

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**आयकर अपील सं/ I.TA No.3166/Mum/2013**

**(निर्धारण वर्ष / Assessment Year: 2008-09**

Subhash Mohandas Gogia, F-9/0:2, Noopur CHS, Sector 22, Koperkhairane, Navi Mumbai-400 709	<b>बनाम/</b> Vs.	The ITO 22(3)(4), Vashi Navi Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ACHPG 1894P		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
अपीलार्थी ओर से/ <b>Appellant by:</b>		ShriPrakash Pandit
प्रत्यर्थी की ओर से/ <b>Respondent by:</b>		Shri Satyajit Mandal

**सुनवाई की तारीख / Date of Hearing :08.02.2016**

**घोषणा की तारीख /Date of Pronouncement :24.02.2016**

**आदेश / O R D E R**

**PER C.N. PRASAD, JM:**

This appeal is filed by the assessee against the order of the Ld. CIT(A)-33, Mumbai dated 15.2.2013 pertaining to assessment year 2008-09.

2. There is a delay of 7 days. The assessee has also filed Affidavit stating the reasons as to why delay of 7 days occurred in filing the appeal. The Ld. Departmental Representative has no serious objection for condonation of delay of 7 days. Having gone through the petition and affidavit, we find that there is a reasonable cause not

filing the appeal in time therefore, short delay of 7 days is condoned and appeal is admitted.

3. The only issue in the appeal of the assessee is that the Ld. CIT(A) erred in confirming the addition of Rs. 3,00,000/- and Rs. 9,00,000/- made by the AO as income from undisclosed source being the gift received from the assessee's sister and brother in law respectively.

4. The Assessing Officer while completing the assessment noticed that in the capital account the assessee has shown to have received gift from father, sister and brother in-law amounting to Rs. 25,000/-, Rs. 3,00,000/- and Rs. 9,00,000/- respectively. The assessee on 19.11.2010 was requested to furnish the supporting proof in respect of these gifts. However, the assessee could not file the information before the AO before completion of assessment on 10.12.2010.

5. The assessee preferred an appeal before the Ld. CIT(A) and the CIT(A) accepted the gift given by the father. However, he confirmed the addition in respect of other two gifts given by assessee's sister and brother in-law holding that the assessee has not proved the credit worthiness of the donors. He also doubted the source of gifts from the donors.

6. The Ld. Counsel for the assessee submits that the assessee received gift of Rs. 3,00,000/- from his sister who is residing in Australia and Rs. 9,00,000/- was received from brother in law who is residing in United State of America. The Ld. Counsel for the assessee submits that declaration confirming the gift given by assessee's brother in law was furnished before the Ld. CIT(A) and this declaration was notarized in California. In the declaration, it is

clearly mentioned that Rs. 9,00,000/- was given by way of Cheque No. 58187 drawn on HDFC Bank, Vashi and donor is a software businessman in USA and his annual income is 1,20,000 US dollars.

7. Similarly declaration confirming gift by assessee's sister who is residing in Australia is also furnished before the Ld. CIT(A) and it is clearly mentioned in the declaration that an amount of Rs. 3,00,000/- by cheque No. 581875 drawn on City Bank payable at Mumbai was given to the assessee. It is also mentioned in the declaration that since last 18 years she is settled in Sydney, Australia and her annual income is about 35,000 Australian Dollars. The Ld. Counsel submits that Passport and Driving Licence of both the donors are furnished before the Ld. CIT(A). Therefore, the Counsel submits that the genuineness of the gift cannot be doubted. The source of gift is also cannot be doubted as the gifts are through banking channels therefore the Ld. Counsel for the assessee submits that there is no justification in confirming the addition made by the AO as income from undisclosed source.

8. The Ld. Departmental Representative supports the orders of the lower authorities.

9. Heard both sides, perused the orders of the lower authorities and the material placed before us. The AO made the addition as the assessee could not produce requisite details in respect of the gifts. Before the Ld. CIT(A), the assessee furnished declaration from the donors, copies of passports and driving licence of brother in law to prove the genuineness of the gift, the credit worthiness of the donors. However, the Ld. CIT(A) though accepted the identity of the donors, doubted the credited worthiness of the donors. On going through the

declaration furnished by both the donors, who are residing in Australia and U.S.A. and the contents thereon, we are convinced that the donors have sufficient earnings for lending gifts to the assessee. The gifts have come through banking channels, therefore they cannot be doubted. In the circumstances, we hold that the gifts are genuine, the sources are proved hence we direct the AO to delete the addition of Rs. 12,00,000/- made as undisclosed income from these two donors.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24<sup>th</sup> February, 2016.

Sd/-

Sd/-

**(RAJESH KUMAR)**

**(C.N. PRASAD )**

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24<sup>th</sup> February, 2016

व.नि.स./ Rj , Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार**

(Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**

		Date	Initials	
1.	Draft dictated on:	10.02.2016		Sr. PS/PS
2.	Draft placed before author:	19.02.2016		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			