

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES “SMC” : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA.No.1981/Del./2021
Assessment Year 2017-2018

Ms. Ritu Jain, 121/124, Near Nehra Park, Jagdish Colony, Rohtak – 124 001. Haryana. PAN ASRPJ5968R	vs.	The Income Tax Officer, Ward 5, Rohtak.
(Appellant)		(Respondent)

For Assessee :	Sh. Manoj Kumar, C.A.
For Revenue :	Sh. Om Prakash, Sr. D.R.

Date of Hearing :	15.06.2022
Date of Pronouncement :	21.07.2022

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A), National Faceless Appeal Centre, dated 01.11.2021 relating to the A.Y. 2017-18.

2. The relevant facts as culled out from the material on record are as under :

2.1. The assessee is an individual stated to be carrying business as Retail Trader of Women Suits and

other clothing for the past several years. Since her income is below the tax limit prescribed under section 139 of the I.T. Act, 1961, she has stated to have not filed the return of income. During the demonetization period i.e., from 09.11.2016 to 31.12.2016 relevant to the impugned assessment year under consideration, the assessee has deposited cash of Rs.12,29,500/- in Corporation Bank and Federal Bank bearing A/c.No.xxxx8000 and xxxx7514 . Therefore, the A.O. issued notice under section 142(1) of the I.T. Act, 1961 dated 10.03.2018 through electronically and manually asking the assessee to file her return of income for the impugned assessment year on or before 31.03.2018. There were no compliance from the side of the assessee. Thereafter, the A.O. received directions from JCIT, Rohtak under section 144A of the I.T. Act, 1961 vide letter dated 14.10.2019. Accordingly, A.O. issued notice electronically and manually through postal service under section 142(1) of the I.T. Act, 1961 dated 12.07.2019 along with questionnaire. In response to the notice issued under section 142(1) of the I.T. Act, 1961, the assessee filed her

reply contending *inter alia*, that she is having joint A/c with her husband in Federal Bank, Corporation Bank and Punjab and National Bank and since her husband is suffering with Blood Cancer, she deposited a sum of Rs.12,29,500/- in the aforementioned banks for meeting his medical expenses. The source of deposits was stated to be out of rental income of her husband from the property situated at Quila Road, Rohtak @ Rs.29,000/- per month i.e., for 12 months $29,000 \times 12 = \text{Rs.}3,48,000$, amounts pertains to her husband Rs.6,25,500/-, Income from clothing business of Rs.2,49,000/-, a sum of Rs.1,75,000/- from Mr. Rajesh Jain and a sum of Rs.1,80,000/- from Mrs. Kamlesh Devi who are relatives and gifted the said amounts to meet the medical expenses of her husband. The A.O. noted that since the assessee failed to file the ITRs of both Sh. Rakesh Jain and Mrs. Kamlesh Devi for the alleged gifted amounts and failed to prove the creditworthiness of the donors and genuineness of the transaction in the matter, the A.O. treated the deposits of Rs.3,55,000/- as unexplained and added it to the income of the assessee as

unexplained money under section 69A of the I.T. Act, 1961. Thus, the A.O. assessed the total income of the assessee at Rs.3,55,000/-.

2.2. Aggrieved by the order of the A.O. the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 01.11.2021 in DIN & Order No. ITBA/NFAC/S/250/2021-22/1036688014(1) confirmed the order of the A.O.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal before the Tribunal by raising the following grounds :

“1. That the honorable CIT(A)NFAC has erred in law and on facts in sustaining the addition of Rs.3,55,000.00 on illegal and untenable grounds. Hence, the addition as such may be deleted.

2. That the Ld AO has erred in law and on facts in making assessment under section 144 instead of 143(3). The honorable CIT (A)-NFAC has also erred

in sustaining the same. Hence, the assessment as such may be quashed.

3. *That the Honorable CIT(A)-NFAC has erred in law and on facts in sustaining the addition under section 69A of Rs.3,55,000.00 on illegal and untenable grounds. Hence, the addition as such may be deleted.”*

4. Before me, the Learned Counsel for the Assessee at the outset submitted that though the assessee has raised several grounds, but the sole grievance of the assessee is with reference to addition of Rs.3,55,000/- as income of assessee. The Learned Counsel for the Assessee submitted that since the husband of the assessee was suffering from cancer, Mr. Rakesh Jain, the brother of the assessee had gifted Rs.1,75,000/- and Rs.1,80,000/- was given by Mrs. Kamlesh Devi, sister of the assessee. Ld. A.R. submitted that in view of ill health of assessee’s husband, assessee’s sister had gifted the said amount out of her family savings which is generally kept by any household to meet the contingency. The Ld. A.R. submitted that the giving of gift

has been confirmed in the affidavit of the donor. He thereafter, drew the attention of the Bench with respect to the press release dated 18.11.2016 wherein the Government announced that small deposits made by housewives etc., would not be questioned by the I.T. Department in view of the fact that the present exemption of Tax is Rs.2.5 lakhs and also referred to Instruction No.03/17 dated 21.02.2017 which was SOP for verification of cash deposits. The Learned Counsel for the Assessee with respect to gifted amount of Rs.1,75,000/- from Sh Rakesh Jain submitted that he is the real brother of the assessee and he gifted the amount to meet the medical expenses of her husband. Ld. A.R. submitted that Sh. Rakesh Jain is working as Sales Executive and her wife was giving tuitions upto 10th class besides his father was having rental income of Rs.13,500/- per month and the average bank balance of Sh Rakesh Jain throughout the year is Rs.1,50,000/-. Further, in support of his contention, the Learned Counsel for the Assessee relied on the order of the Hon'ble Supreme Court in the case of M/s. Mehta Parikh & Co. vs., CIT 1956 AIR 554 copy of

the order is placed on record wherein the Hon'ble Supreme Court held that if the affidavit is not controverted then it has to be accepted as truth. Since, the A.O. has not controverted to the contents of the affidavit filed by Mrs. Kamlesh Devi and Sh. Rakesh Jain which were filed in response to notice under section 142(1) of the I.T. Act, 1961, the decision of Hon'ble Supreme Court is squarely applicable to the facts and circumstances of the case.

5. The Ld. D.R. on the other hand vehemently supported the orders of the lower authorities.

6. I have heard the Learned Representatives of both the parties and perused the material on record. I find that in the instant case the A.O. made an addition of Rs.3,55,000/- by treating gifted amount of Rs.1,80,000/- and Rs.1,75,000/- from Mrs. Kamlesh Devi and Sh. Rakesh Jain respectively as unexplained money under section 69A of the I.T. Act, 1961 without taking into consideration of the Government Instruction No.3/2017 dated 21.02.2017 and press release dated 18.11.2016 (supra) wherein the present exempt limit for income tax is Rs.2.5 lakhs. In my view, the

assessee has discharged her initial onus by proving the identity, creditworthiness and genuineness of the transactions. Therefore, the A.O. cannot insist the assessee to prove the source of source. Further, the A.O. has not pointed out any defect in the Affidavits filed by both the donors viz., Mrs. Kamlesh Devi and Sh. Rakesh Jain and, therefore, the decision of the Hon'ble Supreme Court in the case of M/s. Mehta Parikh & Co. vs., CIT (*supra*), relied upon by the assessee is squarely applicable to the facts and circumstances of the case. Further the submission of assessee that her husband was suffering from cancer and for the treatment, a lot of medical expenses was required to be incurred. The aforesaid contention of assessee has not been found to be false. It is a general practice followed that in time of medical emergencies, the near and dear ones of the family, close friends and relatives generally pool their resources to help the family in need.

6.1. Considering the totality of the facts and circumstances of the case and following the decision of Hon'ble Supreme Court in the case of M/s. Mehta Parikh &

Co. vs., CIT (supra), I am of the view that the gifts received by the assessee from her brother and sister cannot be added as unexplained income. I, therefore, direct the deletion of the addition made by the A.O. and allow the grounds of the assessee.

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

Order pronounced in the open court on 21.07.2022.

Sd/-
[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 21st July, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT “SMC” Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.