

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

BEFORE SHRI G.E VEERABHADRAPPA VICE PRESIDENT AND
SHRI RAJPAL YADAV, JUDICIAL MEMEBR

I.T.A No. 2579/Del/08

Asstt. Year – 2000-01

Smt. Kanta Kwatra	Vs.	Income Tax Officer
12, Huda Sector – 11 & 12		Ward-3, Panipat
Phase-1, Panipat		
(Appellant)		(Respondent)

ITA Nos. 2577,2578/Del/08

Asstt. years 1999-2000, 2000-01

Sh. Gopal Krishan Kwatra	Vs.	Income Tax Officer,
666-A/7, Amar Bhawan Chowk		Ward-2
Panipat		Panipat

Appellant by: Dr. Rakesh Gupta, Advocate, Shri Ashwani, CA

Respondent by: Shri N.K. Chand, DR

ORDER

PER RAJPAL YADAV, JM:

The present three appeals are directed at the instance of assesses against the separate orders of even date i.e. 6.6.2008 passed by the Ld. CIT(A) in asstt. Year 2000-01 in the case of Smt. Kanta Kwatra and in asstt. Years 1999-2000, 2000-01 in

the case of her husband Shri Gopal Krishan Kwatra. The common grievance of both the assessee is that Ld. CIT(A) has erred in confirming the penalty of Rs. 8,25,000/- in the case of Smt. Kanta Kwatra and a penalty of Rs. 1,50,000/- and Rs. 7,80,000/- in the case of her husband Shri Gopal Krishan Kwatra in asstt. Years 1999-2000, 2000-01 respectively. Since the common issues are involved we heard all these appeals together and deem it appropriate to dispose off them, by this common order. The fact leading to these penalties , on all vital points are common, therefore, for the facility of reference mainly we are taking up the facts from the appeal of Smt. Kanta Kwatra.

2. The brief facts of the case are that Smt. Kanta Kwatra has filed a return of income for asstt. Year 2000-01 on 28.6.2000 declaring a total income of Rs. 3,25,510/-. Similarly her husband Shri Gopal Krishna Kwatra has filed his return of income for asstt. Years 1999-2000 on 28.6.1999 declaring an income of Rs. 3,72,650/-, for asstt. Year 2000-01 he filed the return of income on 26.6.2000 declaring an income of Rs. 910420/-. Their returns for all the asstt. Years were processed u/s 143(1) of the Income Tax Act. Informations were received from Additional Director of Income Tax Act. Information were received from Additional Director of Haryana, Faridabad vide letter dated 25th May, 2005 along with an enclosure from Additional DIT Investigation Meerut. According to the information it revealed to the department that one Shri Sanjay Mohan Aggarwal having residential address at 4674, Shora Kothi, Pahar Ganj, New Delhi and office address 1598, Main

Asstt. years 2000-01, 1999-2000,2000-01

Bazar, Pahar Ganj, New Delhi was involved in giving bogus gifts, bogus loans by cheque/DD in lieu of cash received from intending beneficiaries. The alleged Shri Sanjay Mohan Aggarwal has been operating a large number of current and OD account in Vijay Bank, Ansari Road, New Delhi in the name of himself, his family members and large number of companies/firms managed and controlled by him. According to the AO the assesseees have received a gift of Rs. 56 lacs from Shri Sanjay Mohan Aggarwal vide his account No. 2017. The details of gift read as under:-

Bogus gifts/loans scam-Sanjay Mohan Agarwal-Delhi-F.Y.2003-04-Status of Inquiry-Addl. DIT (Inv.) Meerut

Acc. No.	Account Holder's name and Address	Name of Bank and Address	IBT No.	DD No.	Date	Name of Beneficiary	Station	Clearing Bank code	Amount
2017	Sanjay Mohan, 4674, Shora Kothi, Pahar Ganj, Delhi	Vijaya Bank, Ansari Road, New Delhi.	7	449984	30.03.1999	Himanshu Kawatra	Panipat	8307	500080
2017	Snajay Mohan, 4674, Shora Kothi, Pahar Ganj, Delhi	Vijaya Bank, Ansari Road, New Delhi.	9	169	07.04.1999	Jimmy Kawatra	Panipat	8307	1500000
2017	Sanjay Mohan, 4674, Shora Kothi, Pahar Ganj, Delhi	Vijaya Bank, Ansari Road, New Delhi	10	337	12.4.1999	Kanta Kawatra	Panipat	8307	2500000
2017	Sanjay Mohan, 4674, Shora Kothi, Pahar Ganj,	Vijaya Bank, Ansari Road,	12	729	01.05.1999	Himanshu Kawatra	Panipat	8307	1100000

	Delhi	New Delhi							
									5600000

3. On the basis of above information a notice u/s 148 was issued after recording reasons on 23.3.2006 which was duly served upon Smt. Kanta kwatra on 24th March, 2006 and upon Shri Gopal Krishn Kwatra on 27th March, 2006. The assesseees have asked for copy of the information as well as copy of the reasons recorded by the AO. There was lot of correspondence between the assesseees and the department In this connection which has duly been referred by the AO in the asstt. Orders. The AO ultimately directed the asseseees to show the occasion on which the gift was made, purpose of the gift, capacity of the so called donor and the relationship of the assessee with alleged donor. He also directed Shri Gopal Krishan Kwatra to show reason, for the purpose and show justification for splitting up the gifts. The assesseees were further directed to produce gift deed in respect of gift stated to be received and account of all family members explaining the source of deposits and purpose of withdrawal. On 27.12.2006 Smt. Kanta Kwatra had written a letter which has been reproduced by the AO on page 6, whereby, she surrendered a sum of Rs. 25 lacs with a rider that no penal action would be taken up against her. Similarly Shri Gopal Krishan Kwatra has made the surrender for the gift alleged to have been received by his minor sons in both asstt. Years. Ld. AO without getting influenced from the concession given by both the assessee in respect of surrendering the amounts, concluded that Shri Sanjay Mohan Aggarwall had issued DDs to the extent

of 6.05 crore from his current account No. 2017 operated in Vijaya Bank, Ansari Road, New Delhi. According to the AO these were not the gifts rather these were bogus entries by the assessee by making payment of their unexplained cash to the alleged entry provider. They have come with a proposal for surrender of the amount only when they were unable to prove the genuineness of gifts in respect of these entries. Apart from the above ingredients, AO further found that Shri Sanjay Mohan Aggarwal had distributed entries of more than 76 crores during this period. In his understanding it is apparent that there was no explanation with the assessee in support of the alleged gifts Hence he made the addition and initiated the penalty proceedings for concealment of income and for furnishing inaccurate particulars.

4. In the penalty proceeding, the stand of the assessee that they have filed the return which were processed u/s 143(1)(a) of the Act. In the balance sheet they have duly disclosed the factum for gift. In the case of Smt. Kanta Kwatra balance sheet as on 31st March, 2000 was filed along with the return where such gifts have been disclosed. In the bank account the gifts have been shown as credited in the accounts. The assesseees have filed bank statement of Shri Sanjay Mohan Aggarwal, the alleged donor showing that a draft was prepared by him as appearing in the details extracted supra. Copy of the gift deed in which donor has confirmed in respect of gift made were filed. Shri Sanjay Mohan Aggarwal was an income tax assessee, and evidence in this respect was also filed. Similarly details were filed in the case of Shri Gopal Krishan Kwatra, personal balance sheet of minor child

disclosing all assets liabilities and source of the receipt along with necessary evidence was submitted. Faced with a difficulty that assessee would not be in a position to produce Shri Sanjay Mohan Agarwal they have surrendered the amount. Otherwise there was a complete documentation in respect of these gifts. On the strength of these details it was contended that it was a case where nothing was concealed and assessee disclosed complete particulars even in the original return hence there would be no case for the AO to charge the assessee for concealing the particulars of income or furnishing inaccurate particulars of income. It was also pointed out that AO failed to bring any material in the asstt. Order which can demonstrate that the impugned gift were bogus. He is only possessing the report of Additional DIT which is not enough to prove that impugned gift was not genuine. According to the assessee this report was a general information meant for all the assessee. The assessee has cited a number of judgment before the AO. Ld. AO was not satisfied with the explanation of assessee and he after taking cognizance of judgment cited by the assessee as well as relied upon by him held that assessee deserves to be visited with penalty u/s 271 (1)(c). He imposed a minimum penalty @ 100% on the tax sought to be evaded on both the assessees.

5. Aggrieved with the order of AO the assessee carried the matter in appeal before the Ld. CIT(A). They have taken a number of pleas. The first plea taken by the assessee was that penalty proceeding has been initiated without recording the satisfaction. Ld. CIT(A) rejected this argument of the assessee on the ground that

only addition made by the AO to the declared income is on account of bogus gifts received by Smt. Kanta Kwatra and minor sons. Thus according to the Ld. CIT(A) AO has made elaborate discussion in the asstt. Order and the penalty proceeding has been properly initiated at the end of the order. The next argument raised by the assessee before Ld. CIT(A) was that penalty has been imposed by the AO on twin charges i.e concealment of particulars of income and furnishing of inaccurate particulars, whereas both are claimed to be mutually exclusive. According to the Ld. CIT(A) the assessee claimed the amount received as gift knowing well that this is a bogus claim and the alleged DDs are accommodation entries for which they have paid cash. Thus as far as the assessee claimed the amount received as a gift they filed inaccurate particulars and they have concealed the correct particulars in respect of accommodation entries shown as gift. The Ld. CIT(A) has held that even these two charges are mutually exclusive the assesseees have been correctly held guilty on both the counts. The next observation made by the Ld. CIT(A) is that assesseees have claimed that they have discharged the onus by filing all the details of gifts whereas the fact is that they have surrendered the gift amount and could not file any evidence in support of their claim. The AO on the other hand has proved that the accounts from where cheques were received were used by Shri Sanjay Mohan Aggarwal for depositing the cash received from persons line assessee and issued bogus gift cheque and assessee is also a beneficiary of such a bogus gift. In this way Ld. Commissioner has rejected the appeals of the assessee.

6. Before us While impugning the orders of revenue authorities Ld. Counsel for the assessee reiterated his submission as were made before the AO as well as before Ld. CIT(A). In brief his first preposition was that AO has not recorded his satisfaction before initiation of the penalty proceeding. In his second fold of submission he contended that section 271(1)(c) contemplates two fact situation i.e. assessee has concealed the particulars of income and where assessee has failed to furnish accurate particulars of income. The first situation proceeds on the ground that particulars of income have not been furnished later proceeds on the footing that such particulars had no doubt been furnished by the assessee but the same has been found inaccurate. According to the Ld. Counsel for the assessee both these facts situations cannot run together and they are mutually exclusive. The AO in the penalty order has nowhere propounded the specific charge against the assessee. Therefore his order deserves to be set aside. For butteracing his contention he relied upon the decision of Hon'ble Gujrat High Court in the case of CIT vs. Lakhdhir Lalji 85 ITR 77 (Gujrat) and in the case of Navin Bhai M. Patel vs ITO 27 ITD 411 (Ahd). He further contended that assessees have disclosed all the material facts in their return of income. Before issuance of notice u/s 148 the balance sheet exhibiting the fact of receipt of gift were duly filed by the assessees. He further contended that information received by the AO in respect of alleged accommodation entries provided by alleged Shri Sanjay Mohan Aggarwal was pertaining to the period November 1999 to September, 2001 whereas the assessees have already received the gift prior to April 1999 i.e. in the case of Smt Kanta Kwatra and May 1999 in the case of Himanshu, who is the minor son of assessee and whose income has been

assessed in the hands of Shri Gopal Krishan Katra. He further contended that additions were made only for the reason that assesseees have failed to prove the gifts but that is not ipso facto sufficient for the AO to visit the assessee with penalty. He relied upon the decision of Hon'ble Delhi High Court in the case of CSIT Vs. Pradeep Kumar Gupta 303 ITR 95.

7. In the case of Shri Gopal Krishan Kwatra Ld. Counsel for the assessee has contended that reopening of assessment is bad in law and consequently no penalty order ought to be passed in this case. According to the Ld. Counsel the information received from ADIT Meerut relates to the period November 1999 to September 2001 whereas the gifts received by the assessee were prior to this period. Thus there is no direct nexus between the information and the belief of AO for reopening of the assessment. The Ld. Counsel for the assessee emphasised that even if assessee has not taken up the issue of reopening in the quantum proceeding the assessee can defend his penalty proceeding on this issue also. As far as other aspects are concerned he reiterated his contention as were raised before the revenue authorities below.

8. Ld. DR on the other hand relied upon the order of Ld. CIT(A). He has filed written submissions running into 14 pages wherein basically he apprised us as to how section 271(1)(c) is to be construed and interpreted. According to his submission department is not obliged to prove that assessee has concealed the particulars of

income or furnished inaccurate particulars with a guilty mind or deliberately. He referred a large number of decision of Hon'ble Supreme Court right from 165 ITR 14 in the case of Mussadilal Ram Bharose upto the decision of Hon'ble Supreme Court in the case of Dharmendra Textile 306 ITR 277 . He has also explained as to how a situation is to be appreciated when return is revised upward and revised income is accepted. In the written submission the next step taken by the Ld. DR is in respect of the cases where addition was made on the basis of surrender of amount made by the assessee.

9. Though in our to understanding it is not a very complicated issue where interpretation of section 271(1)© is involved but both the counsels have devoted lot of energy for making a reference to the case law. They have cited a large number of cases for the facility of reference we are taking their citation as under :-

By Counsel for assessee

1. Copy of judgment of CIT vs. Sidhartha Enterprises (P&H)
2. Copy of judgment of Puneet Sehgal (Delhi), ITAT
3. Copy of judgment of Dr. Sanjay Chug in ITA 330-331/08
4. Copy of judgment of ITO vs. Dr. Sameer Kant Agaral 113 TTJ 252
5. Copy of judgment of Ranbir Chemicals (P) Ltd. 91 TTJ 692
6. Copy of judgment of CITvs Balbir Singh 304 ITR 125
7. Copy of judgment of Smt. Sandhya Verma 114 TTJ 933

8. Copy of judgment of Kamal Chemical Industries 277 ITR 150 (P &H)
9. Copy of judgment of CIT vs Aggarwal Pipe Co. 240 ITR 880 (DEL)
10. Copy of judgment of National Textile vs CIT 249 ITR 125 (Guj)

By Department

11. 137 ITR 722 (Cal)
12. 163 ITR 440 (Raj)
13. 130 ITR 602 (Cal)
14. 2009-TIOL-755-ITAT-BANG
15. (2000)109 TAXMAN267 (KER)
16. ITAT in ITA No. 2633/Del/09 – Ashok Mahindra Vs. ITO

10. We have duly considered the rival contention and gone through the record carefully. Section 271(1)© has a direct bearing on the controversy in hand. Therefore it is salutary upon us to take note of this section which read as under :-

“271. Failure to furnish returns, comply with notices, concealment of income, etc.

(1)If the assessing officer or the Commissioner (Appeals) or the CIT in the course of any proceedings under this Act, is satisfied that any person

(a) and (b)*****

Asstt. years 2000-01, 1999-2000,2000-01

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income.

he may direct that such person shall pay by way of penalty,

- (i) and (ii) *****
- (ii) in the cases referred to in Clause (c) or Clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits the furnishing of inaccurate particulars of such income or fringe benefits:

Explanation 1 – Where in respect of any facts material to the computation of the total income of any person under this Act.

- (A) Such person fails to offer any explanation or offers an explanation which is found by the assessing officer or the Commissioner (Appeals) or the CIT to be false, or
- (B) Such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of Clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”

11. A bare perusal of the above provision would make it clear that in order to impose the penalty the AO or the Ld. CIT(A), during the course of any proceedings before them should be satisfied that the assessee has (i) concealed his income or, (ii) furnished inaccurate particulars of income. As regards the quantum of penalty, the penalty imposed under section 271(1)(c) can range between 100% to 300% of

the tax sought to be avoided by the assessee, as a result of such concealment of income or furnishing of inaccurate particulars. The next and most important feature of this section is deeming provision regarding concealment of income. Not only that the penalty provisions cover the situation in which the assessee has concealed income or furnished the inaccurate particulars, in certain situation, even without there being anything to indicate so, statutory deeming fiction for concealment of income would come into action. A deeming fiction provided by way of Explanation 1 to Section 271(1)(c) postulate two situations (1) where in respect of any facts material to the computation of total income under provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the AO or the Ld. CIT(A) wherein in respect of any fact material to the computation of total income under the provision of this Act, the assessee has not substantiate the explanation and the assessee fails to prove that such explanation is a bonafide and assessee has disclosed all the facts relating to the same and material to the computation of total income. Thus in the first position the deeming fiction would come into play by the inaction at the end of assessee, by his not giving his explanation with respect to any fact material to the computation of total income or by action of the AO or Ld. CIT(A) by giving categorical finding to the effect that the explanation given by the assessee is false, whereas in the second condition the deeming fiction would come into play by the failure of the assessee leading to satisfaction of conditions laid down in Clause B of Explanation 1 to section 271 (1)(c) i.e. assessee is not able to substantiate an explanation in respect of any fact material to the computation of total income and in addition to this the assessee

is also not able to prove that such explanation as given is bonafide and all the facts relating to the same and material to the computation of total income have been disclosed by the assessee. Thus when this deeming fiction comes into play which can only happen in one of the above situation, the related addition or disallowance in computing the total income of the assessee for the purpose of section 271(1)(c) is deemed to represent the income in respect of which inaccurate particulars have been furnished.

12. The case of the assessee before us is that they have received genuine gifts and have duly disclosed all these details in their income tax return. Therefore they should not be visited with penalty. It is also pleaded by them that in the details filed alongwith the original return the gifts have been disclosed in the balance sheet. The amounts have been credited in the bank. They are having affidavit of the donor, his permanent account number. The only thing which they could not comply with during the asstt. proceeding was that they failed to produce Shri Sanjay Mohan Aggarwal in order to substantiate all these documents. On the strength of Hon'ble Punjab and Haryana High Court decision in the case of CIT Vs. Sidhartha Enterprises in ITA No. 908 of 2008. It was also contended by the Counsel for the assessee that Hon'ble jurisdictional High Court has considered the impact of Hon'ble Supreme Court's decision in the case of Dharmendra Textile and the High Court has held that judgments of Hon'ble Supreme Court cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. What has been laid down in that qualitative difference between criminal liability u/s 276© and

penalty u/s 271(1)© had to be kept in mind and approach adopted to the criminal case need not to be adopted while considering the levy of penalty. According to the Hon'ble High Court concept of penalty has not undergone change by virtue of this judgment of Hon'ble Supreme Court. Penalty is to be imposed only when there is some element of deliberate default and not the mere mistake. We have considered the facts of the present case in the light of preposition laid down by the Hon'ble High Court in the case of Siddhartha Enterprises.

13. According to the assessee they have received a gift of Rs. 56 lacs from Shri Sanjay Mohan Aggarwal. This very fact does not inspire any credence in the story put forth by the assessee. In the present materialistic world we have to come across a philanthropist who can donate Rs. 56 lacs to any stranger. Not only this Rs. 56 lacs the department has come out with an information that DDs of Rs. 6.5 crore were got issued from account number 2017 and the alleged donor was found to be a man of no means. These facts lead us to observe that whatever documentary evidence assessee has filed along with original return were manipulated one. When such type of entries are being obtained with due consultation then hardly there will be any defect in their documentation. The assessee is caught only when these documents and facts were put for verification. The stage to substantiate those documents, when arrived at the asstt. proceedings, the assessee has immediately surrendered the amount, the veracity of these documents were never to put to test thus the argument about the disclosure of these details in the return is meaningless. It is difficult for us to believe that

assesseees were not aware about these bogus gifts when they file the return. The facts found from the record lead us to say that the gifts have been arranged by them by giving their unexplained money. They were fully aware that it is a false claim but inspite of that they took the risk of the addition as well as penalty proceedings. We have no doubt in our mind on the basis of the details available from the record that it was a deliberate attempt at the end of assesseees to portray their bogus claim as genuine one in the return of income. It is not the case that assesseees have taken some loan which was credited in their books which could not be proved with the help of evidence. In the present case the assesseees have shown receipt of gifts which they were aware that such a claim is bogus one. The department was able to collect the information exhibiting that Shri Sanjay Mohan Aggarwal was involved in providing accommodation entries to various individual and other concern. He has provided the entries of Rs. 76 crores out of that entries of Rs. 6.5 crore was provided from the bank account bearing No. 2017 from where assesseees have also received the gifts. It is such a brazen attempt at the end of assessee where there can be no doubt or two opinion that assesseees have shown these gifts deliberately knowing to the fact that they are bogus.

14. During the course of hearing Ld. Counsel for the assessee submitted that a similar gift was received by Shri Puneet Sehgal and others. In their cases penalties have been deleted by the Tribunal. He placed on record copies of the Tribunal's order. We have gone through the orders and we are of the opinion that no ratio of law has been laid down in that order. It is an order on the facts of those cases. In those cases AO has directed the assesseees to produce Shri Sanjay Mohan Aggarwal.

When AO has given this direction by that time the alleged Shri Sanjay Mohan Aggarwal had already died and therefore assessee were not in possession to comply with the direction of the AO. The Tribunal at the end has observed "that department has not made any other efforts to come to the conclusion that the gifts in question in no circumstance have been amounts received as gift from Shri Sanjay Mohan Aggarwal." According to the Tribunal the assessee have surrendered these gifts as income under the situation where they could not produce Shri Sanjay Mohan Aggarwal because of his death, occurred before the starting of reopening proceeding. No such circumstances are available in the present case. The AO has never asked the assessee to produce Shri Sanjay Mohan Aggarwal. He simply asked the assessee to prove their gifts. Apart from the above we do not find any discussion in the order whether information collected in the present case and discussed by us were available on those cases or not. Therefore the order of the Tribunal in the case of Shri Punit Sehgal does not lay down that in every case of accommodation entries taken from Shri Sanjay Mohan Aggarwal no penalty could be imposable. In the case of Shri Gopal Krishan Kwatra the argument that reopening of assessment was not justified is concerned, we are of the opinion that assessee has not disputed reopening of the assessment during the course of assessment proceedings. He himself surrendered the amount, additions have been confirmed, now at this second appellate stage assessee cannot make out altogether a new case. The validity of assessment is very much intact. The one of the argument by the Ld. Counsel for the assessee is in respect of charge framed by the assessee i.e. whether they have furnished inaccurate particulars or they have concealed the

particulars of income. The Ld. CIT(A) has dealt this issue and we do not find any error in his order. Apart from that we are of the opinion that there is no ambiguity in the charge which assessees were required to explain. From the assessment stage it was very clear that assessees have to explain why they have introduced their unexplained money in the garb of bogus gift and tried to avoid the payment of tax. There is no confusion on this aspect. We could understand argument of Ld. Counsel for the assessee if on account of some confusion a prejudice has been caused to the assessee for explaining their position. In fact they do not have any explanation. In view of the above discussion we do not find any merit in these appeals. They are dismissed.

Order pronounced in the open court on 30.4.2010.

[G.E.VEERABHADRAPPA]

VICE PRESIDENT

[RAJPAL YADAV]

JUDICIAL MEMBER

Veena

Dated: 30.4.2010

Copy forwarded to: -

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

TRUE COPY

By Order,

Deputy Registrar,

ITAT