

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.821/SRT/2024

Assessment Year: 2017-18

(Hybrid hearing)

Dy. Commissioner of Income-tax, Circle-2(1)(1), Surat, Room No.612 Aayakar Bhawan, Majura Gate, Surat-395 001	बनाम/ Vs.	Shri Surendran Nanoo, 91A, Lakshmi Jawahar Nagar, Kadavanthra, Ernakulam, Kerala – 682020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABTPN 4976 A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

प्रत्याक्षेप सं /CO No.25/SRT/2024
(a/o ITA No.821/SRT/2024/(AY 2017-18)

Shri Surendran Nanoo, 91A, Lakshmi Jawahar Nagar, Kadavanthra, Ernakulam, Kerala – 682020	बनाम/ Vs.	Dy. Commissioner of Income-tax, Circle-2(1)(1), Surat, Room No.612 Aayakar Bhawan, Majura Gate, Surat-395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABTPN 4976 A		
(co-objector)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by	Shri P M Veeramani, AR
राजस्वकी ओर से /Respondent by	Shri Aashish Pophare, CIT(DR)
सुनवाई की तारीख/Date of Hearing	10/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	26/09/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the Revenue and Cross Objection (CO) by the assessee emanate from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 12.06.2024 by the National Faceless Appeal Centre

(NFAC), Delhi / Commissioner of Income tax (Appeals) [in short, 'the CIT(A)'] for the assessment year (AY) 2017-18, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 143(3) r.w.s. 263 of the Act on 29.03.2023.

2. Grounds of appeal raised by the Revenue are as under :

"1. On the facts and circumstances of the case and in law, the Ld. CIT has erred in deleting the addition made of Rs.5,74,74,847/- by the AO on account of unexplained cash credit within the meaning of section 68 of the Act.

2. On the facts and circumstances of the case and in law, the Ld. CIT has erred in accepting the argument of the assessee that no fresh funds were infused as the gift transaction is books entry and has not appreciated that the assessee Shri Surendran Nanoo has received fresh funds in the form of gift during the year under consideration and the very onus u/s.68 of the Act casted upon him to prove the sources of the fund with regard to the said transaction along with supporting evidences which he failed to do.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has violated the principles of natural justice while admitting the additional evidences and not providing opportunity of being heard to the Assessing Officer as per the provisions of section 250(2) of the Income tax Act, 1961 and Rule 46A(3) of the Income tax Rules, 1962.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in admitting the additional evidences, which were not produced before the AO during the course of the assessment proceedings, without appreciating the fact that the assessee has not satisfied the basic conditions laid down under Rule 46A(1) of the Income tax Rules, 1962.

5. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

6. *It is, therefore, prayed that the order of Ld. CIT(A) may kindly be set aside that of the Assessing Officer be restored.*

7. *The appellant craves leave to add, alter, amend and/or withdraw any ground of appeal either before or during the course of hearing of the appeal."*

3. Brief facts of the case are that the assessee, Shri Surendran Nanoo, has filed his return of income for AY 2017-18 on 29.09.2017 declaring total income at Rs.1,77,61,630/-. The case of the assessee was selected for scrutiny under CASS. The assessment order was passed u/s.143(3) on 23.1.2.2019 by accepting the returned income of Rs.1,77,61,630/-. Thereafter, the Ld.PCIT reviewed the assessment order and noticed that the assessee claimed that source of increase in capital was on account of gift of Rs.5.75 crore received during the year. In support of his claim, the assessee had furnished a copy of the ledger accounts of some individuals wherein details of equity shares/unsecured loans given/accepted as gift, etc. were mentioned. However, it was noticed by Ld. PCIT that the basic documents evidencing the identity of the donor as well as creditworthiness of the 'donor' and the relation of the 'donee' with the 'donor' were not to be submitted. Besides, the amount of unsecured loans mentioned in the ledger accounts were also not found supported by any documentary evidence such as audit report, financial accounts, books of account, affidavits/gift deed, etc. Therefore, it was seen that necessary inquiries were not conducted by the AO, to verify the claim regarding receipt of gift and unsecured loans accepted during the year by the

assessee, during assessment proceedings. In view of the same, the order passed by AO u/s.143(3) on 23.12.2019 was considered erroneous in so far as prejudicial to the interests of revenue and hence, the same was set aside by the Ld. PCIT vide order passed u/s.263 of the Act dated 16.03.2022.

3.1 Subsequently, the AO issued the notice for assessing the total income in pursuance of the order u/s.263 of the Act. During the course of assessment proceedings, the appellant claimed that the gifts received by him were nothing but shares and unsecured loans in the books of account of M/s. Shyama Dynamic Foods (P) Ltd. and M/s. S.D. Health and Fitness Centre Pvt. Ltd. respectively in the accounts of his brother that was transferred to his account. As per the assessee, no fresh amounts were received by him and the aforesaid gifts were transferred through book adjustment only. However, the AO did not accept the contention of the assessee and recorded that those transactions remained unverified as the bank statement submitted by the assessee was incomplete. Since the genuineness of the gift and unsecured loan could not be established by the assessee, therefore, the same were considered as unexplained cash credits u/s.68 of the Act and added to the total income of the assessee. The AO completed the assessment u/s.143(3) r.w.s. 263 of the Act on 29.03.2023 by assessing the total income of the assessee at Rs.7,52,36,477/-.

4. Aggrieved by the assessment order passed u/s.143(3) r.w.s. 263 of the Act, assessee preferred appeal before CIT(A). During the appellate proceedings, it was observed by CIT(A) that there was no fresh credit introduced in the books of account of the assessee in the AY 2017-18. Therefore, the addition of amount of Rs.5,74,74,847/- made by the AO u/s.68 of the Act was not maintainable. The CIT(A) directed the AO to delete the same; thereby allowing the appeal of the assessee vide its order passed u/s.250 of the Act dated 12.06.2024.

5. Aggrieved by the order of CIT(A), the revenue has preferred appeal before this Tribunal. The Ld. CIT-DR of the Revenue relied upon the order passed by the AO and contended that CIT(A) has erred in accepting the argument of the assessee that no fresh funds were infused and the gift transaction was mere book entry. The Ld. Sr. DR further contended that the CIT(A) has not appreciated that the assessee had received fresh funds in the form of gift during the year and onus was on assessee to prove the sources of the funds, which he failed to do. Ld. Sr. DR also raised objection against admission of additional evidence by CIT(A) without providing the opportunity of being heard to the AO as per the provisions of section 250(2) of the Act and Rule 46A(3) of the Income tax Rules, 1962.

5.1 On the other hand, Ld. AR of the appellant submitted a paper book consisting of written submission, copies of share transfer form for transfer of equity shares in S.D. Health and Fitness Centre Pvt. Ltd., gift deed executed by Shri Syamaprakash Nanoo Vaidyan for transfer of 5100 equity shares of S.D. Health and Fitness Centre Pvt. Ltd., gift deed executed by Shri Syamaprakash Nanoo Vaidyan for transfer of unsecured loan and gift deeds executed by Shri N. Suseelan for transfer of unsecured loan, ledger copy of the accounts of unsecured loan in the name of donor and donee from the books of SD Health and Fitness Centre Pvt. Ltd. and Syama Dynamic Foods Pvt. Ltd., ledger accounts of N Surendran, N Suseelan and N Syamaprakash for AY 2015-16 to 2017-18 in the books of account of Syama Dynamic Foods Pvt. Ltd. and SD Health and Fitness Centre Pvt. Ltd., copy of minutes of meeting of the above 2 companies submitted to ROC regarding the transfer of unsecured loan into gift to Shri Surendran Nanoo, copies of balance sheet of the above companies before and after transfer of unsecured loans and shares. The Ld. AR also relied on the decisions in cases of (i) ITO vs Zexus Air Services Pvt. Ltd. in ITA No.2608/Del/2018; (ii) V R Global Energy Pvt. Ltd. vs. ITO [2018] 407 ITR 145 (Mad) and (iii) ITO vs. Sanjay Kumar Goel 108 TTJ 823 (Del). The Ld. AR of the appellant requested to uphold the order of CIT(A).

6. We have heard the rival submissions of both the parties and perused the materials available on record. We have also deliberated upon the case law

relied on by Ld. AR. It is an undisputed fact that the appellant, Shri Surendran Nanoo Vaidyan, Shri Syamaprakash Nanoo Vaidyan (PAN: ABTPN4978Q) and Shri N. Suseelan (PAN: ABTPN4977B) are brothers and are having individual sources of income. They are relatives within the meaning of section 2(41) of the Act. The brothers were also shareholders in various companies run by them including SD Health and Fitness Pvt. Ltd. and Syama Dynamic Properties Pvt. Ltd. On perusal of books of account, it is seen that the brothers, namely, Shri Syamaprakash Nanoo Vaidyan and Shri N. Suseelan had extended unsecured loans to the aforesaid companies during the periods from the financial year 2012 to 2016. Subsequently, the unsecured loans were gifted by the brothers to the appellant and corresponding entries were made in the books of the respective companies on 16.04.2016. It is further seen from the gift deed and share transfer Form that Shri Syamaprakash Nanoo Vaidyan gifted 5100 equity shares at face value Rs.10/- amounting to Rs.51,000/- in S D Health and Fitness Pvt. Ltd. to the appellant. The share transfer Form was also signed by both the transferor and transferee and was executed on 16.04.2016. The above gifts were not cash gifts but gift of the unsecured loan in the books of the companies in the name of brothers to the name of the appellant and thus it was a gift by book entries. There was no funds transfer in this case. Besides, it is seen that the appellant has furnished the copies of the passport, Aadhar card and income-tax returns filed by Sri Syamaprakash Nanoo Vaidyan and Sri N. Suseelan for the AY 2017-18 and earlier years. The AO has not

doubted the creditworthiness of the donors. Be that as it may, the impugned sums are also not liable to tax as income from other sources u/s 52(2)(x) of the Act. In view of the above discussion, we find no infirmity with the order of CIT(A) and, accordingly, grounds of appeal No. 1 & 2 raised by the revenue are dismissed.

7. Regarding the grounds of appeal No. 3 and 4 raised by the revenue regarding the admission of additional evidences, it is seen that no additional evidences were produced by the appellant during appellate proceedings. The appellant had submitted all the details during the course of assessment proceedings before the AO pursuant to the order u/s.263 of the Act by the Ld. PCIT. Hence, there is no breach of the principles of natural justice. Accordingly, ground Nos. 3 and 4 are dismissed.

8. Grounds Nos. 5, 6 and 7 are general in nature and do not require any adjudication.

9. In the result, appeal of the revenue is dismissed.

10. In CO No.25/SRT/2024, the assessee has raised following grounds:

- (i) *The appeal filed by the Income tax Department is against law.*
- (ii) *The Revenue is not correct in its grounds of appeal that the appellant had received fresh funds in the form of gifts during the year and hence the provisions of section 68 are attracted. The credits in the account of the appellant on 01.04.2016 was gift by means of book entries in various companies whereby the unsecured loans and share capital in the name of his brothers Shyama Prakash Nanoo and Suseelan Nanoo were transferred to the name of the appellant and there was no fresh cash credits during the year to attract the provisions of section 68 which was confirmed by the Commissioner of Income tax (Appeals).*

- (iii) *The Revenue is not correct in its grounds of appeal that the respondent had furnished additional evidences during the appeal. Your appellant had furnished only the copies of the gift deed and ledger copies of the appellant which were the documents based on which the assessment was completed and hence there is no violation of Rule 46A(3) as claimed in the Grounds of appeal by the Revenue.*
- (iv) *The Revenue has failed to note particulars furnished as per the notice issued Commissioner of Income tax (Appeals) would fall under Rule 46(4) and in respect of these document, there was no violation of Rule 46A(3).*

It is therefore, prayed that the appeal of the Revenue may be dismissed.”

11.1 Since the appeal filed by the revenue is dismissed, the CO filed by the assessee is allowed to the extent it supports the order of CIT(A).

12. In combine result, appeal of revenue is dismissed whereas CO of assessee is allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 26/09/2025 in the open court.

Sd/-
(SIDDHARTHA NAUTIYAL)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 26/09/2025
Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्योषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

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सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत