

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.124/SRT/2025

Assessment Year: (2017-18)

(Hybrid hearing)

Madhvi Ajitkumar Ranka, 88, Sunder Nagar, Jamalpore, Navsari – 396445	Vs.	ACIT, Navsari Circle, Navsari
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AHFPR5791K		
(Appellant)		(Respondent)

Appellant by	Shri Darshit J. Naik, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	01/09/2025
Date of Pronouncement	26/11/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 30.05.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2017-18.

2. The grounds of appeal raised by the assessee are as under:

"1) Based on the facts and circumstances of the case as well as law on the subject, both lower authorities erred in making an addition of Rs.44,61,237/- on account of gifts received by the appellant and treating the same as unexplained cash credit u/s. 68 of the Income Tax Act, 1961.

2) Based on the facts of the case, both lower authorities erred in taxing the gifts to the tune of Rs.42,61,237/- which were received in earlier assessment years u/s 68 of the Act.

3) *Based on the facts and circumstances of the case as well as law on the subject, the both lower authorities erred in making an addition of Rs.14,05,000/- on account of commission/ dalali income received by the Appellant and treating the same as unexplained cash credits u/s. 68 of the Income Tax Act. 1961*

4) *Based on the facts and circumstances of the case as well as law on the subject, the both lower authorities erred in making an addition of Rs.14,05,000/- on account of commission/ dalali income received by the Appellant in utter disregard of the principle of consistency.*

5) *Based on the facts and circumstances of the case as well as law on the subject, the both lower authorities erred in making an addition of Rs.10,79,025/- on account of investment in agricultural land by treating the same as unexplained cash credit u/s. 68 of the Act, 1961, without appreciating the facts that sources of the same stood explained.*

6) *Without prejudice to Ground No.5, both lower authorities erred in doubly taxing the amount of Rs.10,79,025/- u/s 68 of the Act.*

7) *Based on the facts and circumstances of the case as well as law on the subject, the both lower authorities erred in making an addition of Rs.3,10,663/-, on account of non-deduction of tax at source u/s 40(a)(ia) in respect of interest paid on borrowed funds*

8) *Without prejudice to Ground No.4, the Appellant submits that the disallowance u/s 40(a)(ia) ought to be restricted to 30% of the amount on which tax was net deducted at source.*

The Appellant craves leave to add to, amend, alter, modify or withdraw any or all the Grounds of Appeal before or at the time of hearing of the Appeal, as they may be advised from time to time."

3. The appeal filed by the assessee is late by 184 days in terms of provisions of section 253(3) of the Act. The assessee has filed an affidavit giving reasons for delay in filing appeal before the Tribunal. In the affidavit, the assessee submitted that he had no knowledge of Income-tax law. He appointed Mr. Bhadresh Soni, tax consultant, who looked after his tax matter since past many years. His tax consultant informed him that refund was issued after completion of assessment

proceedings. Subsequently, he came to know about the levy of penalty u/s 271(1)(c) of the Act, after which he immediately informed his tax consultant. Thereafter, he approached another Chartered Accountant, Mr. Darshit J. Naik, who guided him to appeal filed before the Tribunal. He submitted that the delay was neither willful nor deliberate and circumstances beyond his control. The learned Authorized Representative (Id. AR) of the assessee requested that the delay may be condoned.

4. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue submitted that the Bench may decide the matter as it thinks fit.

5. We have heard both parties on this preliminary issue of condonation of delay. In the affidavit, the assessee stated that he was unaware of the tax proceedings and could not file appeal in time before the Tribunal. We find that there was a lack of guidance on the part his earlier tax consultant who looked after his tax matter. The delay was neither deliberate nor intentional. We, therefore, condone the delay and admit the appeal for hearing.

6. During the course of hearing, the appellant filed an application dated 03.06.2025, seeking admission of additional evidences for AY 2016-17. These additional evidences include affidavit of tax consultant sworn before a Notary, confirmations and affidavits of persons from whom gifts were received, statement of commission income, confirmations of persons from whom commission income was earned, copy of ITR and computation of Ajit Ranka (HUF), Form No. 26A

evidencing payment of tax by the payee - Ajit Ranka (HUF) on the interest paid by assessee during the year under consideration.

6.1 The appellant submitted that the aforesaid additional evidences were not furnished before lower authorities for the reason beyond her control and such non furnishing was not deliberate. The appellant further stated that she had handed over all these additional evidence to her previous tax consultant, Mr. Bhadresh V. Soni during assessment proceedings. However, her tax consultant inadvertently failed to furnish the same before the AO during the assessment proceedings. Therefore, the appellant requested to admit this additional evidence in the interests of justice. The appellant has submitted that aforementioned evidences are essential for proper adjudication of the issues in dispute.

7. The Id. Sr. DR for the revenue opposed the admission of additional evidence, stating that sufficient opportunity had been granted during assessment and appellate proceedings.

8. We have considered the contentions of both the parties and perused the material on record. We find that the additional evidence sought to be filed is relevant and crucial for proper adjudication of the issues involved in this appeal. The assessee has explained that all such documents were handed over to her earlier tax consultant during assessment proceedings, but they were not filed before the AO due to a bonafide and inadvertent lapse. The affidavit of the tax consultant placed

on record also corroborates this position. At the same time, the evidences admittedly go to the root of the additions made by the AO under sections 68 and 40(a)(ia) of the Act. These evidences are vital for verifying the identity and creditworthiness of donors, genuineness of gift transactions, source of commission income and applicability of TDS provisions on interest payments. Rule 29 permits ITAT to admit the additional evidence for any substantial cause. The intention behind the rule is that substantial justice should be done and the interest of justice should be the overriding consideration. Accordingly, the additional evidence filed by the assessee under Rule 29 of the ITAT Rules is admitted. However, since the AO did not have the benefit of examining these documents, we deem it appropriate to remand the matter back to the file of the AO with a direction to examine the additional evidence and adjudicate the issue afresh in accordance with law, after affording reasonable opportunity to the assessee.

9. Brief facts of the case are that the assessee filed return of income for AY 2016-17 on 14.10.2016, declaring the total income at Rs.NIL and the current year loss of Rs.95,52,264/-. The case was selected for scrutiny and notices u/s.143(2) and section 142(1) of the Act were issued, requesting the assessee to furnish various details. The Assessing Officer (in short, 'AO') observed that assessee has shown gift income of Rs.44,61,237/- and credited the same in her capital account. Therefore, to verify the genuineness of the gift, the assessee was requested to furnish

documentary evidences such as valid gift deed, source of gift and creditworthiness and identity of person from whom such gifts were received; however, no details with supporting documentary evidence were furnished by the assessee. Therefore, the aforesaid amount of Rs.44,61,237/- added to her total income u/s.68 of the Act.

9.1 The AO further noticed that the assessee had offered Dalali income of Rs.14,05,000/- in her P&L account. The assessee was requested to furnish evidence to substantiate the source of such dalali (commission) income; however, the assessee could not substantiate and furnish the source of such dalali income. Therefore, AO treated the aforesaid amount of Rs.14,05,000/- as unexplained cash credits and added it to her total income u/s.68 of the Act.

9.2 The AO also noticed on perusal of the balance sheet of the assessee that there was a new addition into fixed asset, i.e., agriculture land at Khadsupa ½ share of Rs.10,79,025/-. The AO requested the assessee to furnish proof and source of new addition into fixed assets. In compliance, the assessee furnished the details, however same were not found satisfactory since no documentary evidence in respect of source of investment made for purchase of property was furnished by the assessee. Therefore, AO treated the amount of Rs.10,79,025/- as unexplained cash credits and added to her total income u/s.68 of the Act.

9.3 During the assessment proceedings, the AO noticed that the assessee had paid interest on borrowed fund to Ajit R. Ranka (HUF) of Rs.2,58,750/- and of

Rs.51,913/- to Kotak Securities without deducting TDS on such interest payment. On being show caused, the assessee could not furnish any plausible explanation in respect of failure to deduct TDS on such interest payment. Accordingly, interest payment to Ajit R. Ranka (HUF) of Rs.2,58,750/- and interest given to Kotak Securities of Rs.51,913/- were disallowed as per provision of section 40(a)(ia) of the Act and added to the total income of the assessee. Accordingly, an assessment order was passed u/s.143(3) of the Act on 14.12.2018 determining total income of the assessee at Rs.69,45,262/-. In the assessment order, since all the additions were made u/s.68 r.w.s. 115BBE of the Act, therefore, the assessee was not allowed to claim any deduction for any expenditure/allowance or set off of any loss against such income.

10. Aggrieved by the aforesaid assessment order dated 14.12.2018, assessee preferred appeal before CIT(A). CIT(A) confirmed all the additions made by the AO in the assessment order. He, however, allowed set off of losses in her case for AY 2016-17, in view of CBDT Circular No. 11/2019 dated 19.06.2019.

11. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Id. AR of the assessee submitted the paper book including copy of audit report, replies filed before AO and CIT(A), ledger accounts of all the parties from whom the assessee had received gifts, ledger account of Dalali income, cash book, copy of assessment orders for AYs 2014-15 and 2015-16, cash flow statement

showing proof of source of investment in agricultural land, bank books, copy of purchase deed of agriculture land etc.

12. The Id. AR of the assessee submitted that the assessee is regularly filing her return of income since many years and the aforesaid investment of Rs.10,79,025/- in agricultural land at Khadsupa was duly reflected in her books of account. He submitted that during the course of assessment proceedings, the assessee had submitted details like copy of purchase deed, copies of bank passbooks as well as bank books of all three bank accounts. The Id. AR also submitted that the assessee had completely disclosed her investment in as much as the relevant bank account was appearing in the books of account of the assessee and therefore, the said investment cannot be termed as unexplained investment. It is further stated that the assessee was having opening bank balance of Rs.53,09,724/- as on 01.04.2015 and out of the said balance, the assessee had paid the above referred payments on 15.04.2015. Therefore, there was no case of the AO to doubt the source of investment.

12.1 As regards the additions made on unexplained gifts, unexplained commission income and disallowance of interest u/s.40(a)(ia) of the Act, the Id. AR submitted that in view of the documentary evidence submitted during the assessment proceedings and the additional evidences furnished by the assessee before the Tribunal, the additions made by the AO may be deleted in the case of assessee.

13. On the other hand, the Id. Sr. DR for the revenue relied upon the orders of lower authorities.

14. We have carefully examined the material placed before us and considered rival submissions. The additional evidences filed by the assessee have already been admitted. We notice that all the additions made by the AO u/s.68 of the Act relate to examination of factual aspects such as identity and creditworthiness of the parties and genuineness of transactions, i.e., issues to be verified by the AO upon examining relevant parties, their records, bank accounts, financial statements, ITRs etc. The additional evidences now placed on record were never examined by the AO. Similarly, the disallowance u/s.40(a)(ia) of the Act pertaining to interest paid to Ajit Ranka (HUF) requires verification of Form 26A and the payee's return, which were neither available to nor examined by the AO. The confirmation and supporting material for commission income also require factual verification.

14.1 Regarding the addition of Rs.10,79,025/- relating to investment in agricultural land, the assessee has submitted that the source was fully recorded in her books and was traceable to opening bank balances. The assessee filed bank books, passbooks and purchase deed. These records form part of the paper book and some were produced before the AO, which were not found sufficient. The additional evidences filed before the Tribunal would help the AO to properly appreciate the explanation after factual verification.

15. In view of the above and considering the additional evidence, we deem it appropriate to restore all issues to the file of the AO for fresh examination and order in accordance with law. The AO shall afford adequate opportunity of being heard to the assessee and shall pass a speaking and reasoned order on all issues in accordance with law. Accordingly, the appeal of the assessee is allowed for statistical purposes.

16. We clarify that this remand is to enable proper appreciation of evidence and shall not be construed as the Tribunal expressing any view on the merits of the additions.

17. In the result, the appeal is allowed for statistical purposes.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 26/11/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 26/11/2024

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

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By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat