

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1484/KOL/2024  
Assessment Year: 2022-23**

Nirmal Dutta, Middle Santinagar, Ghugumali, B.O. Dabgram (P), Dist: Vs Jalpaiguri - 734006 (PAN: AGRPD0623M)	Assessing Officer/ITO, Ward 1(4), Siliguri, Aayakar Bhawan, Matigara, Siliguri -734010
<b>(Appellant)</b>	<b>(Respondent)</b>

**Present for:**

Appellant by : None  
Respondent by : Madhumita Das, Addl. CIT

Date of Hearing : 28.08.2024  
Date of Pronouncement : 17.09.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as “the Ld. CIT(A)” passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2022-23, dated 09.05.2024, which has been passed against the assessment order u/s 143(3) read with section 144B of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 29.02.2024.

2. The grounds of appeal raised by the assessee are reproduced as under:

“1 For that on the facts of the case, the order passed by the Ld. CIT(A), NFAC on 09.05.2024 is completely arbitrary, unjustified and illegal.

2. For that on the facts and legal position of the case, the Ld. CIT(A) ought not to have confirmed the addition of Rs.8,00,000/- u/s 68 of the Act made by the Assessing Officer, being gifts received from relatives, without considering the evidences furnished before him.

3. For that on the facts and legal position of the case, the Ld. AO had erred in assessing the appellant and making addition on other issues, other than the issues for which the return was selected for scrutiny under CASS on limited issues "Low income from TCS receipts Timber not obtained from forest lease". The Ld. CIT(A) ought not to have confirmed the assessment order which was bad in law.

4. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

3. The facts of the case are that the appellant is an Individual engaged in the business of Retail Trading in Timber. For the Assessment Year 2022-23, the Appellant had filed the Return of Income on 21/10/2022 vide Acknowledgement No 740686261211022 declaring Total Income of Rs. 4,76,470.00 and claiming Refund of TCS credit of Rs. 2,26,570.00 as reflected in the Form No. 26AS and then had filed a Rectification Request on 27/02/2023 vide Acknowledgement No 967907190270223. The return of income was processed under section 143(1) of the Act. The return was selected for scrutiny and notice under section 143(2) of the Act was issued. Thereafter, The Assessing Officer completed the assessment u/s 143(3) vide order dated 29/02/2024 assessing the Total Income at Rs. 12,76,470/- and raising a demand of Rs. 7,81,988/-. Aggrieved with the order of the Assessing Officer, the appellant filed an appeal before the Ld. CIT(A). The appellant filed written submission before the Ld. CIT(A) who considered the same and after going through the order of the Assessing Officer, allowed part relief to the assessee and confirmed the addition of Rs.8,00,000/- on account of capital introduced in the business.

Aggrieved with the order of the Ld. CIT(A), the assessee has filed this appeal before the Tribunal.

4. We have heard the Ld. DR as none had appeared on behalf of the assessee and have also gone through the facts of the case and the order of the Ld. CIT(A) as well as that of the Ld. AO.

5. Ground Nos. 1 and 4 are general in nature and do not require any separate adjudication.

6. Ground No. 3 is a legal ground in which the assessee has assailed the action of the Assessing Officer for making addition on issues other than the issues for which the return was selected for scrutiny under CASS on the limited issue "low income from TCS receipts-Timber not obtained from forest lease". However, this ground of appeal does not appear to have been taken before the Ld. CIT(A) nor any evidence has been filed in support of the claim that the case was taken up for limited scrutiny. The Assessing Officer has mentioned the reason for which the case was selected under scrutiny and the issue was low income from TCS receipts. He found that the sum of Rs.8,00,000/- was the capital introduced by the assessee during the year and since it was a proprietorship concern, this coupled with the fact of low-income cannot be said to be excluded from the purview of scrutiny, more so when there is no evidence that the case was selected under limited scrutiny. Therefore, since the legal issue does not emanate from the facts on record nor any evidence in this regard has been filed before us nor the same was taken up before the Ld. CIT(A), therefore the assessee is precluded from taking up this ground of appeal in the appeal before us and this ground of appeal is rejected.

7. Ground No. 2 is against the confirmation of addition of Rs. 8,00,000/- made on account of capital introduced during the year. The Ld. AO observed that the assessee had introduced capital in the business amounting to Rs. 8,00,000/- and he required the assessee to furnish necessary evidence while the assessee remained silent on this issue. A specific query was raised vide notice under section 142(1) and the assessee responded that the capital introduced was for smooth running of the business without any explanation for the source of the same or documentary evidence which were called for by the Ld. AO. In absence of the evidence regarding the source along with supporting documentary evidences, as the Ld. AO had required the assessee to explain the source and as the same was not furnished, therefore, in view of the low income shown in the three preceding years, no loans availed by the assessee during the year under consideration and in the absence of any averment from the assessee on this issue and considering the minimum cost of living, family responsibilities of the assessee, contingent expenses and medical expenses etc. into account, the source of capital introduced by the assessee remained unexplained and the same was added to the income of the assessee. Before the Ld. CIT(A) as well, the assessee could not satisfactorily explain the source except for stating that total cash gifts of Rs.8,06,000/- had been received during the year from 11 persons who were relatives and out of which, Rs. 8,00,000/- was introduced as capital in the business. The assessee had furnished confirmations from the relatives and copy of their respective PAN cards however, the explanation was not accepted by the Ld. CIT(A) for the reasons as extracted from the order of the Ld. CIT(A) reproduced below:

6.4 The details and documents filed were perused. Firstly it is very surprising that if appellant was in possession of all such details and documentary proof regarding cash gifts received from the relatives then why he has not furnished before the AO in spite of so many opportunities granted by the AO this cast suspicion on these transaction. Secondly appellant tried to explain the source of capital introduction through cash gift but appellant failed to file the bank statements, ITR copies and balance sheet of the relatives to prove their creditworthiness. Appellant merely filed their PAN and confirmation which to some extent can establish their identity but their creditworthiness is still not proved. The burden is on the assessee to prove the nature and source of cash receipts (by way of gifts) by establishing the identity of the donor, the creditworthiness of the donor and genuineness of the gift.

6.5 Therefore, after careful consideration of the all the facts made available to this appellante, I am constrained to not to concur with the appellant's contentions. In absence of bank statements and ITR of donor it is not established that whether the donors had any significant income during the year and had means to hand out gifts of such substantial amount. Therefore, appellant's attempt is to make it appear like the transactions which is genuine but it rather gave air to suspicion implicating that the donors had no creditworthiness. Thus, it is clear that the action of the appellant is nothing but is premeditated contumacious conduct, surreptitiously done for specific reasons in an attempt to justify such transactions under the guise of gifts. Thus, Addition made by the AO is hereby upheld. Thus Ground No. 1(a) & (b) are dismissed.

Even before us, the assessee has not filed any evidence regarding the source of the gifts or the details/evidences justifying their creditworthiness. Therefore, in the absence of such details, no further relief can be allowed and this ground of appeal is rejected and the order of the Ld. CIT(A) confirming the addition made by the Ld. AO is hereby upheld.

7. In the result, the appeal filed by the assessee is dismissed and the order of the Ld. CIT(A) is confirmed.

Order pronounced in the open court on 17<sup>th</sup> September, 2024.

**Sd/-**  
**(Rajpal Yadav)**  
**Vice President**

**Sd/-**  
**(Rakesh Mishra)**  
**Accountant Member**

**Dated: 17<sup>th</sup> September, 2024**

AK, P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata