

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.2743/DEL/2017  
Assessment Year 2008-09

ACIT, Circle-59(1), New Delhi	v.	Mrs. Seema Jain, 12, Dayanand Vihar, Delhi.
TAN/PAN: AAFPJ6460J		
(Appellant)		(Respondent)

Appellant by:	S/Shri Raj Kumar Gupta & Sumit Goyal, Adv.		
Respondent by:	Shri H.K. Chaudhary Sr.D.R.		
Date of hearing:	28	10	2020
Date of pronouncement:	29	10	2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the Revenue against the impugned order dated 23.02.2017, passed by Ld. Commissioner of Income Tax (Appeals)-IX, New Delhi for the quantum of assessment passed u/s.153C read with Section 153A for the Assessment Year 2008-09. In the grounds of appeal, the Revenue has taken following grounds.

- “1.       *The order of the Ld. CIT(A) is bad in law.*
2. *The Ld. CIT(A) erred in not appreciating the facts of the case that, the loans taken by the assessee are not genuine. The close relationship/nexus between the assessee and the parties from whom loan has been taken is a mere facade to*

*route unaccounted money. It is a fact that the husband of the assessee and several other family members are engaged in the business of real estate. It is apparent that channeling money through entities is only a means to reintroduce unaccounted money generated through the family business. It is pertinent to note that, the Ld. CIT(A) has upheld that the loans advanced to the assessee by various other parties (Sh. Bhawgan Singh., Sh. Sudam Chauhan, Sh. Vishwanath, Sh. Manak chand) are not genuine.*

*3. The Ld. CIT(A) has erred in not appreciating that the loans taken during AY 2008-09 were repaid only after the commencement of assessment proceedings.”*

2. The brief facts qua the issue raised in the grounds are that the assessee is an individual. A search and seizure action was carried out u/s.132(1) on 19.10.2011 at the premises of Agarwal Associates and Jainco Group of cases. During the course of search certain material was found and seized which related to the assessee and accordingly, the proceedings u/s.153C read with Section 153A were initiated.

3. Ld. Assessing Officer on perusal of the documents noted that assessee has taken unsecured loan from the following persons which was outstanding on 31<sup>st</sup> March, 2008:-

<i>S.No.</i>	<i>Name</i>	<i>Amount outstanding as on 31.03.2008 in Rs.</i>
<i>1.</i>	<i>Deepa Jain</i>	<i>3,00,000/-</i>
<i>2.</i>	<i>Sunita Jain</i>	<i>3,00,000/-</i>

3.	M/s. Abhinav Colonizers Pvt. Ltd.	50,00,000/-
4.	M/s. Uphaar Builders Pvt. Ltd.	50,00,000/-
5.	Laxmi Chand Gupta	1,40,000/-
6.	Sumit Gupta	60,00,000/-
<i>Total</i>		1,67,40,000/-

4. He observed that during the previous assessment proceedings, these parties have been shown as sundry creditors and not as unsecured lenders. He further observed that assessee had taken money from her husband Shri P.K. Jain in Financial Year 2007-08 and was also shown as a sundry creditor in her books of accounts and this amount later on has been squared up by treating it as a gift given by her husband. Thus, he presumed that this is some kind of *modus operandi* carried out by the assessee for treating loans as gift in her books and accordingly, he treated the sums aggregating to Rs.1,67,40,000/- as gift from unrelated persons and treated as assessee's income u/s.56(vi).

5. Ld. CIT (A) has deleted the said addition after observing and holding as under:-

*“10.2 Assessment cannot be made on the basis of presumption. Just because the husband has treated his loan as a gift cannot be a reason for drawing a conclusion that other person will also convert their loan to a gift, especially when the books reflect the same as a loan. The same cannot be treated as*

*a gift to bring it within purview of Section 56(2)(vii) of the Act and section 56(vii) deals with receipt of money without any obligation to repay. A loan cannot be treated as a sum of money received without consideration because the assessee was only a custodian of money with an obligation to repay the same on demand as has been held in the following case law.*

- *ACIT vs. Saranpal Singh, HUF in ITA 692/Chd/2009*
- *Chandrakant H. Shah vs. Income Tax Officer, 124 ITD 177/121 TTJ 145*
- *JCIT vs. Virat Dhingra, ITA No. 1141/DHD/2011, order dated 01/05/2012*
- *Income Tax Officer Vs. Rajesh Gulati, ITA No.1129/CHD/2009, order dated 31/08/2010.*

*10.3 Therefore, the addition is deleted.”*

6. After hearing both the parties and on perusal of the material placed on record, we find that Assessing Officer has made the addition in respect of unsecured loan as a gift purely on the basis of surmises and presumption, because her husband, Shri P.K. Jain, has also given unsecured loan which has been subsequently treated as gift by the assessee. Inferring the same yardstick, Assessing Officer has treated the loan taken from unrelated person for sums aggregating to Rs.1,67,40,000/- as gift and has taxed u/s.56(vi). We concur with the finding and the observation of the ld. CIT(A) that, simply because husband has treated his loan as a gift to his wife, cannot be the reason for drawing a similar conclusion

for unrelated parties that the other persons will also convert their loan to gift, especially when in the books of account amount has been reflected as loan. The ld. counsel for the assessee has brought on record that, these loans has been repaid back in the subsequent year, and therefore, amount which has been treated as loan in the books of account and has also been repaid back as a loan, same cannot be treated as a gift. We do not find any reason to interfere in the order of the ld. CIT (A), and therefore, the appeal of the Revenue is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 29<sup>th</sup> October, 2020.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 29<sup>th</sup> October, 2020

PKK: