

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.500/Mum/2024
(Assessment Year 2011-12)**

DCIT, CIRCLE-41(1)(1), Mumbai Room No.623, Kautilya Bhavan BKC, Mumbai-400 051	vs	Lalita Devi Agarwal C-602, Lakshchandani Heights, Gokuldham, Goregaon East Maharashtra-400 063 PAN: AJRPA4123A
APPELLANT		RESPONDENT

Assessee by : Shri Gautam Thacker
Respondent by : ShriSuresh Periaswamy (SRDR)

Date of hearing : 28/11/2024
Date of pronouncement : 02/12/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the revenue was filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2011-12, date of order 06.12.2023. The impugned order was emanated from the order of the Ld. Assistant Commissioner of Income-tax-31(2), Mumbai (in short, 'the A.O.') passed under section 143(3) read with section 147 of the Act, date of order 22/12/2018.

2. The revenue has taken the following grounds of appeal:-

1. *"Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in allowing appeal of the assessee wherein assessee has claimed the entire amount of Rs.3crore as Gift received from her son, "*

2 *"Whether on facts and circumstances of this case, the Ld, CTT(A) has erred in deleting the addition of Rs. 3 crore made u/s. 68, without appreciating the fact that the AO has made due diligence by issuing summons u/s. 133(1A) to M/s. Mangalam Vanijya Pvt Ltd., however the same was returned back 'UNCLAIMED'."*

3. *"Whether on facts and circumstances of the case, the Ld. CIT(A) has erred by considering the money received by the assessee as a Gift to be genuine, without appreciating the fact that the part of the Gift money has been returned back to her son by the assessee in the A.Y. 2013-14"*

4. *"Whether on facts and circumstances of the case, the Ld.CIT(A) erred in treating the entire Gift money to be genuine, without appreciating the fact the Hedge fund operated by her son was banned by SEBI to operate in the Indian Market and that the unsecured loan of Rs. 2.7 crore given to M/s. Manglam Vanijya, Pvt, Ltd, .is a colorable device to invest in Indian Security market."*

5. *"The appellant craves leave to add, amend, and alter any grounds of appeal."*

3. The brief facts of the case are that the assessee was non-filer in impugned assessment year. The case was reopened on the basis of information received from DIT(investigation) and notice u/s 148 was issued to assessee. In response to the same the assessee filed her return on 08.08.2018 declaring an income of Rs 18,840/-.During the reassessment proceeding, the Id. AO asked the genuineness of the transaction related to the gift received by the assessee amount to Rs.3 Crores from her son Shri. Barun Agarwal, an NRI, by way RTGS. Total amount of Rs.3 Crores was received by the assessee from her son on 14.03.2011, 17.03.2011 as a gift. The assessee gave unsecured loan of Rs.2.7 Crores to M/s. Mangalam

Vanijya Ltd. on 04.06.2011 and also purchased its shares. The assessee received some principal amount with interest from this company during A.Y. 2011-12. A summon u/s 133(1A) of the Act was issued to M/s. Mangalam Vanijya Ltd. calling for certain details/documents, which was returned back by the postal authority with a remark unclaimed. Further, after examination of the evidence forwarded by Dy. Director (Inv)-II, Ranchi, it was found that not only the assessee but her husband, Sh. Bishwanath Agarwal, also have received sum of Rs.3 Crores from her son, Shri Barun Agarwal. From these gifts, husband and wife both invested amount to Rs.2.7 crores to M/s. Mangalam Vanijya Pvt. Ltd as unsecured loan and also purchased some shares. Further M/s. Mangalam Vanijya Pvt. Ltd. repaid some principal as well as interest and from these receipts of assessee and her husband. The said amount was transferred by the parent to their son, Sh. Barun Agarwal. Finally, the assessment was framed u/s 144 of the Act. The A.O. added the amount of Rs 3,00,00,000/- as unexplained cash credit u/s 68 of the Act for absence of creditworthiness of donor i.e. son of the assessee. The aggrieved assessee challenged the assessment order before the Ld. CIT(A). On appeal, the Ld.CIT(A) decided the issue in favour of the assessee. Aggrieved by the appellate order, the revenue has filed the appeal before us.

4. The Ld.DR vehemently agued and placed that in the assessment the addition is confirmed amount to Rs.3 crores related to the gift from assessee's son which is lack of creditworthiness. The genuineness of the transaction is not a question here, but the addition under section 68 was confirmed due to the absence of creditworthiness of the donor. Further, he stated that the donor's fund was generated from the hedge fund, which was banned in India by the SEBI.

Therefore, he fully relied on the impugned assessment order and prayed for dismissing the impugned appeal order.

5. The Ld.AR argued that the assessee had complied the notices and shifting her onus by submitting the bank details and the identity of the donor. He stated that related to the creditworthiness, there is sufficient balance in the bank account of the donor at the time of gift. The son gifted the amount to his mother and the bank entries are reflected on 14/03/2011 and 17/03/2011 amount to Rs.1.5 crore each. The Ld.AO asked for the return for 3 years of the donor, but it is evident that the donor was an NRI, and no return was filed in India. He finally stated that the assessee adduced the evidence by submitting the bank account and the identity of donor. It is pertinent to mention that gift was executed in relation mother and son. The allegation made by the Ld.AO is totally baseless which is on the basis of the report from the daily local newspaper. The Ld.AR fully relied on the impugned appeal order, paragraphs 7.3 to 7.5 which are reproduced as below: -

"7.3 The Burden of proof is on the assessee who is required to offer an explanation to the satisfaction of the Assessing Officer so as not to attract the mischief of section 68 or for that matter section 69A. From a careful perusal of the judicial decisions on the subject, it is established that primary onus to prove the source of the money and necessary evidence to support credit entries u/s 68 of the Act is on the assessee. However once the materials have been furnished and explanation is given, it is incumbent on the assessing officer to make further enquiries Hindustan Tea Trading Co. Ltd. vs CIT 263 ITR 289 (Kol) once the assessee has discharged and adduced evidence to establish prima facie the aforesaid, the onus and simultaneously adduced evidence to establish prima facie the aforesaid, the onus shifts on the Department. Further once the assessee has

produced the materials and an explanation that are comprehensive and not inaccurate then the onus shifts to the Assessing Officer to start making enquiries and it is incumbent on the A.O to make proper enquiries.

7.4 In this case it is seen that the amount received was from the son of the appellant by way of gift in support of which the appellant had submitted a declaration of gift from the son as well as the bank statement of the son showing the transfers to the mother. Thus, prima facie, the appellant had indeed submitted the necessary details as well as an explanation regarding the monies received. The A.O has not pointed out any infirmity in these documents. The A.O instead has acted on conjecture and surmise firstly by saying that the son Shri Barun Agarwal had also given a similar gift to the father. This fact has no bearing on the case at hand. If the son had sufficient means, he is well within his right to give gifts to his parents independently. It is the genuineness of the gifts which is the issue in point and whether Shri Agarwal also gave a gift to his father or not is immaterial. Looking at the creditworthiness of the son to provide these gifts, from the bank statement it is seen that there was an opening balance of Rs 2.54 crores before any of the gifts were given and subsequently even after giving the gift to the appellant and her husband there was a positive balance. The amount of Rs 3.5 crores were transferred into the CITI bank account which was from his Hongkong account. The A.O has himself noted in the order that Mr. Barun Agarwal was in fact a well-known hedge fund operator who had risen to prominence in Hong Kong and hence would have the capacity to transfer these amounts of monies into his Indian account. The fact that SEBI had banned the fund due to insider trading does not impact his ability or creditworthiness to give the gifts to his parents. Furthermore, it is seen that the A.O asked the appellant to provide the ITRs of the last 3 years. This was unwarranted since son was an NRI since FY 2004-05 and hence as per the provisions of the All the income earned outside India would not be taxable here. Also it is noted that vide letter dated 23.11.2018, which is reproduced in the order, the appellant has informed the A.O

that it was not receiving the notices as the notices were being sent to the Ranchi address where she was no longer residing and had requested to send them to the Mumbai address which had been updated on the portal, and the screen shot of the same was also send in the letter. Even so, once the basic details had been provided by the appellant it was incumbent of the A.O to prove them otherwise, by making independent enquiries which he did not do.

7.5 Thus taking all the facts and circumstances of the case into consideration, it is held that the appellant had discharged the onus cast upon her under the provisions of section 68 of the Act. Accordingly, the addition of Rs 3 crores is deleted and the Grounds of Appeal are Allowed.”

6. It is further stated by the Id. AR that the Id. AO alleged about the donation of hedge fund in India by the foreign national. But the ban was duly withdrawn by the SEBI. This restriction is not vitiated the gift. There was sufficient balance in donor's bank account before and after transferring the gifted amount to mother. The onus was shifted to the Id. AO by submitting the evidence and the Id. AO had never rejected the evidence submitted by the assessee during the assessment proceeding.

7. We have heard the rival submissions and carefully considered the documents available on record. The assessee received the impugned gift from her son, who is a NRI. The details of the bank transfer were submitted to the Ld. AO, and these documents clearly established that the donor had sufficient funds to make the gift. Copies of the relevant bank account statements have been annexed at **APB pages 31-34**. With respect to the SEBI guidelines referenced, the Ld. AR submitted that the SEBI order imposing the alleged ban was duly withdrawn. Despite this, for the purpose of making the addition, the Ld. AO primarily relied on information sourced from a Google search and local

newspaper reports, without conducting any cross-verification or independent inquiry to substantiate the claims. The addition appears to have been made in a baseless manner, solely relying on unverified newspaper reports. Notably, the evidence provided by the assessee was not rebutted or discredited by the Ld. AO. The genuineness of the gift has not been questioned, and the donor's financial capacity to provide the gift was sufficiently demonstrated. The donor's bank account showed adequate funds at the time of executing the gift, thereby establishing creditworthiness.

The Ld. AO appears to have undertaken verification through online searches and local media reports about the donor, but even these steps did not provide conclusive evidence to challenge the donor's credibility. The actions of the assessee for investing the gifted amount in an Indian company and subsequently receiving and returning the funds to the donor are unrelated to the issue of addition under Section 68 of the Act.

The Ld. DR was unable to provide any evidence or bring forth any material to contradict the submissions of the Ld. AR. Upon review, we find no infirmity in the appellate order under challenge. Therefore, the grounds raised by the revenue are dismissed.

8. In the result, the appeal of the revenue bearing **ITA No.500/Mum/2024** is dismissed.

Order pronounced in the open court on 02nd day of December 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 02/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**