

आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI  
श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1063/Mum/2010  
(निर्धारण वर्ष / Assessment Year: 2002-03)

Astt. Commissioner of Income Tax Central Circle 17 & 28 Room No.401, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K.Road, Mumbai - 400020	<b>बनाम/</b> Vs.	Shri Mahesh M. Doshi 01, Natraj, 34, V.P.Road, Vile Parle (West) Mumbai - 400056
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPD9701C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri S.C.Tiwari
Department by:	Shri Mallik Arjun Uttire

सुनवाई की तारीख / Date of Hearing: 01.07.2016  
घोषणा की तारीख /Date of Pronouncement: 05.10.2016

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

This is an appeal filed by the revenue against the order dated 27.11.2009 passed by the Commissioner Of Income Tax (Appeals) 39, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2002-03.

2. The revenue has raised the following grounds of appeal:-

- a. *On the facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in deleting addition of Rs.50,00,000/- made by the Assessing Officer u/s.68 of the I.T.Act, 1961.*
  - b. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition on the ground that the assessee had sufficient balance in his capital account and bank account, when in fact all the amounts received in bank account were from the donee's account i.e. Euro group and income returned by the donor was only Rs.6,43,665/- for A.Y.2002-03.*
  - c. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in accepting the genuineness of the gift when the donor does not have sufficient resources to make the gift.*
2. *The appellant craves to leave to add, to amend and / or to alter any of the grounds of appeal, if need be.*
  3. *The appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-39, Mumbai may be set aside and that of the Assessing Officer restored.*

3. The facts of the case are that the assessee filed his return of income on 29.12.2006 declaring total income to the tune of Rs.2,65,850/-. The return of was processed u/s.143(1) of the Income Tax Act, 1961( in short "the Act"). A search and seizure action u/s.132 of the Act was conducted on 03.08.2006 by the DDIT Unit III(1), Mumbai on Euro Group of companies. The assessee being an associate person of this group, his residential premises was also searched. A notice u/s.153A of the Act was issued on 30.11.2006. In

responses to the said notice, the assessee filed his return of income on 29.12.2006 declaring total income to the tune of Rs.2,65,850/-. The return of income was accompanied with computation of total income, balance sheet and capital account etc. Notices u/s. 143(2) / 142(1) of the Act were also issued and served upon the assessee. The assessee received the donation to the tune of Rs.50,00,000/-. The creditworthiness of the donor and the genuineness of the gift were not properly proved. Therefore, the gift to the tune of Rs.50,00,000/- was added to the income of the assessee. Therefore, the assessee preferred an appeal before the learned CIT(A) who allowed the claim of the assessee. Therefore, the revenue has filed the present appeal before us.

**ISSUE NO. a, b & c:-**

4. These issues are interconnected therefore are being taken up together for adjudication. The revenue has raised the issue of deletion of Rs.50,00,000/- added by the Assessing Officer u/s. 68 of the Act. The assessee has already shown gift of Rs.50,00,000/- in his return of income which has been processed u/s. 143(1) of the Act and copy of which has been attached at page 8 of the paper book. Thereafter an action u/s.132 of the Act was conducted on 03.08.2006 by the DDIT Unit-II(1), Mumbai on Euro Group of Companies. The assessee being an associate person on this group, his residential premises was also searched. In the books of accounts donor Shri Vimal Rathi has also

shown the gift to the assessee to the tune of Rs.50,00,000/-. The assessment was reopened u/s.147 of the Act. In the instant case the identification of the donor is not in dispute who has capital of worth Rs.97,53,788/-. Donor has executed the gift deed in favour of the donee and also filed an affidavit in this support. The donor as well as donee has reflected the transaction in their books of accounts. The gift has been made through cheque which has been reflected in the bank account and the donee has also received the cheque and the transaction has been reflected in his bank account also. In this said circumstances the genuineness of the donor is not in dispute and the creditworthiness of the donor is also in dispute being he was having sufficient amount in his account. The account of the donor is hereby mentioned below which reflect the sufficient amount of donation:-

Date	Ch. No.	Particulars	Debits	Credits	Balance
2001 23.06.2001		Brought forward bal. To CLFD/01/9800008 FOR DRSM:00120 VIMAL KUMAR RATHI			5,10,462.12
26.06.2001		BY CLFD/01/9800008 DRSM M	5,00,000.00	5,00,000.00	10,462.12 5,10,462.12
26.06.2001	74478	L M INVESTMENT CO.	5,00,000.00		
26.06.2001	331616	By Inst. No. 331616 on THE COSMOS CO-OPERATIVE BANK 970592 LALJIBHAI K SHAH		20,25,479.00	20,35,941.12
26.06.2001	336368	970598 NENSHI L SHAH By Inst. No. 498993 on THE COSMOS CO-OPERATIVE BANK		10,34,110.00	30,70,051.12

26.06.2001	498993	970013 NEELAM METALS		10,34,110.00	41,04,161.12
		By Inst. No. 44820 on MUMBAI DISTRICT CENTRAL C			
27.06.2001	44820	3244 Laxmi Ply & Vaneer TO CLFD 01/980008		10,34,110.00	51,38,271.12
		For DRSN : 00121			
28.06.2001	74479	VIMAL KUMAR RATHI	51,28,000.00		10,271.12
28.06.2001		M M DOSHI	50,00,000.00		49,89,728.88D
		BY CLFD/01/98008		50,00,000.00	10,271.12
		DRSN N			
28.06.2001	361614	By Inst. No.363614 on CITI BANK N.A.		250.00	10,521.12
		CENTURY ENKA			
28.06.2001	361082	By Inst. No.361082 on CITI BANK N.A.		50.00	10,571.12
		CENTURY ENKA			

5. The above said statements speaks about the sufficient funds lies with the donor to the various transactions carried out by him and therefore, in view of these sources the donor has made the gift to the donee. Moreover, the search carried out in view of the provision u/s.132 of the Act at the residential as well as business premises of donor and donee. No new material of any kind was found which may leads to this fact that the transaction is bogus and is not liable to be treated as genuine. The income of the donee nowhere routed through the account of donor. No doubt no material of any kind was found with the authority to which it can be assume that the gift is not in accordance with law. Moreover in this regard we also find support of law settled in CIT Vs. Ms. Asha Hampannavar SLP (Civil No.16370 of 2009) SLP rejected in (2009) in (2009) 319 ITR (St)5 wherein the

Hon'ble Supreme Court has confirmed the order of Bombay High Court in ITA No.1108 of 2008, wherein it was held the genuineness of the transaction of the gift was proved and the capacity of donor has been established therefore there is no occasion to arrive at this conclusion that the gift was not the genuine gift contrary to the any material on the file.

6. However at the time of argument the learned representative of the assessee has also raised the points to the effect that assessee has disclosed the gift in his return of income which has been finalized in view of the provision contained in section 143(1) of the Act. Therefore there is no concealment of any kind on the part of the assessee hence the matter cannot be taken up again in view of the provision contained in section 153A of the Act. However, assessee has also relied upon the plethora of case in which it has been decided that when the assessee has disclosed each and every facts in his earlier return and no new material of any kind was found in the search, therefore, the assessment u/s.143(3) r.w.section 153A of the Act is not liable to be sustainable in the eyes of law and relied upon law settled in case CIT v/s Continental warehouse corporation 2015(120) DTR 0089. However on the other hand the learned representative of the assessee has refuted the said contention. No doubt the assessee did not file the appeal and cross objection but in view of the rule 27 of the Act, he can raise the question at the time during the appeal of the filed

by the revenue also. In view of the law settled in CIT Vs. Mahalaxmi Textile Mills Ltd. (1967) 66 ITR 710 (SC) and CIT Vs. Bandaru Subbarao (1996) 85 taxman 631, 633 (AP) the legal question can be raised at anytime. Since no new material was found in relation with the assessee then no doubt the case of the assessee is not required to be opened in view of section 153A of the Act. Therefore, we are of the view that this issue is squarely covered by the above said law i.e CIT v/s Continental warehouse corporation 2015(120) DTR 0089. In view of the above said observations, we are of the view that present case is not the case to take up the matter in view of provision under section 153A of the Act. We therefore set aside the assessment order under section 153A of the Act. Accordingly this issue is decided in favour of assessee against the revenue.

### **ISSUE NO.2 &3**

7. Issue no.2 and 3 is formal in nature which does not require any adjudication at all.

8. In the result, the appeal filed by the **revenue is hereby dismissed.**

Order pronounced in the open court on 5<sup>th</sup> October, 2016.

Sd/-  
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 5<sup>th</sup> October, 2016

MP

**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**