

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

[Before Sri S.S. Godara, Judicial Member & Sri M. Balaganesh, Accountant Member]

**I.T.A. No. 1429/Kol/2017
Assessment Year: 2010-11**

ACIT, Circle-37, Kolkata.....Appellant

Navin Agarwal.....Respondent

**C/o R. Patodia & Co.
9, Jagmohan Mullick Lane
3rd Floor
Kolkata - 700 007
[PAN - ACTPA 4140 JJ]**

Appearances by:

*Shri R.K. Patodia, FCA, appeared on behalf of the assessee.
Shri A. Bhattacharya, Addl. CIT, DR appearing on behalf of the Revenue.*

Date of concluding the hearing : June 14th, 2018

Date of pronouncing the order : July 4th, 2018

ORDER

Per S.S. Godara, JM :-

This Revenue's appeal for the assessment year 2010-11 challenges the correctness of the Commissioner of Income Tax (Appeals) - 2, Kolkata's order dated 24/03/2017 upholding the assessing officer's action adding its share application money of Rs.67,40,000/- u/s 68 of the Income Tax Act, 1961 (in short the 'Act') as well as various other additions made in assessment order dated 30/03/2016 involving proceedings u/s 143(3) of the Act.

Heard both the parties. Case file perused.

3. Learned departmental representative at the Revenue's behest takes us to the CIT(A)'s detailed discussion deleting the impugned addition as under:-

"3.1. The first ground of appeal is general in nature and needs no adjudication. The second ground of appeal is against disallowance of Rs. 36,22,000/- on account of gifts given by the appellant treated as not genuine by the AO. The AR of the appellant, during the appellate proceedings, furnished a written submission, wherein it was stated, inter-alia, as under:-

"Ground No.2

This ground relates to the addition of a sum of Rs. 36,22,000/- (Rupees thirty six lacs twenty two thousand only) made towards alleged undisclosed source of income on account of gift given to the relative of the assessee for which the gift deeds were not produced before the Ld AO. During the year under consideration the appellant had made the following gift to his Relatives:-

Sl.No.	Name of the Donee	Amount Rs.	Relation	Source of Funds
1	Ankit Agarwal	17,67,500/-	Nephew (Brother's son)	Liquidation of fixed deposit Credited in the bank account of the Appellant.
2	Pratik Agarwal	14,64,500/-	Nephew (Brother's Son)	Liquidation of fixed deposit Credited in he bank account of the appellant
3.	Naivedya Agarwal	35,000/-	Son	Out of the fund available with assessee in cash out of withdrawals from bank
4	Annanya Agarwal	3,55,000/-	Son	Out of the fund available with assessee from Salary etc in the bank account of the Appellant.
	Total	36,22,000/-		

From the above table it can be seen that all the gifts were given by the appellant to his very close relatives only. The first two gifts to Ankit Agarwal and Pratik Agarwal represented jewellery & ornaments gifted to his relative on the occasion of their marriage and the last two gifts were made by way of transfer of funds. The jewellery & ornaments were purchased from M/s Kothari's and relevant bills in this regard are duly available with the appellant and are enclosed herewith and the payment for the said jewellery & ornaments was made out of the funds available with the Appellant in his bank account which was duly disclosed in the Return of Income filed by the Appellant. During the course of the hearing, the Ld Assessing Officer asked the appellant to produce the Deed of Gifts. As these gifts were close family gifts, no formal deed of gift was prepared and the first two gifts were made on the occasion of marriage by way of gifting jewellery & ornaments and as such the gift deed was not prepared and was not available. It is normal that in such a situation when gifts are given on the occasion of marriage, the gift deed is seldom prepared since they are handed over to the bride and bridegroom at the time of marriage and one is not expected to carry a gift deed to be signed upon giving the gifts. In the instant case, the jewellery was physically handed over to the relative on the occasion of the marriage. Moreover, the other two gifts were made to the Son of the Appellant and cheque/cash as the case may be was handed over to the respective son. In any case, not providing the gift deed cannot be a reason for treating the amount of the gift as income from undisclosed sources as there is no such provision under the Income-tax Act, 1961 and the addition was totally arbitrary, unjustified, unwarranted, mala fide and illegal.

The Ld AO had made the addition by stating that

"In the given circumstances the genuineness of these gifts shown as given to the tune of Rs.36,22,000/- by the assessee could not be ascertained. It is understood that the said gifts are given by the assessee from his undisclosed source of income."

The Ld AO had failed to disclose the basis on which he has arrived at a conclusion that the gift were given out of undisclosed source. It can be noted that during the course of hearing the copy of bank statement in respect of account maintained with ICICI Bank was produced for the verification of the source of fund from which gift were given. The copy of said bank statement is once again enclosed herewith for your ready reference and from the said statement it can be seen that the source of funds for the gifts was out of the income from Salary and from liquidation of fixed deposits maintained with the bank and out of the funds available with the appellant in cash with the appellant.

Thus when the source of gift made was duly verifiable from the bank statement the action of the Id AO in assuming that the gift were made out of undisclosed source is totally wrong and illegal.

It may be noted that the addition of Rs. 36,22,000/- as income from undisclosed sources even when the amount was paid out of the funds on which tax has already been paid amounted to an arbitrary addition and addition of an income which has already been taxed and thus amounted to double taxation. Moreover in the assessment order the Ld AO has not stated the provision of law under which he had made the additions. Therefore the action of the Id AO in making the addition in respect of gift given is totally wrong and illegal.

Thus the addition of Rs.36,22,000/- was totally wrong, arbitrary, unjustified and illegal."

*3.2. I have considered the facts of the case and the appellant's submissions. The Assessing Officer disallowed the gifts amounting to Rs. 36,22,000/- as he did not consider them genuine. Accordingly, he stated that the gifts were given out of the appellant's undisclosed income. However, the AO has not given the basis on which he arrived at this conclusion, when he himself had observed that the gifts were shown in the balance sheet of the appellant and were found on examination of the appellant's books of accounts. It is the appellant's case that the gifts were made out of the appellant's account no. 000401029619 with ICICI Bank and the said bank account had been disclosed in his return of income. The appellant's income had been deposited in the said bank account and the balance sheets filed during the course of income-tax assessment and wealth-tax assessment over various assessment years reflected the same. I find that there is no material on record to show that the gifts were made out of undisclosed income and it is not the finding of the AO that the bank account was undisclosed. In my view, gifts cannot be considered to have been made out of undisclosed income merely because gift deeds have not been prepared. Moreover, it was not as if the appellant had claimed any expenses on account of the gifts. Hence, there was no reason for the AO to "disallow" such gifts as mentioned in the assessment order. Therefore, the addition/disallowance of Rs. 36,22,000/- is **deleted**.*

4. Revenue's case as per above facts and circumstances is that the CIT(A) had sought for relevant remand report from Assessing Officer only *qua* the additional issue but had never asked to verify source of impugned gifts. We find no merit in the instant technical argument. It has come on record that the assessee has shown the relevant bank accounts as well as the sums in question in its books of accounts which have nowhere been disputed at Revenue's instance during the course of hearing before us. We therefore conclude that the CIT(A) has rightly deleted the impugned addition of gifts given amounting to Rs.36,22,000/-.

5. This Revenue appeal is dismissed.

Kolkata, the 4th day of July, 2018.

Sd/-
[M. Balaganesh]
Accountant Member

Sd/-
[S.S. Godara]
Accountant Member

Dated : 04.07.2018
{SC SPS}

Copy of the order forwarded to:

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2. ACIT, Circle-37, Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

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