

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : 'B' NEW DELHI

BEFORE SHRI DEEPAK R SHAH, ACCOUNTANT MEMEBR AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER

I.T.A. No. 3059/Del./09
Assessment year 2002-03

Mrs. Deepa Bhatia,
31-B, Rajpur Road, Delhi..

Vs. ACIT, Central Circle – 17,
New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri Kapil Goel
Respondent by : Shri Manish Gupta, DR

ORDER

PER RAJPAL YADAV : JUDICIAL MEMBER

The assessee is in appeal before us against the order of Ld. CIT(A) dated 17th April, 2009 passed for asstt. Year 2002-03. The grounds of appeal taken by the assessee are not in consonance with Rule 8 of ITAT rules. They are descriptive and argumentative in nature. In ground No. 4 to 7 the common grievance raised by the assessee is in respect of a challenge made to validity of asstt. Order passed u/s 153 C of the Act. Since it is a primarily issue therefore we deem it appropriate to take these grounds of appeal first.

2. Ld. Counsel for the assessee while impugning the orders of the revenue authorities below apprised us the facts and circumstances and submitted that search and seizure operation was conducted at the business concern of the family on 13.12.2005. The residence of other family members were also covered by the search. In the asstt. Order AO had mentioned that notice u/s 153C/153A

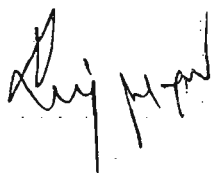
Shri Manish Gupta

of the Income Tax Act 1961 was issued requiring the assessee to file her return of income in the block year. It is not certain under which section AO was going to assess the assessee because both these provisions deals with cases of assessee in different situation. An assessment u/s 153A can be made if valid search was carried out upon the assessee whereas an assessment u/s 153C can be made if during the course of search any books of accounts, money, bullion, jewellery, or other valuable articles seized or requisitioned belongs to a person other than the person referred to in section 153A of the Act. Thus, because of this ambiguity the asstt. Orders deserves to be declared null and void. In his next fold of submission he contended that notice u/s 153A was served upon the assessee on 13.11.2007. Thereafter it appears that ITA of the assessee has pointed out that Section 153A can be taken only where there is a search action u/s 132 of the Act. This was informed to the AO vide letter dated 1st December, 2007. The AO thereafter issued a notice u/s 153C of the Act on 12.12.2007. The action u/s 153C can be initiated against the asstt. After recording of satisfaction by the AO that the documents, money, bullion or jewellery etc. relating to the assessee were found during the course of search carried out on any other person. The AO had not recorded any such satisfaction before issue of notice u/s 153C of the Act and therefore the asstt. Order deserves to be quashed. In support of his contention he made a reference to the letter of AO available at page 8 of the paper book. He pointed out that this letter is dated 13.12.2007. It means that satisfaction was recorded on 13th December, 2007 where notice to assessee u/s 153 C was issued on 12.12.2007. He invited our attention to this

Thy paper

notice which is available on page 6 of the paper book. In support of his contention he relied upon the decision of Hon'ble Supreme Court in the case of Manish Maheshwari Vs. CIT 289 ITR 341 order of the ITAT Lucknow bench rendered in the case of ACIT vs. Smt. Surinder Kaur reported in 18 DTR Lucknow 38. He also relied upon the order of ITAT in the case of ACIT vs., Late Smt. Krishna Kumar rendered in ITSS No. 201/Del/2006 wherein the Tribunal has observed that if the AO of the assessee in whose case search was carried out fail to record the satisfaction that evidence exhibiting undisclosed income of any other person in whose case no search was carried out, then no notice u/s 158BD can be served on the other person. This satisfaction either should be discernable from the notice issued u/s 158 BD or otherwise. On the strength of these decisions he contended that asstt. order is not sustainable.

3. Ld. DR while controverting the contention of Ld. Counsel for the assessee submitted that there is a substantial difference between section 153C and 158BD, Under section 158BD the AO who is passing an asstt. Order u/s 158 BC in respect of the person search has been carried out, has to be satisfied that any undisclosed income belongs to any other person, other than the person with respect to whom search was made then he will hand over the evidence found during the course of search belonging to other person to the AO who was having jurisdiction over such other person. The operative force of expression "satisfied that any undisclosed income belongs to any other person" employed in section 158 BD talks about undisclosed income whereas in section 153C it only talks about satisfaction of the AO in respect of books of accounts or documents,



money, bullion or jewellery. It does not talk about satisfaction of AO indicating undisclosed income. Therefore the burden upon the AO of recording satisfaction is not similar to the one employed in section 158BD. In 153C the AO is required to make a primary satisfaction that books, documents, money, bullion, jewellery etc. belongs to other person. He further pointed out that ACIT Circle 17, New Delhi has assessed all the persons i.e. assessee as well as the person in whose case search was carried out. Inviting our attention towards page 8 of the paper book, he pointed out that satisfaction for initiating proceeding u/s 153C was not recorded on 13.12.2007 rather it is the date on which information was supplied to the assessee in response to her letter dated 20.11.2007. This satisfaction was recorded much prior to the issuance of notice.

4. We have duly considered the rival contention and gone through the record carefully. As far as the controversy raised by the Ld. Representative for mandatory requirement of recording satisfaction before initiating proceedings u/s 153C equating it to 158BD is concerned we are of the opinion that it is academic issue only in the present proceedings. We need not to embark upon this controversy because from the letter dated 13.12.2007 available at page 8 of the paper book its implicity clear that satisfaction was recorded before issuing notice u/s 153C. Bharti Sharma ACIT Circle 17 is the AO of the assessee as well as the AO of other persons upon whom search was carried out. We have heard more than 40 appeals of this group along with this appeal. In order to appreciate this issue it is imperative upon us to take note of the letter dated 13.12.2007

To

Smt. Deepa Bhatia,
31-B, Rajpur Road,
Delhi.

Madam,

This is in reply to letter dated 20.11.2007 filed by your Appraisal Report/ITP Sh. B.L. Gupta. At the outset, it is pointed out that no authority letter has been filed by you authorizing Shri B.L. Gupta to attend n your behalf. However, to cut short the proceedings, the said letter is being replied with the condition and clarification that unless the authority is filed by you, no cognizance will be taken of the letter filed by Shri B.L. Gupta.

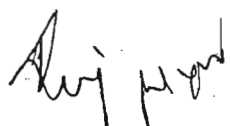
2. The contents of the aforesaid letter has been examined. The decisions referred by you are inapplicable as these are not in reference to section 153C of the I.T. Act and the requirement contained in section 147/148 of the Act. Nevertheless, in the interest of natural justice, it is to inform you that out of various documents found during the search carried out u/s 132 of the I.T. Act at the residential and business premises of Hing Group of cases. Following documents in my satisfaction to you:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Ld. AO made a reference of document from serial No. 1 - 12 which pertains to the assessee and thereafter observed her satisfaction as under :-

"3. As per provisions of Section 153C, I am satisfied that the aforesaid documents belong to you and hence I am duty bound to proceed to issue notice u/s 153C against you for the purpose of assessment/reassessment as prescribed. If you still have any doubt about the aforesaid documents, you may examine the same in my office latest by 24.12.2007 at 11.00 a.m."

5. This satisfaction was not recorded on 13.12.2007 rather it is the date of the letter on which this information was supplied to the assessee. Thus there was a satisfaction indicating that books / documents pertaining to assessee were



found at the time of search. As far as the grievance of Ld. Counsel that it is not ascertainable whether asstt. has been made u/s 153C or 153A of the Act. From the notice dated 12.12.2007 it is clear that asstt. has been framed u/s 153(C) of the Act. The Ld. CIT(A) has also made observation to this aspect. If we take into consideration the cumulative effect of notice u/s 153 C dated 12.12.2007 letter of AO dated 13.12.2007 informing the assessee about the satisfaction, the details of documents which were considered as belonging to the assessee, observation of Ld. CIT(A) and the asstt. Order, then there is no ambiguity that a valid notice u/s 153C was issued and assessment has rightly been framed u/s 153C of the Income Tax Act. It is also discernable from the column No. 8 of the asstt. order that assessment is made u/s 153 C of the Act. As far as the decision relied upon by the assessee are concerned they are not applicable on the given facts because the satisfaction has been recorded. It has duly been communicated to the assessee. In view of the above discussion ground No. 4 - 7 are rejected.

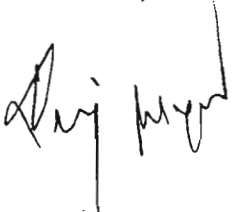
6. Ground No. 1 :- In this ground of appeal assessee is impugning the confirmation of estimated addition amounting to Rs. 25,000/- on account of personal expenses. With the assistance of Ld. Representative we have gone through the record carefully. The AO has not made any estimated addition on account of personal expenses. Ld. CIT(A) without issuing any show cause notice for making any addition on account of personal expenses has made the addition of Rs. 25,000/-. Basically the AO has made GP addition in respect of trading in ~~hing~~. This addition has been deleted by the Ld. CIT(A). But Ld. First Appellate Authority made addition of Rs. 25,000/- without mentioning any reason. We have



deleted similar addition in other asstt. Years in respect of assessee. Therefore we do not see any logic for making such addition. This ground of appeal is allowed and the addition of Rs. 25,000/- is deleted.

7. Ground No. 2 :- In ground No. 2 the grievance of assessee is that Ld. CIT(A) has erred in confirming the addition of Rs. 5 lacs which has been received by her as a gift from Shri Mukesh Mittal. The brief facts of the case are that assessee has received a gift of Rs. 5 lacs from one Shri Mukesh Mittal. In order to explain this gift assessee has filed copy of the gift declaration by Shri Mukesh Mittal details of receipt of money indicating that it was received through banking channel and evidence exhibiting that Shri Mukesh Mittal is an income tax assessee with permanent account number. The Ld. AO was not satisfied with evidence produced by the assessee and made the addition.

8. Ld. CIT(A) has confirmed the addition on the ground that gifts are exchanged on an important occasions of festivals, religious functions and other family functions like marriages. Gifts are always in the form of articles only. Cash gifts are also exchanged among close family members but in small quantities. Seldom gifts are given in lacs of Rupees as argued by the assessee more so in the absence of any ceremonial occasion to give such a quantum of gift. In the opinion of Ld. CIT (A) mere falling of declaration of gift and creditworthiness of donor does not ipso facto establish the genuineness of the gift. The Ld. CIT (A) has also observed that on the same date i.e, 18.1.2000 a gift of Rs. 5 lacs was made by Shri Mukesh Mittal to the co sister of assessee. This gift was also purchased from Canara Bank, New Delhi. In this way Ld. CIT(A) doubted the

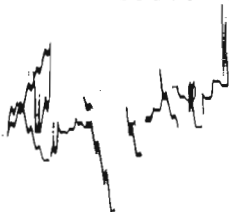


genuineness of the gift and made the addition. The assessee has cited a large number of decisions which has been noticed by Ld. First appellate authority on page 6.

9. Ld. Counsel for assessee reiterated his contention as were raised before revenue authorities below. He pointed out that gift deed was produced before the AO gift was taken through D/D. The donor is an income tax assessee hence his capacity to give gift cannot be doubted. He also pointed out that for treating any gift as a genuine it is not always necessary that such gift should be from relatives only, even a friend can give a gift to an assessee because of long association, love and affection.

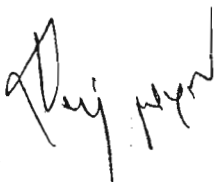
10. Ld. DR on the other hand relied upon the order of Ld. CIT(A). He pointed out that Ld. First Appellate Authority has considered this issue from all possible angles. After discussing human probabilities and the judgment of Hon'ble Delhi High Court in the case of Rajeev Tandon Vs. ACIT 294 ITR 488 Ld. CIT (A) has confirmed the addition. Ld. CIT (A) has further discussed the decision of Hon'ble Rajasthan High Court in the case of Chain Sukh Rathi 270 ITR 368. He relied upon the order of Ld. CIT(A).

11. We have duly considered the rival contention and gone through the records carefully. The money received through gifts though are also credit entries in the books of assessee but still they cannot be equated with any other cash credit and are required to be examined not only within the simple conditions provided in section 68 of the Income Tax Act. Because normally whenever an assessee took loan an amount and that amount credited in his books then he



was considered under a moral obligation to refund that amount. Such conditions are not applicable on the gifts. In a case of ^{gift} not coming from the relatives, the genuineness of the transaction cannot be determined without looking into the aspect of human probabilities i.e relationship of donor and donee, occasion for making the gift and existence of reciprocity. There is always a strong motive for every individual in giving gift of huge amount. Without any motive it is quite unnatural that any individual would extend the monetary benefit to any person in this day to day world. The Hon'ble Delhi High Court in the case of Rajeev Tandon vs. ACIT (supra) has observed that in such circumstances the taxation authorities were entitled to look into the surrounding circumstances. In the present case also it is quite unnatural that one will give a gift of Rs. 5 lacs to the assessee and Rs. 5 lacs to her co-sister without any basis. The assessee failed to bring any evidence indicating the motive for the gift i.e love and affection etc. between the donor and donee. As far as furnishing of evidence in the shape of gift deed PAN number etc. are concerned when such gifts are received under due consultation then hardly there can be any lacuna in the documentation. But such documents are not sufficient for treating such gifts as genuine. In our opinion Ld. CIT (A) has considered the controversy in right perspective and no interference is called for in his finding. Thus ground No. 2 is rejected.

12. Ground No. 3 :- In this ground of appeal grievance of assessee relates to confirmation of an addition of Rs. 53,010/- With the assistance of Ld. Representative, we have gone through the record carefully. From the perusal of the asstt. Order it reveals that AO has not made any specific discussion on this



issue. She observed that assessee has shown purchase of jewellery in asst. year 2002-03 and she made the addition. Ld. CIT (A) has confirmed the addition again without making any discussion on this issue. In our opinion assessee is a regular income tax assessee she has been filing her return. Addition has been made purely on estimate basis, without there being any evidence with the AO, exhibiting that such investment was made out of books. She just noticed certain facts from the balance sheet and made the addition. In our opinion such type of additions are not sustainable which are not supported with sound reasoning or basis. The investment in jewellery of Rs. 53010 can be from past saving also.

d There ^{be} should some evidence with the AO to show that it was out of books. This ground of appeal is allowed and the addition is deleted.

13. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on

11/12/09

[DEEPAK R SHAH]
ACCOUNTANT MEMBER

[RAJRAJ YADAV]
JUDICIAL MEMBER

Veena

Dated: 11-12-2009

Copy forwarded to: -

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

TRUE COPY

By Order,
Deputy Registrar,
ITAT