

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "D" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI L.P. SAHU

ITA No. 4128/Del/2009
Assessment Year: 2003-04

Kusum Lata Thakral,
H.No. 126-R,
Model Town,
Panipat (Hr.)
(PAN: ABLPT6458R)
(Appellant)

vs.

ITO,
Ward-3,
Panipat

(Respondent)

Assessee by: Shri Ved Jain, CA
Department by: Ms. Richa Rastogi, Senior DR

Date of hearing : 15 .10.2015
Date of pronouncement: 13 :01.2016

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The assessee has questioned sustaining of penalty of Rs.3,15,000 levied under sec. 271(1(c) of the Income-tax Act, 1961 by the Learned CIT(Appeals).

2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.. In support of the grounds, the Learned AR submitted that there was no concealment of particulars or furnishing inaccurate particulars thereof on the part of the assessee towards the additions of Rs.10 lacs made under sec. 68 of the Act to attract the penal provisions under

section 271(1)(c) of the Act. He submitted that gift of Rs.10 lacs were received from various persons. Rs.2,50,000 as a gift was received from Smt. Neelam Rani, Rs.3,25,000 from Smt. Kiran Rani and Rs.3,75,000 from Smt. Bhirawan Bai, all from Rohtak. The assessee could not produce the onus for verification before the Assessing Officer at Panipat. Before the Assessing Officer, the donors denied to have given the claimed gifts to the assessee. They also denied any relationship with the assessee and they shown their unawareness as to who had deposited amount in their bank accounts. They, however, confirmed that the donation papers were signed by them but they were not knowing what were those papers and for what purpose they were to be used. In the circumstances, the Assessing Officer made addition of the amount of the alleged gifts which was confirmed by the Learned CIT(Appeals) and subsequently upheld by the ITAT. On this addition, penalty of Rs.3,15,000 has been levied. He submitted that assessment as well as penal proceedings are independent to each other. There was no positive evidence that assessee had concealed particulars of income or had furnished inaccurate particulars thereof towards the addition as the gifts were paid by the donors through bank account and cheques/drafts were signed by them. Besides their statements were recorded at the back of the assessee without affording any opportunity to the assessee to cross examine them. The

Learned AR also referred page Nos. 1 to 31 of the paper book i.e. copies of return filing acknowledgement showing gift deed filed with the return, gift deeds, statement of donors Smt. Bhirava Bai and Smt Neelam Arora, explanation furnished on 28.2.2006 in response to notice dated 17.2.2006, reply furnished against show-cause notice issued under sec. 271(1)(c) of the Act dated 5.06.2009, written submissions to the Learned CIT(Appeals), order of the ITAT in quantum and copy of Punjab National Bank's A/c. No. 01207126 of the assessee showing gift credited. He placed reliance on the following decisions:

- i) CIT vs. Orissa Corporation (P) Ltd. – 159 ITR 78 (S.C);
- ii) CIT vs. Daulat Ram Rawat Mal – 53 ITR 574 (S.C);
- iii) CIT vs. Ram Narain Goyal – 224 ITR 180 (P&H);

3. The Learned Senior DR on the other hand tried to justify the orders of the authorities below with the submissions that in the claimed gifts elements of love and affection are missing. The facts and circumstances of the case suggests that assessee had managed the entries of gift. Thus, there was concealment of particulars of income and furnishing of inaccurate particulars thereof on the part of the assessee towards the addition.

4. Considering the above submission, we fully concur with the submission of the Learned AR that assessment proceedings and penal proceedings under sec. 271(1)(c) are two independent proceedings. In other words, upholding of an addition does not automatically lead to imposition of the penalty. Being penal in nature, the legislature has prescribed some precaution for invocation of the provisions under sec. 271(1)(c) of the Act. These precautions are that there must be concealment of particulars of income or furnishing in accurate particulars thereof on the part of the assessee towards the addition i.e. subject matter of the penalty. In the present case before us, the one undisputed fact is that the gift amounts were paid to the assessee through their bank accounts vide cheques/drafts. The donors have, however, denied the claimed gifts and any relationship with the assessee on the basis of which addition under sec. 68 of the Act has been made by the Assessing Officer and upheld by the ITAT. There may be several reasons for their denial to the claimed gifts by them and their statements without their cross examination by the assessee cannot lead to a finding without doubt that there was concealment of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee towards the claimed gift to attract the penalty provisions under sec. 271(1)(c) of the Act especially when there is undisputed material fact that the gift amount

were paid through banking channel. Under these facts and circumstances, we are of the view that it may be a good case for justification of addition under sec. 68 of the Act but not a fit case to attract penal provisions under sec.271(1)(c) of the Act . We thus while setting aside the orders of the authorities below, direct the Assessing Officer to delete the penalty of Rs.3,15,000 levied and sustained by the authorities below. The grounds involving the issue are accordingly allowed.

5. In result, the appeal is allowed.

Order pronounced in the open court on 13 .01.2016

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 13 /01/2016
Mohan Lal

Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT(Appeals)
- 5) DR:ITAT

ASSISTANT REGISTRAR

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Date on which file goes to the Head Clerk.	
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