

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'D' BENCH, KOLKATA

[Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member & Sri S.S. Viswanethra Ravi, Hon'ble Judicial Member]

I.T.A. No. 1417/Kol/2015

Assessment Year: 2008-09

I.T.A. No. 1418/Kol/2015

Assessment Year: 2009-10

**Sri Ismat Pasha.....Appellant**

*C/o, SRI Associates*

*41, B.B. Ganguli Street*

*3<sup>rd</sup> Floor*

*Kolkata – 700 012*

*[PAN : AEPPP 3809 K]*

**Income Tax Officer, Ward-54(1), Kolkata.....Respondent**

*3, Govt. Place*

*West*

*Kolkata – 700 001*

**Appearances by:**

*Shri V.N. Purohit, FCA, appeared on behalf of the assessee.*

*Shri Arindam Bhattacharjee, Addl. CIT, DR, appearing on behalf of the Revenue.*

Date of concluding the hearing : December 18<sup>th</sup>, 2017

Date of pronouncing the order : December 21<sup>st</sup>, 2017

**ORDER**

**Per J. Sudhakar Reddy :-**

Both these appeals are filed by the assessee directed against separate but identical orders of the Id. Commissioner of Income Tax (Appeals)-6, Kolkata, (hereinafter the 'Id. CIT(A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 09/11/2015, for the Assessment Year 2008-09 & 2009-10.

2. After hearing rival contentions, considering the papers on record and orders of the authorities below as well as the case-law cited, we hold as follows:-

ITA No. 1417/Kol/2015, for the Assessment Year 2008-09

3. The only issue is Cash gift received by the assessee from his brother, which was treated as undisclosed income by the assessing officer. The assessee claimed that his only brother, Ajmat Pasha (60 years of age), was looking after the agricultural activities

of the family, gifted an amount of Rs. 5,33,000/-, to him. This brother of the assessee has no children. The assessee had submitted that the gift was made out of natural love and affection. In support, the assessee filed the following documents and confirmation letter from Ajmat Pasha, wherein he stated that this amount of is 5,33,000/-, was gifted by him to his brother and also indicating the source from which this amount was given. The following evidences were filed in support of the claim of Ajmat Pasha, to the effect that the gift was given from agricultural income:-

- a) List of rent receipts from agricultural land.
- b) List of agricultural land inherited, acquired etc.
- c) Copies of certain receipts were filed.

4. The Id. CIT(A), disbelieved the claim of the assessee on the ground that:-

- (a) The gift as by way of cash.
- (b) The brother has modest agricultural income of Rs.2,40,000/-, per annum.
- (c) The assessee has come up with this explanation as an afterthought, as originally this has not appeared in his balance sheet and return of income.
- (d) The donor of the assessee was not produced before the Assessing Officer.

4.1. The Id. CIT(A), applied the decision in the case of Hon'ble Supreme Court in the case of *Sumati Dayal v. CIT (1995) 214 ITR 801 (SC)* and *CIT v. Durga Prasad More [1971] 82 ITR 540*.

5. The brother of the assessee has given a declaration that he has never been called by the Assessing Officer and that the cash gifts were given over the period of time from 03/05/2007 to 27/07/2007. In our view, a gift from a brother, who has no children and has agricultural income, should be allowed as genuine in the absence of any concrete evidence, which controverts the evidences produced by the assessee. The addition, in our view, was made only on surmises and conjectures. The assessee has discharged the burden of that lay on him. Under these circumstances this addition is deleted and the appeal of the assessee is allowed.

6. This appeal of the assessee is only on one issue. The assessee had made a fixed deposit of Rs. 5 lakh/-, on 3<sup>rd</sup> May, 2007. The Assessing Officer made an addition for the Assessment Year 2008-09. The only contention of the assessee is that, the investment does not pertain to the financial year 2008-09 relevant to the assessment year 2009-10 and hence no addition can be made. We agree with this submission and delete this addition. If law permits, the Assessing Officer may consider of examining the taxability of this investment in the appropriate Assessment Year.

7. In the result both the appeals of the assessee are allowed.

**Kolkata, the 21<sup>st</sup> day of December, 2017.**

**Sd/-**

**[S.S. Viswanethra Ravi]**  
 Judicial Member

Dated : 21.12.2017  
 {SC SPS}

Copy of the order forwarded to:

1. **Sri Ismat Pasha**  
**C/o, SRI Associates**  
**41, B.B. Ganguli Street**  
**3<sup>rd</sup> Floor**  
**Kolkata – 700 012**
2. **Income Tax Officer, Ward-54(1), Kolkata**  
**3, Govt. Place**  
**West**  
**Kolkata – 700 001**
3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

**Sd/-**

**[J. Sudhakar Reddy]**  
 Accountant Member

By order

Senior Private Secretary  
 Head of Office/ D.D.O. ITAT, Kolkata Benches