

**IN THE INCOME TAX APPELLATE TRIBUNAL "K (SMC)" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM

And

SHRI SUNIL KUMAR SINGH, JM

**ITA No 2316/Mum/2024**

(Assessment Year:2015 – 16)

Vaibhavi Vinod Ghosalkar Flat number 401, fourth floor Kumar Kunj Daulat Nagar road number 9 <b>Borivali ( E )</b> <b>Mumbai – 66</b>	Vs.	The income tax officer Ward 32 (3) (5) Mumbai Room number 803, eighth floor, Kautilya Bhavan, C – 41 and C – 43, G-Block Bandra Kurla complex, Bandra (East) Mumbai – 51.
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**(Appellant)**

**(Respondent)**

**PAN No.** AGCPG0972D

**Assessee by** : Ms Shruti Kalyanikar

**Revenue by** : Shri Rajnish Yadav , SR DR

**Date of hearing:** 25 July 2024

**Date of pronouncement :** 29 July 2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. This appeal is filed by the assessee/appellant for assessment year 2015 – 16 against the order of the National faceless appeal Centre Delhi (the learned CIT – A 31/file/2023 wherein the appeal filed by the assessee against the assessment order dated 26/12/2017 passed by the income tax officer – 32 (3) (5), Mumbai under section 143 (3) of the income tax act wherein the assessing officer

has made an assessment of Rs. 1,619,800 in the hence of the assessee, was dismissed.

2. Assessee is aggrieved with that and has preferred this appeal before us contesting the addition.
3. Brief cares facts of the case shows that assessee is an individual who filed her return of income on 31/3/2017 declaring total income of Rs. 269,800/-. Assessee during the year has shown income under the head income from business or profession and income from other sources. The return was picked up for limited scrutiny by issue of notice under section 143 (2) of the act on 19/9/2017 to verify the cash deposited.
4. During assessment proceedings, it was found that assessee has deposited Rs. 225 lakhs in the bank account but in the last submission it was submitted that only the details of Rs. 13,50,000/- was the cash deposited. The fact shows that assessee has deposited Rs. 1,250,000 in Jain Sahakari bank limited and Rs. 1 lakh in state bank of India. These two cash deposits were confirmed in response to notice under section 133 (6) of the act. The assessee was asked to furnish the details and explain the source of cash deposited. The assessee submitted that she had got gift from her son and husband in cash but did not submit any registered gift deed. The AO found that the amount of cash deposited in the bank account of the assessee, was transferred on the same day or after one day in another bank account. The learned assessing officer questioned that if the son of the assessee is giving gift to the assessee in cash by withdrawing the amount in cash, why such amount could not have been given to her by issue of a cheque. Accordingly, the learned assessing officer disbelieved the explanation of gift received by the assessee and made an addition of Rs. 13,50,000 to the total income of the assessee by passing an assessment order under section 143 (3) of the act on 26/12/2013. Thus, the only contention before the learned CIT - A the addition of

Rs. 13,50,000 in the hands of the assessee under section 68 of the income tax act.

5. The assessee aggrieved with the same has preferred an appeal before the learned CIT – A wherein several notices were issued to the assessee, but assessee did not respond to any of them and therefore the learned CIT – A held that as there is no material available to warrant any inference in the order of the learned assessing Ofc the order of the learned AO was confirmed.
6. Assessee aggrieved with the same has preferred this appeal before us.
7. At the time of hearing the learned and authorised representative produced letter dated 22/7/2024 issued by the assessee seeking the adjournment of the hearing. However it was pointed out to the learned and locate that appeal of the assessee is filed against the ex parte order passed by the learned CIT – A who has not decided the issue on the merits of the case and therefore it is imperative to send back the assessee before the learned CIT – A with a direction to grant an opportunity of hearing to the assessee and decide on the merits of the case. The learned authorised representative agreed with the above proposition.
8. The learned departmental representative also stated that before the learned CIT – A assessee has failed to appear on many occasions and therefore there is no reason to grant further opportunity to the assessee however he stated that the learned CIT – A did not discuss the merits of the addition but has confirmed the action of the AO.
9. We have carefully considered the rival contention and perused the orders of the learned lower authorities. We find that the assessee has deposited cash in the bank account amounting to Rs. 13,50,000 for which the assessee has given an explanation that she has received a gift from her husband and son. This is disbelieved by the learned assessing officer because such gift could have been given by her husband and her son by cheque. Therefore, the gift is

disbelieved. When the matter reached before the learned CIT – A, several opportunities of hearing were granted to the assessee, but assessee did not avail any of them, however the learned CIT – A instead of deciding the issue on the merits is merely stated that there is no infirmity in the order of the learned assessing officer has no further material is coming for from the assessee. However, the learned CIT – A did not consider the argument of the assessee that the gift is received by the assessee from her husband and her son. The learned assessing officer has rejected merely on the ground that both these relatives of the assessee would have given him gift by cheque. Therefore, in the interest of justice we set-aside the issue back to the file of the learned CIT – A to decide the issue on the merits of the case after giving assessee opportunity of hearing. As assessee has stated her email ID as [saurabhg022@gmail.com](mailto:saurabhg022@gmail.com) and [SaurabhVghosalkar@gmail.com](mailto:SaurabhVghosalkar@gmail.com). The learned authorised representative has also confirmed the above two email ids. Assessee is directed to respond to the notices of the learned assessing officer/CIT appeal.

10. Accordingly appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29<sup>th</sup> July 2024

Sd/-

Sd/-

(SUNIL KUMAR SINGH)

(PRASHANT MAHARISHI)

(JUDICIAL MEMBER)

(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.07.2024

*Sudip Sarkar, Sr.PS/Dragon*

Copy of the Order forwarded to:

1. The Appellant

2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai