

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

**ITA No.515/Mum/2024
Assessment Year: 2021-21**

Abul Wais Abdus Salam Gala No. 17, MBK Compound M/S A-1 Trading Co, Khairani Road, Sakinaka, Mumbai- 400072. PAN: AAAPA 7242 C	Vs.	ITO, Ward-41(1)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya
Revenue by : Shri R.R. Makwana, SR. DR

Date of Hearing : 11.06.2024

Date of Pronouncement : 16.08.2024

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:

1. ITA 515/Mum/2024 is filed by Abul Wais Abdus Salam for A.Y. 2021-22 against the appellate order passed by the National Faceless Appeal Centre, Delhi ('Id. CIT(A)') dated 17.11.2024 wherein the appeal filed by the assessee against the rectification order passed u/s 154 of the Income-tax Act, 1961 ('the Act') on 29.07.2022 by the Central Processing Centre ('the Id. Assessing Officer') was dismissed.

2. The assessee aggrieved and has preferred this appeal raising following grounds:

"i. The Id. CPC erred in adding the amount of Rs. 20,00,000/- to the total income of the assessee where the amount was received by the assessee from his real brother (being an NRI) as a gift out of natural love and affection.

ii. The ld. CPC erred in adding the amount of Rs. 40,504/- to the total income of the assessee which is already considered in the respective head of income from other sources and considered for the computation of total income.

iii. The ld. CIT(A) erred in confirming interest under section 234B and 234C of the Income Tax Act 1961.

iv. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

3. The brief fact of the case shows that assessee is an individual, proprietor of A-1 Trading Company engaged in the business of trading in plastic granuals. He filed his return of income on 01.01.2022 declaring total income of Rs. 19,88,600/-.
4. This return was processed. The income of the assessee is computed at Rs. 40,29,099/-. The CPC computed the business income at Rs. 39,88,595/- where the appellant has shown business income of Rs. 19,48,091/-. The addition is with respect to gift received of Rs. 20,00,000/- from non-resident brother of the assessee. Further, a sum of Rs. 40,500/- has been taxed double as income from other sources of income.
5. The assessee preferred an application u/s 154 of the Act. However, the order u/s 154 of the Act was passed on 02.08.2022 rejecting request for rectification.
6. The assessee filed before National Faceless Appeal Centre raising the ground of appeal that gift received from brother of the assessee who is resident of UAE of Rs. 20,00,000/- has been considered as income of the assessee whereas the addition was shown as exempt receipt. Further, a sum of Rs. 40,500/- has been taxed double. Assessee submitted the passport of the brother

of the assessee and the copies of cheques issued by him, and bank statements of his brother. The Id. CIT(A) held that though assessee has proved identity but has not discharged the genuineness of the above gift, therefore, in the absence of creditworthiness of the donor and genuineness the Id. AO has correctly added the income. With respect to the double addition of Rs. 40,500/-, he directed the AO to verify and allow the deduction. Accordingly, the appeal of the assessee was dismissed.

7. Aggrieved with the same, assessee is in appeal before us. The assessee has submitted a paper book containing 55 pages wherein assessee has given copies of 3 cheques issued by the donor, passport of the donor and gift deed. The assessee submitted that Mr. Abul Khair Shaikh, brother of the assessee, is a non-resident Indian carrying on the business of laundry services in Dubai for last more than 25 years and has given a gift of Rs. 20,00,000/- of his natural love and affection to the assessee. He further submitted that the gift is received by 3 cheques from Bank of Baroda Account and ICICI Bank. In the audit report, assessee has clearly shown that the above sum is gift from his brother which is excluded u/s 56(2)(x) of the Act. The relevant extract of non-resident external bank statement of the assessee was also submitted. Thus, for the purpose of identity, assessee submitted passport and investor class visa of the donor, for creditworthiness the copy of the non-resident external bank account of the donor and to prove the genuineness, assessee submitted gift deed dated 26.08.2022, therefore, he submitted that assessee has submitted complete details of the donor and therefore, same is not income of the assessee. He relied upon the several judicial precedents. With

respect to the second addition of Rs. 40,500/-, he referred to the computation of income, Form No. 3CB and rectification order to show that the above sum is about interest which has already been included in the computation of total income and, therefore, same amount to double addition.

8. The Id. Departmental Representative vehemently supported the orders of the Id. lower authorities and stated that though assessee has established the identity of the person who donated Rs. 20,00,000/- but creditworthiness and genuineness of the transaction is not proved. Therefore, there cannot be any infirmity in the orders of the Id. lower authorities.
9. We have carefully considered the rival contentions and perused the orders of Id. lower authorities. We find that assessee individual filed his return of income on 01.01.2022 declaring total income of Rs. 19,88,600/-. In the computation of income, assessee has already disclosed income from other sources being interest income of Rs. 40,500/- which has been once again added by the Id. AO while processing the return. Therefore, same is double addition. The Id. CIT(A) directed the AO to verify and allow the claim of the assessee. We find that there is no need of verification when the relevant document submitted by the assessee clearly shows that there is a double addition of the income. Accordingly, we direct the Id. assessing officer to delete the addition of Rs. 40,500/- to the total income of the assessee. Accordingly, ground no. 2 of the appeal is allowed.
10. Coming to ground no. 1 where the addition of Rs. 20,00,000/- is challenged, we find that in the audit report in Form No. 3CB,

assessee has mentioned that there is gift from his brother of Rs. 20,00,000/- which is an exempt gift under the provisions of section 56(2)(x)(a) of the Act. However, the above amount was shown in Column No. 16(d) stating that amounts not credited to the profit and loss account. In fact, it should have been disclosed in clause no. 16(e). However, the fact remains that assessee has received the gift of Rs. 20,00,000/-.

11. On 10.02.2021 cheque no. 169511 of Rs. 5,00,000/- was received from Bank of Baroda NRE Account No. 15427 of Mr. Abul Khair Shaikh. On 16.02.2021 by cheque no. 169512 Rs. 10,00,000/- was received from the same bank account and on 15.02.2021 by cheque no. 000135 from ICICI Bank Account No. 1 was received. Thus, the total sums received were Rs. 20,00,000/-.
12. This sum was received from Mr. Abdul Salam Shaikh where the name of the mother is Azarunnisa, name of the father is Abdul Salam Murtuza Shaikh. The name of the father of the assessee and the name of the donor is the same. Therefore, it cannot be denied that assessee and the donor are the real brothers.
13. The bank account of the donor from Bank of Baroda and from ICICI Bank are also submitted. The Bank of Baroda account is NRE Savings Bank Account of the donor from which the available fund shows that cheques have been issued out of the funds available with the donor. Similarly, the ICICI Bank Account also shows that assessee has continuous balance available for last several months.

14. As such the gift from a brother is not chargeable to tax in the hands of the assessee being relative. Assessee has proved identity, creditworthiness and genuineness of the gift received as well as relationship with Donor.
15. Therefore, the amount of Rs. 20,00,000/- received by the assessee clearly shows that above amount is not the income of the assessee. Despite above information being available with the lower authorities, an addition is made to the total income of the assessee. In view of the above facts, we direct the ld. Assessing Officer to delete the addition of Rs. 20,00,000/- in the hands of the assessee being gift received from his non-resident brothers whose identity, creditworthiness and genuineness is proved. Accordingly, ground no. 1 of the appeal is allowed.
16. Ground no. 3 is consequential in nature and therefore dismissed.
17. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 16.08.2024.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Mumbai, Dated: 16.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:

3. The CIT,

4. The DR

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By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai