

IN THE INCOME TAX APPELATE TRIBUNAL

DELHI BENCH "SMC": NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No. 1548/Del/2010**

A.Y. : 2000-01

Krishan Gopal Chhabra,  
P/o M/s Raj Stores,  
3/5156, Krishan Nagar,  
Karol Bagh,  
New Delhi  
(PAN : AADPC0006H)

vs. ITO, Ward-33(4),  
New Delhi

**(Appellant)**

**(Respondent)**

Assessee by : Sh. R.S. Adlakha, Adv.

Department by : Dr. B.R.R. Kumar, Sr. D.R.

**ORDER**

This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-XXVI, New Delhi dated 12.2.2010 pertaining to assessment year 2000-01.

2. The grounds of appeal read as under:-

- i) That the order of the Ld. Commissioner of Income Tax-XXVI, New Delhi is contrary to law and facts on record.
- ii) Whether on the facts and circumstances of the case the Ld. Commissioner of Income Tax (A) was justified in rejecting the appeal of the assessee and confirming the order of the ITO, Ward 32(3) and confirming the addition of ₹ 3,00,000/- as gift from Sh. Sanjay Mohan Aggarwal?

- iii) Whether on the facts and circumstances of the case the Ld. Commissioner of Income Tax (A) was justified in rejecting the plea of the assessee regarding genuineness of the person, creditworthiness of the person, affidavit, gift deed, bank statement of the donor in which he has himself admitted that the donor as a capital of ₹ 32,47,90,367/- and this case is covered by Hon'ble Supreme Court decision in the case of Lovely Exports Pvt. Ltd.,
- iv) Whether on the facts and circumstances of the case the Ld. Commissioner of Income Tax (A) was justified in confirming the addition of ₹ 6,00,000/- being commission alleged to have been paid by the assessee for procuring the gift.”

3. In this case on an enquiry by the Investigation Wing, it transpired that assessee has received an accommodation entry of ₹ 3 lacs on 4.3.2000 from one entry operator Sh. Sanjay Mohan Agarwal. The said entry was shown as gift from Sh. Sanjay Mohan Agarwal. During the assessment proceedings assessee furnished a copy of the gift deed and affidavit signed by Sh. Sanjay Mohan Agarwal as also a copy of the assessment order of Sh. Agarwal for A.Y. 1994-95 in support of his capacity to make such a gift. The Assessing Officer also asked for copy of return for assessment year 1999-2000 and 2000-01 and also a copy of death certificate of the donor Sh. Sanjay Agarwal which was

not produced. The Assessing Officer asked for the personal attendance of the assessee, in response to which the assessee furnished an affidavit dated 18.12.2007 in support of the gift received by her. In the absence of personal appearance of the assessee, the Assessing Officer disregarded the evidentiary value of the affidavit. On the same ground, the affidavit filed by the donor of aforesaid gift of ₹ 3,00,000/- as unexplained cash credit u/s. 68 and taxed it as "income from other sources". In addition, an amount of ₹ 6000/- was also added as unaccounted commission @ 2% of the amount of the gift, that the assessee may have paid.

4. Upon assessee's appeal, Ld. Commissioner of Income Tax (A) considered the submissions of the assessee and held as under:-

*"On the basis of the above, I hold that on the face of it even though relevant documents in support of gift such as gift deed were got signed, and the gift was made through banking channel, however, on lifting the veil, the genuineness of the gift does not stand proved. During the period relating to assessment year 2000-01, Shri Sanjay Mohan Agarwal had made gift to several persons running in a few crores. However, in his own balance sheet for 2000-01, no amount has been reduced out of his capital, which ought to have been done in case of genuine gift. The corresponding*

*reduction of ₹ 3 lacs on account of gift to appellant has also not been reduced in the said balance sheet. Shri Agarwal, when investigated by the Investigation Wing- Ghaziabad had admitted to have run a scam of providing bogus entries and had himself informed about the bank accounts through which such a scam was run. The appellant is also one of the beneficiaries of such as bogus gift from the donor, account with Vijaya Bank, Ansari Road, New Delhi. In the absence of Shri Sanjay Mohan Agarwal, who had expired in 2005, his evidence cannot be cross examined by the appellant. However, the report of the investigation wing regarding bogus gifts is further corroborated by entries in his balance sheet as on 31.3.2000, which shows that no corresponding reduction out of capital was made for the gift. Keeping in view totality of facts and circumstances, I therefore, hold that the appellant could not prove genuineness of the gift.*

*In view of the above, I hold that the gift of ₹ 3 lacs from Sh. Sanjay Mohan Agarwal to the appellant on 4.3.2000 was not a genuine one and therefore the Assessing Officer was justified in making addition u/s. 68 in respect thereof.*

*On the second ground of addition, once the gift has been proved as bogus, it is reasonable to estimate certain amount of commission, which may have been*

*paid by the appellant in order to convert cash of ₹ 3,00,000/- to cheque through the bogus gift entry from the donor. I find that the Assessing Officer was reasonable in estimating the same @2%. Therefore, the addition on this ground is also sustained.”*

5. I have heard the rival contentions in light of the material produced and precedent relied upon. Assessee in this case has received a gift from a person with whom assessee has no relationship. The occasion for giving of gift is also not specified and also there is no reciprocity.

6. I find that Hon'ble Delhi High Court in the case of Rajiv Tondon vs. ACIT 294 ITR 488 has held that in a case where two donors had absolutely no connection with the assessee and they made gifts to the assessee only because he needed money to buy a house and they wanted to help him. It was held that this was not only quite unusual but also quite unnatural. It was incredible that a complete stranger would want to gift lakhs of rupees to a person only because that person wanted the amount for purchasing a house. The taxing authorities were entitled to look into the surrounding circumstances, which they did, and come to the conclusion that the gifts could not be said to be genuine. The reason offered by the assessee did not

appear to be reasonable, much less acceptable. Therefore, there was no error in the view taken by the Tribunal.

7. I also find that on the touchstone of the aforesaid judgement assessee's case is squarely covered. Here also there is no relationship of the donor with the assessee. There is also no occasion for this gift. The taxing authorities have rightly looked into the surrounding circumstances and drawn the conclusion that gift in this case was not genuine.

8. Accordingly, in the background of the aforesaid discussions and precedent, I do not find any infirmity in the order of the Ld. Commissioner of Income Tax (A), hence, I affirm the same.

9. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 08/8/2012.

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

*Date: 08/8/2012*

**SRBhatnagar**

**Copy forwarded to: -**

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches