brothers and sisters and sons. He submits that the evidence in the form of the affidavit of these relatives was totally ignored. He further stated that when the property

is sold to the other party and that the other party does not respond to notice under section 133 (6) of the act, it is not the fault of the assessee. He further submitted that consideration is mentioned in the sale deed. Therefore, the addition made by the learned AO and confirmed by the learned CIT – A deserves to be deleted.

7. The learned departmental representative vehemently opposed the submission made by the assessee but supported the orders of the lower authorities. He submits that when the person to the property is sold and who is stated to have paid cash to the assessee did not respond, the learned AO has correctly made the addition under section 69A of the act. He further submitted that the assessee did not respond to notice issued by the learned CIT – A to plead her case and therefore the CIT – A disposed of the appeal on the merits as well as non-prosecution.
8. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly the assessee has deposited a sum of Rs. 4,605,000 in her bank account which has been added by the learned assessing officer under section 69A of the act. The assessee has given a detail of sale of property and submitted that Rs. 36 lakhs have been received in cash from that party. For the further balance sum of approximately Rs. 11 lakhs the assessee has given that this sum is out of her past saving, gift received from related parties i.e., brothers and sister, on marriage of her son. For the gift et cetera the assessee submitted the affidavits of the brother and sister. For her own saving she submitted the copies of the earlier years return and further she also submitted that part of the deposit is on account of earlier withdrawal from her bank account. It was stated that from Union Bank of India account of the assessee she has withdrawn Rs. 19 lakhs in the past year. The learned assessing officer issued notice under section 133 (6) of the act to the buyer of the property for examination of receipt of cash by the assessee, but the

buyer did not respond. But that does not mean that the income is required to be added in the hands of the assessee if the sale deed itself shows that the consideration has been paid in cash by buyer. Further, what documentary evidence assessee would produce from gifts received of small amounts from her brother and sister more than affidavit from those parties along with their permanent account number and sources of the funds. In the affidavits submitted the brother and sister have given the sources of funds and by such funds were given to the assessee. All this evidence has not been considered by the AO. Therefore, in the interest of justice, the issue of addition with respect to Rs. 4,605,000/- is restored back to the file of the learned assessing officer with a direction to the assessee to substantiate the sources of such fund, the AO may thereafter decide the issue on merits after considering the evidence placed on record. In the result, these grounds of appeal of the assessee are restored back to the file of AO.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24th June 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai