

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE, JUDICIAL MEMBER AND

SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.101/B/2014
Assessment year : 2004-05

Smt. Manjari, Penthouse, Bilden Park, I Cross, G. M. Palya, New Thippasandra, Bengaluru-560075. PAN : AHOPM2199R	Vs.	Income Tax Officer, Ward-7(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Guruswamy, ITP
Revenue by	:	Shri. Kamaladhar, Sd. Counsel

Date of hearing	:	18.1.2017
Date of Pronouncement	:	20.1.2017

O R D E R

Per George George, Judicial Member

This appeal, at the instance of the assessee, is directed against the order of the CIT (A) LTU, Bangalore, dated 28.10.2013. The relevant assessment year is **2004-05**.

2. The assessee has, in her grounds of appeal, raised the following two grounds, namely:

- (1) ***that the CIT (A)LTU had erred in confirming an addition of Rs.8,40,000/- being the amount of cash gift without appreciating the documentary evidence in support of source of cash gifts; &***
- (2) ***that the CIT (A) LTU had erred in confirming an addition of Rs.6.8 lakhs made by the AO on protective basis without appreciating the fact that the said amount was not a subject matter of revision proceedings or appellate proceedings for the AY 2004-05.***

3. The facts of the issues, in brief, are as follows:

The assessee, an individual, had filed her original return of income, admitting a total income of Rs..1,07,780/- for the assessment year under dispute. There was an operation u/s 133A of the Act in the case of M/s. Bilden Developers in which the assessee was a partner. Subsequently, the assessee had furnished a revised return of income, admitting an income of Rs.3,17,780/-. The original assessment was concluded u/s 143(3) of the Act, accepting the revised income of Rs.3.17 lakhs.

3.1. Subsequently, the jurisdictional CIT initiated proceedings u/s 263 of the Act whereby set-aside the assessment with a direction to the AO to examine the source of loan amount of Rs.15.2 lakhs secured by the assessee from her two minor daughters. On an appeal of the assessee, the earlier Bench of this Tribunal vide its findings dated 25.02.2009 directed

the CIT, B-III to provide an opportunity to the assessee of being heard. Accordingly, the CIT, B-III vide his order u/s 263 of the Act dated 31.8.2009 held that the assessment in question was erroneous and prejudicial to the interest of the Revenue and, thus, directed the AO to examine the source of loans etc.

3.2. Aggrieved, the assessee had again took up the issue with the earlier Bench of this Tribunal which in its findings dated 26.07.2010 dismissed the assessee's appeal with an observation that the order of the CIT u/s 263 of the Act was in accordance with law. Consequent upon the findings of the earlier Bench (supra), the AO initiated re-assessment proceedings. During the course of the said proceedings, the assessee had produced the grandmother (the donor) of the minor daughters of the assessee before the AO along with an affidavit dated 25.11.2010 sworn by the donor [the grandmother] confirming the gifts made. During the deposition also, the donor had confirmed the gifts made with the confirmation letter for gifts and source thereof. According to the assessee, the source was being agricultural income and sale proceeds of agricultural lands. When she was again called upon by the AO to depose, the donor, according to the assessee, was in her advanced age, could not appear before the AO, instead, filed an affidavit dated 25.11.2010 affirming that the gift was revoked to mitigate the hardships of the assessee as well as the minor children. Subsequently, the donor again appeared before the AO and,

according to the assessee, categorically deposed/confirmed the gifts so made. However, the AO took a stand that no documentary evidence was produced and, accordingly, concluded the assessment.

3.3. Aggrieved, the assessee had preferred an appeal before the CIT(A)-III on 31.1.2011 which was subsequently came up for hearing before the CIT (A)-LTU who in his order dated 28.10.2013, dismissed the appeal of the assessee for the following grounds, namely:

- (a) The assessee had failed to produce the registered sale deeds in respect of the agricultural lands agreed to be sold vide sale agreement dated 6.2.2003 for transfer of 15 acres of land for a consideration of Rs.28.5 lakhs against which advance of Rs.14 lakhs was received and another agreement dt.22.5.2003 for transfer of 13.5 acres of land for a consideration of Rs.36.58 lakhs against which advance of Rs.1 lakh was received;
- (b) The assessee's bank accounts maintained in Nellur and Bangalore were not furnished;
- (c) The assessee had failed to produce the books of account by the donors in respect of the agricultural income; &
- (d) The donor had revoked the gift on 11.12.2010 and the gifted amount was received back from the assessee through an account payee cheque, but, the same has not been encashed till the date of appellate order etc.,,

3.4. Aggrieved, by the reasoning of the CIT (A)-LTU, the assessee has now come up before **us** with the present appeal. During the course of hearing, the submissions made by the learned counsel for the assessee are summarized as under:

- That though the CIT (A) had examined the sale deeds dated 6.2.2003 and 22.5.2003 and sale agreement dt.6.2.2003, according

to which advances of Rs.14 lakhs and Rs.1 lakh received by the donors which was not disputed by him, but, dismissed the appeal for non-production of sale deeds;

- That the CIT (A) had not appreciated the fact of execution of sale deed which was not a relevant factor since the issue before him was related to the capability of the donors to gift the amount of Rs.15.2 lakhs to the minor children in the assessment years 2003-04 and 2004-05;
- That the CIT (A) had failed to appreciate that the gifts were made in cash and as such, non-production of copies of bank accounts was not an issue before him;
- That the donation of gifts was only from the income of agricultural land and, therefore, no books of account were maintained as the donors were non-assesseees;
- That the revocation of the gift and receipt of the gifted amount by one of the donors from the assessee was not a relevant factor to adjudicate the genuineness of the gift since it was a later development which cannot have any bearing on the events of earlier years; and that the subject matter of appeals as on 31.3.2004 and, therefore, the revocation of gift on 11.12.2010 cannot assume any significance for adjudicating the issue of gift;
- That the gifts were received in two separate financial years i.e., 2002-03 and 2003-04 relevant to the AYs 2003-04 and 2004-05. The cash gifts of Rs.6.8 lakhs and Rs.8.4 lakhs received by both the minor children were for the A.Ys 2003.04 and 2004-05 respectively. The aggregate gifts amounting to Rs.15.2 lakhs, out of which, the assessee had shown the loans received from the minor children at Rs.6.8 lakhs and Rs.8.4 lakhs for the AYs 2003-04 and 2004-05 respectively. The aggregate loan amounting to Rs.15.2 lakhs relating to AYs 2003-04 and 04-05 was shown separately as liability payable to the minor children in the respective assessment years as per the returns of income, However, the AO took a stand that a sum of Rs.8.4 lakhs as admitted transactions pertaining to the AY 2004-05, but, the genuineness of such transaction was not established, the same was brought to tax in the AY under dispute.

3.5. In conclusion, it was submitted that the gifts made by Smt. Sulochanamma and Late Venksatesha Reddy - the grandparents – to

their grandchild [Ms.Pradyutha], aggregating to Rs.8.4 lakhs was out of agricultural income and sale proceeds of agricultural lands during the relevant assessment year under dispute, To substantiate their claim, the grandmother had furnished confirmation letters of gift and source thereof. It was, therefore, pleaded that the assessing officer be directed to delete the addition of Rs.8.40,000/- made under the head 'income from Other Sources" on substantive basis.

3.6. On the other hand, the learned DR pleaded that the stand of the authorities below are in accordance with the provisions of the Act and, there was no infirmity which requires any intervention by the Tribunal. In essence, the learned DR urged that the appeal of the assessee deserve to be dismissed.

4. We have carefully considered the rival submissions, perused the relevant materials on record, the findings of the earlier Benches of this Tribunal and also the documentary evidences produced by the learned counsel for the assessee in the form of a Paper Book.

4.1. As could be seen from the assessment order, the surviving donor was required to furnish documentary evidence in support of the claim that the donation was made to her granddaughter. Smt. Sulochanamma [aged 70 years], the surviving donor had furnished an affidavit solemnly affirming

that the confirmation letters of the gift had already been produced in the course of earlier proceedings. According to the AO, the affidavit also averred that the gift was made partly out of agricultural income and partly out of sale proceeds of the lands. Sworn statement of Smt Sulochanamma on oath was recorded by the AO on 23.12.2010 in which, she affirmed that *'during the life time of my late husband both my husband and myself have given gifts to my grand children namely Pradyutha & Reetu of around Rs.15 lakhs from the sale proceeds of our agricultural lands consisting of around 30 acres situated in and around Gandavaram village which is 16 KMs away from Nellore Town, AP. The said lands were sold in stages over a period of time at around Rs.1.5 to 2.5 lakhs per acre. All the lands were sold before the gifts were given to my grand-daughters. The sale proceeds from the agricultural lands were entirely received in cash from different buyers. The gifts were made to my granddaughters as and when they visited us from time to time in cash.....Apart from the proceeds from sale of land we were also in receipt agricultural income from the lands at an average of around Rs.1.5 to 2.5 lakhs per crop. And in a year we used to grow 2 crops.'* [Refer: Pages 33 & 34 of PR]. To substantiate her claim, she had also produced copies of (i) Agreement of sale of immovable property dated 6.2.2003 and also (ii) agreement of sale dated 22.5.2003. The genuineness of such agreements cannot be suspected as on a careful scrutiny of the copies of stamp papers, it could be seen that the stamp papers were purchased on 5.2.2003 and 22.5.2003 i.e., on the dates of

entering into such agreements. Moreover, the donor had solemnly affirmed before a statutory authority – Notary – that she and her late husband have jointly made cash gifts of Rs.6.8 lakhs and Rs.8.4 lakhs to their minor grand children Pradyutha and Reethu during the years-ended 31.3.2003 and 31.03.2004 respectively from partly out of agricultural income and partly out of the sale proceeds of the lands owned by them. The above affirmation made by the donor in a sworn affidavit cannot be disbelieved. To substantiate her claim, the donor had also furnished copies of sale agreements entered into with the prospective buyers. She had also ascertained in her sworn statement that the sale proceeds of agricultural produces and agricultural lands were received by her [late husband] only in cash. As the late husband was in full control of such affairs, she could only aver the events which took place when her husband was alive. Receiving cash for the selling of agricultural produces are prevalent even on this date in rural areas. Most of the agriculturists who are semi-literate and unaware of legal implications tend to receive the sale proceeds of their agricultural produces only in cash. If they have to insist for the proceedings to be done through banking channel, they will lose their businesses as well as the prospective buyers. Such being the prevailing conditions in the rural areas, the averments of the donor in the instant case cannot be disbelieved. The main reasoning of the CIT (A) to suspect the claim of the donor to donate such gifts was that no books of account maintained for their agricultural income. However, most of the agriculturists being semi-

literate, they do not have such expertise to maintain books of account. Being an elderly lady who cannot fully fill all the requirements set out by the authorities and to put the issue at rest, she might have resorted to revoke the gift at a later stage, say on 11.12.2010 which, in our view, cannot be construed that the contents of the affidavit furnished by the donor were untrue..

4.2. Further, we would like to refer to the findings of the earlier Bench of this Tribunal in the case of Ms. Panduranga Bhargavi Vaidya v. DCIT [ITA No.1215/Bang/2015 dated 13.4.2016. For appreciation of facts, the relevant portion of the findings of the earlier Bench (supra) is reproduced as under:

“6.1. The Hon’ble Supreme Court in categorical terms has held that even if an explanation offered by an assessee is not acceptable, still the AO has discretion not to make addition keeping in view of the facts and circumstances of the case. If based on particular set of facts it is highly unlikely that an assessee could have earned that kind of income, the AO can hold that no addition is called for, even if the explanation offered by the assessee is not satisfactory. The present case is a fit case where the AO ought to have exercised the discretion in favour of the assessee. There is no dispute that the father of the case appeared before the AO and stated that the cash deposits and withdrawals in Karnataka Bank account are part of his transactions. The ITAT, ‘A’ Bench of Bangalore in Nusra Imran v. ITO at para 8 held that when the persons who lent the money appeared before the AO and confirmed the transaction, the addition u/s 69 is not warranted. On similar reasoning when father of the assessee has stated that he had deposited cash in the bank account, it is not permissible for the AO to reject such an explanation and draw an adverse inference. The Hon’ble Gujarat High Court in the case of Murlidhar Lahorimal v. CIT 280 ITR 512 held that when the creditor/donor having appeared before the AO the genuineness of the transaction is established. In the

present case, assessee's father appeared and explained the transactions and it is undisputed that the assessee could not have earned such huge unaccounted income of Rs.24.00 lakhs for making deposits of the same in her bank account. In such facts and circumstances of the case, the addition made by the AO is not warranted and we delete the same. It is ordered accordingly."

4.3. Taking into all the facts and circumstances of the issue for consideration as discussed in the fore-going paragraphs and also in consonance with the findings of the earlier Bench of this Tribunal (supra) we are of the view that the authorities below were not justified in disbelieving the assertion of the donor and making an addition of Rs.8,40,000/- under the head 'income from Other Source' for the AY 2004-05, In essence, the addition of Rs.8,40,000/- made by the AO is deleted.

5. In the second ground, the assessee had objected to the CIT (A)'s stand in confirming the addition of Rs.6,80,000/- made by the AO on protective basis. During the course of hearing, the learned counsel for the assessee submitted that the addition of Rs.6.8 lakhs made without appreciating the fact that an assessment on substantive basis was made separately as per the assessment order dt.26.12.2011 which is subject matter of appeal (filed on 25.1.2012) before the CIT (A)-III, Bangalore and the same is pending for disposal. In view of the above, this ground is not adjudicated.

6. In the result, the assessee's appeal for the AY 2004-05 is allowed.

Order pronounced in the open court on 20-01-2017.

Sd/-

(INTURI RAMA RAO)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Judicial Member

Bangalore.

Dated:20th January, 2017.

/NS/

Copy to:

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|-------------------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.