

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.592/PUN/2014

निर्धारण वर्ष / Assessment Year : 2009-10

Income Tax Officer,
Ward - 3(2), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Vijayraj Uttamchand Mundada,
Flat No. 27, Amit Apartment,
1374, Sadashiv Peth,
Pune - 411030

PAN : AGVPM0364J

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak &
Shri Suhas P. Bora
Revenue by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 05-12-2017

घोषणा की तारीख / Date of Pronouncement : 01-03-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-II, Pune dated 27-11-2013 for the assessment year 2009-10.

2. The brief facts of the case as emanating from records are : The assessee filed his return of income for the assessment year under appeal on 23-09-2009 declaring total income of Rs.18,35,650/-. The case of the assessee was selected for scrutiny through CASS. Accordingly, statutory notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued to the assessee on 21-08-2010. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that in the Auditor's Report, the Auditor has mentioned that the assessee has received a gift of Rs.1 crore from Mrs. Jayashree Shirole by way of Will and has claimed the said amount as exempt u/s. 56(2)(v)(d) of the Act. It was later clarified by the assessee that the amount was received from Pushpa D. Shirole. The name Jayashree Shirole was wrongly mentioned in the Auditor's Report. The Assessing Officer disallowed the assessee's claim of gift in contemplation of death as exempt from income on following counts :

- i. The assessee failed to produce Will.
- ii. The assessee has received consideration/gift from Smt. Vasundhara D. Shirole, sister of deceased Smt. Pushpa D Shirole, therefore, the amount cannot be said to have been received in contemplation of death.
- iii. FDRs and cheques which were stated to be handed over to the assessee prior to the death of Smt. Pushpa D. Shirole were in fact encashed by her legal heir and sister Smt. Vasundhara D. Shirole.

Thus, the Assessing Officer rejected assessee's claim of exemption u/s. 56(2)(v)(d) and made addition of Rs.1 crore in the income returned by the assessee.

Aggrieved by the assessment order dated 23-12-2011, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The

Commissioner of Income Tax (Appeals) vide impugned order accepted the explanation furnished by assessee and deleted the addition of Rs.1 crore made by Assessing Officer. Now, the Department is in appeal before the Tribunal assailing the findings of Commissioner of Income Tax (Appeals) by raising following grounds of appeal :

- (1). *The learned Commissioner of Income-tax (Appeals) erred in holding that the amount of Rs.1,00,00,000/- received by the assessee was a gift in contemplation of death when the same was chargeable to tax as 'Income from other sources' and not exempt u/s. 56(2)(v)(d) of the Act.*
- (2). *The learned Commissioner of Income-tax (Appeals) erred in not appreciating the fact that FORs claimed to have been gifted to the assessee were not in the name of the donor (Smt.Pushpa Shirole) alone but was held jointly by Smt. Pushpa Shirole & Smt. Malini Shirole and as such Smt. Pushpa did not have the sole right to gift the FDRs to the assessee.*
- (3). *The learned Commissioner of Income-tax (Appeals) erred in not appreciating the fact that the cheques were issued to the assessee by Smt.Vasundhara Shirole and thus the sum received by the assessee from Smt.Vasundhara Shirole cannot be termed as a gift by will or a gift in contemplation of death or on behest of the donor, Ms. Pushpa Shirole.*
- (4). *The learned Commissioner of Income-tax (Appeals) erred in deciding the appeal on the basis of blank signed cheques & signed form for premature withdrawal of FDRs by Smt. Pushpa Shirole in possession of the assessee, which could not, in any way, be inferred as oral gift as claimed by the assessee.*
- (5). *The appellant craves leave to add, alter or amend any or all the grounds of appeal.”*

3. Shri Ajay Modi representing the Department vehemently supporting the findings of Assessing Officer submitted that the assessee has failed to show that the amount of Rs.1 crore has been received by assessee from Smt. Pushpa D. Shirole in contemplation of her death. Therefore, the said amount cannot be stated to be exempt under the provisions of section 56(2)(v)(d) of the Act. The ld. DR submitted that as per records Smt. Pushpa D. Shirole died on 15-03-2008. She was survived by her two

sisters Smt. Malini D. Shirole and Smt. Vasundhara D. Shirole. Smt. Malini D. Shirole died within two months from the date of death of Puspha D. Shirole. As per the contentions of assessee, the assessee had received blank cheques and Fixed Deposit Receipts drawn on Bank of India from Pushpa D. Shirole on 10-03-2008 as gift. However, on enquiry it revealed that the amount of Rs.1 crore was credited to the account of assessee through various cheques drawn on Bank of Maharashtra. The money lying in fixed deposits jointly owned by Pushpa D. Shirole and Malini D. Shirole were in fact, transferred to the account of their sister Vasundhara D. Shirole. The fixed deposits which the assessee claimed to have been given to him by Pushpa D. Shirole bears no endorsement in favour of assessee. Therefore, it cannot be said that the same were handed over to the assessee as gift in contemplation of death. The ld. DR submitted that as per provisions of section 191 of the Indian Succession Act three conditions must be satisfied to constitute of valid gift in contemplation of death : (i) the property must be movable which could be disposed of by the person on death bed by way of Will, (ii) a man, who is ill delivers the possession of movable property to the donee as a gift, in case the donor shall die of illness; and (iii) such a gift may be resumed by the giver if he recovers from illness.

3.1 In the present case, firstly the amount of Rs.1 crore has been received by assessee from Smt. Vasundhara D. Shirole and not from Smt. Pushpa D. Shirole who has died. Secondly, the amount of Rs.1 crore has been received by assessee after the period of 3-4 months from the date of death of Smt. Pushpa D. Shirole and not before her death during the time of her illness. Thus, in given set of facts the assessee has failed to show that the gift of Rs.1 crore has been received by assessee in contemplation of death of Smt. Pushpa D. Shirole. The ld. DR prayed for setting aside the

order of Commissioner of Income Tax (Appeals) and restoring the findings of Assessing Officer.

4. Per contra, Shri Nikhil Pathak and Shri Suhas P. Bora appearing on behalf of the assessee strongly defended the findings of Commissioner of Income Tax (Appeals). The ld. AR submitted that the Fixed Deposit Receipts (FDRs) of Bank of India (nine in numbers) aggregating to Rs.70,00,000/- were handed over by Smt. Puspha D. Shirole after endorsement on reverse side of FDRs to the assessee prior to her death. The ld. AR referred to Pages 69 to 77 of the paper book to show that Smt. Pushpa D. Shirole had made endorsement on the back side of FDRs prior to her death. The ld. AR further submitted that apart from FDRs Smt. Pushpa D. Shirole had also given two blank signed cheques on 10-03-2008 to the assessee. Thereafter, on 15-03-2008 Smt. Pushpa D. Shirole died. Shortly after the death of Pushpa D Shirole her sister Malini D. Shirole died on 29-05-2008. The assessee was closely associated with Shirole family. Smt. Pushpa D. Shirole treated assessee as her son. The assessee remained besides Pushpa D. Shirole throughout her illness and even at the time of her death. The assessee did not rush to the bank for encashing the cheques/FDRs immediately after the death of Pushpa D. Shirole as he was not in state of grief and was disturbed by the death of Pushpa D. Shirole followed by the death of Malini D. Shirole. The assessee's close relation with Shirole sisters was endorsed by Ms. Savita Nandkumar Gadekar a close family friend and neighbor of Shirole sisters and Shri Vidyesh Prakash Gokhale, investment consultant of Shirole family.

4.1 The ld. AR submitted that the assessee after the death of Pushpa D. Shirole and Malini D. Shirole returned the cheques and FDRs to Smt.

Vasundhara D. Shirole. Smt. Vasundhara D. Shirole issued new cheques drawn on Bank of Maharashtra to the assessee to fulfill the wish/will of her sister Pushpa D. Shirole. Smt. Vasundhara D. Shirole had filed her affidavit to this effect. The ld. AR referred to affidavit of Smt. Vasundhara D. Shirole at pages 46 and 47 of the paper book. The ld. AR pointed that a perusal of affidavit clearly indicate that the cheques bearing No. 375426 dated 18-06-2008 for Rs.35,00,000/-, cheque No. 375433 dated 11-07-2008 for Rs.35,00,000/-, cheque No. 375435 dated 04-08-2008 for Rs.10,00,000/- and cheque No. 395563 dated 05-03-2008 for Rs.20,00,000/- all drawn on Bank of Maharashtra were issued in favour of assessee by her as per last wish of Pushpa D. Shirole. The ld. AR asserted that the Assessing Officer has failed to take cognizance of the affidavit dated 03-12-2011 executed by Smt. Vasundhara D. Shirole.

4.2 The ld. AR asserted that Smt. Pushpa D. Shirole had made gift of Rs.1 crore to assessee on 10-03-2008 during her severe illness in contemplation of her death. The FDRs and cheques were handed over by Smt. Pushpa D. Shirole to the assessee before her death. Shortly, thereafter she died on 15-03-2008. The conditions set out u/s. 191 of the Indian Succession Act are satisfied so far as the manner, mode and time of gift is concerned, thus, the assessee is eligible for claiming exemption under the provisions of section 56(2)(v)(d) in respect of gift of Rs.1 crore. The Assessing Officer has taken hyper technical view of time and manner of encashment of FDRs/cheques in denying the exemption.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The Department has raised as many as four grounds in appeal relating to solitary issue of

assessee's eligibility of claiming exemption u/s. 56(2)(v)(d) in respect of Rs.1 crore received as gift as per last wish/will of Smt. Pushpa D. Shirole.

6. The facts narrated above are not in dispute. The Revenue has assailed the findings of Commissioner of Income Tax (Appeals) in allowing assessee's claim of exemption u/s. 56(2)(v)(d) on the ground that since, the assessee has received amount of Rs.1 crore from Smt. Vasundhara D. Shirole, it cannot be said that the amount of Rs.1 crore has been received by assessee as gift from Smt. Pushpa D. Shirole in contemplation of her death.

7. Before proceeding further it would be relevant to refer to the provisions of section 191 of Indian Succession Act, 1925 which refers to the property transferable by gift made in contemplation of death :

“191. Property transferable by gift made in contemplation of death.—

(1) A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by Will.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers, to another the possession of any movable property to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.”

Thus, as per provisions of section 191 of the Indian Succession Act following conditions must be satisfied for treating the gift made in contemplation of death :

- i. The gift must be of movable property, which could be disposed of by Will.
- ii. The gift is made in contemplation of death.
- iii. The donor of gift must be ill and is expects to die shortly of his/her illness.

- iv. The gift is delivered by the donor to the donee before death.
- v. The donor of gift may resume the gift if he recovers from illness and is survived.

8. In the present case we find that Smt. Pushpa D. Shirole before her death expressed her Will to give gift to the assessee and thus handed over two cheques of Bank of India along Fixed Deposits Receipts of Bank of India (nine in numbers) aggregating to Rs.70,00,000/- purportedly on 10-03-2008. Shortly, thereafter, she died on 15-03-2008. Thus, it is quite evident that the conditions set out in sub-section (1) and sub-section (2) of section 191 of India Succession Act were satisfied when Smt. Pushpa D. Shirole died. The person who could have raised objection on validity of will/oral will of Pushpa D. Shirole is her legal heir and sister Vasundhara D. Shirole. We find that she not only endorsed the existence of oral will/wish of her elder sister but also facilitated in ensuring that the last wish of her sister is fulfilled. Smt. Vasundhara D. Shirole facilitated the encashment of FDRs handed over by Smt. Pushpa D. Shirole to the assessee. It is not a case where Smt. Vasundhara D. Shirole gifted the amount to assessee. We observe that the Assessing Officer has not taken into consideration the affidavit filed by Smt. Vasundhara D. Shirole which clearly states that the amount of Rs.1 crore has been given to assessee in accordance with the last wish of her sister Smt. Pushpa D. Shirole. The Assessing Officer denied the exemption claimed by assessee by taking pedantic and hyper technical view of the manner of encashment of FDRs/cheques received as gift in contemplation of death from Pushpa D. Shirole. The Assessing Officer lost sight of the fact that Vasundhara D. Shirole had issued fresh cheques to the assessee in lieu of FDRs and cheques handed over by Pushpa D. Shirole to assessee before her death.

9. A perusal of impugned order shows that the First Appellate Authority after taking into consideration entire facts of the case, various case laws and also the provisions of section 191 of Indian Succession Act first has held that the assessee is eligible for claiming exemption u/s. 56(2)(v)(d) of the Act. We do not find any infirmity in the findings of Commissioner of Income Tax (Appeals). Accordingly, impugned order is upheld and the appeal of Revenue is dismissed being devoid of any merit.

10. In the result, the appeal of Revenue is dismissed.

Order pronounced on Thursday, the 01st day of March, 2018.

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|--------------------------------------|---------------------------------|
| Sd/- | Sd/- |
| (डी. करुणाकरा राव/D. Karunakara Rao) | (विकास अवस्थी / Vikas Awasthy) |
| लेखा सदस्य / ACCOUNTANT MEMBER | न्यायिक सदस्य / JUDICIAL MEMBER |

पुणे / Pune; दिनांक / Dated : 01st March, 2018

RK

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)-II, Pune
4. आयकर आयुक्त / The CIT-II, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune