

(2007) 03 DEL CK 0007
In the Delhi High Court
Case No : ITA No. 875 of 2006

Commissioner of Income Tax		APPELLANT
	Vs	
Shri Anil Kumar		RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144, 260A, 263, 68

Citation : (2007) 138 DLT 788 : (2007) 292 ITR 552 : (2008) 167 TAXMAN 143

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; K.R. Manjani, for the Respondent

Judgement

V.B. Gupta, J.—Revenue has filed this appeal u/s 260A of the Income Tax Act, 1961 (for short as "Act") against the order dated 23rd September, 2005 passed in ITA No. 2468/Delhi/2002 for the assessment year 1995-96.

2. We have framed the following substantial question of law for consideration:

Whether the Income Tax Appellate Tribunal was correct in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition of Rs. 20 lacs on account of gifts alleged to have been received by the assessed?

3. Brief facts of the case are that the assessed in the present case filed the Income Tax Return for the assessment year 1995-96 on 31st October, 1995 declaring an income of Rs. 1,04,249/-. This assessment was made u/s 143(3) of the Act on 2nd March, 1998 accepting the declared income of the assessed. Subsequently, this assessment order was examined by CIT(Central-2), New Delhi u/s 263 of the Act who set aside the assessment on 2nd August, 1999 with direction to examine the identity, genuineness and creditworthiness of two donors.

4. The assessed filed a written reply on 5th November, 2001 but the Assessing Officer wanted further details as well as the attendance of the assessed. The

assessed did not appear and sought adjournments. After giving sufficient opportunities, the Assessing Officer completed the assessment u/s 144 of the Act. The assessed neither appeared personally nor furnished the requisite information to the Assessing Officer and accordingly, Assessing Officer completed the assessment on merits. The Assessing Officer observed that the assessed had received two gifts of Rs. 10 lacs each from N.R.E. accounts of two donors namely Sh. Vinod Kumar Ghai and Sh. David Paramjit Gill. The Assessing Officer observed that the assessed had filed no evidence to prove the capacity of the donors for giving these substantial gifts, though the assessed in his reply dated 5th November, 2001 had stated that he has also submitted form of Gift Deeds, affidavits of two donors, passport of two donors as well as bank certificates relating to these gifts by means of A/C Payee cheques from NRE accounts from these two donors. However, the Assessing Officer was not satisfied with the reply of the assessed and observed that the assessed could not discharge his onus of proving the creditworthiness of the donors and held that the amount of Rs. 20 lacs which has been declared by the assessed as gift, was in fact his income and same was added to his total income u/s 68 of the Act.

5. Aggrieved by the order of the Assessing Officer, the assessed filed an appeal before the Commissioner of the Income Tax (Appeals) who held that these two gifts made are genuine and as such the addition made was deleted.

6. Being dissatisfied with the orders of the Commissioner of Income Tax (Appeals), Revenue filed appeal before the Income Tax Appellate Tribunal and vide impugned order the appeal of the Revenue was dismissed.

7. It has been argued by the learned Counsel for the Revenue that the assessed failed to furnish financial capacity and creditworthiness of the donors and there was no natural love and affection between the assessed and the donors. The assessed did not appear before the Assessing Officer nor he furnished the requisite information and thus, the assessed has failed to discharge its onus and in support of his contention, the learned Counsel cited a decision of our own High Court reported as Sajan Dass and Sons Vs. Commissioner of Income Tax, .

8. On the other hand, it has been argued by learned Counsel for the assessed that the assessed duly declared these two gifts in his capital account at the time of original assessment and he submitted necessary evidence in the form of gift deeds, affidavits of donors, copies of the passport of the two donors and bank certificate confirming the payment by pay order from the NRE accounts of the two donors and in support of his contention, learned Counsel cited two decisions of our own High Court, Commissioner of Income Tax, Delhi (Central-2) Vs. Mrs. Sunita Vachani, and Commissioner of Income Tax Vs. R.S. Sibbal, .

9. The question to be seen here is as to whether the identity of donors has been established and whether they had the capacity to make such a gift or not. In Commissioner of Income Tax v. R.S. Sibbal (supra), it has been laid down:

There is no quarrel with the proposition that a mere identification of the donor

and showing the movement of the gift amount through banking channels is not sufficient to prove the genuineness of the gift and since the claim of a gift is made by the assessed the onus lies on him not only to establish the identity of the donor but his capacity to make such a gift. But, in the instant case, we find that though the assessed had admittedly produced the bank statements, the Assessing Officer did not raise any query with regard to the capacity of the donors to make the gift. From the assessment order, we find that the only ground on which the genuineness of the gifts has been doubted is the alleged failure on the part of the assessed to establish relationship between the donor and the donee.

10. Similarly in *Sajan Dass and Sons* (supra), it has been laid down that:

A mere identification of the donor and showing the movement of the gift amount through banking channels is not sufficient to prove the genuineness of the gift. Since the claim of gift is made by the assessed, the onus lies on him not only to establish the identity of the person making the gift but also his capacity to make a gift and that it has actually been received as a gift from the donor. Having regard to the inquiries conducted by the Assessing Officer from the bank, with which the assessed was admittedly confronted and bearing in mind the fact that admittedly said Subhash Sethi was not related to the assessed, we are of the view that the findings recorded by the Tribunal are pure findings of fact warranting no interference. We find it difficult to hold that on the facts of the instant case proper opportunity had not been granted to the assessed to prove the gift.

11. So, from the aforesaid judgments, the position which emerges is as under:

(i) Mere identification of donor and showing the movement of gift amount through banking channels is not sufficient to prove the genuineness of the gift.

(ii) Since the claim of the gift is made by the assessed, the onus lies on him not only to establish the identity of the person making the gift but also his capacity to make such a gift.

12. Here in the present case, there is nothing on record to show as to what was the financial capacity of the donors; what was the creditworthiness of the donors; what kind of relationship the donors had with the assessed; what are the sources of funds gifted to the assessed and whether they had the capacity of giving large amount of gift to the assessed. Further, the assessed was asked to appear in person before the Assessing Officer, however, he never appeared.

13. Since, the assessed did not prove the genuineness of the transaction nor he established the identity of the donor, nor the capacity of donor to make gift, as such the Income Tax Appellate Tribunal was wrong in deleting the addition of Rs. 20 lacs on account of gift alleged to have been received by the assessed.

14. Accordingly, the present appeal filed by the Revenue is accepted and impugned order passed by the Income Tax Appellate Tribunal is set aside.

15. The substantial question of law is answered in the negative, in favor of the Revenue and against the assessed.