

IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH (SMC), RANCHI

[Before Hon'ble Shri J. Sudhakar Reddy]

I.T.A. No. 156/Ran/2015
Assessment Year : 2009-10

Smt. Durga Devi Gupta.....Appellant
*C/o. Shri S.K. Poddar,
Advocate, Upper Bazar,
Behind Central Bank,
Ranchi – 834 001.
[PAN: ACSPG 5241 R]*

Income Tax Officer.....Respondent
*Ward 1(3)
Luby Circular Road,
Dhanbad.*

Appearances by:

*Shri Devesh Poddar, Advocate appearing on behalf of the Assessee.
Shri P.K. Mondal, JCIT appearing on behalf of the Revenue.*

Date of concluding the hearing : February 22, 2018

Date of pronouncing the order : February 28 , 2018

ORDER

Per J. Sudhakar Reddy, AM

This is an appeal filed by the assessee directed against the order of CIT (Appeals) Dhanbad dated 17.08.2015 for the assessment year 2009-10.

2. The sole issue for my consideration are the additions made under section 68 of the Act being loans and gifts stated as received by the assessee. After hearing rival contentions, I find that the details of the amounts received by the assessee are as follows:

<i>Amount/Nature</i>	<i>Name of Donner/Creditor</i>	<i>Mode of Transaction</i>	<i>Documents relied on</i>
<i>Rs. 1,10,000/- (loan)</i>	<i>Smt. Sweta Gupta (daughter-in-law)</i>	<i>By A/c payee cheque</i>	<i>ITR acknowledgement, Balance Sheet, Computation of Taxable income, copy of bank</i>

			<i>account, confirmation of loan letter.</i>
<i>Rs. 1,15,000/- (loan)</i>	<i>Smt. Poonam Gupta (daughter- in-law)</i>	<i>By A/c payee cheque</i>	<i>ITR acknowledgement, Balance Sheet, Computation of Taxable income, copy of bank account, confirmation of loan letter.</i>
<i>Rs. 50,000/- (loan)</i>	<i>Smt. Alka Gupta (daughter-in-law)</i>	<i>Cash</i>	<i>ITR acknowledgement, Balance Sheet, Computation of Taxable income, copy of bank account, gift declaration letter.</i>
<i>Rs. 50,000/- (loan)</i>	<i>Smt. Asha Devi Sharma (Friend)</i>	<i>Cash</i>	<i>ITR acknowledgement, Balance Sheet, Computation of Taxable income, gift declaration letter.</i>
<i>Rs. 16,000/- (loan)</i>	<i>Smt. Anju Gupta (Relative)</i>	<i>Cash</i>	<i>ITR acknowledgement, Balance Sheet, Computation of Taxable income, Confirmation of loan letter</i>
<i>Rs. 16,000/- (loan)</i>	<i>Smt. Savitri Gupta(relative)</i>	<i>Cash</i>	<i>ITR acknowledgement, Balance Sheet, Computation of Taxable income, Confirmation of loan letter</i>
<i>Rs. 15,000/- (loan)</i>	<i>Smt. Kusum Gupta (relative)</i>	<i>Cash</i>	<i>ITR acknowledgement, Balance Sheet, Computation of Taxable income, Confirmation of loan letter</i>
<i>Rs. 13,000/- (loan)</i>	<i>Sri Madan Ram Gupta (relative)</i>	<i>Cash</i>	<i>ITR acknowledgement, Balance Sheet, Computation of Taxable income, Confirmation of loan letter</i>

3. It can be seen that in all these cases the creditors or the donors are income tax assessee's. They have filed, copy of the return of income filed by them, the computation of taxable profit, the balance sheet as well as loans confirmation and declaration gift letters as applicable. Under these circumstances, the issue is whether the addition can be made sustained in law. The Ranchi Bench of the ITAT

in the case of Lalit Kr. Jaganani vs ITO ITA No. 157/Ran/2015 dated 16.09.2016 at para 8 observed as follows:

“The assessee in the present has by filing the documents referred to in the order of assessment prima facie discharged the burden cast on him u/s 68 of the Act. Once the aforesaid three facts viz. identity of the creditor, his capacity to advance the loan and the genuineness of the transaction are prima facie established, then the onus shifts onto the department. The A.O. in the present case has found fault with the capacity of the donors to give the gift in question to the assessee. As we have already observed, the burden cast on the assessee stands discharged the moment the assessee proves the identity of the creditor, his capacity to lend and the genuineness of the transaction. The assessee cannot be further required to prove the source of the money out of which gift was given as laid down by the Hon’ble Madras High Court in the case of S. Hastimal vs CIT 49 ITR 273 (Mad). In the present case, I have already seen that the donors have filed their returns of income and such returns of income have been accepted. The source of the donors cannot therefore be gone into in the assessment of the assessee. I am, therefore, of the view that the addition made u/s 68 of the Act, in the facts and circumstances of the present case cannot be sustained. The same is directed to be deleted.”

4. Applying the proposition of law laid down therein, I find that all the loans taken by the assessee from these persons have wrongly been added u/s 68 of the Act. It cannot be said that there is no capacity of the creditors to lend such small amounts of Rs. 13,000/- or Rs. 15,000/- or Rs. 16,000/- when they are all income tax assessee’s. Even the gifts herein have been received from close relatives. The additions have been made on surmises of probabilities. No evidence is brought on record by the A.O. to contradict the evidence filed by the assessee. Such addition cannot be sustained. The assessee has proved the identity, creditworthiness as well as the genuineness of the transactions. Thus all these additions made u/s 68 are deleted and ground no 1 to 6 are allowed.

5. Ground No. 7 is on the levy of interest u/s 234A and 234B in this regard. The issue is whether interest u/s 234A and 234B is to be levied only on the total income disclosed by the assessee in the return of income or on the total income determined by the A.O. in the assessment order i.e. assessed income. The Hon'ble Jharkhand High Court in T.A. No. 38 of 2010 order dated 25th July, 2012 in the case of Ajay Prakash Verma vs. ITO, Dhanbad reported in 2013(1) TMI 140 has held that interest u/s 234A and 234B can be levied only on the income declared by the assessee in the return of income. The Hon'ble Jharkhand High Court in I.A. No. 5725 of 2014 in Civil Review No. 66 of 2013 judgment dated 1st September, 2015 dismissed the civil review application filed by the department on this issue in this very case of Ajay Prakash Verma. Respectfully following the propositions of law laid down by the jurisdictional High Court, I direct the A.O. to levy interest u/s 234A and 234B only on the income returned by the assessee and not on the income assessed by the A.O.

6. In the result, the appeal of the assessee is allowed in part.

Order Pronounced in the Open Court on 28th February, 2018.

Sd/-
(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 28/02/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. Smt. Durga Devi Gupta, C/o. S.K. Poddar, Advocate, Upper Bazar, Behind Central Bank, Ranchi – 834 001.
2. ITO, Ward 1(3), Luby Circular Road, Dhanbad.

3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Ranchi