
(2008) 05 RAJ CK 0130
In the Rajasthan High Court

Commissioner of Income Tax	Vs	APPELLANT
Sh Ram Dev Kumar Chitlangia		RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Income Tax Act, 1961 — Section 142

Citation : (2008) 217 CTR 462

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—This appeal by the revenue, is against the judgment of learned Tribunal dated 09.01.2004. By the said judgment, the learned Tribunal decided four appeals; two by the assessee, and two by the revenue, relating to assessment years 1994-95 and 1995-96. Out of them, the present appeal relates to Appeal No. 372, decided by the learned Tribunal, being appeal by the revenue, relating to the assessment year 1995-96. This appeal was admitted vide order dated 23.05.2006, by framing following substantial questions of law:

I. Whether on the facts and in the circumstances of the case and in law, the learned Tribunal was right in holding the NRI gifts as genuine ignoring the fact that the assessee failed to prove the capacity of the donor who is stranger as gift was not made on any social occasion?

II. Whether on the facts and in the circumstances of the case and in law, the learned Tribunal was right in confirming the order passed by the learned CIT(A) deleting the addition of Rs. 1,20,000/- made by the A.O. treating the gifts as arranged by the assessee by utilizing his undisclosed income?

2. The necessary facts are, that the case of the assessee was, that a notice under Sec.142 was issued alleging, that a bogus gift of Rs. 1,51,000 in NRI Account was received in the name of assessee's minor son, and there were other bogus gifts from four persons, being Smt.Godavari Devi, Ravi Kumar, Yogesh

Kumar and Pradeep Kumar. Other aspects of the notice, we need to go into, as they are not involved before us. The Assessing Officer made addition with respect to these gifts, finding them to be not genuine, and added as income from undisclosed sources.

3. The matter was carried in appeal before the learned Commissioner, and the learned Commissioner allowed the appeal. Regarding the gift of Rs. 1,51,000, it was found, that during the course of assessment proceedings, the Assessing Officer required production of donor Ravi Kumar, the assessee provided complete particulars and postal address of the donor, and requested the AO to make direct verification, by post, or otherwise, at the cost of the assessee, the AO also mentioned about the FAX message received from the donor, confirming the gift. In such circumstances, it was found, that the donor could not be compelled to appear in person, and also found, that otherwise the amount of gift from an NRI, out of the money standing to his credit in a NRE Account, in any bank of India account, is exempted from gift tax, and the attempt on the part of the assessing officer to bring such amount under existing taxing provision, without appropriate material, or tangible evidence, deserves to be discouraged. So far the four other gifts are concerned, in this regard, it was also found, that the addition has been made without any justification, particularly when identity of the donors has not been doubted, and the sources of gifts are very old credit, in the respective accounts of the donors, who are existing assesseees of income tax. It was also found, that the genuineness of the transactions cannot be questioned, particularly when, the transactions are through bank, and no evidence against such transactions has been collected, in support of the adverse finding. Various other reasons were also given, and it was found that additions deserve to be deleted, and were accordingly deleted.

4. The learned Tribunal, in the appeal, discussing the gift of Rs. 1,51,000 found, that in the instant case, it is not disputed that the donor is an NRI, and a man of means, because the AO has not questioned his credit worthiness. It is also found not in dispute, that the amount was received by the minor son of the assessee from NRE account of the donor, ofcourse it was found true, that no deposits were made in the NRE account, except realization from foreign country i.e., and that only foreign exchange can be deposited in NRE Account, and there is nothing to show, that the assessee received the money back, after giving cheque to his minor son, and thus the AO was found to be not justified in finding the gift as an arranged gift. Then the consideration of reciprocity, also was negated, as gift is made without any consideration, and under natural love and affection. Various other judgments were also considered in this regard, and followed. Then, discussing the gift of Rs. 1,20,000, again, it was found, that donors were assessed to income tax, their identity was not in doubt, although all of them were having financial capacity to give gifts, transactions were through banking channel, thus, it was found, that AO has made additions merely, on the basis of presumption and assumptions, which is not tenable, as the requirement of law was, only to prove the identity, and credit worthiness, and genuineness, of the

transactions, which were found to be duly proved by the assessee.

5. Assailing the impugned judgment, learned Counsel for the revenue relied upon the judgment of this Court, reported in *Chain Sukh Rathi Vs. Commissioner of Income Tax and Another*, wherein the assessee had shown the gift from his father, in the sum of Rs. 30,000, made by cheque, but then, this was not accepted, on the ground, that there was no occasion for the father to gift the amount to his son, and as such the amount was found to be bogus, and addition was confirmed. On this basis, it is contended, that in present case the additions are required to be confirmed, by setting aside the order of the learned Tribunal, and the learned Commissioner. Learned Counsel also referred to the judgment of Punjab & Haryana High Court, in *Commissioner of Income Tax Vs. Ms. Monica Oswal, Jawahar Lal Oswal and Miss Ruchika Oswal*, however, after going through the judgment, what we find is, that by a long judgment running into more than 30 pages, ultimately, it was found, that the question of law arise for determination, being as to whether the assessee had discharged the onus of establishing that the gifts made in favour of the assessee were genuine, and as to whether the Tribunal was right in law in deciding the deletion of the gifts, on protective basis in their hands, and simultaneously deleting the additions, made on substantive basis, in the hands of father of the assessee, because the financial capacity of the donor has not been proved at any stage, either at the assessment stage, or at the appellant stage. By framing these questions, appeals were admitted for hearing.

6. On the other hand, learned Counsel for the assessee has relied upon two judgments of this Court; one being in the case of *Nek Kumar Vs. Assistant Commissioner of Income Tax*, and the other judgment in *CIT v. Padam Singh Chauhan* reported in 215 CTR 303, to contend, that in *Padam Singh's* case it has been held, that there is no legal basis to assume that to recognize a gift to be genuine there should be blood relationship, or any close relationship, between the donor and the donee, and that, instances are not rare, when even strangers make gifts, out of very many considerations, including love, affection and sentiments. Likewise, it was also held that when the assessee has produced the copies of the gift deeds, and the affidavits of the donors, in absence of anything to show, that the act of the assessee, in claiming gift was an act of money laundering, simply because he happens to receive the gifts, it cannot be said that that is required to be added in his income. Likewise, in *Nek Kumar's* case, inspite of directions, the donor had not been examined through a Commission, but the donor had given an affidavit, and also a declaration, to the effect, that she had given gift of Rs. 1 lac to the assessee, the gift was found to be genuine, and the order of the learned Tribunal was set aside.

7. Inter-alia, on this basis, it has been contended, that the order of the learned Commissioner and the learned Tribunal, in this regard, does not require any interference.

8. We have considered the submissions, and have gone through various

judgments cited at the bar, and the impugned orders.

9. In our view, in the first instance, the question, as whether it is established on record, that the gift given is genuine, would essentially be a question of fact. May be, that if, in arriving at a conclusion either way, on this aspect, any relevant material is ignored, or irrelevant material is considered, or there is misreading, or non-reading of record, then it may, ofcourse, give rise to substantial question of law. So far the case law cited on either side is concerned, the judgment in Chain Sukh Rathi's case, in respect of the gift, while deciding the matter, does not lay any law, except that in that particular case, gift by father to the son was not recognized, while in view of various other judgments, including the judgment rendered by the same Bench, in Nek Kumar's case, a diametrically contrary view has been taken. In Nek Kumar's case, the matter had been considered threadbare, and the order of the learned Tribunal has been set aside. It is enough to comprehend, that in Chain Sukh's case, a gift by father to his son in the sum of Rs. 30,000 was not recognized, for want of any occasion, while in Nek Kumar's case a gift of comparatively larger amount of Rupees one lac has been held to be genuine, by considering, that despite the directions, the donor had not been examined through a Commissioner by the Assessing Officer, though the donor had given an affidavit to this effect, and also declaration was given by her, that she had given gift of Rs. 1 lac to the assessee. The assessee was also examined in second round by the AO, wherein the assessee submitted, that she knew the donor since long, and that the donor was impressed by his grandmother, who was a "Sadhvi" in Jain religion. The donor had also visited Jaipur so many times, and stayed with the family of the assessee, and the gift had been given. On these facts, it was found, that there is no reason to confirm the view taken by the Tribunal, in not recognizing the gift, rather it was held, that merely on conjectures and surmises, such gifts cannot be treated as non-genuine. Then, the proposition propounded by this Court, in Padam Singh's case has already been quoted above. If the present case were to be examined on these parameters, it is clear, that in the present case, identity of all the donors is not in dispute, the transactions have been channelized through bank, and four of the gifts are by the blood relations, apart from the fact, that blood relationship is not necessary. There is no tangible material, collected by the assessing officer, to show anything, which may cast any doubt on the genuineness of the gift, or to establish, that the purported transactions of gift, were otherwise transactions of money laundering, or the like.

10. In that view of the matter, since the authorities below, i.e. learned Commissioner and the learned Tribunal, have examined the matter on correct parameters, and have arrived at a conclusion, in favour of the assessee, in our view, the findings do not require any interference.

11. Consequently, the two questions, as framed, are answered in affirmative i.e. in favour of the assessee and against the revenue.

12. The appeals thus have no force and are dismissed.