

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI BR BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 170/MUM/2024
(Assessment Year : 2018-19)**

Urvi Premal shah GE-8041/8042, Block-G, Bandra Kurla Complex, Bandra(East), Mumbai-400051.	Vs.	ITO, Ward-19(3)(1) Room No. 202, 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400007.
PAN/GIR No. CRFPS7862C		
(Appellant)	..	(Respondent)

Assessee by	Shri. Rohit Vijay Vargia
Revenue by	Ms. Rajeshwari Menon, Sr. DR
Date of Hearing	15/10/2024
Date of Pronouncement	16/12/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 16.11.2023 passed in Appeal no. NFAC/2017-18/10040568 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.]

2018-19, wherein learned CIT(A) has dismissed the assessee's appeal.

2. The brief facts related to the appeal state that the appellant assessee filed her return of income for A.Y. 2018-19 on 27.08.2018, declaring total income of Rs. 6,18,063/-. The case was selected for limited scrutiny on the consideration that there is a substantial increase in the capital to the tune of Rs. 7,90,49,155/- in comparison to the previous year. Statutory notices u/s. 143(2) and 142(1) were issued and served upon the assessee. Assessee submitted before the learned assessing officer that the reason for the increase in the capital was due to income earned and the gift of equity shares of unlisted private limited company, valued at Rs. 7,76,25,000/- received from the brother of assessee's spouse. Learned assessing officer, after examining the ledger account of the donor/Shri Milan S Shah found that the said gift of 2,81,250 shares of M/s. Ecobrilliance to assessee were shown to be debited as Rs. 2,73,06,266/-. Learned assessing officer accordingly added the difference of Rs. 5,03,18,734/-, being the difference in the cost of shares received by the assessee under gift and that recorded by the assessee,

treating it as unexplained credit u/s. 68 of the Act. The same was added to the total income of the assessee. Aggrieved, assessee preferred an appeal before learned CIT(A) who, dismissed assessee's appeal.

3. Appellant assessee has preferred this appeal against the impugned order on the ground that the learned CIT(A) has erred in upholding the assessment order, confirming the addition of Rs. 5,03,18,734/-, being difference between the 'fair market value' of equity shares gifted from relative and the cost of acquisition by previous owner/donor by invoking section 149(1)(ii) of the Act.
4. Perused the records and heard learned representative for the appellant assessee and learned DR for the respondent revenue department.
5. The small issue involved under appeal is as to whether the difference in the cost of shares donated by the assessee's relative to assessee and that recorded at 'fair market value' by the assessee, be treated as unexplained credit u/s 68 of the Act?
6. Learned representative for the assessee has submitted that the shares gifted by the assessee's relative to the assessee were

recorded in donor's A/c showing the cost of acquisition of Rs. 2,73,06,266/-. However, these were recorded by assessee in her books of account at the 'fair market value' of Rs. 7,76,25,000/- on the date of gift deed. The said gift received from the relative of the assessee is wholly exempt under the Act. It is further submitted that the gifted shares have not been sold in the year under consideration. Prayed to set aside the impugned order and delete the addition.

7. Learned DR has vehemently supported the impugned order.
8. It is not disputed that assessee has received gift of total number of Rs. 2,81,250/- equity shares of M/s. Ecobrilliance Private Limited company from Mr. Milan S. Shah (Donar), who is the brother of assessee's spouse. The value of the aforesaid shares has been shown at Rs. 7,76,25,000/- on the date of gift deed dated 03.02.2018. The gift deed is part of the assessee's paper book at page 46 and 47. The assessee has not sold the gifted shares during the year under consideration. According to section 56(2)(X), the gift being from the relative of the assessee is wholly exempt from tax. There cannot be treated any profit or gain on the receipt of such gift from relative.

9. Learned CIT(A), while passing the impugned order, has taken support from the decision of Hon'ble Bombay High Court in CIT(A) V. Trikamlal Maneklal (Karta of HUF) [1987] 32 Taxman 479 (Bom) and the decision of the ITAT Jaipur bench in Utsav Cold Storage (P.) Ltd. V. ITO Ward 3(2) Jaipur [2016] 70 taxmann.com 13 (Jaipur-Trib.). These cases relate to the capital gain on the profit or gain that arise on the transfer of the capital asset. In the instant case, there is no transfer of aforesaid gifted shares after the assessee (donee) received these shares in gift from the relative (brother of assessee's spouse). The facts of the cases referred and relied by the Ld. CIT(A) are easily distinguishable and not applicable to the facts of the present case.

10. We notice that the assessee received the gift of shares from the brother of her spouse, who is a relative in terms of explanation (a) attached to the proviso to clause (xiii) r/w explanation to clause (vii) of section 56(2) of the Act. The gifted shares of Rs. 2,73,06,266/- were recorded by the assessee in her account exhibiting the cost of gifted shares at 'fair market value' @ Rs. 7,76,25,000/-. Such a gift is wholly exempt u/s. 56(2)(X)

of the Act. The aforesaid issue is accordingly determined in negative against the revenue and in favour of the assessee.

Assessing officer is directed to delete the said addition

11. In the result, the assessee's appeal is allowed.

Order pronounced on 16.12.2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 16/12/2024
Aniket Singh Rajput, Steno

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai