



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"E" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA no.2923/Mum./2012  
(Assessment Year : 2004-05)

Smt. Seema Dhingra  
24, Sushila Bhawan  
Adi Marzban Path  
Ballard Estate, Mumbai 400 038  
PAN – AAIPD4071C

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Central Circle-33, Mumbai

..... Respondent

Assessee by : Shri Kishore K. Poddar  
Revenue by : Shri Manjunatha Swamy

Date of Hearing – 22.02.2016

Date of Order – 29.02.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Aforesaid appeal of the assessee is directed against the order dated 7<sup>th</sup> March 2012, passed by the learned Commissioner (Appeals)-41, Mumbai, for the assessment year 2004-05.

2. Issue in dispute in the present appeal is confined to addition of ₹ 5.50 lakh under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

3. Briefly stated the facts are, assessee is an individual. A search and seizure operation under section 132 of the Act was conducted in case of the assessee on 15<sup>th</sup> February 2006. During the search and seizure operation, incriminating material was found by the Department indicating that assessee had obtained bogus capital gain with respect to scrips of First Track Entertainment Ltd. It was further found that assessee and other family members had obtained bogus gifts from some persons. Consequent to search and seizure operation, notice under section 153A of the Act was issued calling upon the assessee to submit her return of income. In response to the said notice assessee on 29<sup>th</sup> December 2006, filed her return of income declaring total income of ₹ 20,37,785. In the return of income filed assessee offered income of ₹ 8 lakh on account of bogus gift received from Shri Sanjay Agarwal and also short term capital gain on sale of shares amounting to ₹ 3,53,335. During the assessment proceedings, the Assessing Officer noticed that in addition to bogus gift from Shri Sanjay Agarwal, which was offered as income, the assessee had also received gift from two other persons as under:-

Ms. Rani Sharma	₹ 2,50,000
Shri Sanjay Verma	₹ 3,00,000

4. He, therefore, called upon the assessee to prove the genuineness of the gift received. The Assessing Officer also issued notices to the aforesaid donors under section 133(6) which, as alleged by the Assessing Officer were returned un-served by the postal authority. He, therefore, called upon the assessee to furnish the correct address of the donor. However, as stated by the Assessing Officer, assessee did not furnish any details. Therefore, alleging that assessee was not able to substantiate the genuineness of the gifts, the total gift of ₹ 5.50 lakh claimed to have been received from Ms. Rani Sharma and Shri Sanjay Sharma, were treated as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. Being aggrieved of such addition, assessee challenged the same in appeal preferred before the learned Commissioner (Appeals).

5. In the course of hearing before the first appellate authority for establishing the genuineness of the gift assessee submitted various documentary evidence such as gift deed executed by the donors, photocopy of the PAN, voter I.D., copies of the return of income with balance sheet to show the creditworthiness as well as bank statement and affidavit of the donors to establish genuineness of the transactions. The learned Commissioner (Appeals), however, refused to admit the evidences submitted by the assessee as they were not furnished before the Assessing Officer and confirmed the additions

made by the Assessing Officer. Against the order passed by the learned Commissioner (Appeals), assessee preferred appeal before the Tribunal and the Tribunal, after considering the submissions of the assessee, restored the matter back to the file of the learned Commissioner (Appeals) with a direction to decide the issue after considering additional evidence. In terms with the direction of the Tribunal the learned Commissioner (Appeals) directed the Assessing Officer to examine the additional evidences produced by the assessee and submit the remand report. After receiving remand report of the Assessing Officer and seeking assessee's objection on the same, the learned Commissioner (Appeals) finally sustained the additions on the following reasons.

- i. There is no relationship between the donors and the donee as explained u/s. 56(2)(v) of the I.T. Act.*
- ii. There was no occasion of gift.*
- iii. Identity of the donor, creditworthiness and genuineness of transaction is not proved because the Assessing Officer has given a reasonable opportunity to the appellant to submit present address of the donors because notice issued u/s. 133(6) was received back.*
- iv. Concept of human probability as held by Hon'ble Supreme Court in case of Durga Prasad More, Sumati Dayal an P Mohankala (supra is against the assessee because a person who has no relation with the donee and without any occasion of gift cannot give a huge gift of Rs.58 Iakhs to the family members of the donee. Practically in this materialistic world nobody is ready to give even a single penny to his/her Brother/sister without any consideration. To curve the misuse of gift provision and to avoid the*

*payment of taxes the legislature has inserted the provisions of sec. 56(2)(v) by finance Act, 2004 w.e.f. 01.04.2005. It is seen that after the introduction of this provisions, the transaction of gift has been reduced to almost NIL except genuine cases in this provision. It does not mean that love and affection has come to an end.*

*v. Surrounding circumstances are against the assessee because nobody can give a gift of huge amount of Rs.58 lakhs to family member of donee without any relation and occasion of gift.*

*vi. Merely submitting of IT particulars, affidavit and transaction through bank is not sufficient to prove the identity, creditworthiness and genuineness of transaction. In view of all these facts and circumstances of the decisions of Hon'ble Supreme Court and other court decisions (supra). Moreover, the assessee and other family members have already surrendered the gift received from Shri Sanjay Agarwal as not genuine because no evidence was produced before the AO. Keeping in view all these facts and circumstances, it is held that the Assessing Officer has rightly assessed the gift amount u/s. 68 as undisclosed income of the assessee. Thus the decision of the Assessing Officer is upheld and ground of appeal is dismissed."*

6. Learned A.R. referring to the documentary evidence submitted before the first appellate authority contended that not only the donors have filed affidavit confirming the gifts but they have also sent confirmation through e-mail. Explaining the reasons for which the notices issued under section 133(6) could not be responded, the learned A.R. submitted, as both the donors are no more staying in India they could not respond to the notices under section 133. However, they submitted all documentary evidences such as PAN / voter I.D. to establish their identity, bank statements and income tax returns of the donors, proved their creditworthiness and the

transactions having been made through proper banking channel genuineness is also established. Learned A.R. submitted only because the donors and assessee are not close relative, the genuineness of gift cannot be doubted.

7. Learned Departmental Representative, on the other hand, supporting to reasoning of the learned Commissioner (Appeals), submitted, there being no natural love and affection between donor and assessee, the story of gift cannot be accepted.

8. We have considered the submissions of the parties and perused the material available on record. As seen from the material on record in response to the notice issued under section 153A, assessee has offered the gift received of ₹ 8 lakh from Shri Sanjay Agarwal, accepting it as bogus. However, the gifts received from Shri Sanjay Verma and Ms. Rani Sharma, were claimed as genuine. Before the Assessing Officer, assessee, admittedly, could not produce any evidence to prove the genuineness of gift may be for the reason that they were not available with the assessee at that time but, subsequently before the first appellate authority assessee did produce various documentary evidence such as affidavit of concerned donors confirming the gift, copies of the gift deed executed by the donors, income tax returns for the assessment year 2002-03, along with

balance sheet, copies of PAN / voter I.D. and confirmation letter received through e-mail as well as copies of the bank statement of the donors. On a perusal of the documentary evidences, it is evident that both the donors have accepted of having gifted the amount in question to assessee. Further, both the donors are income tax assessee and have filed their income tax return for assessment year 2002-03. Copies of the balance sheet of the donors enclosed with the return of income indicate that both the donors have creditworthiness to make the gift. Further, on perusal of bank statements of donors it is found, as far as Ms. Rani Sharma, is concerned, she was having old balance available in the bank account from which she had purchased demand draft in favour of the assessee for making the gift. Similarly, as far as Shri Sanjay Verma is concerned, on perusal of the bank statement it is found that money has come from current account of the said donor from which he has purchased the demand draft to make the gift. The evidences brought on record not only establish the identity of the donors but also their creditworthiness. That being the case, by making general observations that there is no natural love and affection between the donors and the assessee the gift cannot be treated as unexplained cash credit. When there is no evidence brought on record by the Department to demonstrate that it is assessee's money which has been routed back to him the addition made purely on conjectures

and surmises ignoring documentary evidences brought on record cannot be sustained. Being unable to accept the conclusion drawn by the Assessing Officer and the learned Commissioner (Appeals), we delete the addition of ₹ 5.50 lakh.

9. In the result, appeal stands allowed.

Order pronounced in the open Court on 29.02.2016

**Sd/-  
RAMIT KOCHAR  
ACCOUNTANT MEMBER**

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 29.02.2016**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai