

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "F" : DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.6030/Del/2014  
Assessment Year 2002-03

Rahul Khanna 14, Golf Links New Delhi – 110 003 PAN AIMP7037R (Appellant)	vs.	Income Tax Officer Ward-31 (2) New Delhi. (Respondent)
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For Assessee :	Shri Rajat Jain Shri Akshat Jain, CA
For Revenue :	Shri Surender Pal, Sr. D.R.

Date of Hearing :	01.10.2018
Date of Pronouncement :	21.12.2019

**ORDER**

**PER AMIT SHUKLA, J.M.**

The aforesaid appeal has been filed by the assessee against the Order dated 26.8.2014, passed by Ld. CIT(Appeals)-XXVI, New Delhi in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2002-03. The assessee is mainly aggrieved by levy of penalty of Rs. 1,52,178/- u/s 271(1)(c) on account of gift of Rs. 5,00,000/- treated as unexplained.

2. The brief facts qua the issue involved are that assessee has received a gift from Shri L.D. Gera on 12.5.2001 through account payee cheque. The said gift was accompanied by gift deed and copy of Income Tax return of income of the donor. The AO had issued a summon u/s 131 who did not comply with said summon and accordingly, he held that such a gift is not genuine and also no

confirmation was filed in support of the same. Penalty has been levied by the AO on such an addition holding that such an unexplained gift amounts to concealment of income and filing of inaccurate particulars of income. Ld. CIT (A) too has confirmed the said penalty after noting down the facts and findings given in the quantum proceedings by the Ld. CIT (A). He has also relied upon catena of judgement to hold that penalty has rightly been levied by the AO under the facts and circumstances of the case.

3. After hearing both the parties and on perusal of the relevant material referred to before us at time of hearing and the perusal of the impugned orders, we find that assessee at the time of receiving the gift from the donor, Shri L.D Gera had filed gift deed of the donor as well as his income tax return. The gift was stated to be on the occasion of assessee's birthday and was received through cheque No. 004092 drawn on Centurion Bank, Connaught Place, New Delhi which was cleared on 31.5.2001. Regarding non compliance of the summon u/s 131(1) by the donor, it has been explained that said summon was issued almost after the gap of 10 years of making the gift and the donor had died long back and hence it was not possible for said person to comply with such a summon. This fact is clearly borne out from the assessee's submission which has been incorporated in the impugned order at para 3. Though addition may have been sustained on the ground that summon issued to the donor was not responded and the assessee could not prove the creditworthiness of the donor, however in the penalty proceedings the same material can be reappraised to see whether assessee's explanation has been substantiated or not or has been found to be false. Here the primary onus has been discharged by the assessee by giving the particulars of the cheque; the bank details of the donor; gift deed and also the income tax return of the donor. Thereafter, no material has been

brought on record to rebut the said evidences or such evidences dislodge the assessee's explanation. When at the time of summon the donor had already died, then any compliance or filing of confirmation letter would be complete improbability. Thus, for the purpose of levy of penalty u/s 271(1)(c), we find that assessee's explanation has not been rejected on the ground that it is incorrect rather the assessee could not produce the donor before the AO in response to summon u/s 131(1). *Explanation 1* to section 271(1)(c) raises a rebuttal presumption and if assessee is able to point out the probable factor in his favour and the explanation under the facts and circumstances were correct and was substantiated at the time of filing of return of income, then without any contrary material brought on record such an explanation cannot be rejected or held to be non genuine for the purpose of levy of penalty. Accordingly, we hold that no penalty is leviable u/s 271(1)(c) and the gift of Rs. 5,00,000/- and accordingly same is deleted.

4. In the result appeal of the assessee is allowed.

**Order pronounced in the open Court on 21<sup>st</sup> December, 2019.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMEBR**

**sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

Delhi, Dated 21<sup>st</sup> December, 2019

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1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi

6.	Guard File.
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