

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'H' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**I.T.A. No. 1650/Del/2012  
Assessment Year: 2003-04**

Sh. Yashodanandan Aggarwal,  
Sadar Bazar,  
Haldwani,  
Uttranchal  
**(PAN: ACKPA0577C)**  
**(APPELLANT)**

Vs. ACIT, Haldwani  
Uttranchal

**(RESPONDENT)**

**Assessee by:** Shri Vidur Puri, CA  
**Revenue by:** Shri Amit Mohan Govil, CIT(DR)

**Date of Hearing on : 16/02/2016**  
**Order Pronounced on : 30/3/2016**

**ORDER**

**PER H.S. SIDHU, JM**

This appeal is filed by the Assessee against the Order dated 16.12.2011 passed by the Ld. CIT(A)-II, Dehradun relating to Assessment Year 2003-04 on the following ground:-

*“Ld. CIT(A) erred in fact and in confirming the penalty of Rs. 4,75,000/- which is not only bad in law but also against the facts and circumstances of the case.”*

2. The brief facts of the case are that assessee has filed his return of income on 28.11.2003 declaring total income of Rs.2,18,783/-. The assessee is an individual runs proprietorship firm in the name of Yashodanandan Naval

Kishore and engaged in the business of wholesale trading of food grains and truck plying having office at Sadar Bazar, Haldwani, Distt. Nainital. During the year, assessee has claimed to have received three gifts of Rs.5 lacs each from three persons. The Assessing Officer has investigated the issue and made the addition of Rs. 15 lacs to the income of the assessee as income from undisclosed source and completed the assessment u/s. 143(3) of the I.T. Act, 1961 on 30.3.2006. Aggrieved with the assessment order dated 30.3.2006, assessee filed the Appeal before the Ld. CIT(A) who has rejected the Appeal of the Assessee by giving the finding vide para no. 6.7 which is reproduced as under:-

*“6.7 I have considered the above submissions of the counsel of the appellant and the facts elaborately stated in the assessment by the AO. It is observed that the appellant has claimed to have received gifts of Rs.5 lakhs each, from Shri Shiv Kumar Agarwal, Shri Hari Lal Gupta and Shri Ram Dev Agarwal all having their residential addresses at Kolkata which have been mentioned in the assessment order. The AO has issued letters to the declared addresses of the donors and such letters in the case of two donors came back unserved and in the case of the third donor even though the letter was not unserved, no reply came from such donor. The AO has analyzed from the income tax returns of the donors that they had meagre income and they were not in a position to make such substantial amount of gifts out of their own sources. In reality, the donors have received gifts for the purpose of making gifts which indicate that the gifts were actually organized out of the own funds of the appellant or his accoriplishes. Incidentally, the AO has*

*pointed out that drafts for gifts by two separate persons were found to be made from the same bank branch bearing consequent numbers which cast reasonable doubt about the genuineness of such donors to be in a position to make such gifts to the appellant. The surrounding circumstances which have been placed on record do not fit into probabilities of the actual transaction of the impugned gifts fund so I am in agreement with the action of the AO in treating such aggregate gifted amount of Rs.15 lakhs as income from undisclosed sources and no interference is called for in this respect. Hence ground Nos. (ii), (iii) and (iv) are rejected.”*

3. Against the order of the Ld. CIT(A), the assessee filed the Appeal before the Tribunal vide ITA No. 21/Del/2009. The Tribunal vide its order dated 27.8.2013 remanded the matter to the file of the Ld. CIT(A) to decide the issue Denovo by giving the following directions:-

*“6. We have heard both the sides on the issue. We have also perused the orders of the authorities below. After hearing both the sides, we are of the view that CIT (A) should have admitted the additional evidences filed by the assessee. Assessee submitted reconfirmation from the donors as additional evidence. CIT (A) neither recorded reasons for rejection of additional evidence nor remand report was called for from the Assessing Officer. In our considered view, CIT (A) could have been forwarded these additional evidences for verification to the Assessing Officer for calling his view in the remand report. The CIT (A) has also not dismissed the assessee’s application filed under Rule 46A of the Income-tax Rules, 1962 with a speaking order. Therefore, in the interest of justice and equity, we find it appropriate to remand the*

*matter to the file of the CIT (A) to decide the issue de novo, after providing an opportunity of being heard. We order accordingly.”*

4. In compliance of the aforesaid order dated 27.8.2013 the Ld. CIT(A) admitted the additional evidence, after seeking the Remand Report from the AO and finally deleted the addition of Rs. 15 lacs vide his order dated 20.3.2015. In the meantime AO vide order dated 30.3.2010 passed the penalty order u/s. 271(1)(c) of the I.T. Act and imposed the penalty of Rs. 4,75,000/- on the 3 gifts amounting to Rs. 15 lacs which he found that assessee could not prove the identity and creditworthiness of the donors and also the existence of love and affection or any social or familial relationship, against which the Assessee filed the Appeal before the Ld. CIT(A) who vide impugned order dated 16.12.2011 dismissed the Appeal of the Assessee and aggrieved with the order dated 16.12.2011 the Assessee has filed the present Appeal before the Tribunal.

5. After hearing both the parties and perusing the relevant records specially the facts narrated by us in the preceding paragraphs, we are of the view that in compliance of the order dated 27.8.2013 passed by the Tribunal in ITA No. 21/Del/2009 for the assessment year in dispute in the case of the assessee the Ld. CIT(A) has admitted the additional evidence after verifying and seeking Remand Report from the AO and deleted the addition of Rs. 15 lacs on which penalty in dispute has been imposed. Therefore, in our considered opinion, penalty of Rs. 4,75,000/- in this case is not sustainable in the eyes of law, when

the addition in dispute has already been deleted by the Ld. CIT(A). Therefore, we delete the penalty in dispute and allow the appeal of the Assessee accordingly.

6. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 30/3/2016.

Sd/-

**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date 30/3/2016*

**“SRBHATNAGAR”**  
**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches