

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 253 of 2009

DATE OF DECISION: 24.7.2009

Smt. Kusum Lata Thakral

.....Appellant

Versus

Commissioner of Income Tx, Aayakar Bhawan,Respondent
Sector 13, Karnal.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. S.K. Mukhi, Advocate
and Mr. Rajiv Sharma, Advocate
for the appellant.

ADARSH KUMAR GOEL, J. (Oral)

1. The assessee has preferred this appeal under Section 260A of the Income Tax Act, 1961 (for short, "the Act") against the order of Income Tax Appellate Tribunal, Delhi Bench "D" Delhi dated 24.10.2008 passed in ITA No. 4723(Del) of 2007 for the assessment year 2003-04, proposing to raise following substantial question of law:-

"That the ITAT was not justified in concurring with the findings of the authorities below in treating the genuinely given gifts duly affirmed by way of affidavits, gift deeds, independent confirmations by the donors to the AO of the appellant and by filling copies of their respective Bank Accounts thus fulfilling all the three ingredients of a genuine gift of establishing the identity, creditworthiness

and genuineness of a transaction, so that so the orders of the ITAT is bad in law and perverse and thus needs to be quashed.”

2. The assessee claimed certain gifts but the Assessing Officer made addition to the declared income by treating the alleged gifts to be income from undisclosed sources. The said additions were confirmed on appeal by the CIT(A) as well by the Tribunal.

3. We have heard learned counsel for the appellant.

4. Learned counsel for the appellant submitted that the donors had given affidavits and the gift deeds were also produced. The Assessing Officer obtained report from Mr. R.S. Bura, Assessing Officer, Rohtak, where the donors disowned the making of the gifts. Contention raised on behalf of the appellant is that the assessee should have been allowed opportunity to cross-examine the donors.

5. Before we proceed to deal with the submission, it will be appropriate to refer to the finding recorded by the Tribunal, which is as under:-

“9. It is a settled law that in case of a gift as in the cash creditors the onus is on the assessee to prove the identity, the genuineness of the transaction and creditworthiness of the donors. In the case before us, the assessee had only discharged the onus relating to identity of the donors. The onus of proving the creditworthiness of donors and the genuineness of the transactions had not been discharged. The Id. AR of the assessee has sought annulment of the order on the ground that the assessee was not allowed to confront the donors. We are unable to agree with the submissions made by the Id. AR of the assessee.

Whatever material the assessing officer had gathered was put to the assessee to comment. Therefore, the statements of the donors denied to have made any gift had not been utilized against the assessee without affording the opportunity of the assessee. In fact in this case the assessee had not discharged initial onus to produce the necessary evidence to support the genuineness of the transactions. The donors in their statements had denied to have given any gifts to Smt. Kusum Lata Thukral, the assessee. They have denied even the acquaintance with the assessee. They have also denied to have made the deposit of cash in their accounts and issue of drafts for the purpose of gifts. The Id. AR of the assessee has stated that the gifts received by the assessee are supported by the gift deeds, their affidavits and confirmations filed by donors in response to summons issued u/s 131 of the Act. We have gone through the gift deeds and affidavits. In case of gift deed alleged to have been signed by Smt. Neelam Arora, we find that the same is not signed by the donee, though it has been attested by Notary Public, Delhi, on 5.12.2002. The gift deed is not witnessed by any person. The gift deed of Smt. Kiran Rani is also not witnessed by any person. Likewise, in the case of Smt. Bhirawa Bai, the gift deed is not witnessed. There is an interesting point to be noted in case of gift deed of Smt. Kiran Rani that the said gift deed has been executed on 30.10.2002 and 5.12.2002. Similar is the position in respect of gift deed between Smt. Bhirawan Bai, which

has been executed on these two dates. These two persons, according to the assessee, have made two gifts on 30th October as well as on 5th December. It is not understood as to how a gift deed can be executed on two different dates. From the above it is clear that all three gift deeds are defective and cannot be taken into consideration. Thus, the assessee has not discharged the initial onus even in respect of genuineness of transaction as the gift deeds are defective. The donors have also denied having any relationship or acquaintances with donee; even they do not know her. They have also denied to have given any gifts. Therefore, the genuineness of the transaction is not proved. The assessee has also not discharged the onus of proving the creditworthiness of the donors. When the donors have denied to have given any gifts it has to be logically concluded that it was the assessee's own money, which was routed through the mode of alleged gifts through the accounts of the persons, who were not aware about the deposit of money in their accounts and purchase of bank drafts in favour of the assessee.

10. Hon'ble jurisdictional High Court in the case of Tirath Ram Gupta Vs. CIT (supra) has held that a gift is generally given out of natural love and affection without any consideration, which necessarily denotes the closeness between the donor and the donee. It can be given either on some occasion or to help a relative or friend. To see the genuineness of a gift, the test of human probability is the most appropriate. A gift cannot

be accepted as such to be genuine merely because the amount has come by way of a cheque or draft through banking channels unless the identity of the donor, his creditworthiness, relationship with the donee and the occasion is proved. Unless the recipient proves the genuineness, the same can be very well treated an accommodation entry of the assessee's own money, which is not disclosed for the purpose of taxation.

11. If the facts of the case are tested on the touchstone of the ratio of the decision of Hon'ble Punjab and Haryana High Court in the case of Tirath Ram Gupta Vs. CIT (supra) we find that there is no relationship between the alleged donors and the assessee. The donors do not know the donee. Therefore, the element of natural love and affection is missing. When there is no relationship between the donor and the donee and the donors in their statements recorded on oath under Section 131 have refused to have given any gift and, therefore, the genuineness of the transaction is not proved. The logical conclusion is that the assessee got her unaccounted money routed through the account of the alleged donors by way of cash deposits and issue of drafts for alleged gifts. Therefore, the alleged gifts have to be treated as undisclosed money of the assessee brought in the books of accounts. Even in the cases where donors have confirmed to have given gifts the Courts are applying the principle of human probabilities as held by Hon'ble Supreme Court in the case of Sumati Dayal v.

CIT 214 ITR 801. The reliance placed by Ld. AR of the assessee on various decision is of no relevance having regards the facts of the case before us. Accordingly, we do not find any infirmity in the order passed by the Id. CIT (Appeals) confirming the addition of Rs.10,00,000/- as undisclosed income of the assessee.”

6. It is clear from the above finding that there was no relationship between the donors and the assessee and there was no natural love and affection. The Tribunal has followed the judgement of this Court in **Shri Tirath Ram Gupta Vs. CIT 304 ITR 145 (P&H)**, laying down that in absence of natural love and affection, the gift could not be accepted as genuine.

7. The above being undisputed position, mere fact that the assessee produced the confirmations of the gift deeds and the assessee was not allowed opportunity to cross-examine the donors, who disowned the making of the gifts, they will not be in any manner affected.

8. Learned counsel for the appellant also relies upon the following judgments:-

(i) CIT Vs. S.P. Jain (1973) 87 ITR 370 (SC)

(ii) Additional Commissioner of Income Tax, Bihar Vs. Hanuman Agarwal (1985) 151 ITR 150 (PAT)

(iii) Commissioner of Income Tax, Delhi (Central-2) Vs. Mrs. Sunita Vachani (1990) 184 ITR 121 (DEL)

(iv) CIT Vs. Sanjeev Kumar Jain (2009) 20 DTR 225 (P&H)

(v) CIT Vs. Rajesh Kumar (2008) 12 DTR 176 (Del)

(vi) CIT Patiala-II Vs. Sham Lal 127 ITR 816 (P&H)

(vii) CIT Vs. Dharam Pal Prem Chand Ltd. 295 ITR 105 (DEL)

(viii) C.B. Gautam Vs. Union of India 199 ITR 530 (SC)

(ix) Heirs and LRs of Late Laxmanbhai S Patel Vs.

CIT (2008) 12 DTR 108 (GUJ)

(x) CIT Vs. Ms. Monica Oswal & Ors. 267 ITR 308

(P&H)

(xi) Roopchand Manoj Kumar Vs. Commissioner of

Income Tax (1999) 235 ITR 461 (GAU)

9. However, he wishes the Court to deal with the judgment in **Sanjiv Kumar Jain's** case (supra).

10. In the said judgment, the Assessing Officer had recorded statements of some persons to whose accounts the assessee had made credit entries but they were allowed to be cross-examined. This Court held that in absence of cross-examination, the order of assessment was vitiated.

In para 9 of the judgment, it was observed as under:-

“We find merit in the aforesaid submission of the learned counsel for the appellant. The AO had failed to afford an opportunity to the respondent assessee to cross-examine the persons whose statements were recorded by him, before passing the assessment order under ss 143/147 of the IT Act, 1961, on 31st March, 2004. The action of the AO was unacceptable in law. Naturally, there was nothing wrong upto the stage of recording the statements of the 4 persons referred to above. The proceedings conducted by the AO after recording the statements of aforesaid individuals, are liable to be set aside. The same alone are, therefore, set aside. It will be open to the AO to re-initiate the proceedings from the aforesaid stage if he is still of the same opinion. In the aforesaid eventuality, any further action taken by the AO

would inevitably require him to allow the respondent assessee to cross-examine all the four witnesses whose statements were the basis of the earlier consideration. Thereafter, it will be open to the AO to pass a fresh order in accordance with law. We would also like to clarify that the instant liberty granted to the AO, to redetermine the issue would not enable him to collect any further information, besides the material already available with him (while passing the order dated 31st March, 2004), for the purpose under reference.”

11. We do not find any relevance of the judgment relied upon. The said judgment was not of gift but of relying upon certain statements at the back of the assessee, which was against the nature justice. The question whether denial of opportunity of cross-examination results in violation of natural justice depends upon facts of each case. The object of cross-examination is to test the veracity of the version given in examination in chief. In the present case, even if cross-examination was allowed and the donors who had disowned the making of gifts, were confronted and shown to be factually wrong, the same would have made no difference, as there was no natural love and affection and in its absence, the gifts were not genuine.

11. In view of above, no substantial question of law arises. The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

July 24, 2009
pooja

(DAYA CHAUDHARY)
JUDGE

Note:-Whether this case is to be referred to the ReporterYes/No

