

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

M.A.No.282/PUN./2023

Arising out of

I.T.A.No.1186/PUN./2016 - Assessment Year 2012-2013

Shri Inderpalsingh Sahni, 189, Satpur, Mahatma Nagar, Nashik – 422 007 PAN ACAPS6248Q	vs.	The ACIT, Circle-2, Room No.6, Wani House, Wokhard Hospital Compound, Nashik. Maharashtra. PIN 422 007
(Applicant)		(Respondent)

For Assessee :	Shri Bhupendra Shah
For Revenue :	Shri Pawan Bharati

Date of Hearing :	21.06.2024
Date of Pronouncement :	28.08.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This assessee's miscellaneous application filed u/s.254(2) of the Income Tax Act, 1961 (in short "the Act") seeks to recall the tribunal's order herein dated 02.02.2023, allowing Revenue's appeal ITA.No.1186/PUN./2016 in the following terms :

Heard both the parties. Case file perused.

2. It emerges during the course of hearing that our impugned order dated 02.02.2023 had restored the Assessing Officer's action disallowing the assessee's gift claim of Rs.2,15,00,000/- received from his uncle Shri Birender Sahni

and other family members etc., involving varying sums, as under :

“5. We have given our thoughtful consideration to the foregoing vehement rival stands and find no merit in assessee’s submissions. We make it clear first of all that there are total three donors herein namely Mr. Birender Singh Sahni [Rs.30 lakhs on 11.04.2011] with Smt. Ajit Kaur Sahni and Ms Harleen Kaur, daughter for Rs.1,45,00,000/- and Rs.40 lakhs on 04.05.2011, respectively. There is further no quarrel between the parties that the assessee had received the impugned sum totalling to Rs.2,15,00,000/- through banking channel only. And that the said third donor Ms.Harleen Kaur is undisputedly of unsound mind. A perusal of the Assessing Officer’s detailed discussion in his assessment order dated 26.03.2015 further suggests that the donor Mr. Birender Singh Sahni had clearly denied to have made this gift as per his statement dated December 13, 2014 recorded in the presence of his wife Smt. Ajit Kaur Sahni as well as the assessee’s son-in-law Shri Kulpal Singh with other two witnesses. This donor’s statement duly forms part of the case record before us at pages 184-186. The assessee thereafter sought cross-examination of the said donor which was duly granted by the assessing authority. The latter’s cross-examination dated 18.01.2015

*is compiled at pages 181 to 183 in the assessee's paper book. Learned counsel could hardly dispute the contents thereof at page-183 and more particularly, the said donor had categorically denied the assessee's claim once again about the impugned gift deed(s). And that this assessee had not even put a suggestion to the said donor about the gift claim in issue so as to rebut his reply. All these facts forms sufficient material for us to conclude that the assessee's gift claim herein seeking exemption from assessment of the impugned sum of Rs.2,15,00,000/- is totally a false one which deserves to be outrightly rejected.*

5.1. *Learned counsel at this stage again reiterated the assessee's stand highlighting relation between all these parties, family disputes in the donor(s) family and their daughter-in-law, police complaints, development agreements etc. His case is that the said documentary evidence(s) duly taken note of in the CIT(A)'s order extracted hereinabove proves a clear cut case of the impugned gift as a genuine instance.*

5.2. *All these assessee's arguments are found to be without any substance. We make it clear that whether or not there existed development agreements or criminal/police proceedings or any civil proceedings, as the case may be, hardly come to the assessee's aid once*

*we hold the impugned gift as a non-genuine one as the donor(s) have categorically denied any such confirmation in assessee's favour. This is indeed coupled with the fact that their daughter Smt. Harleen Kaur is also of un-sound mind who could not even take care of herself as it transpires during the course of hearing. We thus conclude that de hors all other proceedings, the assessee's impugned claim of having received the impugned gift by seeking to super impose the alleged unconditional love and affection on his uncle's family deserve to be declined at least for income tax purposes as our instant adjudication is confined to the addition made by the Assessing Officer only. We thus accept the Revenue's instant sole substantive grievance. The Assessing Officer's findings making the impugned addition of Rs.2,15,00,000/- in assessee's hands stands revived in these peculiar facts and circumstances. Ordered accordingly."*

3. It is in this factual backdrop that the assessee's instant miscellaneous application seeks to recall/rectify our above extracted findings vide following pleadings :

*1. With reference to above said impugned order received by us on 24-6- 2023, it is respectfully submitted as follows:*

*a. At Para No. 5, it is observed by the Honorable Bench that, "We have given our thoughtful consideration to the foregoing vehement rival stands and find no merit in assessee's submissions. We make it clear first of all that there are total three donors herein namely Mr. Birender Singh Sahni Rs.30 lakhs on 11.04.2011] with Smt. Ajit Kaur Sahni and Ms Harleen Kaur, daughter for Rs.1,45,00,000/- and ₹.40 lakhs on 04.05.2011, respectively. There is further no quarrel between the parties that the assessee had received the impugned sum totaling to Rs.2,15,00,000/- through banking channel only. And that the said third donor Ms. Harleen Kaur is undisputedly of unsound mind. A perusal of the Assessing Officer's detailed discussion in his assessment order dated 26.03.2015 further suggests that the donor Mr. Birender Singh Sahni had clearly denied to have made this gift as per his statement dated December 13, 2014 recorded in the presence of his wife Smt. Ajit Kaur Sahni as well as the assessee's son-in-law Shri Kulpal Singh with other two witnesses. This donor's statement duly forms part of the case record before us at pages 184-186. The assessee thereafter sought cross- examination of the said donor which was duly granted by the assessing authority. The*

*latter's cross-examination dated 18.01.2015 is compiled at pages 181 to 183 in the assessee's paper book. Learned counsel could hardly dispute the contents thereof at page- 183 and more particularly, the said donor had categorically denied the assessee's claim once again about the impugned gift deed(s). And that this assessee had not even put a suggestion to the said donor about the gift claim in issue so as to rebut his reply. All these facts forms sufficient material for us to conclude that the assessee's gift claim herein seeking exemption from assessment of the impugned sum of Rs.2,15,00,000/- is totally a false one which deserves to be out rightly rejected.*

- b. At Para No 5.1. Learned counsel at this stage again reiterated the assessee's stand highlighting relation between all these parties, family disputes in the donor(s) family and their daughter-in-law, police complaints, development agreements etc. His case is that the said documentary evidence(s) duly taken note of in the CIT(A)'s order extracted hereinabove proves a clear cut case of the impugned gift as a genuine instance.*
- c. At Para No 5.2. All these assessee's arguments are found to be without any substance. We make it clear*

*that whether or not there existed development agreements or criminal/police proceedings or any civil proceedings, as the case may be, hardly come to the assessee's aid once we hold the impugned gift as a non-genuine one as the donor(s) have categorically denied any such confirmation in assessee's favour. This is indeed coupled with the fact that their daughter Smt. Harleen Kaur is also of un-sound mind who could not even take care of herself as it transpires during the course of hearing. We thus conclude that de hors all other proceedings, the assessee's impugned claim of having received the impugned gift by seeking to super impose the alleged unconditional love and affection on his uncle's family deserve to be declined at least for income tax purposes as our instant adjudication is confined to the addition made by the Assessing Officer only. We thus accept the Revenue's instant sole substantive grievance. The Assessing Officer's findings making the impugned addition of Rs.2,15,00,000/- in assessee's hands stands revived in these peculiar facts and circumstances. Ordered accordingly.*

*d. At Para No 6. This Revenue's appeal is allowed"*

*2. As can be seen from the above the following points/factual errors/omissions are to be noted:*

- a. *No Proof is produced by the AO to justify that any hearing was held as mentioned in para no 5.2 of ITAT order dated 2-2-23 which was attended by Smt Harleen Kaur. Therefore this observation is unsupported. There is no mention of the same in proceedings sheet now provided to me under RTI.*
- b. *No proof is adduced by the AO to prove that the donors Mr. Birinder Singh Sahani and others individually gave gift of ₹ 2.15 cr to me or his M/S Birinder Singh HUF gave gifts to me. There is no mention of the same in proceedings sheet now provided to me under RTI.*
- c. *No proof is adduced by the AO to prove the owner of property at Khar, Mumbai mentioned by the AO in ground no 2 and 4 of the appeal before ITAT, Pune. This is not emanating from the Order of the AO. There is no mention of the same in proceedings sheet now provided to me under RTI.*
- d. *No Proof adduced by the AO to prove that the sum of 2.15 cr claimed by the donor Shri Birinder Sahani to me for vacating land and not as a gift in his returns and or his HUF's balance sheet or Profit and Loss account as demanded vide letter dated 20/1/15, 27/1/2015, 6/2/2015, 11-2-2015, 4-3-2015 and 6-3-2015, 25-3- 2015 and assessment was passed without these documents*

- There is no mention of the same in proceedings sheet now provided to me under RTI.*
- e. No proof is filed by the AO to prove the fact that if M/S Birinder Sahani HUF was the owner of the property mentioned by him and also as to why the donors Mr. Birinder Singh Sahani and others individually gave gift to me. There is no mention of the same in proceedings sheet now provided to me under RTI.*
- f. No Proof filed by the AO for revocation of the gift by the said donor Shri Birinder Singh Sahani since gift is not a loan which can be revoked or repaid. There is no mention of the same in proceedings sheet now provided to me under RTI.*
- g. The AO never controverted report of the technical expert of M/S Helik Advisory confirming donor's signature and did not confront the same to the donor Shri Birinder Singh Sahani. The AO never afforded any cross examination of the Donor after signature of the donor was confirmed by the report of the technical expert of M/S Helik Advisory in spite of several requests made by me. There is no mention of the same in proceedings sheet now provided to me under RTI.*
- h. The gift deed was never sent for Forensic Investigation by the AO as per letters dated 29-12-14, 27-01-2015 and 27/01/2015 to JCIT ? Hence the ground no 5 filed by the*

- AO before ITAT, Pune is incorrect. There is no mention of the same in proceedings sheet now provided to me under RTI.*
- i. No proof adduced by the AO to prove Cancellation Deed dated 04-05-2011 nullified by any competent court. There is no mention of the same in proceedings sheet now provided to me under RTI.*
  - j. The AO relied upon statement of donor Shri Birinder Singh Sahani dated 13-12-2014 even though most of his answers were tutored and evasive and hence a hostile witness. There is no mention of the same in proceedings sheet now provided to me under RTI.*
  - k. The Cross examination of donor Shri Birinder Singh Sahani was conducted on 18-01-2015 at a Hotel. Two more unauthorized persons were present at that time. The said cross examination held on Sunday [18-01-2015] and that too in hotel at Thane. This shows that the whole cross examination was illegal and at the behest of other aggrieved relatives. There is no mention of the same in proceedings sheet now provided to me under RTI.*
  - l. The AO never disposed objections mentioned in letter dated 20-1-2015 written by me. There is no mention of the same in proceedings sheet now provided to me under RTI.*
  - m. Thus the whole order is based on incorrect/missing facts/documents.*

3. *In view of the above omissions, we request you to please recall the impugned order and oblige. We therefore request you to kindly fix a fresh date of hearing at the earliest and oblige. We therefore request Your Honours to pass the order u/s 254(2) and oblige.”*

4. Learned counsel vehemently argued in light of the assessee's pleadings herein that our impugned order deserves to be recalled/rectified as it involves apparent inconsistencies therein. He has also seeks to buttress the point that not only the learned Assessing Officer ever gave him chance to cross-examine the donor(s) herein but also the latter could not even have revoked their respective gift(s) going by sec.126 of the Transfer of Property Act, 1882. Our attention is further invited to the assessee's recourse taken under the provisions of Right of Information Act, 2005 with the departmental authorities to this effect.

5. We find no merit in the assessee's above stated arguments once it is clear that our impugned order sought to recalled/rectified as appreciated the entire evidence(s) thereby holding that the assessee could not discharge his onus of having received the impugned gift(s) sum of Rs.2.15 crores in the given facts and circumstances of the case. We wish to make it clear that purpose of sec.254(2) rectification jurisdiction is only to deal with any apparent mistake(s) on

record than indulging in roving enquires requiring appreciation of the entire evidence(s) afresh as held in [2008] 305 ITR 277 (SC) ACIT vs. Saurashtra Kutch Stock Exchange Ltd.; [2021] 133 taxmann.com 41 (SC) CIT vs. Reliance Telecom Ltd.; and [1993] 203 ITR 497 (Bom.) CIT vs. Ramesh Electric and Trading Co. We thus see no substance in assessee's instant rectification pleadings in very terms.

6. This assessee's miscellaneous application M.A.No.282/PUN./2023 is dismissed in above terms.

Order pronounced in the open Court on 28.08.2024.

Sd/-  
[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 28<sup>th</sup> August, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.