

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.159/Ind/2017  
Assessment Year: 2008-09**

Shri Avinash Singh Mandloi, 103, Laxmi Appartment, 138- 139, Bhagwandin Nagar, Indore	Vs.	ITO-5(2) Indore
(Appellant)		(Respondent )
<b>PAN No.AKXPM2340J</b>		

Appellant by	Shri Niranjana Purandare, CA
Revenue by	Shri Puneet Kumar, Sr. DR
Date of Hearing	10.12.2019
Date of Pronouncement	13.12.2019

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

This appeal at the instance of Assessee pertaining to A.Y. 2008-09 is directed against the order of Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT'), dated 22.11.2016 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 30.12.2010 by ITO-5(2), Indore.

2. The Assessee has raised following grounds of appeal:

*“1. The Ld. respondent erred in not accepting the gift amount of Rs.12.25 lakhs received from then deceased father despite the fact of proving the identity, capacity of the deceased and also the genuineness of the transaction.*

*2. The Ld. respondent did not contradict the vital statements on oath of other legal heirs available on record in support of the impugned gifts and simply disbelieved the whole transaction of gift as shame and bogus on other grounds.*

*3. That the Ld. respondent failed in appreciating the remand report submitted by the AO properly and only tried to pick and choose some of the adverse findings of the AO to uphold the entire addition on account of gift from father suiting to his convenience without considering the findings and other cogent material available on record in proper perspective.*

*4. The remand report of Ld. AO clearly states that sale proceeds of 05 sale deed documents were received in cash and that too in the previous year 2007-08 relevant to ASSESSMENT YEAR 2008-09 and as such opine that a sum of Rs.6.25 lakhs may be allowable as a gift from father to son instead of the whole alleged amount of Rs.12.25 lakhs as gift received by the appellant.*

*5. The Ld. respondent failed to see that registration of the sale document under registration Act 1908 with sub registrar office can take place much after the financial transaction between the buyer and seller for various reasons and no anomaly or adverse inference can be assumed due to the said gap.*

*6. The AO accepts that donor's main business was agriculture and sale of agricultural lands which might be outside the tax net and non filing of income tax returns cannot be a sole factor to infer or decide the capacity of donate the impugned sums of gifts in favour of appellant.*

*7. The ld. Respondent failed to appreciate that all sale deeds of lands and business were the winding up factions of the deceased donor at the fag end of his life and entire proceeds from above aggregating to Rs.20.00 lakhs and gift to appellant all were in cash which were natural transaction executed by the donor in his last days of his life.”*

3. Though the assessee has raised multiple grounds but the sole grievance relates to addition for unexplained cash gift of Rs.12,25,000/- received by the assessee from his deceased father.

4. Brief facts relates to this issue are that the assessee is an individual Trading in Wine and Medicine etc. The return of income has been filed on 28.09.2008 declaring income of Rs.4,01,809/-. The case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. Ld. Assessing Officer(AO) while examining books of accounts noticed that the assessee has shown a gift of Rs.12,25,000/- received in cash from his father Late Shri Dongar Singh. Assessee's father expired in April 2010 at the age of 65 years. In the assessment proceedings assessee filed copies of various sale deeds for the sale of agricultural land by the assessee's father. Some of which were before and during financial year 2007-08 and some were subsequent to financial year 2007-08. The assessee also submitted the affidavit of assessee's mother and brother to support the contention that source of cash gift is from past earning of the assessee's father from agricultural income business income sale of agricultural land.

5. Ld. AO however was not convinced with the submissions made by the assessee confirmed the addition for unexplained cash gift at Rs.12,25,000/-. Assessee challenged the addition for unexplained gift before the ld. CIT(A) but failed to succeed.

6. Now the assessee is in appeal before the Tribunal.

7. Ld. counsel for the assessee vehemently argued referring to the submissions and evidence filed before both the lower authorities and also explained about the source of cash available with the assessee's father for giving gift.

8. Per contra Ld. Departmental Representative(DR) vehemently argued supporting the orders of both lower authorities.

9. We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee relates to the addition for unexplained cash gift of Rs.12,25,000/- which is claimed to have been received by the assessee from his father but both the lower authorities have denied the claim questioning the genuineness and creditworthiness of the cash gift of Rs.12,25,000/-

10. Assessee's father, Late Mr. Dongar Singh Mandloi was holding agricultural land in the Village-Pipri, Block-Thikri, Tehsil-Rajpur measuring 5.37 acers used for cultivating and growing Soya bean, wheat etc. Government land Revenue documents placed in the paper book page 81, prove this fact that the regular agricultural income was earned. Records also shows that some part of agricultural land were sold by Late Mr. Dongar Singh Mandloi during the period 01.04.2000 till 31<sup>st</sup> March 2007 and some of the land were disposed of subsequently. The consideration received

from sale of land was in cash. Assessee's father was also running cloth business in the name and style of M/s Shubham Matching Centre at Juni Indore for last 38 years giving regular income. This business was finally closed during financial year 2006-07 due to illness and bad health of Late Mr. Dongar Singh Mandloi. In April 2010 after prolonged illness Mr. Dongar Singh Mandloi died. The assessee's claim is that the source of cash gift of Rs.12,25,000/- is the accumulated income from agricultural operations, cloth business and sale of agricultural land. This fact has also been sworn in the affidavit given by assessee's mother. Assessee has also placed on record, copies of the sale deed for sale of agricultural land, which transpires that sale consideration is received in cash. None of these facts has been disputed by the revenue authorities, however in absence of a proper cash flow statement, the genuineness and creditworthiness of the cash gift is has been questioned.

11. We, however, in the given facts and circumstances of the case are of the considered view that documents placed by the assessee before the lower authorities and before us fairly prove that the assessee's father before his death in April 2010 had been earned consistently from cloth business, agricultural operation and also sale consideration from sale of agricultural land received from time to time. The fact that cash of Rs.6,25,000/- was received before and during financial year 2007-08, there was accumulated income from cloth business, liquid cash available on winding up of cloth

business and income earned from agricultural operation in totality can easily add up to explain the source of cash gift of Rs.12,25,000/- given by Late Mr. Dongar Singh Mandloi to his son. We, therefore, delete the addition of Rs.12,25,000/- and treat the cash gift received by the assessee from his deceased father as duly explained. Thus, the grounds raised by the assessee are allowed.

12. In the result, the appeal of the assessee is allowed.

*Order was pronounced in the open court on 13.12.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 13/12/2019

*Patel. P. S. / नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar**