

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI B.R.R KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.890/DEL/2012
Assessment Year: 2000-01

Surinder Kumar & Sons HUF, 117, Anand Vihar Pitam pura, New Delhi.	vs.	ITO, Ward-25(2), New Delhi.
TAN/PAN: AAAHS 6589Q (Appellant)		(Respondent)

Appellant by:	Shri V. Raj Kumar, Adv.		
Respondent by:	Shri S.S. Rana, CIT-D.R.		
Date of hearing:	19	09	2019
Date of pronouncement:	09	12	2019

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against the impugned order dated 21.12.2011 passed by Commissioner of Income Tax (Appeals)-XXIV, New Delhi for the Assessment Year 2000-01. In the grounds of appeal, the assessee has challenged the validity of reopening u/s.147 on various grounds and on merits addition of Rs.5 lacs made u/s. 69A on account of gifts. The relevant grounds raised by the assessee read as under.

"1. The assessing authority has grossly erred in taking action u/s 148 of the act and passing order u/s 147 of the Income Tax Act, 1961 as the Re opening of the case is against law due to the following reasons.

- a. That the Assessing Officer ward 25(2) New Delhi had no jurisdiction over the case.
- b. That the assessee had already made a return for the year concerned and the same was pending disposal before the Assessing Officer as such the notice under section 148 was invalid.
- c. That the Assessing officer had not obtained the satisfaction u/s 151 of the Act which he must have obtained before the issue of the notice under section 148.
- d. That the notice under section 148 was issued after the expiry of the period of limitation laid down in that regard in section 149 of the Act.
- e. That the Assessing Officer had no information in his possession on the basis whereof he could have reason to believe that the income of the assessee had escaped assessment or had been under assessed.
- f. That on facts of the case, the provisions of section 147 were not attracted and could not be applied;

And the learned Commissioner Of Income Tax appeal XXIV New Delhi has erred in dismissing all the reasoning and confirming the action of the assessing authority.

2. That assessing authority has grossly erred in law and facts of the case in passing order u/s 147 of the Act without giving the copy of the material in his possession for reopening the case and without giving the opportunity of cross examination of the donor and the learned CIT appeal XXIV New Delhi has erred in dismissing these grounds.

3. The assessing authority has erred in law and facts of the case in making an addition of Rs,5,00,000/- (Rs. Five Lacs Only) u/s 68 of the Income Tax Act, 1961 and learned Commissioner of Income Tax appeals XXIV New Delhi has erred in confirming the addition u/s 68 of the Act.

4. *The learned CIT appeals XXIV New Delhi has stated that the addition should have been made u/s 69 A of the Act instead of section 68 of the Income Tax Act, 1961 and thus the addition has been wrongly made.*

5. *That the assessing proceeding were time barred, the learned Commissioner of Income Tax has erred in not passing any order in this respect.”*

2. The facts in brief are that, information was received from Additional DIT (Investigation), Ghaziabad conveying that Shri Sanjay Mohan Agrawal was involvedg in giving accommodation entries of bogus gifts/loans to numerous persons from his various bank accounts. During the course of investigation the name of the assessee had also appeared in the list of beneficiaries, who had accepted and received gift of Rs.5 lac from Shri Sanjay Mohan Agarwal vide DD No.915976 dated 08.04.1999. On perusal of the material before him following reasons were recorded:

“During the course of investigation in the affairs of Sh. Sanjay Mohan Aggarwal, it was found that he was involved in giving accommodation entries of bogus gifts/loans by cheques/DDs in lieu of cash received from intending beneficiaries. The said person operated large number of current and CD accounts. On scrutinizing the details of one such account with Vijaya Bank, Ansari Road, New Delhi (A/c No. CA 2017) it was noted that accommodation entries in form of gifts were given to a large number of persons. The name of my assessee M/s Surender Kr. & Sons HUF (PAN AAIHS238Q) appeared in the list of persons who had received Rs. 5 lacs as gift from Sh. Sanjay Mohan Agarwal. It as conveyed by Addl. CIT (Inv) Ghaziabad that the assessee had

received a sum of Rs.5,00,000/- as Gift on 08.04.1999 through Cheque No. 915976. Keeping in view the dubious credentials of Sh. Sanjay Mohan Aggarwal who had given away gifts worth Rs. 45.75 crores from various bank accounts and the fact that it is contrary to the prevalent social practices and human probability for persons to exchange such sums of money as gifts the aforesaid transaction seems to be bogus.

In view of the above information I have reasons to believe that assessee had procured a gift of Rs. 5,00,000/- from Sh. Sanjay Mohan Agarwal, an accommodation entry provided by offering such sum in cash and receiving back the same in front of a gift. Such amount represents undisclosed income of the assessee, which has escaped assessment.

Keeping in view the above facts, it is requested that necessary approval u/s 151(2) may kindly be accounted for initiating proceedings u/s 148 of the I.T. Act in order to book income which had escaped assessment.

29.03.2017

Sd/-
INCOME TAX OFFICER
WARD 25(2), NEW DELHI

12. Whether the Commissioner/ Board/ AddICIT is satisfied on the reasons Recorded By The ITO/AC/that it is fit case for the issue of a notice u/s 148.

*Yes. I am satisfied
Sd/-
Addl. CIT, Range 25
New Delhi.”*

3. In response to the notice u/s.148 issued on 29.03.2007, the assessee after filing the return of income has raised objection against initiation of proceedings on 10.09.2007 which has been disposed of by the AO vide separate order dated 19.09.2007. On merits, the ld. Assessing Officer has given a very categorical finding that;

- Firstly, the donor was not related to the assessee, and therefore, gift given out of love and affection was beyond the human probability.
- Secondly, assessee was unable to furnish any evidence or explanation why such a gift was given by the donor.
- Thirdly, assessee could not prove the creditworthiness and genuineness of the transaction and mere furnishing of particulars and payment by account payee cheque cannot be the sole ground for proving the creditworthiness and genuineness of the transaction. He also analyzed the balance-sheet of Shri Sanjay Mohan Agarwal and found that the net capital stood invested in the business and no such fund was available in cash, to be distributed by way of gift.
- Lastly, one very important fact noted by him was that the same donor has given huge amount of gift to numerous other persons which were as under:

S.No.	Name	Amount
1.	Shankar Mundhra (HUF) (Assessee)	10,00,000/-
2.	Vijay Mundhra (HUF)	10,00,000/-
3.	Kishan Mundhra (HUF)	10,00,000/-
4.	Arun Mundhra F/o Kamiya Mundhra	4,00,000/-
5.	Kavita Mundhra	4,00,000/-
6.	Mrs. Sangeeta Gupta	5,00,000/-

7.	<i>Shri Ravinder Kumar</i>	2,50,000/-
8.	<i>Shri Ashok Kumar</i>	2,50,000/-
9.	<i>M/s. Rajesh Kumar Aggarwal (HUF)</i>	4,00,000/-
Total		52,00,000/-

4. Apart from that, it is also a matter of fact that Investigation Wing after detailed inquiry had found that Shri Sanjay Mohan Agarwal was an entry provider and has given bogus gift to numerous persons who were complete strangers. After relying upon the judgment of Hon'ble Supreme Court in the case of Sumiti Dayal vs. CIT, 214 ITR 801 (SC) and catena of other decisions, he held that the gift received by the assessee is bogus. Accordingly addition was made u/s.68 of the Act.

5. On the issue of validity of reopening which was challenged before the Ld. CIT (A) on various grounds, Ld. CIT(A) has dealt each and every objections and has rejected the assessee's contention.

6. On the issue of challenging the jurisdiction of the Assessing Officer, ITO, Ward-25, New Delhi, Ld. CIT (A) has held that assessee had not taken these objections before the Assessing Officer at the time of assessment proceedings nor he has disputed the jurisdiction of the Assessing Officer. He has further held that Assessing Officer had sufficient information and material in his possession to form 'reason to

believe' that income had escaped assessment and by following the decision of Hon'ble Supreme Court in the case of **Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 (SC)**, rejected the said objection of the assessee.

7. Lastly, on the issue that Assessing Officer had no credible information in his possession and without giving any opportunity to cross-examination, reopening is not justified.

8. Ld. CIT (A) held that Assessing Officer not only had sufficient material on record but had credible information from the Investigation Wing relating to the assessee and based on application of mind Assessing Officer has reopened the assessment. In support, he relied upon the judgment of Hon'ble Delhi High Court in the case of **AGR Investment Ltd. vs. Addl. CIT, (2011) 333 ITR 146 (Del)**. On the issue of cross-examination also he held that nowhere assessee had produced any material to prove that assessee has requested the Assessing Officer for cross-examination or asked for the reasons recorded. On merits, after detailed discussion and relying upon the various judgments he has confirmed the addition. However, he held that the said addition can be made u/s.69A.

9. Before us, ld. counsel for the assessee had challenged the validity of reopening on various counts. First of all, he submitted that, any information which is received by the Assessing Officer cannot automatically qualify as material for

arriving at the satisfaction of escapement of income. Here, in this case, material as received was in respect of Shri Sanjay Mohan Agarwal who was a third party and it was incumbent upon the Assessing Officer to have confronted that material as received from Investigation Wing to the verification and comments. Further, the statement of Shri Sanjay Mohan Agarwal should have also been provided to the assessee for examination including cross-examination. Further, in the report, Investigation Wing has stated that the aforesaid transaction seems to be bogus which means that it is only a probability. In support of his various contentions on this regard, he has relied upon the following judgments:

- “i) CIT vs. Multiplex Trading and Industrial Co. Ltd., (2015) 378 ITR 351 (Del.)*
- ii) Chhugamal Raj Pal vs. ITO, (1971) 79 ITR 603 .*
- iii) CIT vs. Atul Jain, (2009) 299 ITR 383 (Del.)*
- iv) CIT vs. Pradeep Kumar Gupta (2008) 303 ITR 95 (Del.)*
- v) Andaman Timber Industries v. CCE (2015) 281 CTR 241 (SC)*
- vi) CIT vs. Sunita Dhada in SLP(C) Diary No.9432/2018 dated 28.03.2018.*
- vii) ACIT vs. Dhariya Construction Co., (2010) 328 ITR 515 (SC).*
- viii) PCIT vs. G&G Pharma India Ltd. (Del)*
- (ix) CIT vs. Anupam Kapoor (2008) 299 ITR 179*
- (x) CIT vs. Paramjit Kaur (2009) 311 ITR 38 (P&H)*
- (xi) CIT vs. SFIL Stock Broking Ltd., (2010) 325 ITR 285 (Del.)*

10. He further submitted that the approval given u/s.151 by Addl. CIT is also mechanical and casual. On merits, he submitted that assessee has received a gift through banking transactions and there is no record to prove that assessee after receiving the gift has given any reciprocal payment in cash and further provision of Section 68 cannot be verified because assessee was not maintaining any books of account.

11. On the other hand, ld. DR strongly relied upon the order of the Assessing Officer and ld. CIT (A). Referring to the various observations made by the Assessing Officer and Ld. CIT(A) with regard to the validity of reopening but also on merits.

12. We have heard the rival submissions and also perused the relevant findings given in the impugned orders. From a bare perusal of the reasons recorded, it is seen that inquiry and survey conducted by the Addl. CIT (Inv.), Ghaziabad in the case of donor Shri Sanjay Mohan Agarwal, it was found that he was involved in giving accommodation entries in the form of bogus gifts in lieu of cash received by the intending beneficiaries. On perusal of one such account with Vijaya Bank, New Delhi, it was found that out of various beneficiaries, assessee's name and PAN was appearing. However, it was also found that Shri Sanjay Mohan Agarwal had given away gift worth of Rs.45.75 crore or various bank accounts to numerous persons who were strangers once such a specific information and details about the assessee

including the cheque number which also corresponds with credit entries with the bank account of the assessee. Any prudent person on these material and information will definitely have 'reason to believe' that a gift received from an entry provider who himself has admitted that he is providing bogus accommodation entry as gift to various persons, then at that stage, Assessing Officer is neither required to provide any cross-examination of the donor nor establish the factum of escapement of income. What is required in terms of Section 147 is that Assessing Officer should have prima facie reason to believe based on tangible material/information coming on record which is specific to the assessee and on that stage it is not required to established the factum of escapement of income. If during the course of assessment proceedings, Assessing Officer on the basis of explanation or evidences furnished by the assessee which controverts such material, then Assessing Officer may drop the proceedings of reopening u/s.147. Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra) have laid down that the expression 'reason to believe' does not mean that Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. It is not required the Assessing Officer to establish the fact of escapement of income at the stage of issue of notice the only question which is required to be seen is, whether there was any relevant material on which a reasonable person could have formed the requisite believe and whether material would conclusively prove the escapement of

income is not a concern at that stage. Here, in this case, also not only the material coming on record before the Assessing Officer was relevant but also had live link nexus with the income escaping assessment because the donor was found to be; firstly, accommodation entry provider; and secondly, he has admitted that he has given bogus gift to various beneficiaries in lieu of cash and in the list of such beneficiary not only the assessee's name had appeared but also the PAN and the gift also garb co-related to the relevant entries in the bank account. Thus, we hold that reasons recorded were sufficient to clothe the Assessing Officer to acquire the jurisdiction, to reopen the assessment.

13. In so far as ground is concern that the Assessing Officer had not obtained the satisfaction u/s.151 before issuance of notice is also not correct because Assessing Officer has specifically stated that satisfaction was obtained from the Addl. CIT wherein he has stated that he is satisfied with the reasons recorded by the Assessing Officer. Thus, this ground is also not tenable. Thus, the reopening of the assessment u/s.147 r.w.s. 148 is valid and the order of the Ld. CIT (A) on this count is upheld.

14. Now coming to the issue on merits, we find that assessee in discharge of its onus has filed a memorandum of gift wherein the donor has stated that he is giving gift of Rs.5 lac to the donor through account payee cheque issued from Vijaya Bank Account, Pansari Road, New Delhi in the donors

bank account maintained with the same bank. The said gift has been stated by him to be given out of his own funds and he has also given his income tax particulars. The affidavit of the donor to this effect has also been given. The aforesaid evidences and explanation given by the assessee to prove the genuineness of the gift cannot be held to be sufficient in the wake of glaring material and information on record that, firstly, Shri Sanjay Mohan Agarwal was complete stranger to the assessee and what has been concocted that the donor and the father of the wife of Karta were close friends. However, no such averments have been made in the affidavit or the memorandum of gift. The donor has merely stated that gift is being given out of affection to the donee. The gift out of natural love and affection to stranger needs to be established and it cannot be said that any gift received from the stranger out of affection is on account of natural love infinity unless something is brought on record that what was the relationship between the assessee and the stranger. Such kind of a gift is definitely against human probability, specifically in such cases if there are certain indications that the donor was actually found to be providing bogus accommodation entries to numerous persons. A Donor cannot have natural love and affection to hundreds of people where gifts were given without any occasion and that to be in several lakhs. Another important factor is that the donor has stated to have gifted huge amount of gifts to various persons and Assessing Officer has even noted 9 such persons also on the

basis of information. Once, he has confirmed that he is actually an entry provider and admitted that he has given bogus gifts in lieu of cash, then mere filing of memorandum of gift and affidavit of the donor cannot lead to a conclusive inference that gift is genuine. Mere identification of the donor and movement of the gift through banking channels definitely cannot prove the genuineness of the gift when the credibility of the donor itself is dubious coupled with the fact that his completely a stranger then in our opinion genuineness of the gift does not stand establish. Various courts have held that in the case of the gift mere identity and payment through account payee cheque does not establishes the genuineness of the gift which has been held so by the Hon'ble Jurisdictional High Court in the case of **Sajan Dass & Sons (2003) 264 ITR 435 (Del)**. Accordingly, the gift of Rs.5 lac is confirmed.

15. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 9th December, 2019.

Sd/-

[B.R.R. KUMAR]

[ACCOUNTANT MEMBER]

DATED: 9th December, 2019

PKK:

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER