

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

I.T.A. No.: 2199/KOL/2024

Assessment Year: 2012-13

Deb Prasanna Choudhury <i>(Appellant)</i>	Vs.	ADIT/DCIT (IT)-1(1), Kolkata <i>(Respondent)</i>
PAN: AGMPC2773J		

Appearances:

Assessee represented by : D. Saha, AR and K.K. Ghorai, AR.

Department represented by : Sallong Yaden, Addl. CIT(DR).

Date of concluding the hearing : 07-August-2025

Date of pronouncing the order : 04-November-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-22, Kolkata [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2012-13 dated 13.05.2024, which has been passed against the assessment order u/s 143(3) r.w.s. 147 of the Act, dated 23.12.2019.

1.1. The Registry has informed that the appeal is barred by limitation by 105 days. The assessee submitted that he is an NRI, stays in UAE and at the time when he arrived in India due to medical conditions, could not file appeal before the Tribunal within time. After perusing the petition for condonation of delay filed by the assessee we find force in the reasons mentioned therein and are satisfied that the assessee had



a reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. The Ld. CIT(Appeal)-22, Kolkata has erred in law and in facts in confirming the Assessment Order passed by the Ld. Assessing Officer assessing the Total Income at Rs. 1,00,28,740/- only as against declared Income of Rs. 20,28,740/- only.

2. On facts and circumstances of the case, Commissioner of Income Tax (Appeal)-22/Kolkata was wrong in holding that the amount of Rs. 80,00,000.00 (Eighty Lakhs) only is liable to be taxed U/s 56(2)(vii) of Income Tax Act 1961. without appreciating the exception enshrined in the above referred Section as "Gift from Relative".

3. On facts and circumstances of the case, Commissioner of Income Tax (Appeal)-22/Kolkata was wrong in holding that the amount of Rs. 80,00,000.00 (Eighty Lakhs) only is liable to be taxed U/s 56(2) (vii) of Income Tax Act 1961. without appreciating the identity, creditworthiness and genuineness of the Doner when the transaction was executed through the normal banking channels.

4. That the appellant craves leave to add, alter, and / or amend any ground of appeal in allowing the appeal and justice be rendered.”

3. Brief facts of the case are that the assessee filed his return of income u/s 139(4) of the Act showing total income of ₹20,28,740/- with payment of tax of ₹5,50,570/-. Summons were issued u/s 131 of the Act by ADIT(Inv.), Asansol for clarification of large value transactions. The notice u/s 133(6) of the Act was responded by the assessee with supporting documents. The case was selected for re-assessment u/s 148 of the Act and income tax return was filed thereafter. The notices u/s 142(1) of the Act were issued to which the assessee responded. Accordingly, the Assessing Officer (hereinafter referred to as Ld. 'AO') passed the assessment order u/s 143(3) r.w.s. 147 of the Act assessing



the total income of the assessee at ₹1,50,28,740/- and demand of ₹69,82,460/- was also issued. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who examined the material at hand, the impugned orders, the submissions of the assessee and the orders and the decisions relied upon by the assessee and partly allowed the appeal of the assessee after dismissing Ground no. 2 relating to gift deed amounting to ₹55 Lakh.

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined.

6. The assessee is an individual and had received gift through NRE account from the spouse of his sister i.e. his brother-in-law. It was contended that the gift deed was made outside India in the USA and as per the Transfer of Property Act, the gift deed is not required in case of movable property. The transaction was executed through normal banking channel from one bank to another. The Ld. AO questioned the source of the money received from the sister's husband and the response was duly filed. It was stated that since the amount was received from the relative through banking channel, the same was not liable to be assessed at income from other sources in view of the exemption provided to the relatives as mentioned therein. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

7. We have considered the submissions made. The assessee had received the gift from his brother-in-law and any sum received from the

relative is not assessable u/s 56 of the Act. The term “relative” is defined in section 56 of the Act, which is as under:

“Income from other sources.

56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

*.
. .
. .*

*(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after **the 1st day of October, 2009 but before the 1st day of April, 2017,—***

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections :

Provided further that this clause shall not apply to any sum of money or any property received—

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer or donor, as the case may be; or

(e) from any local authority as defined in the Explanation to clause (20) of section 10; or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(g) from any trust or institution registered under section 12AA or section 12AB; or

(h) by way of transaction not regarded as transfer under clause (vib) or clause (vid) or clause (vii) of section 47.

