

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2324/DEL/2024 [A.Y. 2017-18]

Dr. Priya Narula
B - 5/130, Safdarjung Enclave
New Delhi

Vs. The I.T.O
Ward - 2
International Taxation -2

PAN - AAFPB 6938 D

(Applicant)

(Respondent)

Assessee By : Shri Vikeram Kakar, Adv
Ms. Shrashti Agarwal, CA

Department By : Ms. SabihaRizvi, Sr. Dr

Date of Hearing : 20.08.2024

Date of Pronouncement : .08.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 43, New Delhi dated 30.05.2022 pertaining to A.Y. 2017-18.

2. The grievances raised by the assessee read as under:

"1. The Ld. Income Tax Officer Ward International Taxation 2(2)(2), New Delhi, ("Assessing Officer/AO") and Commissioner of Income Tax (Appeals)-43, New Delhi ("CIT-A") has erred in law by ignoring the documents/gift certificates filed by the Appellant in order to detail the Natur of Receipts of Cash and the accumulation of the same.

2. The Ld. AO erred in law and failed to consider that the total Cash Deposit of Rs10,98,000/- is a cumulative amount of the Appellant along with her family members, primarily her minor sons and the total cash deposit does not pertain to her, individually. Further the Ld. CIT-A failed to appreciate the said facts and preferred to pass orders without any valid reasoning to this aspect.

3 The Ld. AO and CIT-A erred in law to ignore that the Appellant & her Family members received Gifts which are Capital Receipt and the same cannot be taxed and preferred to pass order without any valid reasoning to this aspect

4. The Ld. AO was vide of the mark to ignore that gift certificates to the tune of Rs8,95,000/- issued in favour of the Appellant & Family, by her parental family and further failed to seek confirmations from the said family members or independent inquiry U/s 133(6) or 131(1) of the Income Tax Act, 1961 ("Act"). Further, the Ld. CIT-A also erred in law to ignore the

said documents and preferred to dismiss the appeal without reasoning of the dismissal.

5. The Ld. AO and CIT-A erred in law and also to misread the facts of the case that the Appellant and her family members frequently visited India and accumulated cash derived from foreign currency exchanged to Indian Rupees, which has already been treated for Tax in UK and the same was, deposited during the demonetization period. Further, the Ld. CIT-A erred in law to ignore the submissions and preferred to dismiss the appeal without reasoning

6. The Ld. AO and CIT-A erred in applying provisions of Section 115BBE of the Act on the facts and circumstances of the case of Appellant and determining the tax-liability as per the aforesaid Section without specifying the Head of Income or relevant Section(s) of the Act i.e. Section 68, 69, 69A, 69B, 69C or 69D under which the addition is to be made. Further, Ld. CIT-A erred in law and failed to appreciate that on the said facts of the Case, provisions of Section 115BBE of the Act could not be invoked and accordingly the Assessment Orders U/s 143(3) dated 24.12.2019 ("assessment orders) are arbitrary in nature and against the natural principles of natural justice.

7. That the Ld. AO also erred in charging interest u/s 234B and 234D of the Act while determining demand payable by the Appellant without appreciating that since the Appellant could not be held liable for the payment of advance tax for the amount under reference, no interest u/s 234B and 234D could be charged

particularly for the reason that special rate of tax has been provided under the Act and in any case charging the interest without recording proper satisfaction in this regard is illegal and unjustified and also result in demand even more than the amount of addition.

8. That the Ld. AO also erred in initiating penalty proceedings u/s 274 r.w.s. 270A of the Act without recording proper satisfaction in that regard.

9. The Ld. CIT-A also erred in law in ignoring the judicial precedent settled on the similar facts, wherein Hon'ble ITAT has held that doubting the genuineness of such gifts received from blood relationship is not justified wherein substantial documentation has been filed by the assessee and also AO failed to conduct any independent inquiry U/s 133(6) and 131(1) of the Income Tax Act, 1961 [ITA No. 2761/Del/2016 - Dheeraj Thakran vs ITO Ward -1(4).

10. The Order passed the Ld. CIT-A and Impugned order is bad in law and against the facts of the case."

3. At the outset, it was submitted that an application for condonation of delay of 651 days was submitted. It was submitted that the delay was on account of non-receipt of the appeal order from the CIT(A) office or the IT portal. The assessee relied on the decision of Supreme Court in the case of Vedabai alias Vaijayantabai Baburao, Patil versus Shantaram Baburao Patil and the Chief of postmaster versus

Living Media India Ltd. The contention of the assessee from the affidavit filed is considered reasonable and accordingly the delay is condoned.

4. Briefly stated, the facts of the case are that the assessee is a non-resident citizen of UK and tax resident of the said country as per Laws of United Kingdom of Great Britain. The assessee is practicing Medicine in the field of Gynecology in United Kingdom of Great Britain. During the year under consideration the assessee was deriving income from other sources and capital gains and there was no income from business or profession in India.

5. The case of the assessee was selected through CASS Module of selection for scrutiny u/s. 143(3) of the Income-tax Act, 1961 [the Act, for short] on the basis of "huge foreign remittances in Form 15CA to low tax jurisdiction". The assessee had filed its ITR on 30/07/2017 at income of Rs.2,62,590/-. Accordingly a notice u/s.143(2) dated 21.08.2018 was issued to the assessee for 10.09.2018 to produce documentary evidence on which she might rely in support of her ITR.

6. During the course of assessment proceedings the Assessing Officer noticed that the assessee received gifts amounting to Rs.

10,98,000/- and the said money was deposited during demonetization period i.e. in between 08.11.2016 to 31.12.2016. On perusal of bank statement of Savings bank A/c no. 1911410000155 with Federal Bank money was deposited as below:

S. No.	Date Deposit	Amount of cash	Bank account no.
1	03.12.2016	4,00,000/-	1911410000155 S/B
2.	03.12.2016	4,00,000/-	
3.	05.12.2016	2,00,000/-	
4.	10.11.2016	49,000/-	1911010000663 S/B
5.	10.11.2016	49,000/-	
Total		10,98,000/-	

7. The Assessing Officer, not satisfied by the response of the assessee, ultimately concluded that though the assessee has mentioned to have deposited the amount of Rs. 10,98,000/- while filing ITR for AY 2017-18, the assessee has not explained the source of the above said cash deposits made between 10.11.2016 to 03.12.2016 during Financial Year 2016-17 relevant to Assessment Year 2017-18. The AO, accordingly construed the said amount of Rs. 10,98,000/- as income of the assessee and added back to income of the assessee u/s 15BBE of the I.T. Act, 1961. The AO also initiated separately penalty proceedings u/s 270A(1)(9)(a) of the Act.

8. Aggrieved, the assessee went in appeal before the Id. CIT(A) who sustained the addition on the ground that the assessee has not submitted anything substantial to justify the sources of the cash deposited in Federal Bank account and that the gift certificates submitted by the assessee in assessment proceedings do not have any legal sanctity as they have been merely printed on plain papers.

9. The assessee further grieved is now before us.

10. The learned AR of the assessee vehemently argued that the assessee is an established doctor in England and has substantial source of income in England. It is argued that the assessee's only source of income in India is Interest Income and Capital Gains hence no income can be ascribed to her in India as unexplained income. It was argued that the gifts of Rs.10,98,000/- are capital receipts and, therefore, not taxable. It was argued that the assessee and her family members frequently visited India and accumulated cash derived from foreign currency exchanged to Indian Rupees, which has already been treated for Tax in UK and the same was, deposited during the demonetization period. It was submitted that the assessee kept above cash receipts and residual funds in safe custody at home in India for the purpose or utilizing the funds during their next individual or family travel as the

case may be. The ld counsel of the assessee relied on the decision of Delhi ITAT in ITA No. 2761/Del/2016 - Dheeraj Thakran vs ITO Ward - 1(4).

11. The ld AR of the assessee argued that the AO rejected gift certificates from the above said persons who are filing their tax returns regularly, considering it on a plain paper without making enquiries u/s 133(6) or 131(1).

12. The ld DR on the other hand relied on the orders of the assessing officer and the CIT (A) and reiterated the arguments of the AO that as the assessee was having NRO saving bank accounts in India and if such cash was received as cash gift during her stay in India she could have parked the money in the banks for her utilization during visits in India as stated. It was pointed out that the said amount could have been deposited in one go which has not been done. It suggests that the whole thing is an afterthought and a concocted story just to evade taxes in the grab of gifts.

13. We have heard the rival submissions and have perused the relevant material on record. We find that the assessee is

a doctor and a resident of United Kingdom and regularly comes to India to visit her family. Her father, mother and brother and sister-in-law are also doctors of repute in India and having substantial income which is reflected in their return of income. With respect to the deposit in India in the Federal Bank, the assessee has stated that the fund deposited in the bank account were from her parents, brother and sister-in-law given as gift. We also note that the only source of income of assessee in India is income from interest from bank deposits and capital gains.

14. We find that the impugned cash was deposited during the demonetization period 10.11.2016 to 05.12.2016, table of which is reproduced hereinabove. We are inclined to accept the contention of the ld. counsel for the assessee that cash gift could not get deposited at one go as there were difficulties in depositing cash amount during the demonetization period.

15. We note that when the AO made enquiries with the assessee with regard to the deposits in the bank, the

assessee gave the reply that these deposits are from the gifts received by family members in India and furnished the gift certificates from the family members, though in plain paper. In such a situation, it was incumbent upon the assessing officer to make further enquiries using its power under section 133(6)/131(1) with the family members to find out the truth of the matter. Once the assessee has furnished her explanation, the onus shifted to the assessing officer who failed to complete the process of enquiry into the identity and genuineness of transaction as well as creditworthiness of the donors. The Assessing Officer failed to discharge the onus shifted on him for establishing the bogus nature of cash gift and without conducting further enquiries, he made his own deduction from surmises and conjectures.

16. We also find from the status of the family members of the assessee in India, that they are all doctors declaring substantial incomes in their ITRs which justifies the explanation for cash gifts given over a period of time from FY 2014-15 to FY 2016-17. The father of the assessee has given Rs 1,50,000/-. Likewise, the assessee received Rs 2,25,000/-

from her mother. Similarly the brother and sister-in-law gave Rs 3,70,000/- and Rs 1,20,000/- respectively. We note that all the above cash were received in small tranche from the family members over a period of three years which was deposited in Bank during the demonetization period. The persons from whom the funds were received were not outsiders or unknown entities. In such a factual matrix, the action of the AO, sustained by the CIT(A), without making independent enquiries u/s 133(6)/131(1) does not appear to be justified. We also find the case of Dheeraj Thakran vs ITO Ward-1(4) (supra) applies to the facts and circumstances of the instant case. In view of the above, we are inclined to accept the source of the cash deposits of Rs 10,88,000/- and accordingly, we direct the Assessing Officer to delete the addition of Rs. 10,98,000/-. Grounds 1 to 5 and ground no. 9 and 10 raised by the assessee are allowed.

17. In the instant case, the assessee has taken a ground that the assessing officer has made the addition under section 115BBE, without specifying the head of Income or relevant section of the Act i.e., u/s 68, 69A, 69B or 69C rendering the

assessment arbitrary and against principle of natural justice. From the facts narrated in the case, we find that the assessee was made aware of the nature of additions to be made in the show cause issued to the assessee. In such a situation, we are of the considered opinion that non mentioning of specific section of the Act would not render the assessment order arbitrary. We are fortified in our view by the jurisdictional Delhi High Court decision in the case of Pr. Commissioner Of Income Tax -12 vs Smt. Sudha Loyalka rendered on 3 July, 2024 which held as under:

“8. While Mr. Rai is correct in his submission that the mere non-mentioning of a provision would not invalidate an addition as long as it be otherwise sustainable under the Act...”

In view of the above legal position, ground number 6 can not be sustained and is accordingly dismissed.

18. Grounds no. 7 regarding interest u/s 234B and 234D and ground no. 8 regarding initiation of penalty u/s 270A are consequential in nature and needs no separate adjudication.

19. In the result, the appeal of the assessee in ITA No. 2324/DEL/2024 is partially allowed.

The order is pronounced in the open court on 29.08.2024.

Sd/-
[VIKAS AWASTHY]
JUDICIAL MEMBER

Sd/-
[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 29th August, 2024.
VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi