

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4511/Del./2016
(Assessment Year : 2012-13)**

ITO, Ward 41 (3), vs. Smt. Shimla Devi,
New Delhi. C – 29, New Multan Nagar,
New Delhi – 110 056.

(PAN : AFYPD6835R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sandeep Jain, CA
REVENUE BY : Shri Saras Kumar, Senior DR

Date of Hearing : 27.11.2019
Date of Order : 29.11.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ITO, Ward 41 (3), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 16.06.2016 passed by the Commissioner of Income-tax (Appeals)-14, New Delhi qua the assessment year 2012-13 on the grounds inter alia that:-

“1. On the facts and circumstances of the case and In law, the Ld. CIT(A) is not justified in deleting the addition made by the Assessing Officer (AO) on account of unexplained cash credits u/s 68 of the Act treating as bogus gifts amounting to Rs.1,60,75,000

without properly verifying the bank statements of the donors even though the assessee could not prove the nexus of gift receipts with supporting documents during the assessment proceedings

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) is not justified in deleting the addition made by the Assessing Officer (AO) treating agricultural income as income from other sources amounting to Rs.27,50,000/- without appreciating the findings of the Assessing Officer.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : From the statement of affairs, Assessing Officer (AO) noticed that the assessee has received gift of Rs.1,06,50,000, Rs.11,50,000/- & Rs.42,75,000/- from Shri Dharampal, Shri Ajay Lakra & Shri Naveen Kumar Lakra respectively. On failure of the assessee to explain the nature and source of the cash deposit and to prove the identity, creditworthiness of the parties and genuineness of the transaction, AO made addition of Rs.1,60,75,000/-. AO also made addition of Rs.27,50,000/- being the income from other sources by declining the contention of the assessee that this income is agricultural receipt and thereby assessed the total income at Rs.1,92,90,840/-.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the addition by allowing the appeal.

Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

5. Undisputedly, assessee has received an amount of Rs.1,06,50,000, Rs.11,50,000/- & Rs.42,75,000/- from Shri Dharampal, Shri Ajay Lakra & Shri Naveen Kumar Lakra respectively as a gift. It is also not in dispute that the assessee had filed copy of voter I-card, PAN and income-tax returns of the donors vide reply dated 26.03.2015 before the AO.

6. We are of the considered view that when assessee has produced PAN, copies of income-tax returns and voter I-card of the donors during the assessment proceedings as well as before the appellate proceedings, there is no question of disputing their identity, creditworthiness and genuineness of the transactions particularly when donors are husband and sons of the assessee. Perusal of the assessment order of Dharampal, donor for AY 2012-13, the year under assessment, and copy of order dated 16.06.2016 passed by the Id. CIT (A) for AY 2012-13 qua Dharampal, source

of his income and creditworthiness has been duly accepted. In case of son of the assessee, AO himself has accepted his creditworthiness. Ld. CIT (A), after appreciating all these facts and by relying upon the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Ramesh Suri (2015) 57 taxmann.com 84 (Delhi)*, deleted the addition.

7. Hon'ble Delhi High Court in the case of *CIT vs. Suresh Kumar Kakar in ITA 128/2009 order dated 27.04.2010* also decided the identical issue by returning following findings :-

“3. Insofar as the identity is concerned, that is an admitted position that the gifts were made by the mother to the son. With regard to the creditworthiness, the assessee has been able to discharge the onus cast upon him by furnishing the bank statement of his mother (donor) as also the confirmation certificate from the mother confirming the said gifts. Once the assessee has discharged the primary onus, which was cast upon the assessee, it was incumbent upon the Assessing Officer to prove on the basis of a cogent evidence that the transaction was not genuine. There is no such evidence forthcoming. We find that the conclusions of the Assessing Officer and the Commissioner of Income-tax (Appeals) with regard to the genuineness of the transactions are merely conjectural and are based on surmises and assumptions. Such conjectures and assumptions cannot take the place of proof, once the assessee has discharged the primary burden which had been cast upon him.”

8. So, we find no illegality or perversity in the deletion of addition made by the AO on account of bogus gifts, hence ground no.1 is determined against the Revenue.

GROUND NO.2

9. Assessee claimed an amount of Rs.27,50,000/- as agricultural income having been received from Lov Kush and Anand to the tune of Rs.17,50,000/- and Rs.10,00,000/- respectively as rent for cultivating the land measuring 64 bighas owned by the assessee, it has been treated as income from other sources by the AO on the ground that statement of Lov Kush and Anand shows that the receipt is not an agricultural receipt but income from other sources.

10. Ld. AR for the assessee contended inter alia that in the preceding years, income from the land in question has been accepted as agricultural income by the Revenue; that ownership of the land and its cultivators are not disputed and that the AO proceeded to reach the conclusion only on the basis of statement of Lov Kush and Anand but has not preferred to record the statement of Rishi Kumar nor the AO has preferred to look into the revenue record.

11. Perusal of the statement of Lov Kush and Anand, when read in entirety, goes to prove that the land in question remained under cultivation with them and merely on the basis of hyper-technicalities, the income has been treated from other sources. Moreover, when ownership of the land and its cultivation by Lov

Kush, Rishi Kumar and Anand is not disputed and it is proved from the Revenue record i.e. Khasra Girdwari in form P-4 available at page 1 of the paper book and detail of agricultural activities have been duly given by the assessee at page 2 of the paper book supported with receipt of payment made by cultivators in favour of the assessee, the entire addition made by the AO is conjectural which is not sustainable on the face of facts and documents on record. In these circumstances, Id. CIT (A) has rightly deleted the addition made by the AO by thrashing the facts in the light of the decision rendered by the Tribunal, hence we find no illegality or perversity in the deletion of addition made by the Id. CIT (A), hence ground no.2 is also determined against the Revenue.

12. Resultantly, the appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 29th day of November, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 29th day of November, 2019

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-14, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**