

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**  
श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.1618/AHD/2014/SRT  
निर्धारण वर्ष/Assessment Year : 2009-10

Dr.Mahesh Rudarji Desai, 307, Narmada Apartment, B/h. Kadiwala School, Ring Road, Surat – 395 002.	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle – 2, Surat.
<b>[PAN: AAZPD 2669 K]</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारिती की ओर से /Assessee by	Shri Manish T. Shah - Adv.
राजस्व की ओर से /Revenue by	Shri J.K.Chandnani - Sr.DR

सुनवाई की तारीख/ Date of hearing:	12.07.2018
उद्घोषणा की तारीख/Pronouncement on	18.09.2018

**आदेश /O R D E R**

**PER O. P. MEENA, ACCOUTANT MEMBER:**

1. This appeal filed by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-II, Surat(in short “the CIT (A)”) dated 15.04.2014 pertaining to Assessment Year 2009-10, which in turn has arisen from the order passed by the Deputy Commissioner of Income Tax, Circle-2, Surat(in short “the AO”) dated 08.12.2010 under section 143(3) of Income Tax Act, 1961 (in short ‘the Act’).

**2.** Ground no.1 to 4 are in substance relates to confirming the addition of Rs.1,50,000/- by treating the gift as unaccounted income, even though it was duly confirmed by the submissions and related accounts from donors books of accounts and other necessary evidences.

**3.** Briefly stated facts of the case are that the assessee is a doctor who has received gift of Rs.1,50,000/- from his mother. On verification of the Return of income of the mother of the assessee, the AO noted that she is filing return of income which is below taxable limit and every transferring funds in the form of loan and gifts to the assessee or his HUF. It is noted that she had given loan of Rs.18.37 lakhs to appellant's H.U.F and a loan of Rs.2.9 lakhs to appellant's wife of the assessee, so the AO observed that Return of income of Smt. Pushpa R. Desai is nothing but fictitious in nature. So, gift of Rs.1,50,000/- claimed to have received by the assessee is nothing but an unaccounted income of the assessee. In appeal, it was submitted that the appellant's mother had a cash balance of Rs.1,48,0968/- as on 31.03.2008, appellant's mother is aged 93 years and she had capital to the extent of Rs.29,04,762/- from which gift was made to the appellant. However, the CIT(A)

noted that there is no mention in the appellant submissions as to what was the nature of miscellaneous receipts of Rs.1,53,210/- shown by Smt.P. R. Desai. Therefore, considering her age of 93 years the CIT(A) viewed that she was not engaged in gainful employment or profession, hence, the addition was confirmed.

**4.** Being aggrieved, the assessee filed appeal before this Tribunal. The Id.Advocate of the assessee submitted that the AO and CIT(A) have failed to appreciate that the appellant had discharged his onus casted under the Act by submitting the income tax return along with financial statement and bank statement of the donor. The AO cannot hold in the assessment proceedings of the appellant that the person from whom the appellant has received gift as fictitious income without disturbing the assessment of the donor. This Act of the AO is wholly impermissible in the eyes of the law. The AO has swayed away by considering irrelevant facts to arrive at the conclusion that return of income of the P.B.Desai is fictitious and in turn gift is also nothing but unaccounted income of the appellant. Since Smt. P.B.Desai has capital balance of Rs.29,04,762/- and even after giving a loan of Rs.80,37,500/- to HUF of the appellant and

Rs.2,90,000/- to the wife of the appellant she still have a balance which can be utilised for the gift to the appellant. The Id.Counsel also submitted that account showing receipt of gift which is out of cash deposits made on 31.03.2009. The Id.Counsel also placed reliance in the case of CIT vs. H.R.Patel [2013] 35 taxmann.com 16 (Guj) in which it was held that a gift by a close relative through banking channel along with copy of cheque and acknowledgment of filing of return of income by him is not a unexplained gift.

**5.** Per contra, the Id.Senior Departmental Representative relied on the orders of the Lower Authorities and submitted that donor is 93 years old lady has no explicit source of income and miscellaneous receipts of Rs.1,53,210/- could not be explained.

**6.** We have considered the rival submissions and find that the gift made by the mother of the assessee is out of capital balance shown in the financial statements. She has also filed the copy of her return of income. Therefore, the AO cannot hold that gift so received is out of fictitious income of the donor. If AO was of the view that the donor has shown the income from fictitious sources, the AO was at liberty to proceed against the donor but in the case of appellant the AO cannot hold in his assessment that the donor's return of income was fictitious. Since the gift is backed by the

copy of financial statements of the donor's along with the return of income, wherein she has substantial capital balance. Further, the Hon'ble jurisdictional High Court in the case of CIT vs. H.R.Patel (supra) held that gift from close relatives supported by copy of return, bank accounts cannot be treated as unexplained. Therefore, the addition made by the AO of Rs.1,50,000/- does not deserves to be justified, hence same is deleted.

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

8. The order pronounced in the open Court on 18-09-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER

सुरत/ Surat, दिनांक Dated: 18th Sep, 2018/ S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

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Assistant Registrar, Surat