

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.333/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Ashit Kumar Patel, Kirei, Sundargarh, Odisha	Vs	ITO, Ward-1, Jharsuguda
PAN No. : BHZPP 5835 P		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Mohit Sheth, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr.DR
सुनवाई की तारीख / Date of Hearing	:	17/10/2024
घोषणा की तारीख/ Date of Pronouncement	:	17/10/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 19.06.2024, passed in appeal No.CIT(A), Sambalpur/10111/2019-20 vide DIN & Order ITBA/NFAC/S/250/2024-25/106583.5920(1) for the assessment year 2017-2018, on the following grounds of appeal :-

- For that under the facts and circumstances of the case, the assessment as made and completed u/s.144 of the L.T. Act. is arbitrary, unlawful and unjustified. As the assessee had given explanation with fact and also explained the AO with sufficient evidences but the AO did not take it into consideration. For that the order passed by the learned AO is without giving proper and sufficient opportunity to the appellant. The return filed by the assessee for the impugned assessment year were also not taken into the consideration.*
- For that the addition of Rs.15,87,676/- u/s.69A of the I.T. Act. is unlawful and unjustified and as such also arbitrary. It cannot be said that the assessee has not filed the Income Tax return. The AO should have accepted the explanation and should have also verified the records of the assessee and the explanation given by the assessee. The AO without verifying the details properly and without giving any proper opportunity had just passed the assessment order. The amount of Rs. 15,64,000/- deposited during the demonization period is a gift*

received by the assessee from his father had been duly explained before the AO and the CIT(A). Without considering the fact the AO on the basis of surmises and assumption had added the deposits u/s.69A to which the CIT(A) sustained the addition. The addition of Rs. 15,64,000/- (which is gift received his father) u/s.69A and the addition of Rs.23,676/- (Total comes to Rs.15,87,676/-) is arbitrary, unlawful and unjustified as it was fully

3. *For that under the facts and in the circumstances of the case the whole addition as made by the AO is arbitrary, uncalled for and unjustified as the assessee had filed his return of income and the additions as made by the AO is unjustified and arbitrary and unlawful. Such addition should be deleted in the interest of justice.*
4. *For that under the facts and in the circumstances of the case the Order u/s.250 of the 1.T. Act. as made by the Commissioner of Income Tax (Appeals), NFAC, Delhi is arbitrary, unreasonable, unlawful, uncalled for and unjustified as the CIT(A) without applying his mind and without going through the fact had just passed the order abruptly by dismissing the appeal.*
5. *For that the learned Commissioner (Appeals) is wholly unjustified to confirm the assessment and to dismiss the appeal. The Assessee had explained the fact but the CIT(A) without going through evidences and fact dismiss the appeal which is against the principal of natural justice.*
6. *For that the assessment as made by the AO and confirmed by the learned Commissioner (Appeals) is arbitrary, wholly unjustified, unlawful and against the principal of natural justice.*

2. Brief facts of the case are that the assessee is an individual having income from salary. Since the income of the assessee was below the maximum amount not chargeable to tax for the impugned year, no return was filed by him. Notice u/s.142(1) of the Act was issued on 23.01.2018 wherein the assessee was asked to file return of income, however, the assessee has not filed any return of income within the time period allowed, therefore, the AO proceeded with the assessment proceedings as he was having information that the assessee has made cash deposit during demonetization period of Rs.15,64,000/- in Utkal Grameen bank,

Kandabahal Branch, Sundargarh. During the course of assessment proceedings, the assessee finally filed his return of income on 14.09.2019, which was treated as invalid by the AO since the same was filed beyond the time limit provided in the notice issued u/s.142(1) of the Act. The assessee was asked to explain the source of cash deposit in the bank to which the assessee explained that the same was received as “gift” from his father . The explanation of the assessee was not accepted by the AO and he invoked the provisions of Section 69A r.w.s.115BBE of the Act and made the addition of the cash deposit of Rs.15,64,000/- as unexplained. In first appeal, the Id. CIT(A) has also not accepted the contentions raised by the assessee and dismissed the appeal. Thus, the assessee is in further appeal before us.

3. Since all the grounds of appeal taken by the assessee are in relation to the addition made of Rs.15,64,000/-bring cash deposit in the bank account during demonetization period and interest of Rs.23,676/- received on the said account, therefore, all these grounds of appeal are canvassed together for the sake of convenience.

4. Before us, Id. AR of the assessee submitted that the assessee since beginning of the proceedings has very categorically stated that he has received cash gift of Rs.15,64,000/- on 30.07.2016 through gift deed from his father Shri Gunanidhi Patel. The assessee had filed the bank statement of his father, the gift deed and other documents regarding the acquisition of the land owned by his father by the Government of Odisha under Compulsory Acquisition to support the source in the hands of his

father. The Id. AR submitted that the father of the assessee received compensation from the Govt. of Odisha of Rs.51,92,000/- on 29.06.2016 out of which Rs.9 lakhs was withdrawn on various dates upto 15.07.2016. Besides this, his father was in employment with a bank and is having regular source of income as salary which was deposited in his bank account with Sundargarh District Central Co-operative Bank and had made regular cash withdrawals in preceding years out of which sufficient cash was available with him for making cash gift to the assessee. In support of the same, the Id. AR had submitted a cash-flow statement for the year under appeal and of preceding three years along with bank statements of those years according to which there was an opening cash balance available with the father of assessee of Rs.15,79,232/- and after making bank withdrawals of Rs.10,60,500/- upto 30.07.2016, total cash available as on 01.04.2016 with him was of Rs.26,39,732/-, out of which Rs.15,64,000/- was gifted to the assessee on 30.07.2016. He, therefore, submitted that at the time of making cash gift to assessee, sufficient cash funds were available with the father of the assessee accumulated out of the genuine sources and supported by necessary bank withdrawals. He, thus, prayed that the addition made by the AO deserves to be deleted.

5. Apart from the above, Id. AR has also filed his written submission, which reads as under :-

Facts of the Case

The appellant is an individual had filed his return of income for the Asst. year - 2017-18 on 14.09.2019 and thereafter assessment was completed u/s.144 by adding Rs.15,64,000/- deposited in the bank.

As per AO --

Assessee failed to furnish return of income either u/s.139 or in response to notice issue u/s.142(1) for the A. Year -2017-18.

Assessed u/s.144.

1. Return filed by assessee in response to notice u/s.142(1). Return filed but was treated as Invalid.

2. No evidence of Gift receipt.

3. No evidence that the same money was deposited in bank (Page-8, Para-2)

4. Assessment made u/s. 144 is unlawful and arbitrary.

5. Deposits in the bank treated as unaccounted money.

As per CIT(A)-

No specific documents were submitted to show that, the assessee's father had gifted-Hence dismissed.

Appellant Contentions-

Thus it is pertinent to mention here that the above said addition is based on certain improbable assumption and surmises. No proper finding were given by the AO.

Assessment completed u/s.144 on the basis that no return of income was filed by the assessee. Whereas the assessee had filed return of income in response to the notice u/s.142(1). Return filed was not treated as Invalid. Whereas the same was verified and accepted. Written Submission through e-Proceedings was submitted before the AO with all the Annexure & Evidences. Bank account of the father of the assessee was not verified properly. The bank account of the father shows the cash withdrawals, which was not taken into consideration by the AO.

The AO claims that opening of the bank account was malafied intention of the assessee. Hence addition was made.

Opening of Bank account if at all is a malafied intention then every person having bank account is also having malafied intention.

The AO has accepted the gift received by the assessee from his father. No question of gift received was raised by the AO. Gift received by the assessee is purely supported by the evidence such as gift deed. The said gift deed was duly furnished before the AO through e-Proceedings.

Assessment made u/s.144 is unlawful and arbitrary.

Addition of Rs.15,64,000/- deposited in bank is fully supported by evidences which was received by the assessee from his father as gift. The said deposits should be accepted and the addition made should be deleted.

Prayer:

The appellant prays your honour to be kind enough to considered the submission and adjudicate the matter accordingly.

6. On the other hand, Id. Sr. Dr vehemently supported the orders of the authorities below and submitted that since the assessee's father is in bank and he is having bank account, it is not explained as to why he has made such large amount from bank as cash withdrawals and kept so much cash with him. All these facts suggest that the assessee tried to make up the source of cash deposit from explained source and, therefore, he prayed for the confirmation of the additions made by the lower authorities.

7. We have considered the arguments advanced by both the parties. From the records, we find that the assessee has claimed the immediate source of the bank deposit in cash is out of the gift received from his father in cash in SBN vide gift deed dated 30.07.2016. With regard to the source of the same in the hand of his father, it was stated that a sum of Rs.9 lakhs was withdrawn during the years itself by his father prior to making cash gifts to the assessee out of the compensation received under compulsory acquisition of land owned by his father from the State of Odisha, therefore, the source to this extent cannot be doubted in the hands of the father of the assessee. With regard to the remaining cash of

Rs.6,64,000/- a cash flow statement of current year and also of preceding three years was submitted by the assessee which reads as under :-

GUNANIDHI PATEL
(Father of the Assessee)
 S/O. SOBHA KAR PATEL
 SDCC Bank Ltd.,
 Sundargarh.