Explanation.—For the purposes of this clause,—

(a) "assessable" shall have the meaning assigned to it in the Explanation 2 to sub-section (2) of section 50C;

(b) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;

(c) "jewellery" shall have the meaning assigned to it in the Explanation to sub-clause (ii) of clause (14) of section 2;

(d) "property" means the following capital asset of the assessee, namely:—

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

(iv) archaeological collections;

(v) drawings;

(vi) paintings;

(vii) sculptures;

(viii) any work of art; or

(ix) bullion;

(e) "relative" means,—

(i) in case of an individual—

(A) spouse of the individual;

(B) brother or sister of the individual;

(C) brother or sister of the spouse of the individual;

(D) brother or sister of either of the parents of the individual;

(E) any lineal ascendant or descendant of the individual;

(F) any lineal ascendant or descendant of the spouse of the individual;

(G) spouse of the person referred to in items (B) to (F); and

(ii) in case of a Hindu undivided family, any member thereof;

(f) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;

8. Thus, the spouse of the sister of the assessee is also covered as relative and since the assessee has filed the copy of bank account evidencing the source of gift, the same is not liable to be added in the income of the assessee. For the purpose of section 56 of the Act, there is no need or requirement of any gift deed and the Gift Tax Act is not in operation with effect from 01.10.1998. The Ld. CIT(A) deleted the addition of ₹50 Lakh as the same related to transfer from one account

to another however, as regards the gift received from the relative, he has mentioned in Ground no. 2 as under while deciding this issue:

“In the instant case, the gift deed is not even made in India but in USA and the deed also does not bear the signature of the recipient. It is also made 9 years after the transaction took place which raises the question of genuineness and validity of the gift deed. Perusal of self declaration of the donor reveals that the money acquired from selling of stocks through Indian stock exchanges but no details of stock transaction had been produced by the donor or the AR of the appellant. The gift deed also reveals that the gift was arranged from the donor's NRE account maintained in State Bank of India. However, from perusal of SBI NRE bank statement, it is seen that there are two entries of deposit on 14.12.2011 and 20.12.2011 of amount Rs. 23,41,630.36 and Rs. 55,00,000/- respectively. The transaction happened in 14.12.2011 was due to selling of HDFC Mutual Fund but the source of fund amounting to Rs. 55,00,000/- remains unexplained.

Here it is pertinent to mention that to avoid tax liability, fulfillment of Section 56 is not enough, the recipient must also offer a satisfactory explanation about the nature and source of any sum credited in his account.

In the above mentioned facts and circumstances, the claim of the appellant could not be established. Hence, the ground is dismissed.”

9. It is observed that the Ld. AO questioned the validity of the gift deed made in USA without examining whether the source of the amount received from the relative was validly explained or not. The Ld. CIT(A) also decided the appeal by relying upon the fact that the gift deed was not made in India but in USA and the deed also does not bear the signature of the recipient. However, from perusal of SBI NRE bank statement it is seen that there are two entries of deposit on 14.12.2011 and 20.12.2011 of amount of ₹23,41,630/- and ₹55 Lakh, respectively. The transaction happened in 14.12.2011 due to selling of HDFC Mutual Fund but the source of fund amounted to ₹55 Lakh remained unexplained. It is stated that to avoid the tax liability, fulfilment of section 56 of the Act is not enough, the recipient must also offer a

satisfactory explanation about the nature and source of any sum credited in his account.

10. We have considered the submissions made. The Ld. AO primarily was of the view that since no proper gift deed was made, therefore, the amount was liable to be assessed as 'income from other sources' and not exempt u/s 56 of the Act. However, section 56 of the Act for exemption from assessing any sum received which exceeds ₹50,000/-, does not require a valid gift deed but it is provided in the section itself that if the amount is received from a relative as defined therein, the same is not liable to be assessed u/s 56 of the Act. That being so, the source of the amount being from the relative not being in question, the amount is not liable to be included in the total income of the assessee. The Ld. AO did not make any comment in the remand report when the documents were forwarded to him by the Ld. CIT(A) vide letters dated 17.11.2022 and 03.05.2023.

11. The assessee had submitted before the Ld. CIT(A) the gift deed as under:

“4. The Gift Deed was made on 4th August 2020 which was authenticated and Notarized by California Notary, USA [Annexure- 4A] for the purpose of clarification of Fund wherein of Rs. 80,00,000/- was directly received/ Credited into his Kotak Mahindra Bank account no. 1111146441 [Annexure-4B] from his Brother-in-Law's, Mr. Sajal Kundu SBI account no.10457689697 [Annexure-4C], Relative as per U/s 56(2)(ii) (vii) through normal banking channels.”

12. Since in respect of the amount of ₹80 Lakh, the Ld. CIT(A) dismissed the appeal for the source of fund of ₹55 Lakh from the sale of HDFC mutual fund remained unexplained, without mentioning as to in which year these mutual funds were made, the addition if any, was liable to be made in the hands of the brother-in-law and not in the

hands of the assessee. The assessee's representative made the following submissions before the Ld. CIT(A):

"I on behalf and upon instructions of my client would like to submit as under-

1. That in the course of Appellate Proceedings a Remand Report was sought by your Honour from Ld. Assessing Officer ACIT(IT)-1(1)/Kol.

2. That Ld. Assessing officer has passed the Remand Report while ignoring the following documents submitted on 01/12/2022 (Annexure 2A) and 04/01/2023 (Annexure 28) in Remand proceeding namely:-

- i) Copy of Gift Deed*
- ii) Evidence of Relatives*
- iii) SBI Bank statement of Mr. Sajal Kundu*
- iv) Passport of Mr. Deb Prasanna Choudhury*
- v) Passport of Mr. Sajal Kundu*

The above referred documents were completely ignored and bypassed while passing the Remand Report inspite of being documented in Remand Report No. F.NO.DCIT(IT)1(1)/Kolkata/Appeal/2022-23/24 dated 10/01/2023

3. That an Amount of Rs. 50,00,000/- was transferred from his SBI savings account no 11107941129 to his ICICI Savings Bank account no.: 089501501366 through normal banking channels.

That on 12/03/2012 an Fixed Deposit was prematurely closed amounting to Rs. 22,94,931 only and subsequently on the same date Vide RTGS no. SBIH12072341357 an amount of Rs. 50,00,055 only was debited his SBI savings Bank account no. 11107941129 [Annexure-3A] while crediting the ICICI savings Bank account no 089501501366 for Rs. 50,00,000 only [Annexure-38] being Inter Bank Transfer both accounts belonging to Appellant only.

4. The Gift Deed was made on 4th August 2020 which was authenticated and Notarized by California Notary, USA (Annexure- 4A) for the purpose of clarification of Fund wherein of Rs. 80,00,000/- was directly received/ Credited into his Kotak Mahindra Bank account no. 1111146441 [Annexure- 4B] from his Brother-in-Law's, Mr. Sajal Kundu SBI account no. 10457689697 [Annexure-4C], Relative as per U/s 56(2)(il) (vii) through normal banking channels."



13. The assessee also relied upon the judicial pronouncement in **Atul H. Patel v ITO [2022] 138 taxmann.com 454 (Ahmedabad Bench)** and several other decisions in support of the claim that the amount received from the relative was exempt. Since the necessary documentary evidence in support of the claim that the amount was received from the relative, there was no occasion to insist on a gift deed for excluding the amount received from the brother-in-law. The money has been received through banking channel. The addition, if any, should be made in the hand of the relative of the assessee only and the exemption for the purpose of section 56(2)(x) of the Act does not require any gift deed but only the sum being received from any relative which has not been disputed in the order. Therefore, the appeal is allowed and the addition upheld by the Ld. CIT(A) is hereby deleted. Accordingly, the grounds taken by the assessee in his appeal are allowed.

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

Order pronounced in the open Court on 4th November, 2025.

Sd/-

[George Mathan]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 04.11.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Deb Prasanna Choudhury, Flat 1B, Anupama, 1st Floor, 22A, Rajani Sen Road, Kolkata, West Bengal, 700026.**
2. **ADIT/DCIT (IT)-1(1), Kolkata.**
3. CIT(A)-22, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata