

(2007) 04 DEL CK 0134
In the Delhi High Court
Case No : ITA No. 380 of 2007

Sandeep Kumar (HUF)

APPELLANT

Vs

The Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Income Tax Act, 1961 — Section 132, 158BC, 158BD, 260A, 68

Citation : (2007) 213 CTR 151 : (2007) 293 ITR 294 : (2007) 162 TAXMAN 91

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

Bench : Division Bench

Advocate : P.N. Monga and Manu Monga, for the Appellant; R.D. Jolly, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The Appellant has filed the present appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act") challenging the order dated 21st July, 2006 passed by Income Tax Appellate Tribunal(hereinafter referred to as "Tribunal"), Delhi Bench "C" in IT(SS) No. 6(Del)/1999 for the block period 1st April 1986 to 29th August, 1996.

2. The facts of this case are that a search and seizure operation u/s 132 of the Act was conducted at the residence of Karta of the assessed HUF Sh. Sandeep Kumar. Certain documents/loose papers were seized during the course of search. Proceedings u/s 158BD were initiated against the assessed on 7th January, 1998 and the assessed filed return declaring "nil" undisclosed income on 17th February, 1998. During the course of search, a set of cheque books and pass books of NRE account of the donors of the alleged gifts to this group were recovered from the business premises of the Karta of the assessed HUF. From the perusal of the seized documents it was noticed by the Assessing Officer that the assessed has received a sum of Rs. 3,37,000/- and Rs. 36,000/- as gifts by cheques on 20th February, 1993 and 5th March, 1993 respectively from one Banshi L.Sawhney, 32 West Springway Lutherville MD-21093, USA. The

Assessing Officer asked the assessed to prove the genuineness of these gifts. The assessed in its reply stated that since these gifts are received from NRI, the same are genuine. The source from where these gifts have been made by the donor, the details and particulars of bank account from where these gifts have been made and declaration from the donor in support of his financial status, the annual income and total wealth owned by him has been filed. Further, in support of these gifts the assessed also filed two separate affidavits by the donor before the Assessing Officer affirming the facts that he was a permanent resident of USA having source of income by virtue of being a Professor and that he has NRE account No. 47 with OBC, Karol Bagh, New Delhi from where he has forwarded the gifted amount by cheques to the assessed HUF. Two confirmations on plain paper regarding total income and taxes paid along with the copy of Income Tax return of the donor and certificate regarding the fact that the pass book and cheque book of NRE account No. 47 was kept with Gaurav Gambhir for donor's personal convenience and the latter and his family members have no interest in this account. In view of these documentary evidence the onus cast upon the assessed in respect of the genuineness of these gifts stands discharged.

3. However, after considering the submissions of the assessed and perusing the documents, the Assessing Officer was of the opinion that the assessed has not been able to discharge its onus of proving the identity, capacity and the credit-worthiness of the donors as well as the genuineness of the gifts due to the reason that the copies of affidavits merely confirm the fact that the money has been transferred from NRE account to the assessed but it does not give any information regarding the source of funds as well as the source from where funds are alleged to have been given as gifts, came into the NRE account; that the confirmation of the donor regarding the income declared and tax paid along with copy of individual income tax return without any balance-sheet or annexures, does not throw any light on the source of funds utilized for the purpose of alleged gifts; that the financial capacity and the credit-worthiness of the donor does not stand established; that during the course of such proceedings Shri Sandeep Kumar could not even furnish the exact address of the donor; that the assessed has not brought out any circumstances to show any close relationship with the so called donor; that these gifts are unilateral, time specific and need based and now have been utilized by the assessed in the business of the group companies in one way or other; that the fact that the bank pass book and cheque books of some of NRE donors were found from the premises of the assessed which itself shows that these accounts were operated by the assessed and his family members, including his brother; that the bank cheque books and pass books of the donor in possession of the members of the group in itself show that the assessed was in fact in control and application of funds; that during the search, the Karta of the assessed HUF could not even furnish the address of the donor and during the assessment proceedings could not establish the circumstances in which the gifts of such quantum were made i.e., the occasion etc.; that the assessed could not give any instance of any kind of reciprocal gifts to any of the

relatives of the donor or to the donor himself. Thereafter, the Assessing Officer concluded that though the assessed is able to establish the identity of the donor but has not been able to establish the financial capacity of the donor and genuineness of the gifts. So by invoking Section 68 of the Act a sum of Rs. 3,73,000/- received by the assessed as gift was treated as income of the assessed from undisclosed source and added to the income of the assessed.

4. Being dissatisfied with the assessment order, the Appellant filed an appeal before the Tribunal and vide impugned order the Tribunal dismissed the appeal filed by the Appellant.

5. It has been contended by learned Counsel for the Appellant that on identical facts in the case of Sh.Sandeep Gambhir, individual who is the Karta of assessed HUF, a similar addition in the block assessment u/s 158BC was made by the Assessing Officer and the same has been deleted by the Tribunal vide order dated 26th February, 2003 passed in IT(SS) No. 203(Del)/97 for the block period 1st April, 1986 to 29th August, 1996. Since the facts of the instant case of the assessed as well as that of individual Sandeep Gambhir are identical, the addition made by the Assessing Officer in the instant case of the assessed in respect of the amount received as gifts by the assessed should have also been deleted by the Tribunal. Since, the amount involved in the present case of the assessed has come from the same donor the same may also be treated as genuine. Further, the learned Counsel for the Appellant in support of his contention has referred a decision of this Court in Commissioner of Income Tax, Delhi-II Vs. Ravi Kant Jain, and a decision of Bombay High Court in Commissioner of Income Tax Vs. Vinod Danchand Ghodawat,

6. The Tribunal while considering the genuineness of the gift transactions, vide impugned order has held that:

In the instant case, admittedly, the donors are even not distantly related to the assessed. The donors are NRIs who were not available to the Assessing Officer for examination nor could be made available by the assessed as they were residents of foreign countries. It means that in such circumstances the assessed were required to furnish proper and authenticated evidence on which reliance could be placed by the Assessing Officer as the documents would be foreign documents and the genuineness of the same could not possibly be easily verified by the Assessing Officer. In the instant case the return of the NRI donor filed by the assessed, having not been accompanied by the balance-sheet, is simply a copy not bearing any authentication from the revenue department of that country and not even properly notarised by an authorized person of that country, so, it is not possible for us to look into such unauthenticated evidence filed by the assessed to support and corroborate the financial status of the donor for coming to a conclusion; that in fact the donor was in a capacity to give such huge amounts as gifts to persons unrelated to him out of love and affection as claimed by the donors in their affidavits in the case of the respective assesses. Since the donors in the affidavits claimed to have made the gifts out of love and

affection, here comes the importance of human probability which prompted the donors to donate generously huge amounts to persons not related out of love and affection for determining the genuineness of the gifts, irrespective of the fact that the amounts have been received as gifts by the assessed from the NRI donors through banking channels of the NRE accounts to the bank accounts of the assessed. Here, for determining the genuineness of the gifts we are required to look into relevant attendant facts and circumstances of the instant cases. It is also important to mention here that in this case the donor who has given gifts to Sandeep Kumar, HUF, the instant assessed, has also given gifts to assessed Sandeep Kumar, individual, also and similar was the case of other donors and the other assessed. It appears to be humanly most improbable for a donor to develop love and affection even for the individual as well as the assessed HUF and that too when the donor has no relationship with the assessed and further when there was no occasion for the donors to make such gifts of huge amount and there was no reciprocation between the donor and the donee, as in the instant cases, the assessed claimed to have received the gifts though never ever made gifts to the said donors.

7. The question to be seen in the present case is as to whether the identity of the donor has been established, and whether the donor had the capacity to make such a gift or not. In a decision of this Court in Commissioner of Income Tax Vs. R.S. Sibal, , 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

8. Similarly in another decision of this Court reported as Sajan Dass and Sons Vs. Commissioner of Income Tax, it has been held 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.

9. 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.

10. Here in the present case, there is nothing on record to show as to what was the financial capacity of the donor; what was the creditworthiness of the donor; 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.

11. Accordingly, the gifts received in this case by the assessed from NRI donor cannot be held to be genuine gifts and the tax authorities below were fully justified in treating the amount received as gifts to be representing the concealed income of the assessed and adding the same to the income of the assessed as being assessed's income from undisclosed sources.

12. So, in view of the concurrent findings of fact given by the two statutory authorities, we do not find any reason to disagree with decision of the Tribunal.

13. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

14. Accordingly, the present appeal filed by the assessed is, hereby, dismissed.