CASH FLOW STATEMENT

ASST. YEAR - 2014-15 (i.e. Year Ending 31/03/2014)

Opening Balance (01.04.2013)	186,000.00
<u>Add</u> - Withdrawals from Bank	612,072.00
<u>Add</u> - Agricultural Income	58,000.00
	<u>856,072.00</u>
Less - Personal Domestic Expenses	200,000.00
Closing Balance (31.03.2014)	<u>656,072.00</u>



GUNANIDHI PATEL
(Father of the Assessee)
 S/O. SOBHA KAR PATEL
 SDCC Bank Ltd.,
 Sundargarh.

CASH FLOW STATEMENT

ASST. YEAR - 2015-16 (i.e. Year Ending 31/03/2015)

Opening Balance (01.04.2014)	656,072.00
<u>Add</u> - Withdrawals from Bank	341,000.00
<u>Add</u> - Agricultural Income	54,000.00
	<u>1,051,072.00</u>
Less - Personal Domestic Expenses	280,000.00
Closing Balance (31.03.2015)	<u>771,072.00</u>



GUNANIDHI PATEL
(Father of the Assessee)
 S/O. SOBHAKAR PATEL
 SDCC Bank Ltd.,
 Sundargarh.

CASH FLOW STATEMENT

ASST. YEAR - 2016-17 (i.e. Year Ending 31/03/2016)

Opening Balance (01.04.2015)	771,072.00
<u>Add - Withdrawals from Bank</u>	1,132,160.00
<u>Add - Agricultural Income</u>	36,000.00
	1,939,232.00
Less - Personal Domestic Expenses	360,000.00
Closing Balance (31.03.2016)	1,579,232.00



GUNANIDHI PATEL
(Father of the Assessee)
 S/O. SOBHAKAR PATEL
 SDCC Bank Ltd.,
 Sundargarh.

CASH FLOW STATEMENT

ASST. YEAR - 2017-18 (i.e. Year Ending 31/03/2017)

Opening Balance (01.04.2016)	1,579,232.00
<u>Add - Withdrawals from Bank upto</u> 30.07.2016	1,060,500.00
	2,639,732.00
Less - Gift to son -Asit Kumar Patel out of fund available in hand as on 30.07.2016	1,564,000.00
	1,075,732.00
Less - Domestic Expenses till 31.07.2016	200,000.00
Balance as on 31.07.2016	875,732.00



CASH FLOW STATEMENT

ASST. YEAR - 2017-18 (i.e. Year Ending 31/03/2017)

B/f Balance as on 31.07.2016	875,732.00
<u>Add - Withdrawals from Bank from</u> 01.08.2016 to 31.03.2017	288,665.00
	1,164,397.00
Less - Domestic Expenses from -- 01.08.2016 to 31.03.2017	300,000.00
Balance as on 31.03.2017	864,397.00

8. A perusal of the cash flow statement, it is seen that the assessee has claimed that his father was having cash balance of Rs.1,86,000/- as on 01.04.2013 and thereafter substantial withdrawals were made in all the three years and after reducing the cash utilized for household expenses as on 01.04.2016 i.e. the opening date of the previous year in appeal, he was having cash balance of Rs.15,79,232/-. Thus, the father of the assessee is having sufficient cash balance to make gift to his son of the remaining amount of Rs.6,64,000/- out of opening cash available with him. Since the assessee has been able to establish the source of the cash available in the hands of his father from whom he has claimed to have received cash gifts of Rs.15,64,000/- on 30.07.2016, which amount was deposited in cash during the demonetization period, therefore, we are of the considered view that no addition is required to be made in the hands of the assessee on this score. Accordingly, the addition of Rs.15,64,000/- made by the AO is hereby deleted.

9. In regard to the interest income of Rs.23,676/-, since it is an income on the deposit in saving account received from the bank, the same has rightly been added in the hands of the assessee by the AO and thus this addition is sustained.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 17/10/2024.

Sd/-

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 17/10/2024

Prakash Kumar Mishra, Sr.P.S.

Sd/-

(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant-
Ashit Kumar Patel,
Kirei, Sundargarh,
Odisha
2. प्रत्यर्थी / The Respondent-
ITO, Ward-1, Jharsuguda
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर ँ पीलीय ँ धिकरण, कटक/ITAT, Cuttack