आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री चंद्र पूजारी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.3288/Mds/2016**

निर्धारण वर्ष **/** Assessment Year : 2006-07

Shri K. Vivekanandan, 34, Sarvamanya Street, Melacauvery, Kumbakonam – 612 001.	v.	The Income Tax Officer, Ward I(1), Kumbakonam.
PAN : AEHPV 9685 H (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Quadir Hoseyn, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri R. Durai Pandian, JCIT

सुनवाई की तारीख/Date of Hearing : 09.03.2017

घोषणा की तारीख/Date of Pronouncement : 24.05.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -2, Tiruchirappalli, dated 17.10.2016 and pertains to assessment year 2006-07.

2. Shri N. Quadir Hoseyn, the Ld.counsel for the assessee, submitted that the Assessing Officer by an order under Section 154

of the Income-tax Act, 1961 (in short 'the Act') disallowed the gift received by the assessee from a HUF. Referring to Section 10(2) of the Act, the Ld.counsel submitted that any sum received by an individual as a member of a Hindu Undivided Family, the same cannot be included in the total income of the assessee for arriving taxable income. The Ld.counsel submitted that it is nobody's case that the property belonging to individual member of HUF was transferred to HUF, therefore, the gift of ₹6,00,000/- received by the assessee from HUF cannot be subject matter of taxation. Moreover, according to the Ld. counsel, the issue whether gift received by the assessee from HUF is taxable in the hands of the assessee or not is a debatable issue, therefore, it cannot be a subject matter of discussion in a proceeding under Section 154 of the Act.

3. On the contrary, Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that if the assessee received any sum from and out of income of the family, then it cannot be included in the total income of the assessee. In this case, according to the Ld. D.R., the money was received from and out of estate of HUF, therefore, provisions of Section 10(2) of the Act is not applicable at all.

4. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee is a member of HUF and received a sum of ₹6,00,000/- from the HUF by way of gift. We have carefully gone through the provisions of Section 10(2) of the Act which reads as follows:-

> "10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -
>
> (1) ....
> (2) subject to the provisions of sub-section (2) of section 64, any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate where such sum has been paid out of the income of the estate belonging to the family ;"

5. In view of the above, when the money was received by an individual member of HUF, from and out of income of the family, or in the case of any impartible estate, the same cannot be included in the total income of the assessee. In the case before us, the Revenue claims that income was not of the family but arising out of estate. This Tribunal is of the considered opinion that the income of the family has to be either from the estate which belongs to HUF or

business which would be run by HUF. Therefore, unless there is a source for creation of income, the family cannot have any income at all. In this case, admittedly, the income was said to be received from estate which belongs to family. Therefore, there is a presumption that income is arising from estate which belongs to HUF to which assessee is one of the coparceners/members. Hence, this Tribunal is of the considered opinion that the gift of ₹6,00,000/- received cannot be disallowed.

6. Moreover, as rightly submitted by the Ld.counsel for the assessee, the issue of ₹6,00,000/- is taxable or not is a debtable one which needs interpretation of Section 10(2) read with Section 64(2) of the Act. Such issue, which is debatable nature, cannot be subject matter of proceeding under Section 154 of the Act. In view of the above discussion, this Tribunal is unable to uphold the order of the lower authority. Accordingly, the orders of the lower authorities are set aside and the addition made by the Assessing Officer is deleted.

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

Order pronounced on 24th May, 2017 at Chennai.

Sd/-	Sd/-
(चंद्र पूजारी)	(एन.आर.एस. गणेशन)
(Chandra Poojari)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 24th May, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Tiruchirappalli
4. Principal CIT, Trichy-2, Trichy
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.