

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.378/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

Smt.Porkodi,
No.2B/8, DABC Mithilam Apartments,
Sir Ram Nagar, Main Road,
Nolambur, Chennai.
[PAN: BKEPP 7297 M]
(अपीलार्थी/Appellant)

v. The Income Tax Officer,
Non-Corporate Ward-8(3),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.D.Anand, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 26.09.2022
घोषणा की तारीख /Date of Pronouncement : 14.10.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 21.03.2022 and pertains to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

The Order of the Hon'ble Commissioner of Income Tax (Appeals), NFAC, vide Order reference ITBA/NFAC/S/250/2021-22/1041151277(1), dated 21.03.2022, is against the facts of the case, weight of evidence on record and principles of natural justice.

Grounds:

Addition of Unexplained money U/S.69A

*The Hon'ble CIT(Appeals), NFAC, has failed to appreciate the fact of the case, in confirming the addition of cash deposits to the tune of Jj*s.17 Lakhs (out of Rs.18.*

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Lakhs total addition made by the learned AO) as unexplained money U/S. 69A r.w.s 115BBE of the Act. of the Income Tax Act, without considering the evidence produced, materials on record.

The Appellant may kindly be permitted to adduce any other relevant grounds at the time of hearing of this appeal.

For these and other grounds which might be urged to be allowed at the time of hearing, the Appellant humbly prays that Hon'ble Members of Tribunal, be kind enough to consider the facts and circumstances and be kind enough to direct the learned Assessing Officer to quash the arbitrary order adding the cash deposit to the tune of Rs.17 Lakhs as unexplained money U/S. 69A r.w.s.115BBE of the Act. of the Income Tax Act. and render justice.

3. The brief facts of the case are that the assessee had filed return of income for the AY 2017-18 on 03.08.2018 admitting total income of Rs.12,990/-. The case was selected for limited scrutiny to verify large cash deposits during demonetization period. During the course of assessment proceedings, the AO noticed that the assessee has deposited a sum of Rs.18 lakhs to bank account during demonetization period. The assessee was called upon to explain the source for cash deposits, for which, the assessee explained that a sum of Rs.7.5 lakhs cash deposits is made out of her own savings. Further, a sum of Rs.4.5 lakhs has been received as marriage gift from her brother for daughter's marriage. She also explained a sum of Rs.8 lakhs received as lease advance for property in the name of her daughter. Further, balance sum of Rs.6 lakhs was withdrawn from the very same bank account prior to demonetization period. The AO, however, was not satisfied with the explanation furnished by the assessee and according to the AO, although the assessee claims to have deposited cash out of her own savings of Rs.7.5 lakhs, but on perusal of capital account/balance amount, the assessee does not have opening cash balance to show savings of Rs.7.5

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lakhs. Therefore, rejected the arguments of the assessee and also the AO rejected the gift received from her brothers amounting to Rs.4.5 lakhs on the occasion of marriage of her daughter on the ground that the donor has not confirmed the gift. The AO had also rejected source out of lease deposit received from Mr.Babu for lease of property in the name of her daughter. The AO had also rejected cash withdrawals from the very same bank account on earlier occasions on the ground that there are no previous cash withdrawals prior to demonetization period. Therefore, confirmed the addition of Rs.18 lakhs towards cash deposits during demonetization period u/s.69A of the Act. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeeded. The Ld.CIT(A), NFAC, Delhi, vide its order dated 21.03.2022, allowed partial relief to the assessee towards cash deposits and out of total cash deposits of Rs.18 lakhs, deleted a sum of Rs.1 lakh towards cash available with the assessee before demonetization period and thus, confirmed remaining balance of Rs.17 lakhs, and has considered as unexplained money u/s.69A of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee referring to copy of lease agreement dated 07.08.2016 submitted that Mrs.Aarthi, daughter of the assessee, owned a property at No.4B/14, DABC Mithilam Apartments, 4th Floor, Sriram Nagar Main Road, Nolumbur, Chennai, and the same has been leased out to Mr.Babu and received lease deposit of Rs.8 lakhs in cash. The

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Ld.AR further referring to Rental Agreement dated 01.08.2018 between the daughter of the assessee and Mr.Babu submitted that prior to entering into rental agreement, assessee has leased out the property and received lease deposit in cash and the same has been given to her mother. Therefore, the AO is erred in rejecting source out of lease deposit for cash deposits made during demonetization period. The Ld.AR further referring to marriage Invitation Card of assessee's daughter submitted that during marriage, they have received a sum of Rs.4 lakhs from various persons as gift and the same has been given to her mother and mother has deposited cash into bank out of marriage gift. Further, the assessee had also received Rs.4 lakhs from her brother as marriage gift on the occasion of marriage of her daughter, for which, they have filed Affidavit confirming the gift. Therefore, he submitted that although the assessee has explained source for cash deposits, the AO has ignored all evidences filed by the assessee and made addition towards cash deposits as unexplained money u/s.69A of the Act.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that so called lease agreement between the daughter of the assessee and Mr.Babu is a make belief story, which is evident from the fact that the assessee's daughter had entered into rental agreement with Mr.Babu for very same property from 01.08.2018 and the stamp papers bears name of Mrs.Aarthi. If you see stamp paper taken for drafting lease agreement, there is no name of the assessee's daughter. Therefore, from

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the above it is very clear that stamp paper is used for lease agreement, is fake and the assessee has fabricated the document to create evidence for cash deposits. Therefore, the same should not be accepted. The Ld.DR further referring to details of marriage gift received by the assessee submitted that if you see the amount of marriage gift received from various persons, there is no evidence, as to whether, the assessee has received marriage gift in Specified Bank Notes alone. Therefore, the same cannot be accepted as source for cash deposits. The Ld.DR further submitted that the assessee also could not able to satisfactorily explained the gift received from her brothers on the occasion of her daughter's marriage. Therefore, the same should not be accepted as source for cash deposits.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has made cash deposits during demonetization period. In fact, the AO had gathered information from the banks, as per which, the assessee has deposited cash into bank account during demonetization period. The assessee has explained source for cash deposits. The first explanation of the assessee towards cash deposits is out of lease deposit received from Mr.Babu for the property in the name of her daughter. We have gone through the copy of Lease Deed between Mrs.Aarthi and Mr.Babu and as per the said Lease Deed, the daughter of the assessee received a sum of Rs.8 lakhs in cash. The assessee claimed that said sum of Rs.8 lakhs was received from her

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daughter and deposited into bank account. We find that the AO has not disbelieved Lease Deed entered into by the daughter of the assessee with Mr.Babu. Although, the AO and Ld.DR questioned the authenticity of Lease Deed, but it is only doubt expressed by the AO. Therefore, on that basis, the evidence filed by the assessee cannot be ignored. Therefore, we are of the considered view that the AO erred in not considering the lease deposit received in cash as source for cash deposits during demonetization period and thus, we direct the AO to accept lease deposit as source for cash deposits during demonetization period and delete a sum of Rs.8 lakhs out of total addition made u/s.69A of the Act.

7. Coming back to claim of marriage gift, the assessee claims to have received a sum of Rs.4 lakhs as marriage gift on the occasion of her daughter's marriage. The assessee has filed list of donors. As per which, the assessee claims to have received marriage gift from about 400 persons. Except a statement, the assessee could not file complete address and other particulars of donors. Therefore, it is difficult to accept the claim of the assessee that she had received Rs.4 lakhs marriage gift on the occasion of her daughter's marriage. However, fact remains that it is a customary in India that during marriages guests and relatives will give gift depending upon their social status and economic condition. Therefore, we cannot fully ruled out the claim of marriage gift received by the assessee on the occasion of her daughter's marriage. Therefore, considering the fact that there is a custom in India to give and receive marriage gifts, we are of the

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considered view that the assessee can be given benefit of a sum of Rs.2 lakhs as marriage gift received on the occasion of her daughter's marriage. Therefore, we direct the AO to accept source for cash deposits out of marriage gift received amounting to Rs.2 lakhs and delete the addition to that extent made u/s.69A of the Act.

8. As regards marriage gift claim to have been received from Mr.Madhu, a sum of Rs.2 lakhs and Mr.Raja, a sum of Rs.2 lakhs on the occasion of her daughter's marriage, the assessee claimed that her brothers given two lakhs each as marriage gift on the occasion of her daughter's marriage, for which, the assessee has filed Sworn Affidavit filed by Mr.Madhu & Mr.Raja. We find that first of all so called Affidavit filed by donors claiming given marriage gift to her daughter on 19.05.2016, they have used stamp papers purchased on 13.07.2022. Therefore, on this basis itself the claim of marriage gift from her brothers cannot be accepted. However, fact remains that it is also a customary in India that during marriages brothers will give some money to their sisters depending upon their social status and economic condition. Therefore, the claim of the assessee that she has received marriage gift from her brothers cannot be totally ruled out. Therefore, considering the facts and also custom prevailing in India, we are of the considered view that a reasonable amount of marriage gift claimed by the assessee, can be allowed. Therefore, we direct the AO to allow source for cash deposits out of marriage gift received from her brothers to the extent of Rs.2 lakhs and delete the addition made u/s.69A of the Act,

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towards cash deposits to the extent of Rs.2 lakhs out of marriage gift received from her brother.

9. To sum up, out of total cash deposits of Rs.17 lakhs additions made by the AO and confirmed by the Ld.CIT(A), the assessee could able to explain source to the extent of Rs.12 lakhs being Rs.8 lakhs lease deposit received in cash, a sum of Rs.2 lakhs received on the occasion of her daughter's marriage as gift and further, a sum of Rs.2 lakhs received from her brothers as marriage gift. Thus, we direct the AO to delete the addition made u/s.69A of the Act, to the extent of Rs.12 lakhs and balance sum of Rs.5 lakhs, the assessee could not explain any source and thus, we direct the AO to sustain the addition to the extent of Rs.5 lakhs made u/s.69A of the Act.

10. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on the 14th day of October, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 14th October, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF