

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.2837/Kol/2013
Assessment Year :2005-06

Priyanka Tikmani 2 nd Floor, 10, Lord Sinha Road, Kolkat-71 [PAN No.ACXPJ 1732B]	V/s.	Income Tax Officer, Ward-33(1),10B, Middleton Row, Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri D.P. Baid, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri S. Dasgupta, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	24-01-2018
घोषणा की तारीख/Date of Pronouncement	04-04-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-XIX, Kolkata dated 05.01.2013. Assessment was framed by ITO Ward-33(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 29.08.2007 for assessment year 2005-06. The assessee has raised the following grounds:-

- “1. That on the facts and in the circumstances of the case, the Ld. Assessing Officer erred in law as well as on fact and was not justified in adding the entire gifts of Rs.20,00,000/- as cash credit U/s. 69 of the IT Act on the alleged ground as your appellant had produced all documentary evidences as to the genuineness, creditworthiness and proper identity of each of the various donors before the Ld. AO during the course of assessment proceeding. Similarly the Ld. CIT(A)-XIX, Kol also was not justified to uphold/sustain the said arbitrary illogical and or unjustified addition made by the Ld. AO.*
- 2. That the Ld. AO as well as the Ld. CIT(A)-XIX, Kol were not justified in not giving due cognizance to the fact of the case as well as the evidences produced before them. The Ld. CIT(A)-XX, Kol was also not*

justified in not accepting without any tenable reason the submissions made by your appellant during the course of hearing of her appeal.

3. That on the facts and circumstances of the case, the Ld. AO has erred in law as well as on facts to add back the said gifts of Rs.20,00,000/- as undisclosed income of your appellant u/s. 69. Similarly, the Ld. CIT(A)-XIX, Kol has also erred in law as well as in facts in upholding/sustaining the said addition u/s. 69 of the IT Act, 1961 though none of the authorities below could unearth any investment outside the books/records maintained by your appellant rendering both the impugned order illogical and or void Authorities Below-initio on this ground only.

4. That the impugned order U/s 143(3) as well as the impugned appeal order are otherwise illogical, torturous, unjustified, illegal and or void Authorities Below initio and both are liable to be quashed, set aside, rescinded, recalled and or otherwise nullified.

5. That your appellant craves leave to add, to delete, withdraw, amend, alter, revise, vary and/or otherwise modify, all or any of the aforesaid grounds and/or to adduce evidences at or before the final hearing/disposal of the appeal.”

Shri O.P. Baid, Ld. Authorized Representative appeared on behalf of assessee and Shri S. Dasgupta, Ld. Departmental Representative appeared on behalf of Revenue.

2. Though assessee has raised as many as 5 grounds of appeal, however as per our considered view sole and substantial ground of appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of ₹20 lakh on account of bogus gifts.

3. Briefly stated facts are that assessee is an individual and declared her income under the head “capital gain and income from other source”. The assessee, during the year has received gifts of ₹ 20 lakh from the following persons:-

<u>Name & address</u>	<u>Amount</u>
Baby Mittal 172A, lake Gardens,Kol-45	4,00,000
Sita Devi Agarwal 5, Jadu Lal Mallick Road,Kol-007	4,00,000
Kavita Agarwal P-7, Kalakar St, Kol-007	3,00,000
Shashi Prabha Gupta 31/41, Binova Bhawe Rd, Kol-38	4,00,000

Basanti Devi Mittal	
15/136, B.L. Saha, Rd, Kol-53	4,00,000
Bina Modi	
58A, Raja Basant Roy Rd, Kolkata-29	1,00,000

The Assessing Officer in order to establish the genuineness and creditworthiness of the donors of gifts issued summons u/s 131 of the Act to all the parties but the summons were delivered to two parties only and nobody appeared on the appointed date. However, the notices issued to other parties were returned by Postal Authorities as un-served with the remarks "not claimed and not known". In view of above, AO show-caused the assessee about the aforesaid facts vide letter No.Wd/33(10)/2007-08/265 dt. 11.07.2007. The assessee in compliance thereto expressed her inability to present the alleged donors before the AO. Thus the AO treated the same as unaccounted cash credit under the provision of Section 69 of the Act and added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). It was submitted by assessee that the impugned gifts were received from her relatives on the occasion of her marriage. But subsequent to the marriage ceremony, the relationship with the relatives was broke down unfortunately. Therefore, the donors of the impugned gifts have not co-operated in the assessment proceedings.

5. All the necessary details with regard to the donors such as, address, PAN, bank account etc were furnished before AO during the assessment proceedings. The AO was very much empowered to verify the genuineness of the parties from whom impugned gifts were received by assessee from the AO's having jurisdiction over the donors of the impugned gifts. But the AO failed to do so.

The assessee also submitted that the addition has been made under the provision of Sec. 69 of the Act by the AO without bringing any unexplained investment on record. As such, assessee has not made any unexplained investment. Thus, the provision of Section 69 of the Act cannot be applied to

the instant transactions of impugned gifts. However, Ld. CIT(A) during the course of appellate proceedings observed certain facts as narrated below:-

- a) There was no unexplained investment as alleged u/s 69 of the Act but the bogus gifts needs to be disallowed under the provision of Section 68 of the Act however, merely wrong quote of section would not invalid the assessment framed u/s.143(3) of the Act;
- b) The marriage ceremony of assessee was performed on 08.12.2001 whereas the gifts were received by assessee in the month of August, 2004. Therefore such gifts cannot be covered under the purview of Section 56(2)(v)(b) of the Act as there was huge time gap between date of marriage and the date of received of the impugned gifts.
- c) The reasoning given by assessee that the relation with the relatives has become sore therefore they are not co-operating has no judicial basis under the provision of Income Tax Act,
- d) The assessee has disclosed little amount of income and has shown a sum of ₹ 20 lakh as gift during the year under consideration. Therefore the amounts of impugned gifts are not free from the clutches of doubt. There was no response from any of the donors against the notice issued u/s 131 of the Act made by the AO.

In view of the above facts, Ld. CIT(A) confirmed the order of AO by observing as under:-

"From the aforesaid facts and discussion, the alleged gifts cannot be considered genuine. Hence alleged gifts amounting to ₹20,00,000/- is being treated as unaccounted cash credit in the hands of the ape. From the above, it is evident that there were ample opportunities given to the appellant for proving the alleged gifts as genuine but however the appellant failed to prove the same in a satisfactory manner. This situation is further aggravated by the fact that the postal department returned the envelopes after making the remarks as discussed in the assessment order. Last but not the least the appellant did not provide any cogent reason/cause of such huge gifts without furnishing any plausible explanation. For augmenting her arguments about the bitterness that had crept in between the family relations, she could not furnish any documents having some evidentiary value for proving such bitterness in the form of legal dispute papers, arbitration document, family settlement etc. to substantiate her claim in this regard. Therefore,

the probability of receiving the gifts stands a remote chance with the appellant and thus I am unable to acquiesce to the argument put forth by the appellant and hence in the light of the foregoing paras, the addition made by the AO on account of the impugned gifts amount is hereby confirmed.”

Aggrieved by this, the assessee has come up in appeal before us.

6. Ld. AR for the assessee before us filed paper book which is running from pages 1 to 119 and stated that the impugned gifts were received through banking channel from the concerned parties and same was disclosed by the donors in their respective income tax returns. Ld. AR drew our attention on pages 23 to 28 of the paper book where the affidavits by the respective donors were placed in support of the impugned gifts received by assessee. Ld. AR in support of assessee's claim also filed the copy of ITR, PAN, profit and loss account, balance-sheet, source of funds in the hands of the donor's, declaration, capital account, bank statements etc., which are placed on pages 37 to 90 of the paper book. Ld. AR further submitted that the addition has been made in the hands of assessee merely on the ground that the donors did not appear in response to the notice issued to them u/s 131 of the Act. The AO was having the complete knowledge of the income-tax jurisdiction of the donors who have given gift to the assessee but AO has not exercised his power given under the Statute to verify the genuineness and creditworthiness of the concerned parties by taking confirmation from the AO's having jurisdiction over the donors. Ld. AR also submitted that no reference has been made by the AO even during the course of remand proceedings for the impugned addition to the provisions of Section 68 of the Act. He prayed before the Bench to decide the issue according to law.

On the other hand, Ld. DR submitted that indeed the addition was made AO under the provision of Section 69 of the Act but subsequently the mistake was rectified by the AO by way of letter issued to assessee stating that the addition has been made u/s. 68 of the Act. Ld. DR also submitted that the addition cannot be deleted without merely on the basis of wrong quote of the Section 69 of the Act. He vehemently relied on the order of Authorities Below.

7. We have heard the rival contentions and perused the material available on record. In the instant case, the addition was made by the AO solely on the basis that the parties who has given gifts to assessee did not respond to the notice issued upon them u/s 131 of the Act. In fact, assessee in support of impugned gifts has furnished all necessary documents such as copy of ITR, PAN, bank statements, source of fund, profit and loss account, balance-sheet, affidavits declaration, etc., in support of assessee's claim but none of the Authorities Below has pointed out any defect in the documents filed by assessee in support of impugned gifts. In our considered view, the addition cannot be sustained in the hands of assessee merely on the grounds that the parties had not responded to the notices issued u/s 131 of the Act and without pointing out any defect in the details, filed by the assessee in support of impugned gifts received by her. We also note that certain facts had not disputed by the Authorities Below as detailed under:-

- i) The transactions were routed through baking channel.
- ii) The parties who have given the impugned gifts had not been disputed;
- iii) The details, such as, source of funds, PAN, ITR, financial statements, bank statements had not been doubted;

In view of the above, we note that the addition cannot be sustained in the hands of assessee merely on the ground that the parties have not responded to the notices issued u/s 131 of the Act.

The lower authorities were empowered under the law to initiate the penalties proceedings against such donors for their non-compliance but they did not do so. Moreover there was no defect pointed in the documents filed during the assessment proceedings in support of impugned gifts. Similarly, we also note that the donors have duly given affidavits / declaration which are duly notarized and confirming the gifts made by them to assessee out of their love and affection. Therefore, the supporting documents cannot be ignored without pointing out any defect in such documents. It was also observed that the

donors have also justified the source of money used for the purpose of impugned gifts. It was found that the donor received the money for the purpose of gifts against the sale of shares held by them. The documents supporting the transactions of sale of shares have been duly placed by the assessee in paper book. In our considered view, the assessment should have been made on the basis of documents available on record and no adverse inference can be drawn against the assessee in the event of non response of the alleged donors. In holding so, we draw our support and guidance from the order of ITAT Bangalore Bench in the case of *Mukesh R Marolia vs. ACIT* reported in 6 SOT 247 (Mum) wherein it was held as under:-

“But, whatever it may be, an assessment has to be completed on the basis of records and materials available before the assessing authority. Personal knowledge and excitement on events, should not lead the Assessing Officer to a state of affairs where salient evidences are over-looked. In the present case, howsoever unbelievable it might be, every transaction of the assessee has been accounted, documented and supported. Even the evidences collected from the concerned parties have been ultimately turned in favour of the assessee. Therefore, it is, very difficult to brush aside the contentions of the assessee that he had purchased shares and he had sold shares and ultimately he had purchased a flat utilizing the sale proceeds of those shares.”

Similarly, we also find support and guidance from the Judgment of Hon'ble Supreme Court in the case of *CIT vs. Orissa Corporation Pvt. Ltd.* reported in 159 ITR 78 wherein it was held as under:-

“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.”

Respectfully following the same, we are of the view that the addition made by AO and subsequently confirmed by Ld. CIT(A) is not sustainable. We set aside the order passed by the lower authorities. Hence, ground raised by assessee is allowed.

8. In the result, appeal filed by assessee stands allowed.

Order pronounced in the open court 04/04/2018

Sd/-

(न्यायिक सदस्य)

(N.V.Vasudevan)

(Judicial Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 04/04/2018 कोलकाता ।

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

(Accountant Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Priyanka Tikmani, C/o M/s Baid & Co. Chartered Accountants, 10/C Ballygunge Circular Road, 2nd Floor, Kolkt-19
2. प्रत्यर्थी/Respondent-ITO, Ward-33(1), 1-B, Middleton Row, Kolkata
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।