

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.39/Hyd/2022		
Assessment Year: 2016-17		
Ms. Aarthi Rathi Maharashtra PAN:ABAPR7322K (Appellant)	Vs.	Income Tax Officer (International Taxation)-2 Hyderabad (Respondent)
Assessee by:	Nishitha Mandalaywala	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	13/07/2022	
Date of pronouncement:	28/07/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 28.01.2022 of the learned CIT (A)-10, Hyderabad relating to A.Y.2016-17.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income for the A.Y 2016-17 on 5.8.2016 admitting total income of Rs.1,27,330/-. Subsequently, the case of the assessee was selected for complete scrutiny through CASS on the ground of large exempt income. The Assessing Officer thereafter issued statutory notice u/s 143(2) to the assessee. However, there was no response from the side of the assessee. The Assessing Officer during the course of

assessment proceedings noted that the assessee is a Non-Resident Indian and filed her return of income declaring income of Rs.1,27,330/- from house property besides claiming exempt income of Rs.1,01,00,419/-. Since there was no response from the side of the assessee to the statutory notices issued by the Assessing Officer, the Assessing Officer completed the assessment u/s 144 of the I.T. Act by making addition of Rs.1,01,00,419/- and determined the total income at Rs.1,02,27,739/-.

3. Before the learned CIT (A), the assessee filed some additional evidences under Rule 46A of the I.T. Rules. It was submitted that since no notice was received by the assessee, she could not file the evidences before the Assessing Officer. So far as the amount of exempt income of Rs.1,01,00,419/- is concerned, it was submitted that the same consists of Rs.1.00 crore as gift received from Smt. Nirmala Jayanarayan Rathi (Mother-in-law) which is exempt under the I.T. Act and the balance amount of Rs.1,00,419/- is share of profit from partnership firm which is exempt u/s 10(2A) of the I.T. Act. The assessee also filed the copy of gift deed and the copy of the computation of the total income of Shree Packaging Corporation where she is a partner.

4. The learned CIT (A) called for a remand report from the Assessing Officer. During the remand proceedings, the assessee filed the copies of the bank a/c of Smt. Nirmala Jayanarain Rathi, Ledger A/c of M/s. Alumilite Architecturals Pvt. Ltd, Returns of income of Ms. Nirmala Jai Narayan Rathi and also the details of Shree Packaging Corporation. The Assessing Officer filed his remand report on 26.7.2021 which was confronted to the assessee. The assessee filed additional submission and the learned CIT (A) again called for a remand report from the

Assessing Officer with certain directions. The Assessing Officer furnished his 2nd remand report dated 16.12.2021. Based on the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, the learned CIT (A) dismissed the appeal filed by the assessee. While doing so, she noted that Ms. Nirmala Jayanarayan Rathi is the mother-in-law of the assessee and has submitted return of income with the I.T. Deptt. for the A.Y 2014-15 wherein the gross total income was declared at Rs.33,24,747/- and the income tax was paid at Rs.8,57,821/-. Similarly, for the A.Y 2015-16 she has declared the gross total income at Rs.35,40,261/-and income tax paid was at Rs.9,18,536/-. For the A.Y 2016-17, the donor has submitted her return of income declaring the gross total income at Rs.31,85,436/- and income tax paid was at Rs.8,10,794/-. The assessee has received an amount of Rs.1.00 crore i.e., Rs.20.00 lakhs each via transfer (5 times) on 14.10.2015 which were sent to Smt.Aarthi Rathi. Further Smt. Nirmala Jayanarayn Rathi is also a non-resident. The bank statement furnished by the assessee shows that the dates mentioned in the gift deed and the date mentioned in the bank statement are different.

4.1 She further noted that the company M/s. Alumilite Architecturals Pvt. Ltd, has also declared income of Rs.75,58,961/- for A.Y 2014-15, Rs.98,77,739/- for A.Y 2015-16 and Rs.93,11,993/- for the A.Y 2016-17. She observed the Bank A/c of the assessee shows that the transfer of Rs.20.00 lakh each in 5 instalments to Ms. Manju Damani who is also a partner of M/s. Shree Packaging Corporation on 14.10.2014, i.e., immediately after transfer of amount from Mrs. Nirmala Jai Narayan Rathi. According to the CIT (A), the purpose of the transfer and the details of Smt. Manju Damani who is also a

partner in M/s. Shree Packaging Corporation were never furnished. Therefore, she held that the gift of Rs.1.00 crore received by the assessee is not in the nature of gift and it is only painted as a colour of gift to make it exempt from tax.

5. She further observed that even though the source of the credit is well planned, however, the nature of the transaction remains suspicious. Therefore, she sustained the addition of Rs.1.00crore made by the Assessing Officer. Similarly, she sustained the addition of Rs.1,04,419/- being the share of profit earned from Shree Packaging Corporation on the ground that the transaction is a contrived one.

6. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. On the facts and in the circumstances of the appellant's case and in Law, the Ld. CIT(A) erred in confirming the action of AO in making addition of Rs. 1,00,00,000/- in respect of gift received by appellant from her Mother-in-Law despite the fact that gift received from relative is exempt from tax.

2. On the facts and in the circumstances of the appellant's case and in Law, the Ld. CIT(A) erred in confirming the action of AO in making addition in respect of gift received by appellant from her Mother-in-Law despite having explained the nature and source of the transaction along with supporting material.

3. On the facts and in the circumstances of the appellant's case and in Law, the Ld. CIT(A) erred in confirming the action of AO of making addition of Rs. 1,00,419/- in respect of share of profit from partnership firm received by the appellant despite the fact that share of profit from partnership firm is exempt from tax.

4. The appellant craves leave to alter, amend, modify or substitute any ground or grounds and to add any new ground/ (s) as may be necessary

The appellant prays before this Hon'ble Tribunal to delete the additions made and confirmed by the Ld. CIT (A) and thus render justice to the appellant."

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case has claimed an amount of Rs.1.00 crore being the gift received from her mother-in-law and Rs.1,00,419/- as share of profit from the partnership firm namely Shree Packaging Corporation where she is a partner as exempt. Sine the assessee did not appear before the Assessing Officer, the Assessing Officer in the ex-parte order passed by him made addition of Rs.1,01,00,419/- to the returned income of Rs.1,27,330/-. We find before the learned CIT (A), the assessee filed certain additional evidences which were accepted by the learned CIT (A) and the additional evidences along with the submissions made by assessee from time to time were forwarded to the Assessing Officer who gave two remand reports. We find the learned CIT (A) after considering the remand reports of the Assessing Officer and the submissions of the assessee sustained the addition made by the Assessing Officer. While doing so, she held that the amount of Rs.1.00 crore received by the assessee from her mother-in-law as gift is not in the nature of gift and the colour is painted to the transaction to make it exempt. Similarly, without assigning any reason, the learned CIT (A) sustained the addition of Rs.1,00,419/- being the share of profit from Shree Packaging Corporation on the ground that the whole transaction is contrive. It is the submission of the learned Counsel for the assessee that the assessee has received an amount of Rs.1.00 crore as gift in five instalments of Rs.20.00 lakhs on 14.10.2015

from Smt. Nirmala Jai Narayan Rathi, mother-in-law of the assessee. The details are given at pages 11 and 12 of the order of learned CIT (A) which are as under:

S.No	Amount (Rs.)	Cheque No.	Transferred from	Transferred to
1	20,00,000	50643908	Smt. Nirmala Jai Narayan	Smt. Aarhi Rathi
2	20,00,000	50643909	-do-	-do-
3	20,00,000	50643910	-do-	-do-
4	20,00,000	50643911	-do-	-do-
5	20,00,000	50643912	-do-	-do-

8. It is her submission that the learned CIT (A) basically dismissed the appeal filed by the assessee on the ground that the dates mentioned in the gift deed and the dates mentioned in the bank statement are different, that the assessee after receiving the gift has immediately transferred the money to Smt. Manju Damani and the assessee did not furnish the purpose of the transfer and details of Smt. Manju Damani. It is her submission that when Smt. Nirmala Jai Narayan has withdrawn the money from M/s. Alumilite Architecturals Pvt. Ltd and has transferred the same to the assessee by way of gift and the gift deed and the cheque details were furnished, there should not have been any doubt regarding the identity and creditworthiness of the donor and genuineness of the transaction. Merely because there is difference between the dates in the bank statement and the date of cheque in the gift deed, the same cannot be a ground to disbelieve the gift since the cheques were presented after few days of receipt of the gift and therefore, there were minor difference in the date of cheque mentioned in the gift deed and the date of clearance in the bank statement. Once the assessee has received the gift, it is immaterial to know the purpose for which the amount has been spent or why the amount is transferred to Ms.

Manju Damani who is also a partner in Shree Packaging Corporation.

9. We find some force in the above argument of the learned Counsel for the assessee. The identity of Smt. Nirmala Jai Narayan Rathi is established since she is the mother-in-law of the assessee and also her PAN and IT returns etc., were furnished before the learned CIT (A) who in her order had given the details of her income filed in the return of income:

“9, In light of the above background, the fact of the case are analysed below:

(a) Nirmala Jai Narayan Rathi is the mother-in-law of the appellant and has returned gross total income for 2014-15 @ Rs.33,24,747/- for 2015-16 @ Rs.35,40,261 for 2016-17 @ Rs.31.85,436”.

10. Similarly, the fact that Smt. Nirmala Jai Narayan has withdrawn an amount of Rs.1.00 crore from M/s. Alumilite Architecturals Pvt. Ltd in 5 instalments of Rs.20.00 lakhs each which were transferred to Smt. Aarthi Rathi is also not in doubt since the learned CIT (A) at Para 9(b) of the order has mentioned as under:

“9(b) She has received the following amounts from M/s. Alumilite Architecturals Pvt. Ltd amounting to Rs.1,00,00,000/- i.e., Rs.20,00,000/- via transfer, 5 times on 14.10.2015 and the same were sent to Smt. Aarthi Rathi as under:

S.No	Amount (Rs.)	Cheque No.	Transferred from	Transferred to
1	20,00,000	50643908	Smt. Nirmala Jai Narayan	Smt. Aarthi Rathi
2	20,00,000	50643909	-do-	-do-
3	20,00,000	50643910	-do-	-do-
4	20,00,000	50643911	-do-	-do-
5	20,00,000	50643912	-do-	-do-

11 Therefore, once the identity and creditworthiness of the donor is established and the gift deed was duly furnished and nothing wrong has been found except the variance in the dates mentioned in the gift deed and the amount reflected in the Bank statement which is due to delay in presentation for clearance etc., the assessee, in our opinion, has established all the 3 ingredients of provisions of section 68 i.e. identity and capacity of the creditor/donor and the genuineness of the transaction. Once the gift is treated as genuine, it is immaterial what the assessee does with that money thereafter. So far as the allegation of the learned CIT (A) that the assessee did not furnish the details of Smt. Manju Damani is concerned, we find she is a Partner in Shree Packaging Corporation which fact has been admitted by the learned CIT (A) in her order. Since the assessee in the instant case has provided the identify and creditworthiness of the donor and the genuineness of the transaction, therefore, the addition made by the Assessing Officer and sustained by the learned CIT (A) of Rs.1.00 crores received as gift from her mother-in-law Smt. Nirmala Jai Narayan, in our opinion, cannot be sustained. Accordingly, the order of the learned CIT (A) on this issue is set aside and the grounds raised by the assessee are allowed.

12. Now coming to the addition of Rs.1,00,419/-being the share of profit earned by the assessee from the partnership firm M/s. Shree Packaging Corporation is concerned, the same is exempt u/s 10(2A) of the I.T. Act and it cannot be added to the total income of the assessee. Therefore, the order of the learned CIT (A) sustaining the addition of Rs.1,00,419/- being the share of profit from the partnership firm being not in accordance with law is set aside and the Assessing Officer is directed to delete the addition.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 28th July, 2022.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 28th July, 2022.

Vinodan/sps

Copy to:

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2	Income Tax Officer (International Taxation)-2 Aayakar Bhavan, Opp: LB Stadium, Basheerbagh, Hyderabad
3	CIT (A)-10, Hyderabad
4	Pr. CIT-(IT & TP), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order