

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1046/Ahd/2023
Asstt.Year :2012-13

Yogeshkumar Gajrajsingh Yadav 26, Nandanbaug Club-07 Road, Nr.Apple Wood Village Shela, Sanand Ahmedabad 380 058. PAN : AAEPY 8589 Q	Vs	The ITO-Ward-3(1)(1) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	Written Submission
Revenue by :	Shri C. Dharani Nath, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/06/2024
घोषणा की तारीख /Date of Pronouncement: 25/06/2024

आदेश/ORDER

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short referred to as ld.CIT(A)] under section 250 of the Income Tax Act, 1961 dated 19.10.2023 pertaining to Asst.Year 2012-13.

2. The grounds on which the present appeal has been filed, as mentioned in appeal memo and read as under:

"1. That the Honourable CIT(A) had erred in fact and law and had made addition of Rs.10,21,780/- u/s 68 of the ITA towards cash deposited in bank account without appreciating or considering the submission and justification given by the assessee which is contrary to the law. Entire such addition is liable to be deleted.

2. That the Ld. AO erred in law and in the facts of the case in charging interest u/s 234 B and 234C of the Act."

3. Grievance of the assessee revolves around a single issue i.e. about the addition of Rs.10,21,780/- under section 68 of the Act by the AO in the absence of satisfactory explanation.

5. A perusal of the assessment order reveals that out of the total cash deposit of Rs.27,95,780/- made by the assessee in the bank, the AO raised doubts about the source of Rs.10,21,780/-. The assessee attributed this amount to a gift of Rs.7,50,000/- from their mother and Rs.9,50,000/- from their father. To substantiate this claim, the assessee submitted a declaration from his mother. However, the AO noted a discrepancy in the dates mentioned in the declaration i.e. the mother's death certificate was dated 8.1.2009, while the declaration was dated 5.4.2009. This inconsistency led the AO to conclude that the impugned gift received by the assessee was not genuine, resulting in its rejection.

Similarly, concerning the gift of Rs. 9,50,000/- received from the father, the assessee failed to establish the source of cash on hand available with their father, Gujrajsinh R. Yadav. Consequently, the AO disallowed the claim. As a result, the AO added Rs.10,21,780/- to the assessee's income under Section 68 of the Act. Dissatisfied with this addition, the assessee appealed to the Ld. CIT(A), NFAC, who upheld the AO's decision on this matter. The relevant finding of the Ld. CIT(A) is as follows:

"It is the grievance of the appellant that the AO ignored the claim without making any adverse comments as to the claim of cash received on jewellery and silver utensils.

Besides, the claim of cash gift received from parents was also not accepted for the reason the date of gift deed is posterior to the date of death, which was sought to be explained as an inadvertent mistake.

Scrutiny of the assessment order shows that in para 5 of the assessment order, there is no mention of the claim of jewellery as

alleged by the appellant and therefore this does not call for any validation either way.

The claim of cash gifts of substantial amounts of Rs.7.5 lakhs and Rs.9.5 lakhs from mother and father were not found to be satisfactory to the AO for the defects noticed in the declaration of mother as well as the sources for the parents to make such gifts. It stands to reason that mere declarations without explaining the sources can never be found to be satisfactory explanation taking into account the fact that the appellant is trying to prove the sources of cash deposit with reference to cash flows from other streams.

No fault could be found to the satisfaction of the AO in this regard. Therefore, the addition made by the AO stands confirmed. Therefore, this ground is dismissed.”

6. Still aggrieved the assessee is now before the Tribunal.
7. Before me, the assessee submitted written pleadings to defend his case. The crux of his argument lies non-consideration of his explanation supported with relevant materials, including a summary of cash transactions, receipts for cash received during the year, gift deeds from his parents, and details of cash obtained from the sale of jewelry. These documents were furnished before both authorities, establishing the genuineness of the cash received by the assessee. However, both lower authorities failed to appreciate the submitted documents and ignored to address the assessee's claims on that basis; that the assessment was hastily finalized on December 2, 2019, as the proceedings were nearing the time bar on December 31, 2019. The sole basis for the Revenue Authorities' dismissal of the assessee's claim was a discrepancy between the date mentioned in the gift declaration deed and the death certificate of the assessee's mother, Taradevi Yadav. This discrepancy, the assessee claimed, was an inadvertent mistake and should not render the gift declaration void, and that the source of the cash was otherwise well explained through documentary evidence. For brevity, the relevant portions of the written submissions are as follows:

“3.1 The another additions of Rs.10,21,780/- was made in the assessment order being the difference of the total cash deposited of Rs.27,95,780/- minus the amount of additions made for Rs.,17,74,000/- as under the ground-1 herein above.

3.2 The assessee during the assessment proceedings have substantiated the cash deposit of Rs.27,95,780/- and had submitted vide his letter dated 19-11-2019 and 22-11-2019 (copy submitted herein above in Annexure B and C) the details as to the source of Cash deposited in his bank accounts by providing the summary of cash transactions along with the evidences of cash receipts by the assessee during the year. The assessee already submitted the copies of the gist deeds for various gifts received by the assessee from his parents as well as the cash received out of the sale of jewellery during the assessment proceedings and accordingly, the assessee has discharged the onus cast on him to prove the source of cash deposited in his bank account.

3.3 During the assessment proceedings, the assessee had submitted the copies of the declaration of the gift received from his mother and father along with the necessary documents showing the identity of both the donor parents. The assessee also submitted the confirmation in the form of declaration of the person to whom the jewellery and some silver articles belonging to the assessee was sold and had received cash amount towards the said sales. Since, the assessee had provided all the necessary details as per the onus cast on him to prove the genuinity of the sum received by his, the onus is on the AO to disprove the same which has not been done during the assessment proceedings and such can be verified from the body of the assessment order.

3.4 The assessee had submitted the copies of the declaration of gift made by his mother. Tara Devi Yadav for Rs.7,50,000/- and his father Mr. Gajrajsinh Yadav for Rs.9,50,000/-. It is to be mentioned that the Ld. AO had pointed out the defect in the declaration of the gift made by his mother Ms. Tara devi Yadav with respect to the date mentioned in the declaration of the gift which is 05.04.2009 while, his mother was already expired on 08.01.2009. The assessee had explained that there is an inadvertent mistake in the mentioning the date of 05.04.2009 which was otherwise 05.01.2009, however, the Ld AO. Had not considered such explanation of the assessee and also seems assessee's mother is no more in this world, the assessee could not be able to get another confirmation/declaration or make a correction of date in the said declaration with sign of his mother. Accordingly, the Ld. AO should have considered the same as genuine and would not have gone to held it as non-genuine and therefore, would not have made the additions u/s 68 of ITA.

3.5 Your honor you may kindly refer to para 5 of the assessment order, and may find that Ld. AO had not disbelieved the confirmation of the sale of jewelry of Rs.7,70,000/- and also had not pointed out any other defect from the details and document submitted towards the source of cash deposit but had made the summary addition of Rs. 10,21,780/- which is difference of total cash deposit of Rs. 27.95.780/- less Rs. 17.74.000/- of additions made U/s 68 of ITA as per ground no. 2 here in above. It shows that the Ld. AO had not made any efforts find out or to negativate the claim of the assessee and as such no findings or further investigation carried out by Ld. AO before arriving at to her conclusion about the unexplained cash credit in the hands

of assessee. The assessee were discharged the onus cast on him by the provision of section 68 of ITA by providing all the necessary details pertaining to the source of cash.

3.6 The Ld. AO had passed the assessment order in a haste on 02.12.2019 in spite of the fact that the time limit for passing the assessment order was of 31.12.2019 and she was having enough time to controvert the evidences submitted by the assessee by making necessary investigation and inquiry by issuing notice under 133(6) of ITA and could have come to a justifiable conclusion as to the genuinity of the document submitted by the assessee.

The ld.DR, on other hand, supported the orders of the Revenue authorities.

8. I have heard the ld.DR and gone through the material available on record in the light of the written submissions filed by the assessee as also gone through orders of the Revenue authorities below.

9. The case of the assessee is that out of a cash deposit of Rs.27,95,780, Rs.10,21,780 represents a gift amount received from the parent, the source of which was explained through a declaration. However, the AO disbelieved the explanation primarily due to two reasons:

i) **Contradiction in dates:** The gift deed executed by the donor mother on April 5, 2009, conflicts with the date on the mother's death certificate, which is January 8, 2009. This discrepancy led the revenue authorities to doubt the genuineness of the assessee's claim.

ii) **Unexplained source of cash:** The cash on hand available with the father, Shri Gujrasinh R. Yadav, for making a gift of Rs.9,50,000, has not been adequately explained or proven by the assessee.

In relation to the discrepancy in the date mentioned in the gift deed, the assessee contends that it was an inadvertent error, which does not invalidate the genuine gift transaction. Further, the assessee received an amount of Rs.9,50,000 from his father and also cash from

the sale proceeds of jewelry disposed of by his father. The relevant details were also submitted to the Revenue authorities.

10. Considering the explanation of the assessee and the material available on record, I find that the assessee's explanation regarding the genuineness of the gifts received from the parent warrants careful consideration. The materials provided by the assessee before the lower authorities is claimed to support his case. Consequently, I believe that a re-examination and reconsideration of the matter are necessary in light of the aforementioned explanation and evidence.

Therefore, I am inclined to give assessee another opportunity to substantiate his case before the lower authorities. To facilitate this, I am remanding the issue back to the AO for further review. It is essential that the AO grants the assessee a reasonable opportunity for a hearing in this matter in accordance with law.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 25th June, 2024 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 25/06/2024

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