

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1649/Mum/2024	2011-12	Rashida Shakil Bhati, 1-B/73, Swagat CHS, Naya Nagar, Mira Road (E), Maharashtra [PAN: BGEPB2569N]	Income Tax Officer, Ward-2(4), B-Wing, 6 th Floor, Ashar I.T. Park, Wagle Industrial Estate, Road No. 16Z, Nr. Ambika Nagar, Thane
1648/Mum/2024	2015-16		
1647/Mum/2024	2016-17		

For Assessee :	Shri Dhaval Shah,
For Revenue :	Ms. Mahita Nair, Sr. DR

Date of Hearing :	05-09-2024
Date of Pronouncement :	01-10-2024

ORDER

PER B.R. BASKARAN, A.M :

All the three appeals filed by the assessee are directed against the orders passed by the Ld.Addl/JCIT(A)-3, Delhi and they relate to the Assessment Years (AYs.) 2011-12, 2015-16 and 2016-17. All these three appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee is an individual. The Revenue received information that the assessee has deposited cash of around Rs.30.00 lakhs in a joint bank

accounts along with his sons in DCB Bank Ltd., Mira Road Branch. Hence the AO reopened the assessments of AYs. 2011-12, 2015-16 and 2016-17 by issuing notices u/s. 148 of the Income Tax Act, 1961 ('the Act'). In response to the notices, the assessee filed her return of income for AY. 2011-12 declaring a total income of Rs.1,55,480/-. For AYs. 2015-16 and 2016-17, the assessee had earlier filed returns of income declaring a total income of Rs.2,85,000/- and Rs.2,90,000/- respectively. The assessee requested the AO to treat the said returns of income as the return of income filed in response to the notice issued u/s 148 of the Act.

3. The assessee did not appear before the AO in the assessment proceedings related to AYs. 2015-16 and 2016-17. From the details collected by the AO from DCB bank, it was noticed that the assessee had made cash deposits of Rs.10.00 lakhs each in both the years. Hence, the AO added the deposit amount of Rs.10.00 lakhs in both the years as unexplained income. In AY.2011-12, the AO did not accept the income declared by the assessee and accordingly determined the total income as NIL.

4. Before the Ld.CIT(A), the assessee submitted that she did not have any bank account prior to 1st April, 2014. With regard to the sources of cash deposits, the assessee submitted that the same represented savings made out of her income and gifts received by her over the years. She submitted that she earned income by taking tuitions on Islamic, dini-tuitions to children and also helping others on household works. The assessee also submitted capital account copies from Financial Year 2008-09 (relevant to AY.2009-10) to Financial Year 2014-15 (relevant to AY. 2016-17). The Ld.CIT(A), however, did not accept the capital account copies, since it was not supported by any evidence. The Ld.CIT(A) pointed out that the assessee had shown cash gift of Rs.3.00 lakhs from her son in

Financial Year 2013-14 (relevant to AY.2014-15), but the capacity to gift the above said amount was not proved. The Ld.CIT(A) peculiarly expressed the view that the cash deposits made into the bank account have not been reduced from the Capital Account and hence the same is not reliable. It is seen that the Ld.CIT(A) has confused himself by considering the Capital Account copy as 'Cash Flow Statement'. Cash outflow by way of bank deposits is reduced is shown as reduction in the Cash Flow Statement and not in the Capital Account. Accordingly, he rejected the explanations furnished by the assessee and dismissed the appeals filed for all the three years. Hence, the assessee has filed appeals challenging the order passed by the Ld.CIT(A) in all the three years.

5. We heard the parties and perused the record. We shall first take up the appeal filed for AY.2011-12. In this year, the assessee has declared total income of Rs.1,55,480/-. The capital account of this year reads as under:-

		Rs.
Opening balance brought forward	-	3,88,940
Add:- Income during the year	-	1,54,480
Misc. gifts received	-	38,540

Closing balance as on 31-03-2011		5,81,960
		=====

5.1. We noticed that the AO determined the total income as NIL. The said action of the AO is against the Circular No.549 dated 31-10-1989 issued by CBDT, wherein it is stated that the assessed income should not be less than the returned income. The Hon'ble Gujarat High Court has held in the case of Gujarat Gas Co. vs. JCIT [2000] 111 TAXMAN 144(GUJ) that the above said Circular issued by CBDT is binding upon the Assessing

Officers. Accordingly, the AO was not justified in determining the assessed income as NIL in AY.2011-12. Since the AO did not find fault in the capital account submitted by the assessee for this year, in our view, the same is required to be accepted. Accordingly, we set aside the order passed by the Ld.CIT(A) in AY.2011-12 and direct the AO to accept the income returned by the assessee and also the capital account filed for that year.

6. We notice that the AO did not reopen the assessments of AYs.2012-13, 2013-14 and 2015-16. In the capital account relating to AY.2014-15, the assessee has shown receipt of gift of Rs.3.00 lakhs from her elder son. The Ld.CIT(A) has referred to the same and has disbelieved the same. We notice that the assessee has filed confirmation letter obtained from the son of the assessee, wherein he has confirmed that he has given gift of Rs.3.00 lakhs to the assessee. In that letter, he has furnished his PAN number also. We noticed earlier that the bank accounts stand in the joint name of the assessee and her sons. Hence, the contribution made by the son for making cash deposit has been declared as gift. Hence, we do not find any reason to disbelieve the gift transaction.

7. We notice that the assessee has shown opening cash balance of Rs.15.34 lakhs as on 01-4-2014 out of which it is claimed that a sum of Rs.10.00 lakhs has been deposited into the bank account. The closing balance as on 31-03-2015 was shown at Rs.7,67,200/-. The above said amount constituted opening cash balance as on 01-04-2015 and in the year relevant to AY.2016-17, the assessee has declared income of Rs.2,90,000/- and the same has been accepted by the AO. The AO also did not make any addition of cash gifts of RS.45,600/- shown by the assessee. All these three amounts explain the sources of deposit of Rs.10.00 lakhs made in the year relevant to AY.2016-17. Accordingly, in

the facts and circumstances of the case, we are of the view that the assessee has explained the sources for making deposits of Rs.10.00 lakhs each in the years relevant to AY.2015-16 and 2016-17. Accordingly, we set aside the orders passed by Ld.CIT(A) in AYs.2015-16 and 2016-17 and direct the AO to delete the addition of Rs.10.00 lakhs each made in those two years.

8. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 1st October, 2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date : 01-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai