

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4205/M/2016
Assessment Year: 2012-13**

Hiromi Deepak Shah, 601-602, Titan House, M.P. Vaidya Marg, Ghatkopar (E), Mumbai - 400 077 PAN: AAPPS8096K	Vs.	ACIT 27(2), Vashi IT Office, 4 th Floor, 6 Vashi Station Complex, Navi Mumbai - 400 733
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nishit Gandhi, A.R.
Revenue by : Shri V. Vidhyadhar, D.R.

Date of Hearing : 11.07.2018
Date of Pronouncement : 30.08.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 21.03.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The grounds raised by the assessee are as under:

"1. The Learned CIT is not justified in confirming the addition made by Assessing officer u/s 56 at Rs. 26,73,500/-.

2. Section 56 of Income Tax Act does not refer to "gift" but it refers to only receipt" The taxable event is the receipt of the property and not the completion of the gift.

3. The Learned CIT has erred in saying that the gift deed executed was not dated. In fact the Gift Deed started with the remark that it was executed on 16th August 2009."

3. The only issue raised by the assessee is against the confirmation of addition by Ld. CIT(A) as made by the AO under section 56 of the Act to the tune of Rs.26,73,500/- by rejecting the gift deed dated 16.08.2009 by holding that the gift has actually been taken place on subsequent date i.e. 13.09.2011 on which the deed of gift was duly registered.

4. The facts in brief are that the assessee filed return of income on 25.09.2012 declaring an income of Rs.26,69,610/- which was processed under section 143(1) of the Act. Thereafter the case of assessee was selected for scrutiny after following the due process of law. The AO, during the course of assessment proceedings, observed that there was a gift in favour of the assessee by Mrs. Ranjana Virendra Shah on 13.09.2011 whereby the donor has transferred 50% of share in office No.102, 1st Floor, Titan House, Co-operative Housing Society Ltd., Plot No.83, M.P. Vaidya Marg, Ghatkopar (E), Mumbai - 400 077. The donor has transferred her right, title and interest in the property as gift to the donee, the market value which as per stamp duty valuation was Rs.1,04,48,064/-. Accordingly, the 50% of the said property worked out to Rs.53,47,000/- which has come in the hands of the assessee. The AO further observed that the donor of the property is aunt-in-law of the donee and since aunt-in-law is not covered under the definition of relative as envisaged by the provision of section 56(2)(vi) of the Act, the assessee was accordingly issued a show caused notice as to why the gift should not be added to the income of the assessee which was replied by the assessee as under:

"1. The gift deed evidences the Gift of premises to me by my aunt in law Mrs Ranjan Virendra Shah was registered in month of September 2011, but it was executed and the said gift was completed prior to 30th September 2009 by gift deed. The copy of gift deed is, attached herewith.

2. Your kind attention is invited to the provisions of section 56 of the IT Act where the gift of immovable property prior to 1.10.2009 was exempted from tax.

3. The effective date of gift execution and not the date of registration. Your kind attention is invited to section 47 in the registration Act, 1908 which reads as under:

"47. Time from which registered document operates-A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time its registration"

5. The AO, however, did not accept the contentions of the assessee that the said gift deed was completed prior to 30.09.2009 by way of gift deed which was duly notarized and as such the gift is exempt under section 56 of the Act as gift of immovable property happened prior to 01.10.2009 and finally the AO added the same to the income of the assessee under section 56 of the Act while framing the assessment under section 143(3) vide order dated 25.03.2015 besides making other additions.

6. In the appellate proceedings, the Ld. CIT(A) also dismissed the appeal of the assessee by observing and holding as under:

"3.3 I have carefully considered the submissions of the appellant. As regards the first ground of appeal is concerned, the appellant has filed a copy of the gift deed dated 16.08.2009. This deed was entered on a non judicial paper of Rs. 100/- dated 6th August 2009. According to this deed, 50% of the ownership rights of Smt. Ranjan Virendra Shah has been assigned to the donee, Smt. Hiromi Deepak Shah, and Smt. Jigna Piyush Shah who get 25% of the total rights each of the property without any consideration. Other than the date of the non judicial paper, this deed is not dated at any other place. This has been signed by the donor as well as the donees and the

witnesses who are close relatives without any dates being indicated. Subsequently, another deed was prepared and registered on 13th of September 2011. According to this deed which has been registered, it is indicated that Smt. Ranjan Virendra Shah along with Shri Ranjan Bhailal Shah were the members of Titan House Co.Op. Hsg.Ltd. are the owners of five shares of the face value of Rs. 50 each bearing share certificate No.2 and distinctive Nos. from 6 to 10. The donor being the Aunt-in-law of the donees, has granted, conveyed and transferred the donees, her share in the said office viz, 102, Titan House Co.Op.Hsg.Ltd., Ghatkopar(East), Mumbai. It is again indicated that the donees shall take all necessary steps to get the 50% interest in the said share transfer in their name at their own cost and expenses. As per the another document, being the leave & license agreement, Smt. Ranjan Bhailal Shah, Smt. Jigna Piyush Shah and Hiromi Deepak Shah, being the licensors who are the owners of the premises at 102, House Co.Op.Hsg.Ltd., have given the premises on leave and license to M/s. Titan Laboratories P.Ltd. by way of leave and license agreement dated 1st October 2011. On consideration of all these details which have been filed with the Assessing Officer, it is seen that the gift has actually taken place in the year 2011 when the deed of gift was registered with the Registrar. There are two documents in this regard which have been filed with the Assessing Officer. The gift deed on 16/8/2009 which is on a non judicial paper of Rs.100/- is a general statement without giving any details as to the way and method of transferring the property to the appellant. As indicated already, this deed is signed by the donor and donees without any date and the witnesses are close relatives like BhailalB Shah and Ranjan B. Shah. In all probability as indicated by the Assessing Officer, this has been an attempt to create a situation, where transfer was said to have been taken place before 1st of October 2009. According to the amended provisions of Section 56(2)(vii) of the Act, where an individual receives in any previous year from any person or persons on or after 1st of October 2009 any immovable property without consideration, the Stamp Duty value of which exceeds Rs. 50,000/-, the Stamp Duty Value of such property shall be brought to tax under the head "Income from other sources". The case of the appellant also does not fall under the proviso to the Section where, if the gift has been received from any relative or on the occasion of marriage etc., the section shall not apply. The appellant in her statement has also stated that the provisions of Section 56 of the Act shall apply the moment an immovable is received by the donee and it does not depend on the time when the property was registered, if it is required. In short, the liability in such case arises in the year of receipt and not in the year of Registration. Moreover, she has also referred to the commentary of Shri Sampat Iyengar in "Three New Taxes" in which it is indicated that, A deed of gift would be complete as soon as the document of gift is signed and attested. The circumstance that it is not registered is immaterial since registration is merely "a solemnity in order to enforcement of a gift of immovable property". Non registration does not suspend the gift until registration actually takes place. I have considered this submission too. It is to be noted that as per

the details which have been furnished, the gift has been made in the year 2011 and not in 2009 as has already been indicated. The gift deed said to have been entered into 2009 was only a general statement indicating the intention of the donor to gift her rights in the property to the donee, whereas, on perusal, it is seen that the gift which is registered in the year 2011 provides all information like the details of the shares which the donor has transferred to the donee and other relevant information. This is further reinforced by the fact that the licensors including the appellant had entered into a leave and license agreement from 1st October 2011 with Titan Laboratories just as the deed was registered. Therefore, the submission of the appellant that the gift is complete in the year 2009 and not in the year under consideration has no force. The commentary which has been referred to by the appellant refers to documents being signed and attested. The gift deed of 2009 has only been signed and not attested. Witnesses are themselves family members of the donor and donee, namely; Ranjan B.Shah and Bhailal B. Shah. Therefore, the conclusion arrived at by the Assessing Officer appears to be valid and therefore, the claim that the gift is exempt u/s.56 is not correct. As a result, this ground of appeal is dismissed.”

7. Aggrieved by the order of Ld. CIT(A) assessee is in appeal before us. The Ld. A.R. submitted before the Bench that the assessee has been gifted 50% of the property in question vide gift deed dated 16.08.2009 which was executed on a non judicial stamp paper of 100/- each dated 16.08.2009 duly notarized . The Ld. Counsel submitted that vide the said gift deed the assessee has been gifted 50% of the ownership rights in the said property by the donor Mrs. Ranjana Virendra Shah aunt in law of the assessee. The Ld. A.R. submitted that the first appellate authority has totally misconstrued the facts of the case by holding that the said deed was effective when registered on 13.09.2011 whereas the Ld. A.R. vehemently referred to the 1st para of the gift deed which stated that “this deed of gift was made at Mumbai this 16th day of August in the year 2009 between” and thus submitted that the Ld. CIT(A) has not even appreciated the instrument of gift correctly and further argued that the opinion of the Ld. CIT(A)

is based on the surmises and conjuncture and not on the facts of the case. The Ld. A.R. further argued that the said gift deed was duly notarized and signed by two witnesses which the Ld. CIT(A) has not accepted because of the fact that both the witnesses were family members of the assessee which can not be a ground for rejecting validly executed gift deed. The Ld. A.R. further submitted that subsequently another gift deed dated 13.09.2011 was executed and registered by the same parties with the exact terms and gifting the same property to the same party as stated in the gift deed dated 16.08.2009. The Ld. A.R. further submitted that it is a settled law that post registration the document acts retrospectively from when it was executed/acted upon by the parties. The Ld. A.R. further took us through the 1st proviso to section 56(2)(vii)(b) of the Act which provides for a situation where the property could be transferred by way of an unregistered agreement and in that event also the stamp duty value has to be taken of the date of agreement when the agreement was entered into. The Ld. A.R. submitted that the said gift deed was executed which was done between the members of the family following a family settlement to be entered into between the members of the family so as to demarcate, re-align and crystallize the shares/claims of various family members within themselves so as to avoid any future disputes regarding the properties and businesses carried out by the them together. As the business of the family was going on jointly between father-in-law of the assessee Shri Babulal and his brother Shri Virendra B. Shah and after their withdrawal from the business new generation

was stepping in. The Ld. A.R. submitted that the settlement and separation exercise continued from 2009 to 2012 between the family members of Shri Bhailal Babulal Shah and Shri Virendra Babulal Shah family which was finally completed in 2012. The Ld. A.R. submitted that due to the said settlement the properties which went to the father in law of the assessee and his family and the family of Shri Virendra Babulal Shah and his family were separated by surrendering/transferring the shares by these parties interse. The said property in question i.e. 102, 1st Floor, Titan House Co-operative Housing Society Ltd. was jointly owned by mother in law of the assessee, Mrs. Ranjan Bhailal Shah and aunt in law Mrs. Ranjana Virendra Shah who is wife of Shri Virendra Bhailal Shah. The mother in law of the assessee and aunt in law held 50% of share each in the said property and this property was also a part of the family settlement entered into by the family members. The Ld. Counsel submitted that pursuant to the gift deed dated 16.08.2009 Smt. Ranjan Bhailal Shah gifted her rights/share in the Titan House Property to the assessee and his sister in law equally and thereafter the property was rented out to another group concern M/s. Titan Laboratories P. Ltd. The Ld. A.R. submitted that even the natural love and affection is a good consideration and therefore once the gifts are accepted by the AO and the Ld. CIT(A), the same is made out of natural life and affection for valid consideration, the provisions of section 56(2)(vii)(b) could not be attracted. The Ld. A.R. relied on the decision of Hon'ble Supreme Court in the case of Tulsidas Kilachand vs. CIT (1961) 42 ITR 1 (SC). The

Ld. A.R. further relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Her Highness Vijayaba, Dowager Maharani Saheb of Bhavnagar (1979) 117 ITR 784 (SC) wherein the Hon'ble Supreme Court has held that a family settlement/arrangement is a good consideration for the validity of a contract. The Ld. A.R. submitted that in the present case also there is no dispute about the fact that the gift was made pursuant to a family settlement which is accepted by Ld. CIT(A) in his order and therefore the said transfer of property at Titan House to the assessee could not be said to be without consideration to attract rigorous of section 56(2)(vii)(b) of the Act as the same was done as a part of their family settlement. The Ld. A.R. finally submitted that the revenue officers are not authorised and empowered to decide upon the legality or validity of documents transferring the title of the property and therefore it was not open to AO as well as CIT(A) to hold that the gift deed was invalid. Besides, the Ld. Counsel vehemently countering the Ld. CIT(A)'s observation holding the gift deed dated 16.08.2009 as void/invalid on the ground that it does not mention the date which it was executed is factually incorrect as the date of execution was mentioned in the starting line of the first para that the gift deed was entered into on 16.08.2009. Finally, the Ld. A.R. contended that the AO as well as the Ld. CIT(A) accepted the said transaction in the hands of the donor and the other recipient i.e. the sister-in-law of the assessee, however, the same was not accepted in the hands of the assessee and thus the different treatment of a similar type of

transaction is totally wrong, unjust and arbitrary. In defence of his argument, the Ld. A.R. relied on the decision of UOI vs. Kamudini N. Dalal (2001) 249 ITR 219 (SC), CIT vs. Smt. Veena G. Shroff ITXA 71 of 2013 (Bombay HC). Finally the Id AR prayed that the addition sustained should be deleted.

8. The Ld. D.R., on the other hand, relied on the order of authorities below and submitted that the original deed dated 16.08.2009 was entered into in order to circumvent the tax liability and the provision of section 56(2)(vi)(b) of the Act. The Id DR contended that the gift was actually made on 13.09.2011 when the gift deed was actually registered and relied on the order of authorities below.

9. We have heard the rival submissions of both the parties and perused the material placed before us including the impugned order and various decisions cited by the Ld. A.R. In the present case the undisputed facts are that there was joint family doing business together and also the properties were jointly owned by father in law of the assessee, Shri Bhailal Shah and his brother Shri Virendra Shah. With the aging of both the brothers the new generation was to step into the business and therefore the family settlement and separation was started from 2009 and finally completed in 2012. As a part of the family settlement, a gift was entered into between the aunt-in-law Smt. Ranjana Virendra Shah gifting her rights/share in the Titan House Property to the assessee and his sister in law equally which was rented out to another group concern M/s. Titan Laboratories P. Ltd immediately thereafter.

The said gift deed was executed on non judicial stamp paper of Rs.100/- each dated 12.08.2009 duly witnessed and not arisen but was not registered. Subsequently, another gift deed was executed and registered on 13.09.2011 with same terms as were contained in the original gift deed dated 16.08.2009 between the same parties with the same subject matter. Now the contentions of the AO is that the gift is effective from the 13.09.2011 when the gift deed was registered and not from 16.08.2009 when the gift deed was made but not registered and was executed on a non registered stamp paper. Accordingly to the AO the witnesses in the gift deed were also from amongst the family members.

10. Now the issue before us is whether the gift deed dated 16.08.2009 is valid or not. The Ld. CIT(A) has treated the gift deed dated 16.08.2009 as invalid for two reasons. One is that the gift deed is not dated and second the witnesses are close relatives of the assessee. In our opinion such objection by the tax authorities are without any concrete basis as the first appellate authority has failed to prove any falsity or other deficiency in the said gift deed. We perused the said document carefully and find that it was duly dated in the first para which commenced with the words that "this deed of gift was made on this 16th day of August 2009 between... so on.". So we do not subscribe or concur to the conclusion drawn by the Ld. CIT(A) that the gift deed is undated as same is wrong and against the facts on record. So far as the signing in place of the witnesses by the two close family relatives is concerned, the same can not be a basis for suspicious that deed is invalid.

So we are not in agreement with the conclusion of Ld. CIT(A) that gift deed is invalid and that the gift was effective from 13.09.2011 when the gift deed was registered. Another significant fact is that the Revenue Authorities have accepted the gift vide the same document in the hand of the donor and also in the hand of another co-donee sister-in-law of the assessee. In other words the gift was made in favour of two persons by the donor Mrs. Ranjana Virendra Shah aunt-in-law of the assessee gifting 50% share in the said property in favour of the assessee and 50% in favour of her sister in law. Now it is strange to note that the gift is duly accepted in the hand of sister-in-law by taking the gift deed as genuine whereas the same is not accepted in the hand of the assessee. We also find merit in the arguments of the Ld. A.R. that when a document is registered it acts retrospectively from the date when it was accepted or acted upon by the authorities. In view of these facts, we are of the view that the gift in the hand of the assessee is valid gift vide gift deed dated 16.08.2009 and not by the subsequent date as held by the authorities below. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30.08.2018.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 30.08.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.