

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.1059/Ahd/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Gulamnabi Nuramahmadbhai Momin 524A, Opp. Adarsh Hospital Nr. Telav Shela Cross Road At Telav, Sanand 382 110 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The Income Tax Officer Ward-3(2)(2) Ahmedabad
स्थायी लेखा सं./PAN: APEPM 7307 M		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri P.D. Shah, AR
Revenue by :		Shri Prateek Sharma, Sr.DR

सुनवाई की तारीख/Date of Hearing : 10/10/2024
घोषणा की तारीख /Date of Pronouncement: 15/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

The appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "CIT(A)"] dated 29.12.2023, for the Assessment Year (AY) 2017-18. The primary grievance of the assessee pertains to the addition of Rs.40,00,000/- under section 68 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] made by the Assessing Officer as per his order dated 09/12/2019 passed under section 143(3) of the Act.

Facts of the Case:

2. The assessee filed his return of income for A.Y. 2017-18 on 02.11.2017, declaring a total income of Rs.1,25,210/-. The case was selected for limited scrutiny. During the assessment proceedings, the AO noted that the assessee deposited a substantial amount of Rs.2,14,09,917/- in his HDFC Bank account during the period from 09.12.2016 to 31.03.2017. The AO requested the assessee to explain the source of these cash deposits by submitting bank account statements, cash books, and evidence of cash receipts. The assessee claimed that Rs.30,00,000/- was received as a gift from his father, who was a farmer and Rs.10,00,000/- was from his personal savings accumulated over time. The assessee also submitted that the remaining Rs.1,74,09,917/- was attributed to cash collections from debtors in his business as an authorised distributor of Hindustan Coca Cola Beverages Pvt. Ltd. The assessee furnished a cash book, bank book, and claimed to have submitted supporting documents for the debtors, but did not provide sufficient documentary evidence for the gift and savings.

2.1. The AO issued multiple notices under section 142(1) of the Act asking for details such as the gift deed, the father's source of income, and bank statements to substantiate the claim of the gift. However, the assessee failed to provide these documents. The AO concluded that the assessee did not produce credible evidence to establish the genuineness of the gift and the father's capacity to make such a large gift. The amount was treated as unexplained cash credit under section 68 of the Act. The AO also requested evidence of the assessee's personal savings, but no such evidence was furnished. The AO, therefore, treated this amount as unexplained income and

added it under section 68 of the Act. Relating to deposits of Rs.1,74,09,917/-, the AO asked the assessee to provide details of the debtors, including names, addresses, and the nature of transactions. However, the assessee failed to provide a detailed response or sufficient evidence. In the absence of sufficient proof, the AO treated the entire amount of Rs.1,74,09,917/- as unexplained income under section 68 of the Act. The total income assessed by the AO was Rs.2,15,35,127/- (rounded off to Rs.2,15,35,130/-), after making the additions of Rs.40,00,000/- as unexplained cash credit and Rs.1,74,09,917/- as unexplained income. The AO initiated penalty proceedings under section 271AAC of the Act in respect of the unexplained income added under section 68 of the Act. The assessment order was passed under section 143(3) of the Act.

3. The assessee preferred an appeal before the CIT(A), who confirmed the addition of Rs.40,00,000/- made by the AO and deleted the addition of Rs.1,74,09,917/- on the basis of detailed documents provided by the assessee such as sales reports, party-wise details of debtors, and cash receipts from customers, all extracted from the SAP system of Hindustan Coca Cola Beverages Pvt. Ltd.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before us with following grounds of appeal:

1. *That the learned National Faceless Appeal Centre has erred in law and facts by confirming addition of Rs.40,00,000/- under section and therefore the learned Assessing officer be directed to delete the said addition while computing the total income and further learned AO has erred in law and facts by taxing the said addition under section 115BBE and therefore the ld.AO be directed to not tax said amount under section 115BBE of the Act.*

2. *The appellant craves liberty to add, alter, amend and put additional ground of appeal before the final hearing.*

5. During the course of hearing before us, it was observed that there was a delay of 80 days in filing the present appeal before us. The assessee has filed an Affidavit dated 16.08.2024 explaining the reasons for the delay, stating that the main cause was the non-communication of the CIT(A)'s order to the Chartered Accountant's email address registered with the National Faceless Appeal Centre. Upon receipt of the Tribunal's hearing notice, the assessee sought new legal representation and subsequently filed the appeal. The Departmental Representative (DR) did not object to the condonation of delay. In view of the reasons advanced by the assessee and in the interest of natural justice, we hereby condone the delay and proceed to adjudicate the appeal on merits.

6. On merits, the AR reiterated the explanation provided by the assessee that Rs.30,00,000/- was received as a cash gift from the father, who was a farmer owning agricultural land. The AR further stated that a notarized gift deed had been furnished, along with documents relating to the ownership of the land and a certificate from the village Sarpanch to the CIT(A). The AR pointed out that the CIT(A) has not discussed the at all in his order. The AR also argued that the CIT(A) failed to consider the certificate from the Sarpanch and the other supporting documents submitted, such as the gift deed and ownership details of the agricultural land. The AR contended that the CIT(A) had erroneously upheld the AO's view that the amount was unaccounted income, without giving due consideration to the explanations and documents provided.

6.1. Upon reviewing the submissions of the AR, we note that while the assessee provided certain documents, such as the gift deed and the Sarpanch's certificate, crucial documentary evidence (e.g., the father's bank statements and records of agricultural income) is still missing. The lack of these documents weakens the assessee's claim of the genuineness and source of the gift. However, it is also observed that the CIT(A), despite considering the lack of evidence, did not provide a detailed reasoning on why the explanations provided by the assessee were insufficient. Further, the CIT(A) did not thoroughly discuss the documents submitted by the assessee, such as the notarized gift deed and land records. Given that the assessee's father is claimed to be a farmer with agricultural income (which is exempt under the Act), this requires further factual verification.

6.2. Considering the facts that the CIT(A)'s order does not adequately address the assessee's contentions or the documents on record, we are of the view that natural justice demands a fresh examination of the issue. The CIT(A) should thoroughly verify the assessee's claim regarding the gift of Rs.30,00,000/- and the personal savings of Rs.10,00,000/-, after considering any additional documentary evidence that the assessee may provide. We, therefore, set aside the order of the CIT(A) in respect of the addition of Rs.40,00,000/- under section 68 of the Act and remand the matter back to the file of the CIT(A) for fresh adjudication. The CIT(A) is directed to pass a well-reasoned and speaking order after giving the assessee an opportunity to furnish the necessary documentary evidence in support of his claims. Thus, The order of the CIT(A) is set aside on the issue of the addition of Rs.40,00,000/-. Accordingly, the matter is restored to the file of the CIT(A) for fresh adjudication in light of the observations made above.

7. In the result, the appeal of the assessee is treated as is allowed for statistical purposes.

Order pronounced in the Open Court on 15th October, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 15/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad