



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.158/CTK/2018

Assessment Year : 2009-2010

Sobha Naveen Agarwal, Flat No.301, Kuber Regency, Congress Nagar, Nagpur.	Vs.	ITO Jeypore Ward, Jeypore.
PAN/GIR No.AIOPA 5264 E		
(Appellant)	..	(Respondent)

Assessee by : None (written submission)
Revenue by : Shri Piyush Kolhe, CIT DR

Date of Hearing : 27/09/ 2018
Date of Pronouncement : 28/09/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of the Ld Pr. Commissioner of Income Tax-1, Bhubaneswar dated 26.3.2018 for the assessment year 2009-2010.

2. The sole issue involved in this appeal is that the Ld Pr. Commissioner of Income Tax-1, Bhubaneswar was not justified in holding the order passed by the Assessing Officer under section 143(3)/254 of the Act dated 30.3.2016 as erroneous and prejudicial to the interest of the revenue.

3. The facts of the case are that the Ld Pr. Commissioner of Income Tax-1, Bhubaneswar observed that the assessee had declared addition to her capital account of Rs.15,00,000/- in the financial year 2008-09 relating to assessment year 2009-2010 and the sources of addition was explained to be cash gift received from her husband, Shri Brindavandas Agarwal and her daughter Smt. Deepali Agarwal of Rs.10,00,000/- and Rs.5,00,000/-, respectively. The Assessing Officer added Rs.15,00,000/- in the hands of the assessee being not satisfied with the creditworthiness of the donor of the cash gifts. The assessee thereafter filed appeal to the Tribunal and the Tribunal vide order dated 3.2.2015 set aside the order of the CIT(A) and restored the matter back to the file of the Assessing Officer to re-examine the issue or genuineness of cash gifts of Rs.15,00,000/- in the hands of the assessee. While completing the assessment, the Assessing Officer failed to re-examine the issue properly and could not apply his mind to the genuineness of the transaction resulting in allowance of this introduction to capital account of the assessee by accepting cash gifts from her husband and daughter. Therefore, the proceedings under section 263 of the Act were initiated by issuance of notice dated 6.8.2018.

4. Ld Pr. Commissioner of Income Tax-1, Bhubaneswar observed that no prior withdrawals from bank accounts of the respective donors were made before remittance of gifts as evidenced from the bank statements submitted at the time of assessment. Ld A.R. has neither referred about bank statement of the donors nor explained any reason for absence of any withdrawal from any of the bank accounts of the donors for this purpose. He observed that it could not be explained how an amount of Rs.15,00,000/- was provided as a cash gift from cash in hand to the assessee avoiding the banking channel through cheque/Demand draft mode. Therefore, the genuinity of the transaction was not established beyond doubt and could not be accepted on the details furnished during assessment proceedings. Ld A.R. was silent about the observation of the CIT(A) while confirming the addition on this issue made at the time of original assessment by dismissing the relevant ground of appeal. He observed that with these documents though the creditworthiness of the donor may be established but the genuinity of the transaction could not be proved beyond doubt. Therefore, the claim of the assessee in this regard is not accepted and the revision of the Assessing Officer's order is warranted u/s.263 of the Act being erroneous so far as prejudicial to the interest of the

revenue. He relied on the decision of Hon'ble Supreme Court in the case of Malabar Industrial Company vs CIT, 243 ITR 83 (SC), wherein, it has been held that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. Therefore, he set aside the order of assessment dated 30.3.2016 pertaining to this issue and restored the matter back to the file of the Assessing Officer to redo the assessment with regard to the said issue.

5. Ld A.R. has filed a written submission before us, wherein, it has been stated that in the appeal against the original order passed u/s.143(3) on 27.12.2011, the Tribunal restored the matter back to the file of the Assessing Officer for further examination of the genuineness of the gifts of Rs.15 lakhs in ITA No.105/CTK/2014 order dated 3.2.2015. It is submitted that in the second round, the assessment was completed u/s.143(30/254) on 30.3.2016, wherein, the issue of gifts was thoroughly examined by the Assessing Officer and accepted as genuine. This fact was explained before the Ld Pr. Commissioner of Income Tax-1, Bhubaneswar during 263 proceedings. Ld Pr. Commissioner of Income Tax-1, Bhubaneswar set aside the order of the Assessing Officer treating it as erroneous and also prejudicial to the interest of the revenue. He has thrust upon the Assessing Officer to

inquiry into the genuineness of the gifts again and re-do the assessment. In these circumstances, it cannot be said that the assessment is erroneous so far as prejudicial to the interest of the revenue as the Assessing Officer thoroughly examined the issue and accept the genuineness of the receipt of the gifts and completed the assessment. It is submitted that the case laws cited by the Id Pr. Commissioner of Income Tax-1, Bhubaneswar are not applicable in the case of the assessee.

6. Ld D.R. supported the order of the Id Pr. Commissioner of Income Tax-1, Bhubaneswar.

7. We have heard the Id D.R., perused the orders of lower authorities and written submission filed by the assessee. In the instant case, the assessee had declared addition to her capital account of Rs.15,00,000/- in the financial year 2008-09 relating to assessment year 2009-2010 and the sources of addition was explained to be cash gift received from her husband, Shri Brindavandas Agarwal and her daughter Smt. Deepali Agarwal of Rs.10,00,000/- and Rs.5,00,000/-, respectively. The Assessing Officer added Rs.15,00,000/- in the hands of the assessee being not satisfied with the creditworthiness of the donor of the cash gifts. The matter travelled upto the Tribunal and the Tribunal set

aside the order of the CIT(A) with the direction to re-examine the issue of genuineness of cash gifts of Rs.15 lakhs in the hands of the assessee. The Assessing Officer completed the assessment in pursuance to the Tribunal's direction and accepted the claim of the assessee regarding cash gifts of Rs.15 lakhs.

8. The Pr. Commissioner of Income Tax, Bhubaneswar observed that while completing the assessment, the Assessing Officer failed to re-examine the issue properly and could not apply his mind about the genuineness of the transaction. Therefore, by invoking the provisions of section 263 of the Act, he set aside the order of the Assessing Officer and directed him to re-do the assessment after conducting necessary inquiries and verification on the issue.

9. Being aggrieved against the said order, the assessee is in appeal before us.

10. The only argument of Id A.R. of the assessee is that the Assessing Officer being satisfied with the creditworthiness of the donors accepted the cash gift of Rs.10 lakhs from her husband Shri Brindavandas Agarwal and Rs.5 lakhs from her daughter Smt. Deepali Agarwal in cash as genuine and no addition was made by him in an order passed u/s.143(3) r.w.s 254 of the Act. The Pr.

Commissioner of Income Tax was not justified in setting aside the order of the Assessing Officer and restoring the matter back to his file for verifying the genuineness of the gifts.

11. We find from the order of the Assessing Officer that the assessee has filed before him copies of capital account of Shri Brindabandas Agarwal, husband of the assessee for the financial years 2005-06 to 2008-09 to explain the source of gift of Rs.10 lakhs to the assessee. Similarly, the assessee has filed copies of capital account from financial year 2003-04 to 2008-09 of her daughter Smt. Deepali Agarwal to explain the source of gifts of Rs.5 lakhs in cash received by the assessee. The assessee has not filed copies of these capital accounts in the paper book filed before us.

12. Further, we find from the order of the Pr. Commissioner of Income Tax, Cuttack that before him, the assessee filed cash flow statement of both the donors from financial year 2005-06, capital account, gift deed and confirmation letters to explain the genuineness of gifts of Rs.10 lakhs in cash from the husband Shri Brindabandas Agarwal and Rs.5 lakhs in cash from her daughter Smt Deepali Agarwal. The cash flow statement has not been filed by Id A.R. of the assessee in the paper book filed before us.



Hence, we are unable to decide the issue completely. In the above facts and circumstances of the case, we find no good reason to interfere with the order of Pr. Commissioner of Income Tax, Cuttack, who has set aside the order passed by the Assessing Officer under section 143(3) r.w.s 254 of the Act and restored the matter back to the file of the Assessing Officer to verify the genuineness of gifts. We, therefore, dismiss the ground of appeal of the assessee.

13. In the result, appeal of the assessee is dismissed.

Order pronounced on 28/09/2018.

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 28/09/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Sobha Naveen Agarwal, Nagpur
2. The Respondent. ITO, Jeypore,
3. The CIT(A)-
4. Pr.CIT- Cuttck
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Cuttack**