

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 2010/Kol/2019
Assessment Years: 2010-11**

Sabyasachi Roy.....Appellant
[PAN: ACRPR 6607 F]

Vs.

ITO, Ward-41(2), Nadia.....Respondent

Appearances by:

Sh. Miraj D. Shah, AR, appeared on behalf of the Assessee.

Sh. Jayanta Khanra, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : February 11th, 2020

Date of pronouncing the order : February 19th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-12, Kolkata ['CIT(A)' for short] dated 30.04.2019 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2010-11.

2. The assessee is an individual and is a trader. The issues that arise for my adjudication is validity of the re-opening of assessment u/s 147 of the Act and the addition of ₹5 lakhs to the income of the assessee on the ground that is clear that this claim of gift taken from his mother could not be proved.

3. After hearing rival contentions, I find that the assessee had made detailed submissions on the source of the money for which the mother of the assessee had made the gift dated 21.12.2016. This reads as follows:

"I, Smt. Sucharita Roy w/o Lt. Hirendra Nath Roy, do hereby declare that I received the sum of Rs.6,75,182.00 on premature withdrawal of the following STDRs and I gifted the sum of Rs.5,00,000.00, out of the said amount, on 08.03.2010 in cash to my Son Shri Sabya Sachi Roy out of love and affection. I do also declare that this declaration is given to the best of my knowledge and in sound mind.

STDR No.	Amount (Face value) Rs.
072088	80,398.00
072087	80,398.00
072086	80,398.00
624079	53,796.00

623679	80,000.00
624082	67,244.00
624081	67,244.00
624080	67,244.00
<i>Total</i>	<i>5,76,722.00</i>

4. This declaration is supported by a certificate issued by State Bank of India, a copy of which is file before me. The assessee's explanation before the Id. CIT(A) was that, the mother had prematurely withdrawn the STDR nos. on 21.12.2016 and had received an amount of 6,75,182/- which consists of face value of 5,76,722/- and the balance interest of ₹98460/- and that this amount was given to the assessee as gift by her and the assessee had made three FDRs from out of the receipt of gift from the mother. The assessee further explained that these were personal transactions and not connected with the business and hence they were not reflected in the business account. In my view the assessee has discharged the burden of proof that lay on him that this is a genuine gift. The addition of ₹5 lakhs made u/s 68 of the Act is hereby deleted and that the appeal of the assessee is allowed.

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

Kolkata, the 19th February, 2020.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 19.02.2020

Bidhan

Copy of the order forwarded to:

1. ***Sabyasachi Roy, 22, G.N.P.C. Road, Ranaghat, Nadia-741 201.***
2. ***ITO, Ward-41(2), Nadia.***
3. CIT(A)-12, Kolkata. (sent through e-mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches