

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

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.193-199/Ran/2016
Assessment Years :2004-05 to 2010-11

Shiv Narayan Choudhary Drolia House, Kanke Road, Ranchi [PAN No.ACWPC 9113 E]	V/s.	DCIT, Central Circle- 3, Ranchi
अपीलार्थी /Appellant .. प्रत्यर्थी/Respondent		

आवेदक की ओर से/By Assessee	Shri Rajiv Ranjan Mittal, CA
राजस्व की ओर से/By Revenue	Shri P.K. Mondal, JCIT-DR
सुनवाई की तारीख/Date of Hearing	10-01-2019
घोषणा की तारीख/Date of Pronouncement	15-02-2019

आदेश /ORDER

PER BENCH:-

These seven assessee's appeals for assessment year(s) 2004-05 to 2010-11 arise against the Commissioner of Income Tax (Appeals)-3 Patna's separate orders all dated 12.05.2016 passed in case Nos.398-404/CIT(A)-3/PAT/12-13 involving proceedings u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case files perused

2. It emerge at the outset that first identical issue involved in all these appeals is that of correctness of assessee's cash gifts claimed to have been received from his son Shri Sunil Shekhar to the tune of Rs.5.42 lac, Rs1.41

lac, Rs.1.24 lac, Rs.17,500/-, Rs.2,82,000/-, Rs.7,06,000/- & Rs.7,17,000/- (assessment year-wise); respectively. There is no dispute between the parties that both father-son (donee-donor) had been searched and they are residing together. The CIT(A)'s identical lower appellate discussion affirming the impugned addition reads as follows:-

“Appellate finding and decision:

After considering the Assessing Officer's finding and submission of the appellant, I find that following facts emerged:

- 1. There was search and seizure action in the case of the appellant who was Member (Distribution) in Jharkhand State Electricity Board and this search was in connection with Madhu Korah group of cases. The appellant was thus, admittedly a salaried employee of Jharkhand State Electricity Board.*
- 2. During the search and seizure action, cash deposits in the bank a/c totalling to Rs.5,42,000/- was found for which the appellant stated to have received gifts from his son Shri Sunil Shekhar on the various dates on which the deposits were made in the bank account.*
- 3. The appellant procured copy of capital a/c and computation of total income of Shri Sunil Shekhar, for Assessment Year 2004-05 to support the claim of gifts. No doubt, these evidences are prepared after search and seizure action.*
- 4. The copy of computation of total income filed at the time of appellate proceedings indicate that the income of appellant's son Shri Sunil Shekhar is stated to be income from coal trading amounting to Rs.6,50,000/- on which tax is claimed to have been paid on 31.03.2010. This evidence clearly indicates that the appellant's son Shri Sunil Shekhar has not filed any return of income u/s. 139 of the Act for AY 2004-05. No evidence pertaining to earning of any business income of Shri Sunil Shekhar was found at the premises searched. The only piece of evidence regarding the earning of income of Shri Sunil Shekhar is the statement given u/s 132(4) of the Act at the time of search and seizure action. Apart from this statement, Shri Sunil Shekhar could not substantiate about his business activities and income therefrom. Thus, it is very well apparent that the statement u/s. 132(4) given by Shri Sunil Shekhar was only to cover up the cash deposits in the bank a/c of the appellant as also various other assets in the name of Shri Sunil Shekhar. Copies of capital a/c and balance sheet of Sh. Sunil Shekhar for AYrs. 2004-05 to 2010-11 clearly indicate a simple pattern wherein Sh. Sunil Shekhar has disclosed income as being earned from coal trading so as to suffice so-called gifts made to his father as well as assets in the form of immovable property, deposits in various bank a/c etc in his own name. taxes on these so-called income are also paid on or after 31.03.2010 strengthening the conclusion that the*

income declared u/s. 132(4) by Sh Susnil Shekhar is only cover up explanation for the gifts made and assets held by him.

5. *The appellant has claimed to have received the gifts on 10.04.2003 (Rs.323,000/-), 02.09.2003 (Rs.40,000/-), 08.01.2004 (Rs.20,000/-), 01.01.2004 (Rs.2,00,000/-), 18.02.2004 ((Rs.2,50,000/-). These dates are nothing but the dates on which cash deposits were found to have been made in the bank accounts of the appellant. It is very peculiar to note that the appellant's son has given cash gifts of Rs.2,00,000/- on 01.01.2004 and another amount of Rs.20,000/- just a week later i.e. on 08.01.2004. Thus, these various dates of the so-called gifts by appellant's son are testimony to the fact that these transactions are not gifts but merely a cover up explanation for cash deposits in the bank a/c of the appellant. Thus, the genuineness of transaction of gift is not proved.*

In view of the above facts, I fully agree with the AO that the explanation of gifts from appellant's son is only an afterthought. During the course of appellate proceeding, the appellant had furnished the same explanation as well as the cash book and capital a/c of Shri Sunil Shekhar. These evidences are certainly not found at the time of search and seizure action and prepared only after filing of return of income of Shri Sunil Shekhar based on statement given u/s. 132(4) of the Act. The appellant being a salaried employee, a pattern of withdrawal of Rs.8,000/- to 10,000/- every month is seen from the copy of bank statement filed. Thus, it is also proved that the appellant has no explainable source of income for cash deposits in his bank accounts. The appellant's claim for gifts from his son is also snot proved by any documentary evidences for any kind of business income of his son. The occasions for gifts are the dates of cash deposits in the appellant's bank account which speak itself for the genuineness of the gifts. Hence, the addition of Rs.5,42,000/- made by the AO is hereby confirmed."

3. We heard given our thoughtful consideration to rival contentions. The relevant assessment order in his case dated 17.08.2012 forming part of records suggests that the assessing officer had duly taken into account the fact of impugned gifts coming to the assessee from his son's hand. We are of the view that the assessing officer said action in donor's case accepting correctness of the impugned gifts itself forms clinching factor for us to hold that assessee has been able to prove all the relevant parameters of the impugned gifts to have been received from his son. We therefore direct the assessing office to delete these identical addition(s) in all assessment years.

4. Next comes cash deposits addition issue in some of the assessment years. Suffice to say, we can safely hold that the impugned gifts sum; if they are given telescoping effect would take care of the assessee's cash deposits in issue as well. It further emerges that the assessee's cash withdrawal are much than the impugned cash deposits. We taken into account all these facts to delete cash deposits addition(s) as well. We make it clear we have not extracted the relevant figure for the sake of brevity only.

5. The assessee's all seven appeals are allowed.

Order pronounced in accordance with Rule 34(4) of the ITAT Rules by putting on Notice Board on 15/02/2019

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Ranchi,

*Dkp Sr.P.S

दिनांक:- 15/02/2019 Ranchi I

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक /Assessee-Shiv Narayan Choudhary Drolia House, Kanke Road, Shivashee Building, Shivam Vihar,Deepatoli, Ranchi-834009
2. राजस्व /Revenue-DCIT, Central Circle-3, Ranchi
3. संबंधित आयकर आयुक्त / Concerned CIT Ranchi
4. आयकर आयुक्त- अपील / CIT (A) Ranchi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Ranchi
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

SR.PS, ITAT, RANCHI