

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1515/Chny/2023
निर्धारण वर्ष/Assessment Year: 2017-18

Shri Ravikumar, No.2/167-1, Green Avenue, LRN Colony, Saradha College Road, Salem-636 007.	v.	The DCIT, Circle-1(1), Salem.
[PAN: AABPR 3092 A]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri G. Baskar, Advocate & Shri P.M.Kathir, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Dr.D.Praveen, JCIT
सुनवाईकीतारीख/Date of Hearing	:	16.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	10.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee an individual against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, dated 05.12.2023 for the Assessment Year (hereinafter in short 'AY') 2017-18.



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2. The main grievance of the assessee is against action of the Ld.CIT(A) confirming the disallowance/additions made by the AO. The brief facts of the case are that the assessee is a Director of M/s.AKR Express Pvt. Ltd., and drawing managerial remuneration from the company; and apart from that he has rental income and income from other sources and has filed return of income (RoI) on 30.07.2017 admitting a total income of Rs.2,95,95,480/-. The return was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter in short 'the Act') and later, the case was selected under CASS for limited scrutiny. The AO issued notice dated 16.08.2018 u/s.143(2) of the Act and the assessee came to know the issues for which his RoI that has been selected for limited scrutiny.

- i) salary income &
- ii) cash deposit and transaction in property.

3. Pursuant to the questionnaires put to assessee, the assessee filed replies to the AO. However, not satisfied with the replies/supporting documents, the AO made the following additions:-

- i) Rs.9,72,000/- as unexplained money and (ii) Rs.27,80,000/- as unexplained credits



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4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), who was pleased to confirm the action of the AO and dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before us.

5. We have heard both the parties and perused the material available on record. First we will deal with the addition of Rs.9,72,000/-. The AO noted that assessee had deposited Rs.9,72,000/- in Specified Bank Notes (hereinafter "SBNs") on 23.11.2016 and asked the assessee to prove the nature & source of it. Pursuant thereto, the assessee filed the cash book and bank book as well as filed the details of the opening and closing balance of cash in hand for AY 2016-17, which is noted as under:

S.No	Opg.Cash 01-04-2015	Cl.balance 31-03-2016
1	Rs.83075.22	Rs.5,74,316.22

6. The assessee filed the cash deposits month-wise as under:

Month	Cash Deposit	Remarks
April, 16	0	-
May, 16	2,00,000	-
June, 16	0	-
July, 16	0	-
August, 16	0	-
Sep, 16	0	-
Oct, 16	0	-
Nov, 16	9,72,000	SBN cash deposited in HDFC A/c. No. 01781000001977
Dec, 16	11,14,000	SBN cash of Father (Late) Sri. M. Palaniappan and deposited in HDFC A/c. No. 01781000001977
Jan, 17	0	-
Feb, 17	0	-
Mar, 17	0	-
Total	22,86,000	-

My father Sri. M. Palaniappan passed away on 10-08-2016. The cash held by his were also deposited in my HDFC A/c. No. 01781000001977. I have attached h



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death certificate copy, Legal heir certificate, his bank account statements an extract of his cash book.

7. The Ld.AR explained the cash deposit as under:

1. CASH DEPOSIT:

	Rs.		Rs.
01-04-2016 Opening cash	5,74,316	Drawings	1,20,000
Cash out of withdrawals from Bank	9,68,000	Donation	7,000
01-04-2016 Cash gift from daughter Aparna	1,00,000	23-11-2016 Deposit into bank	9,72,000
Funds of deceased Father	11,14,000	Father's amount deposited	11,14,000
		31-03-2017 Closing cash	5,43,316
	27,56,316		27,56,316

(a) Opening cash of Rs. 5,74,316/- was reflected at Schedule AL of Page 14 in the Return on 28-07-2016 filed vide ack. No. 325055130280716.

(b) Withdrawals from bank are reflected in the bank's account statements filed.

(c) Above sum of Rs. 11,14,000/- has been accepted by Assessing Officer as genuine. Prior withdrawals are to be accepted to make subsequent deposit as held by four decisions listed by Written Submissions dated 14-01-2021.

(d) Page 16 of the assessment order states that there was no cash withdrawal by Aparna from her account with HDFC bank from 01-04-2015 to 31-03-2017. Assessing Officer perhaps considered her bank account statement with one of the two branches of this bank. Cash withdrawals made by her from her account with another branch of HDFC during the year ended 31-03-2016 were Rs. 2,58,500/-. Gift of Rs. 1 lakh was made on 01-04-2016 in cash. Even otherwise, source of source is required to be proved only with effect from assessment year 01-04-2023 by insertion of 1st proviso to Section 68 by Finance Act, 2022. She is assessed in PAN: AKOPA7664E and has admitted income of Rs. 3,34,510/- for assessment year 2016-17. She confirmed having gifted Rs. 1 lakh to the appellant, by her letter dated 21-11-2019 filed on 22-11-2019. Its copy is attached (Attachment-1).

Assessing Officer's only reason to reject the fact of gift was that there was no cash withdrawal made by her from her bank account. As there were cash withdrawals, addition of Rs. 1 lakh made may please be deleted. Copies of her HDFC bank account statements from two branches were filed for the period from 01-04- 2015 to 31-03-2017 with A.O. The relevant copy is attached (Attachment-2), for ready reference. This may be considered at least under Rule 46 A(1)(c).



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8. The AO after verification/enquiry accepted that assessee received Rs.11,14,000/- from the savings of his deceased father, which fact, the AO accepts that was corroborated by the relevant documents viz. proof of bank withdrawal of deceased father. According to the AO, since the source and genuineness of deposit of cash in demonetized currency of his deceased father was explained by the assessee, the AO accepted the claim of Rs.11,14,000/-. However, the AO asked the assessee to prove the balance deposit of Rs.9,72,000/- on 23.11.2016. The assessee brought to his notice that he had opening balance of Rs.5,74,316/- as on 01.04.2016; and that the cash book reveals that from 01.04.2016 to 08.11.2016, the assessee had as on 02.11.2016 an amount of Rs.11,67,316/- which was the closing/opening balance for cash book from 09.11.2016 to 31.03.2017 (Page No.20 of paper book). Out of Rs.11,67,316/- which assessee had in his hands (as on 09.11.2016) assessee deposited on 23.11.2016 in HDFC bank account (01977) Rs.9,72,000/- which fact is evident from perusal of the Page No.111 of Paper Book i.e. HDFC Bank account 01977 (refer page 20 of the Paper Book). Thus, it was brought to our notice that assessee who draws salary of Rs.3,48,32,000/- had shown to have deposited Rs.9,72,000/- when he had Rs.11,67,316/- in his hand on 08.11.2016. As already noted, the assessee had opening balance of Rs.5,74,316/- and an amount of Rs.1 lakh was given [gift] from his daughter Smt.R.Aparna. She/donor has



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filed confirmation before the AO which is found placed at Page No.152 of Paper Book, which shows that she has given a gift of Rs.1 lakh to her father SHri P.Ravikumar on April, 2016, out of her tax paid income and that she was regularly filing return of income and her PAN was AKOPA 7664 E. We find that assessee has withdrawn Rs.8,20,000/- (in several transactions) from his bank account between 28.04.2016 to 02.11.2016. Thus, assessee had Rs.8,20,000/- + Rs.1 lakh from his daughter Smt.R.Aparna; and had opening balance of Rs.5,74,316/- (totaling Rs.14,94,316/-) and assessee deposited Rs.2 lakhs and withdrawn Rs.1 lakh for expenses. Thus, it is noted that assessee had cash in hand on 08.11.2016, Rs.11,67,316/-, which means the assessee had enough cash on hand for making cash/SBN deposit in his accounts of Rs.9,72,000/- during the demonetization period; and in addition, it is also noted that assessee has been showing income exceeding Rs.2 Crs. on an average for the last three years. Thus, we note that assessee has discharged his burden to prove the nature & source of the cash deposit on 23.11.2016 of Rs.9,72,000/-. The only reasons given by the AO to draw adverse inference was that assessee belatedly deposited the same on 23.11.2016 and therefore, it was his unaccounted income. We are unable to subscribe to such assumption drawn by the AO in the facts and circumstances of the case, as discussed supra. In this regard, the Ld.AR drew our attention to Page No.214 & 215 of the Paper Book, wherein, the



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banks had advised their client not to come to the bank in the beginning of the demonetization period, because of heavy rush in the bank for exchange of SBNs. We also note that during initial period (first two weeks from 08.11.2016), there were huge rush and crowd in the banks for exchange of SBNs. Therefore, the reason given by the AO to reject the relevant documents filed by the assessee as discussed (supra) to reject the nature & source of Rs.9,72,000/- cannot be countenanced. Considering the overall facts and circumstances of the case, we accept the nature and source of cash deposit, and therefore, direct the AO to delete the addition of Rs.9,72,000/-.

9. Coming to the other addition made by the AO of Rs.27,80,000/- (unexplained credits), we note that out of Rs.27,80,000/- only Rs.1 lakh cash was given by Smt.R.Aparna, the daughter of the assessee who has given gift of Rs.1 lakh on 01.04.2016 to the assessee; and we have accepted the genuineness of the gift since there was confirmation from the Donor of giving gift to her father/assessee and also we took note of the fact that she is a regular Income Tax Return filer and her PAN was also furnished to the AO and her creditworthiness is discernable from her return of income. When these relevant documents were filed by a donor/ Smt.R.Aparna, still, if the AO had any doubts about the source of Rs.1 lakh which was given to the assessee, then, the AO ought to have



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enquired/verified from the donor about the nature & source of Rs.1 lakh rather than drawing adverse inference without any incriminating material against the donor; and we note that AO has made the addition of Rs.1 lakh in the hands of the assessee merely on the ground that there was no cash withdrawal by the donor from her bank account. However, as discussed (supra), the AO didn't consider the 3rd bank account of the Donor, which clearly shows that Donor had withdrawn cash to make the gift. Therefore, while discussing the cash in hand of the assessee as on 08/09.11.2016, we had discussed about the gift of Rs.1 lakh from Smt.R.Aparna, and accepted the genuineness of it.

10. Therefore, now coming to the balance addition of Rs.26,80,000/-, the Ld.AR drew our attention to the fact that the return of income of the assessee was picked up for scrutiny by the CASS for only two issues:

- i) salary income &
- ii) cash deposit and transaction in property.

11. And the balance amount in question according to Ld AR doesn't fall in any of the above description given by the CASS because undisputedly, the amount in question were gift given by way of cheque through bank transaction from assessee's mother, Smt. P. Jayamma (Rs.8 lakhs) and from his sister Smt. Kalyani.C (Rs.7 lakhs); and from his another sister Smt. Udaykumari (Rs.9 lakhs) (total Rs.24 lakhs). Thus, it can be noted



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that the aforesaid gifts given by close relatives through banking channel/cheques was not subject matter of scrutiny; and the AO has not taken permission for enlarging the scope of the scrutiny as mandated in the Instruction No.17/2022 issued as on 26.09.2014 of Government of India and also CBDT order dated 28.11.2018 (F.No.205/428/208/OTA2). We find force in the submissions of the Ld.AR and we note that the AO at Page No.16 of his order had discussed about the gift from his mother and his two sisters and drew adverse inference and made addition. It is undisputed that the amount gifted by the mother and his two sisters are through cheque/bank transaction which fact has been acknowledged by the AO. Therefore, the issue that has been scrutinized by the AO does not fall in the CASS items as noted supra. Nowhere in the Assessment Order, it is discernable that the AO has taken permission to enlarge the scope of scrutiny. In such a scenario, the AO ought not to have scrutinized the transactions which have not been identified by the CASS unless the scope of scrutiny had been enlarged as noted supra. Therefore, the AO didn't had jurisdiction to enquire about gifts given by relatives (supra) unless it was cash deposits. Since, we have already considered the genuineness of the gift given by the assessee's daughter Smt. K. Aparna of Rs.1 lakh in cash, the balance addition of Rs.26,80,000/- need to be deleted. Therefore, the assessee succeeds and addition made of Rs.27,80,000/- also needs to be deleted and we order accordingly, the



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Ravikumar

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impugned order of the Ld.CIT(A) is set aside and the AO is directed to delete Rs.27,80,000/- + Rs.Rs.9,72,000/- i.e.Rs.37,52,000/-.

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

Order pronounced on the 10th day of July, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 10th July, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF