

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

I.T.A. No. 4140/DEL/2015		
A.Y. : 2009-10		
INCOME TAX OFFICER, WARD 54(2), ROOM NO. 1601, 16 TH FLOOR, CIVIC CENTRE, E-2 BLOCK, NEW DELHI	VS.	SH. PAWANJIT SINGH CHAUDHARY, 129, SIDDARTH ENCLAVE, ASHRAM CHOWK, NEW DELHI - 110014 (PAN:AADPC0281A)
(ASSESSEE)		(RESPONDENT)

Revenue by : Sh. B.S. Rajpurohit, Sr. DR.
Assessee by : Shri Ketan Vora, CA

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 19.3.2015 of the Ld. CIT(A)-18, New Delhi relevant to assessment year 2009-10.

2. The grounds raised in this Appeal read as under:-

- i) *The Ld. CIT(A) has erred in deleting the addition of Rs. 97,00,000/- as the assessee has failed to prove creditworthiness of Sh. Harpreet Singh and genuineness of the transactions. The assessee could not furnish PAN of Sh. Harpreet Singh*

during the course of assessment proceedings and even at the appellate proceedings. The assessee has not submitted copy of gift deed and copy of passport during the course of assessment proceedings.

ii) The appellant craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of hearing of the appeal.

2. The brief facts of the case are that the assessee has filed its e-return declaring total income at Rs. 5,79,160/- on 30.9.2009. The return was processed u/s. 143(1) of the Act. The case of the assessee was selected for scrutiny under CASS. Accordingly, statutory notice u/s. 143(2) of the Act dated 19.8.2010 was served on the assessee within prescribed time. In response to the notice, the AR of the assessee appeared from time to time and filed the documents. AO observed that bank account in the name of M/s Mayall Buildwell and Pace Projects shows credit of Rs. 42,00,000/- and of Rs. 55,00,000/- in the bank accounts. The assessee was asked to explain the sources of these credits. The AR for the assessee submitted that these deposits are transfer from the bank account of his brother with Axis Bank, Green Park, New Delhi which is a SB NRO Normal Account and are gift from brother Sh. Harpreet Singh Choudhary. The assessee was asked to produce the copy of gift deed, copy of the passport of Sh. Harpreet Singh Choudhary, but the assessee has not submitted any documents in support of the same. Hence, the AO has made the addition of Rs. 97,00,000/- on this account and also made

various additions by completing the assessment at Rs. 1,49,28,400/- u/s. 143(3) of the Act vide order dated 28.12.2011. Against the assessment order, the assessee appealed before the Ld. CIT(A), who vide impugned order dated 19.3.2015 has partly allowed the appeal of the assessee and deleted the addition of Rs. 97,00,000/-. Aggrieved with the order of the Ld. CIT(A), Revenue is in appeal before the Tribunal.

3. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal. In support of the Assessing Officer's order, he filed the written submissions by relying upon few cases.

4. On the contrary, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a detailed order, which requires no interference.

5. We have heard both the parties and perused the relevant records available with us, especially the impugned order as well as the written submissions filed by the Ld. DR and the case laws relied upon by him. We find that Ld. CIT(A) has elaborately discussed and adjudicated the issue in dispute vide para no.2.1 to 2.6 at page no. 19 to 21 of the impugned order and deleted the addition. For the sake of convenience, we are reproducing hereunder the relevant findings of the Ld. CIT(A) on the issue in dispute as under:-

- "2.1 I have considered the ground raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*
- 2.2 The appellant has raised ground against the addition of Rs. 97,00,000/- on account of non-production of gift deed, creditworthiness and that the amount was received in proprietary concern of the appellant and not in the savings account.*
- 2.3 It was submitted by the appellant that the said deposits were out of transfer from the bank account of the appellant's brother with Axis Bank which was a NRO account.*
- 2.4 The appellant's brother S. Harpreet Singh Chaudhary had given these amounts as gift to the Appellant. The Assessing Officer wanted the production of the gift deed and a copy of the passport of S. Harpreet Singh Chaudhary. The assessee could not submit these documents. Thereupon the Assessing Officer rejected the submissions of the assessee and added the amount of Rs.97 lakhs to the income of the assessee.*

2.5 *It is submitted now that the gift was out of the proceeds from the bank account of his brother S. Harpreet Singh Choudhary. This bank account in Axis Bank had a credit balance of over Rs.4 crore which proved not only the financial standing of S. Harpreet Singh Chaudhary but also proved his creditworthiness. It is further seen that transfers have been effected through the bank account in terms of and at the instance of Appellant's brother's bankers. In the circumstances it could therefore not be said that the amounts remained un-identified or undisclosed.*

2.6 *As to the relationship a copy of the family arrangement has been filed which vouches for the relationship of the Appellant and the donor as brothers. The Assessing Officer's insistence on production of the PAN of S. Harpreet Singh Chaudhary was uncalled for, in as much, S. Harpreet Singh Chaudhary has no taxable income in India and is therefore not assessed to tax in India. He is being assessed to tax in United States. A copy of the gift letter, his social security number in USA declaration and a copy of the passport of S. Harpreet Singh Chaudhary were*

obtained and were taken on record and examined as additional evidence. The same are stated to be not filed earlier because the documents were not available at that time and have only been received after the conclusion of the assessment. The documents got verified by the AO on remand of the same and a report was received from his office. Under the circumstances, the identity of the donor is established by the passport and the genuineness and creditworthiness through the Axis Bank account. In view of all these facts and documentary proof of the addition of Rs. 97,00,000/- is directed to be deleted. Ground raised in appeal is allowed."

6. After perusing the aforesaid finding of the Ld. CIT(A), we are of the considered view that since the identity of the donor is established by the passport and the genuineness and creditworthiness through the Axis Bank account, hence, we do not find any illegality or infirmity in the findings of the Ld. CIT(A), therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute wherein, he has deleted the addition of Rs. 97,00,000/-. As regards the case laws cited by the Ld. DR are concerned, the same do not support the AO's order, hence, the same are not applicable in the present case.

7. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on 06/12/2018.

Sd/-

**[O.P. KANT]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:06/12/2018

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches