

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B'अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2697/Ahd/2016

(निर्धारण वर्ष / Assessment Year :2009-10)

Shri Mahesh Girishbhai Patel Flat No. 301, Sabar Avenue Near Swastik Char Rasta, Navrangpura, Ahmedabad- 380009	बनाम/ Vs.	ITO, Ward-5(1)(4), Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGE PP1 707 D		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Divyang J. Shah, AR
प्रत्यर्थीकीओरसे / Respondentby:	Mudit Nagpal, Sr. DR

सुनवाईकीतारीख/Date ofHearing	26/04/2019
घोषणाकीतारीख /Date of Pronouncement	21/05/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal has been filed by the assessee for A.Y. 2009-10, arise from order of the CIT(A)-5, Ahmedabad dated 17.08.2016, in proceedings under section 143(3) r.w.s. 263 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has raised following grounds of appeal:-

"1. On facts and in circumstances of the case and in law, whether the Id. Assessing Officer has erred to treat the source of income of Rs. 6,00,000/- as unexplained and to add it as unexplained investment u/s. 69 of the Act.

2. On facts and circumstances of the case and in law, whether the Ld. Assessing Officer has erred in concluding that onus to prove the source of income in the hands of the donor shall also lie on the appellant.

3. On facts and circumstances of the case and in law, whether Ld. AO has erred in treating the gift of Rs. 6,00,000/- as not genuine transaction despite of the fact that all possible evidences regarding the same is very much produced by the appellant.”

3. The solitary ground of appeal of the assessee is against the decision of the Ld. CIT(A), Ahmedabad-5 in sustaining the addition of Rs. 6,00,000/- as unexplained investment u/s. 69 of the Act. All the three grounds of appeal of the assessee are pertained to the aforesaid common issue. Therefore, these grounds of appeal are adjudicated together in this order.

4. The brief fact of the case is that assessment u/s. 143(3) of the Act was made on 08.12.2011. Subsequently, the Commissioner of Income Tax vide order u/s. 263 of the Act dated 20.03.2014 has set aside the assessment to the file of AO with the direction to examine the issue afresh relating to the claim of cash gift of Rs. 6,00,000/- received by the assessee and total investment in a property.

Thereafter, during the course of assessment to verify the gift of Rs. 6,00,000/- received by the assessee from his maternal uncle Shri Shashikant R. Barevadiya, the AO has issued a summon u/s. 131 of the Act to the uncle of the assessee and his statement was recorded on 10.02.2015. In the statement the donor has stated that he was having ownership of approximately 50 Bigha of agricultural land on which he generate yearly income to the amount of Rs. 5,00,000/-. The AO has not accepted the explanation of the assessee that the donor has not substantiated that he actually earned such income from his land holding during the relevant financial year and prior to it. Consequently, the AO has treated the whole amount of Rs. 6,00,000/- as unexplained and added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee reiterating the similar reason cited by the AO.

During the course of appellate proceedings before us the Ld. Counsel has filed paper book containing detail/submission filed before the AO and Ld. CIT(A) during the course of assessment and appellate proceedings. The Ld. Counsel also contended that Ld. CIT(A) has not considered the fact that A.O. has not disproved the material fact that donor uncle of the assessee was having huge ownership of agricultural land from which he was having sufficient agricultural income.

6. On the other hand the Ld. DR has supported the order of CIT(A).

7. We have heard both the sides and perused the material on record. The issue in the appeal is pertaining to the genuineness of gift received by the assessee from his maternal uncle. The AO has treated the amount of the gift received by the assessee as unexplained on the ground that donor of the gift has not proved that he was having sufficient income to make gift of the aforesaid amount to the assessee. With the assistance of the Ld. Representatives we have gone through the material on record and noticed that the donor has submitted copy of (7x12 documents) in support of ownership of agricultural land which demonstrates that he was having ownership of huge agricultural land. In support of carrying of agricultural activities copies of sample bills of purchases were also produced. It is also noticed that in the paper book the assessee has also placed a copy of Form No. 8 on which details of crops cultivated on the agricultural land are maintained. It is also contended to verify the claim of carrying out agricultural activities by the uncle of the assessee not any certificate from the Talati was called for. In view of the above and the claim of the donor that he was having income only from agriculture it become imperative for the A.O. to examine the supporting material/details furnished to claiming that the uncle of the assessee has earned sufficient agricultural income out of which the gift of Rs. 6,00,000/- was given to the assessee. Therefore, we restore this case to the file of the AO to decide afresh after examination and verification of the specific information in support of earning of agricultural income furnished by the donor. Accordingly, we set aside this case to the file of the AO for deciding

afresh as directed above after affording adequate opportunity to the assessee. Therefore, this appeal of the assessee is allowed for statistical purposes.

8. In the result, this appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 21/05/2019

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Ahmedabad: Dated 21/05/2019

TANMAY

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।