

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA**

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

**I.T.A No. 347/Agra/2016
(ASSESSMENT YEAR-2007-08)**

Smt. Priya Arora, W/o Shri Sarvesh Arora, Arora Bhawan, Court Road, Shivpuri, (M.P.) PAN No.AKWPA4597N (Assessee)	Vs.	ITO, Shivpuri. (Revenue)
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Assessee by	Shri Manuj Sharma, AR.
Revenue by	Shri Waseem Arshad, Sr.DR.

Date of Hearing	17.05.2018
Date of Pronouncement	13.07.2018

ORDER

This is assessee's appeal for A.Y. 2007-08, taking the following grounds:

- “1. *That the Ld. CIT(A) Range III Kanpur, camp at Gwalior has erred in deciding the appeal without providing reasonable opportunity of hearing & without considering all the documents, evidences, affidavits and prayer filed before the A.O and Ld. CIT(A).*

2. *That the Ld. CIT(A) has erred in not providing 2nd remand report to the Appellant, which was called by the Ld CIT(A) from A.O. shivpuri on dated 13-01-2015., before passing Appeal order, because 1st remand report*

of the AO dated 04-03-2013, was not accepted by the appellant on dated 13-10-2015. Therefore, without providing the 2nd remand report to the Appellant, the decision passed by Ld. CIT(A) is bad in Law as well as facts of the case.

- 3. That the Ld. CIT(A) has erred in confirming addition of Rs.12000/- made on account of agriculture income. The confirmation of addition on this account is bad in law as well as on facts of the case.*
- 4. That the Ld. CIT(A) has erred in confirming the addition of Rs. 8,00,000/- made of gift amount which was received by your appellant as gift from Smt. Rekha Arora w/o Sushil Kumar Arora PAN- AEDPA9264K R/o Adarsh Nagar Colony, Shivpuri wife of elder brother of appellant husband, relative of the family members). The said gift was received by your appellant, by the a/c payee cheque no. 735906 dated 12/12/2006 drawn on Punjab & Sind bank, Shivpuri. The confirming of said addition by CIT (A) is bad in law as well as on fact of the case.*
- 5. That the Ld. CIT (A) has wrongly & illegally confirmed the above addition of gift amounting to Rs.8,00,000/- which Ld. A.O has taxed u/s 68 of IT Act.*
- 6. The above all addition as made by A.O of 12,000 + 8,00,000/- totaling Rs.8,12,000/- in the declared income of your appellant & confirmed the same by Ld. CIT (A) is*

bad in law as well as on facts of the case. Kindly delete the entire addition of Rs. 8,12,000/- as made by A.O & confirmed by CIT (A) on basis of facts and circumstances of the case.”

2. Ground Nos. 2 and 3 and a part of Ground No.6, regarding addition of Rs.12,000/- is stated to be not pressed. Rejected as not pressed.

3. Apropos the rest of the Grounds, the only issue is the addition of Rs.8 lacs, representing gift received by the assessee from the wife of the elder brother of the assessee's husband (Jethani).

4. During the assessment the AO noted the appellant to have received Rs. 8 lacs as gift from one Rekha Arora besides the gift received from father, of Rs. 5 lacs. The AO issued summons u/s 131 of the Act and the donors attended. Their statements were recorded. In so far as receipt of gift of Rs.8 lacs, the AO, inter alia, noted that:

(a) There was no social occasion involved when the gift was made by the donor to the donee.

(b) The donor's total worth was of just Rs. 6 to 7 lacs, which was too inadequate to make gift.

(c) The appellant was receiving gift from someone, even when the donor's own sons were there, which was against human probability.

(d) The credits which were there, out of which gifts were made, were not explained by the appellant by producing evidences in support of the donor's claim of the same being out of sale proceeds of house.

(e) The explanation given by the donor u/s 131 of the IT Act was a concocted explanation.

(f) The gift was found given on 12-12-2006, whereas the affidavit was got prepared much prior to it, on 12-09-2006, which also showed that it was just a case of creation of evidence to make an arranged affair appear as a genuine one.

5. With the above, the AO concluded that the entire transaction was just an arranged affair. Resultantly, the AO treated the gift as unexplained and made the addition.

6. The ld. CIT(A) confirmed the addition, observing as follows:

“5.2 During the present appeal proceedings, the appellant has reiterated the submissions which were made before the AO. Specifically, it has been argued that the donor had the capacity to make the gift and she has also confirmed the transactions and that the Gift transaction is made by cheque and that it is supported by the gift deed.

15.3 *The submissions are carefully considered. Undisputed and un-rebutted fact of the issue is that the Gift is made without there being any social occasion (like marriage/birthday) to make which is very important, strangely, the donor had two sons till she chooses to make gift to the assessee who was not even related to her by blood (was just the wife of elder brother of husband). The Gift transaction on being tested on the anvil of the Supreme Court judgment in Sumati Dayal (214 ITR 801) and other judgments relied by the AO miserably fail to qualify as a genuine gift transactions. In the Indian context generally Gift exchange hands only some social or pious occasions. In Indian social milieu/society it is a fact that wives of brothers generally have strained relationship. Exchange of Gifts, in Indian social milieu, between the wives of brothers is unheard of. Strange fact of donor's making gift of almost entire sale consideration profusely indicates that the Gift transaction is not genuine. Affidavit / Confirmation or the receipt of amount by cheque at best explains the form and not the substance and all these just explain the receipt of amount from Rekha Arora (so called donor) but these do not prove that the amount was genuinely received as a genuine gift. With this dismissing Ground Nos. 2 to 8 & II of the appeal are dismissed and the order of the AO is upheld.”*

7. The Id. Counsel for the assessee has contended that the assessee had filed the following documents before the AO and the CIT(A):

- (i). Return filed by Smt. Rekha Arora (donor) before the AO.
- (ii). Copy of the PAN of Smt. Rekha Arora (Donor).
- (iii). Copy of the Voter ID Card of the Smt. Rekha Arora (Donor).
- (iv). Copy of the balance sheet of donor Rekha Arora.
- (v). Copy of Savings bank account of Smt. Rekha Arora with Punjab and Sindh bank, Shivpuri.
- (vi). Copy of gift deed regarding gift given by donor Smt. Rekha Arora.
- (vii). Copy of the affidavit of donor Rekha Arora.
- (viii). Copy of acknowledgment for Income Tax return filed by the donor for the assessment year 07-08.
- (ix). Confirmation of the purchasers who had given Rs. 12 lacs to the donor, Smt. Rekha Arora, against the sale of flat.

It has been submitted that the AO had also issued summons under section 131 of the Act and had recorded the statement of Smt. Rekha Arora (Donor). A

copy of the same has been filed. It has been contended that to substantiate the explanation and to explain the nature and source of the deposits required for the purpose of section 68, the appellant filed a copy of certificate issued by the purchaser, regarding payment of Rs.12 lakh paid to the donor, Smt. Rekha Arora, against the purchase of flat of the donor, Smt. Rekha Arora, at Delhi and had also filed the affidavit of Shri Rekha Arora, wherein, she had made declaration on oath in respect of gift being made to the appellant; that the AO, without having any doubt in respect of the genuineness and credit worthiness of the donor and without pointing out any discrepancy in the documents filed before him in support of the explanation offered by the appellant, had rejected the explanation and had made the addition under section 68 of the Act, against which, an appeal was preferred before the Id. CIT(Appeals), who too, without pointing out any defect, either in the explanation offered before the AO, or in the documents filed in support of the gift, has rejected the explanation and has sustained the addition made by the AO under section 68 of the Income Tax Act, treating the gift at Rs. 8 lakh, received through cheque, as non-genuine; that during the year under consideration, the appellant had received the amount of Rs. 8 lakh as gift from her bhabhi (Jethani), Smt. Rekha Arora, through cheque; that during the assessment proceedings, the assessee had filed her explanation in support of the gift received, wherein, the appellant had furnished the copy of various documents in support of the genuineness of the gift

received by her; that the donor is a close relative (Bhabhi) of the appellant, who had sold her flat at Delhi and had received Rs. 12 lakh against the sale, out of which, she had made the gift of Rs. 8 lakh to the appellant through cheque; that the appellant has filed her affidavit, wherein she has stated on oath that she has received gift of Rs. 8 lakh from her bhabhi, Smt. Rekha Arora; that the appellant had also filed acknowledgment slip, Voter ID card, PAN, Bank statement and affidavit of the donor; that the AO, on issuing notice under section 131 of the Income Tax Act, had recorded the statement on oath of the donor (Smt. Rekha Arora) who, on oath, had submitted that she had made the gift of Rs. 8 lakh to her sister-in-law through cheque, which she had made out of receipt of Rs. 12 lakh against the sale of flat; that the appellant had also filed gift deed and confirmatory letter in respect of payment of 12 lakh received by the donor, Smt. Rekha Arora, issued by the person who had purchase the flat of the donor; that the AO, without having raised any doubt in respect of the explanation offered before him in support of the gift received by the appellant, had rejected the explanation, particularly prior to the issue of cheque at Rs. 8 lakh by the donor; and that the deposits in the bank account are not in dispute, nor the AO had made any adverse comment in respect of the deposit in the account of the donor, which the CIT(Appeals) has also not doubted.

8. Thus, as per the assessee, the Authorities below have not considered the above documentary evidence filed by the assessee.

9. Per contra, the Id. DR strongly relies on the impugned order. He contends that as rightly held by the Id. CIT(A), during the first appeal proceedings, the appellant had reiterated the submissions which were made before the AO. Specifically, it has been argued that the Id. CIT(A) has correctly held that the undisputed and un-rebutted fact of the issue is that the gift was made without there being any social occasion (like marriage/birthday) to make it, which is very important; that strangely, the donor had two sons and still she chose to make gift to the assessee, who was not even related to her by blood (was just the wife of elder brother of husband); that the gift transaction miserably failed to qualify as a genuine gift transaction; that in the Indian context, generally, gifts exchange hands only on some social or pious occasions; that in the Indian social milieu/society it is a fact that wives of brothers generally have a strained relationship; that exchange of gifts, in the Indian social milieu, between the wives of brothers, is unheard of; that the strange fact of the donor's making gift of almost the entire sale consideration shows that the gift transaction was not genuine; and that the affidavit / Confirmation, or the receipt of amount by cheque, at best, explains only the form, and not the substance and all these just explain the receipt of the amount by the

assessee from Rekha Arora (so-called donor), but these documents do not prove that the amount was genuinely received as a genuine gift.

10. Heard. The Id. CIT(A) has simply brushed aside the documentary evidence filed by the assessee, observing that the affidavit, or confirmation, or transaction of cheque just explained the receipt of the amount by the assessee, but not the genuineness of the gift. The contents of the documentary evidence filed and the statement of the donor have not even been discussed. It is, thus, a case of non-reading and misreading of material documentary evidence brought on record by the assessee before the Id. CIT(A).

11. Therefore, the matter is remitted to the Id. CIT(A), to be decided afresh in accordance with law, discussing, on merits, all the evidence relied on by the assessee, on providing due and adequate opportunity of hearing to the assessee. All pleas available under the law shall remain so available to the assessee. The assessee, no doubt, shall co-operate in the fresh proceedings before the Id. CIT(A).

Ordered accordingly.

12. In the result, the appeal is partly allowed.

Order pronounced in the open court on 13/07/2018.

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR