

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI JOGINDER SINGH, JUDICIAL MEMBER

ITA No. 7127/MUM/2011
(Assessment Year : 2007-08)

Mrs. Anita Raj Hingorani,
8, Nibhana, Palli Hill,
Bandra (W),
Mumbai 400 050 ... Appellant
PAN:AASPH 2436H
Vs.
The Income Tax Officer 11(1)(1)
Aaykar Bhavan,
M.K.Road, Mumbai 400 020 Respondent

Appellant by : Shri Sanjeiv M. Shah
Respondent by : Shri Pramod Nikale

Date of hearing : 03/02/2016
Date of pronouncement : 16/03/2016

ORDER

PER G.S. PANNU,AM:

The captioned appeal by the assessee is directed against the order of CIT(A)-3, Mumbai dated 22/09/2011, which in turn has arisen from the order passed by the Assessing Officer dated 30/12/2009 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act'), pertaining to the Assessment Year 2007-08.

2. The only issue in this appeal relates to an addition of Rs.7,62,367/- made by the income tax authorities on account of unexplained cash credit under section 68 of the Act.

3. In brief, the facts are that appellant is an individual who filed her return of income for the assessment year 2007-08, declaring an income of Rs.8,55,050/-, which was subject to a scrutiny assessment. In the course of assessment proceedings, the Assessing Officer noted that in the balance sheet as on 31/03/2007, assessee had reported an outstanding loan of Rs.7,62,367/- in the name of M/s. Savvy Designs, a proprietary concern of her husband Shri Sunil Hingorani. It was further noted by Assessing Officer that on verification of the balance sheet of her husband, Shri Sunil Hingorani, there was no corresponding debit entry. As a consequence, the assessee was show caused as to why such credit be not treated as unexplained within the meaning of section 68 of the Act.

3.1 Before Assessing Officer, it was explained that the amount was received as loan from the proprietary concern of the husband in earlier years, but it transpires that in the books of account of the husband, the said amount was shown as gift in earlier years and, therefore, the books of account of husband did not show any corresponding entry in the year under consideration. It was further asserted that it is a case of transaction between a husband and wife, where by mistake the transaction amount has been shown as loan in the hands of the assessee instead of gift and in any case it does not affect the computation of income. The Assessing Officer did not accept the explanation furnished by the assessee on the ground that the plea of

the amount being treated as gift by husband was an afterthought and, therefore, it was an unexplained cash credit within the meaning of section 68 of the Act. The said stand of the Assessing Officer has since been affirmed by the CIT(Appeals), against which the assessee is in further appeal before us.

4. Before us, the Ld. Representative for the assessee has primarily reiterated the explanation furnished before the lower authorities. Apart therefrom, the Ld. Representative for the assessee pointed out that the discrepancy, if any, was in the Books of account of the husband and that cannot defeat the explanation rendered by the assessee. It was also pointed out that the explanation, which was duly supported by the confirmation from the husband has been unjustly rejected, in as much as, other confirmations from the husband for other transactions have been accepted.

5. On the other hand, Ld. Departmental Representative has relied upon the reasoning adopted by the Assessing Officer in support of the case of the Revenue, which we have already adverted to is not being reproduced for the sake of brevity.

6. We have carefully considered the rival submissions. Quite clearly, in the present case, section 68 of the Act has been invoked by the Assessing Officer to make the addition of Rs.7,62,367/-. In the balance sheet filed by the assessee, the said sum was reflected as loan outstanding from assessee's husband, Shri Sunil Hingorani (Proprietor of M/s. Savvy Designs). There is no dispute to the fact that such sum has not been received during the year. It is also not in dispute that the

said amount was received by the assessee from her husband in earlier years. The only point of difference is that in the balance sheet it has been portrayed as a loan received in earlier years, whereas in the books of account of her husband, the said sum was not appearing in the balance sheet as it was treated as a gift in the earlier years itself. We find that after Assessing Officer rejected her explanation, the appellant furnished a gift confirmation before the CIT(Appeals), but the same has been out-rightly rejected. In our considered opinion, the CIT(Appeals) ought to have considered the gift confirmation filed by assessee's husband because the same was in fact reiteration of the explanation which was already before the Assessing Officer. Having regard to the entirety of facts and circumstances of the case, in our view, explanation rendered by the assessee has been unjustly rejected by the lower authorities and, therefore, the impugned addition made by invoking section 68 of the Act is unsustainable. We hold so. We, therefore, set-aside the order of CIT(Appeals) and the Assessing Officer is directed to delete the addition of Rs. Rs.7,62,367/-.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 16/03/2016

Sd/-

(JOGINDER SINGH)
JUDICIAL MEMBER
Mumbai, Dated 16/03/2016

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai

	Details	Date	Initials	Designation
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