120+121
17-12-09

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "G" NEW DELHI)
BEFORE DEEPAK R. SHAH AND SHRI RAJPAL YADAV

I.T.A. No. 2680 & 2682/Del/2009
Assessment Years: 2002-03 & 2006-07

Smt. Veena Bhatia, 31-B, Rajpur Road, Delhi.	Vs.	Assistant Commissioner of IT, Central Circle-17, New Delhi.
(Appellant)		(Respondent)

Appellant by: Shri Kapil Goel, CA
Respondent by: Shri Stephen George, CIT(DR)

ORDER
PER RAJPAL YADAV: JUDICIAL MEMBER

The assessee is in appeal before us against the separate orders of even date i.e. 24.3.2009 passed by the learned CIT(Appeals) on the appeals of the assessee for assessment year 2002-03 and 2006-07. Since the common issues are involved in both the appeals, therefore, we take them together.

2. The solitary ground of appeal in assessment year 2002-03 is common with ground No.2 taken in assessment year 2006-07. In these grounds of appeals, assessee is impugning confirmation of an addition of Rs.5,21,000 and Rs.10,36,109 added by the Assessing Officer by disbelieving the claim of gift made by the assessee in assessment years 2002-03 and 2006-07 respectively.

3. The assessment in assessment year 2002-03 has been made under sec.153A of the Act on the ground that a search under sec.132 of the Act was carried out upon the assessee on 13.12.2005 whereas assessment in assessment year 2006-07 has been made under sec.143(3) on 24.12.2007.

4. The brief facts of the case in assessment year 2002-03 are that a notice under sec. 153A of the Act was issued on 9.7.2007 in assessment year 2002-03. In response to the notice, assessee has submitted that original return filed by her under sec. 139 declaring an income of Rs.2,076,070 may be treated as filed in response to the notice issued under sec. 153A of the Act. The Assessing Officer had issued notice under sec. 143(2) and 142(1) of the Act on 22nd November, 2007. The assessee had filed a reply in response to these notices on 29.11.2007. On scrutiny of the accounts, it was found by the Assessing Officer that a sum of Rs.21,000 and Rs.5 lacs were received by the assessee on 28.2.2002 and 22.1.2002 from one Shri Mukesh Mittal through demand draft. In order to explain the alleged gift of Rs.5,21,000 from Shri Mittal assessee has filed gift deed, evidence exhibiting the facts that gift was received through banking channel and details of income-tax return in respect of Shri Mukesh Mittal along with PAN. Assessing Officer

was not satisfied with the explanation of assessee and made the addition of Rs.5,21,000.

5. Appeal to the learned CIT(A) did not bring any relief to the assessee.

6. The learned counsel for the assessee in his first fold of submissions contended that no search was conducted upon the assessee and, therefore, assessment order is not sustainable. For buttressing this point, he drew our attention towards the copy of the punchnama available at page 18 of the paper book. He pointed out that in the punchnama Shri Anil Bhatia/Veena Bhatia is mentioned. There is no authorization of warrant for carrying out the search in the case of assessee. In support of his contention, he relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs. Pushpa Rani 289 ITR 328 (Del.). He pointed out that in this case, ITAT arrived at the conclusion that there was no search warrant in the name of the assessee and, therefore, Assessing Officer could not invoke the provisions of sec. 158-BC for initiating the block assessment. Hon'ble Delhi High Court has upheld this ITAT's order and dismissed the appeal of the revenue. He further relied upon the order of the ITAT in the case of Narender Kumar Jain vs. DCIT 74 TTJ page 848. In this way, he prayed that assessment order be quashed.

7. Learned DR on the other hand has submitted that the search was carried out upon assessee also. He will produced the copy of warrant issued by the competent authority for carrying out the search in the case of Shri Anil Bhatia and Veena Bhatia, both husband and wife. She has signed the search warrant when it was executed. Thus, according to the Learned DR Assessing Officer has rightly taken up the proceedings under sec. 153A of the Act.

8. We have considered the rival contentions and gone through the record carefully. The learned counsel for the assessee is harping upon half baked information i.e. the punchnama without verifying whether search warrant was issued or not. At the time of hearing, when we confronted this aspect to the Learned DR he said that search has duly been conducted upon the assessee and there is a search warrant as informed by the A.O. He sought time to file copy of the search warrant. We have concluded the hearing with a liberty to the Learned DR to place on record copy of the search warrant. Vide letter dated 13.11.2009 he placed on record copy of the search warrant which we have gone through. On perusal of the search warrant, we are satisfied that valid search was carried out upon the assessee. The search warrant was issued by Shri PK Kedia, Director of Income-tax

(Investigation), authorizing S/Shri BL Meena, SD Sharma, Sunil Kumar and BK Sabharwal. Thus, we do not find any merit in the contention of learned counsel for the assessee. As far as the issue regarding addition of Rs.5,21,000 is concerned, an identical issue by a similar finding has been adjudicated upon by the learned CIT(Appeals) in the case of co-sisters Smt. Deepa Bhatia, who has also ~~taken~~ received a gift of Rs. 5 lacs on the same date from Shri Mukesh Mittal. We have upheld the addition in the case of Deepa Bhatia. Our findings read as under:

> "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 assesse 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 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 their 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 consider the controversy in right perspective and no interference is called for in his finding. Thus ground No. 2 is rejected".

9. Respectfully following our order, we do not find any merit in the appeal of assessee as far as it relates to assessment year 2002-03. The addition of Rs.5,21,000 is confirmed

10. As far as the addition of Rs.10,36,159 in assessment year 2006-07 is concerned, this gift has been received by the assessee from her NRI brother.

She had produced cash book account exhibiting receipt of Rs.1,65,000 from Shri Sanjay Bhatia in cash and Rs.2,32,226 on 10.11.2005, Rs.3,30,486 on 19.1.2006 and Rs.3,08,446 again on 19.1.2006. The donor is not a stranger. He is the real brother of the assessee who is residing abroad. His address was supplied, the evidence exhibiting the gift received was also supplied. The case of the assessee that this gift comes within the ambit of exception provided in sec. 56(v) of the Act because it was received from the real brother. The Assessing Officer has not made much discussion on this issue and has not brought any evidence on the record for doubting the claim made by the assessee. Assessing Officer doubted the genuineness of the gift only on the ground that assessee has been showing receipt of gift in almost alternate year. In our opinion, that cannot be a sound logic for doubting the gift from the blood relative. Therefore, we allow this ground of appeal in assessment year 2006-07 and delete the addition of Rs.10,36,109.

11. The next ground in assessment year 2006-07 relates to addition of Rs.1,50,000. The brief facts of the case are that assessee had received a loan from M/s.Laxman Dass Bhatia Hingwala and the same was used for purchase of house in Atul Rehman Market. The total amount of loan raised for acquisition of house is around Rs.42,50,000 and the same is being repaid

in monthly installments. In this year, interest paid by the assessee is of Rs.1,88,582. She claimed reduction of her income by a sum of Rs.1,50,000 for the purpose of computation. The Assessing Officer has disallowed the claim of the assessee on the ground that assessee failed to furnish a certificate indicating the payment of interest as required by law.

12. Appeal to the learned CIT(A) did not bring any relief to the assessee.

13. Learned First Appellate Authority has confirmed the disallowance on some different grounds. In his opinion, assessee was residing with her husband and did not occupy the property for her residence. Thus, assessee is not entitled to claim interest on house loan under sec. 24(b) of the Act.

14. With the assistance of learned representatives, we have gone through the records carefully. The firm M/s. Laxman Dass Bhatia Hingwala is assessed with the same Assessing Officer. The assessee has shown house loan from this firm not disputed by the Assessing Officer. The only grievance of the Assessing Officer is that assessee failed to give certificate as required by sec. 24(b) of the Act indicating that she had paid interest on such house loan. The learned CIT(Appeals) did not find this ground as a logical one for making the disallowance but considered a different reason i.e. the assessee was not occupying the house which was purchased after

availing loan. In our opinion, assessee has her individual identity. She is assessable to Income-tax Act. She is having her independent source of income. She is regularly assessed to tax. For this assessment year also, she has declared an income of Rs.1,26,240. She was found with her husband on a different premises at the time of search that does not mean that she cannot claim deduction of interest expenses on a housing loan in her individual return. We could have understood the case of Assessing Officer if she has referred to any provision of the act or held that assessee has no taxable income from her independent source. Learned CIT(Appeals) has also not quoted any provision from the act indicating the fact that such deduction is not admissible to an assessee if she is living with her husband. Learned DR was also not able to bring anything to our notice. Section 24(b) nowhere put any restriction on such claim for the reasons assigned by the learned CIT(Appeals) as well as Assessing Officer. The reasons of the Assessing Officer is only cureable one, the interest expenses could have been verified from the details of the assessee as well as from the details of the firm which is lying with the same Assessing Officer. Therefore, we allow this ground of appeal and delete the disallowance.

15. In the result, the appeal bearing ITA No.2682/Del/09 is allowed and the appeal bearing ITA No.2680/Del/09 is dismissed.

Decision pronounced in the open court on 11 .12.2009

(DEEPAK R. SHAH)
ACCOUNTANT MEMBER

(RAJPAL YADAV)
JUDICIAL MEMBER

Dated: /12/2009
Mohan Lal

Copy forwarded to:

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

ASSISTANT REGISTRAR