

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAMIT KOCHAR, AM

ITA No.5074/Mum/2014
(A.Y:2001-02)

Smt. Kantadevi Gpta, (Prop. K. D. Textiles) Shorewala Textiles, 68, Mirza Street, Zaveri Bazar, Mumbai 400 003 PAN:AADGP 3264H	Vs.	The Income Tax Officer, Ward – 16(1) (1), Room No.116, 1 st floor, Matru Mandir, Grant Road, Mumbai 400 007
Appellant	..	Respondent

Appellant by	..	Shri Jay Bhansali, AR
Appellant by	..	Shri A. K. Dhondial, DR

Date of hearing	..	18-10-2016
Date of pronouncement	..	18- 10- 2016

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of the CIT (A)-26, Mumbai in appeal No CIT (A)-26/IT-42/15(1)(1)2013-14 dated 12-05-2014. Assessment was framed by the ITO, Ward -15(1)(1), Mumbai for the assessment year 2001-02 vide his order dated 12-03-2013 under section 143(3) read with section 254 of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The first issue in this appeal of the assessee is against the order of the CIT (A) in upholding the addition of Rs.25 lacs being gift received by the assessee as not bona fide transaction, added u/s 68 of the Act.

3. We have heard the rival contentions and gone through the facts and circumstances of the case. Brief facts are that the assessee received a gift of Rs.25 lacs from one non-resident Shri Chhanulal Jhunjhunwala, an NRI from the NRI bank account at Mumbai. The AO made the addition of this gift as unexplained cash credit u/s 68 of the Act for the reason that the assessee failed to discharge the onus cast upon her to prove the genuineness of the gift. The AO has not doubted the creditworthiness and identity of the donor. The AO only noted that there is no relationship and no occasion for such gift. Accordingly, he

made the addition. The CIT (A) also confirmed the action of the AO by observing in Para 3.2.15 and 3.2.16 of his order as under:-

“3.2.15 Adverting to the fact in the instant case, it is evident that the explanation offered by appellant is not satisfactory. The appellant has not produced any substantiating documents / evidence to verify the genuineness of the transaction and therefore, it has been rightly held by the Assessing Officer that the loan is not bonafide transactions. Therefore, the genuineness of the gift has not been established. Hence evidence produced in support of the creditworthiness is not necessary to examine at this stage.

3.23.16 In view of the facts of the case and relevant judicial pronouncement, I hold that the Assessing Officer was right in rejecting the claim of appellant of unsecured loan of Rs.25,00,000/- as the bonafide of the same was not established. Ground 2 to 7 is dismissed.”

Aggrieved, the assessee is in second appeal before the Tribunal.

4. We have heard rival contentions and gone through facts and circumstances of the case. We find from the case records that the assessee during the course of assessment proceedings filed following documents to prove the identity, source and genuineness of transaction:-

- a) Replies from IRA, Singapore in response to inquiries by CBDT confirmed the identity and donor paying tax in that country.
- b) The assessee has produced the zerox copy of passport, to prove the identity of Mr. CL Jhunjhunwala the donor.
- c) Copy of bank account of Shri Channulal Jhunjhunwala bearing account No.50154 at Indian Overseas Bnk to which a credit of Rs.82,82,301 has been made by clearing in July, 2000 and out of the said deposit a payment of Rs.25 Iakhs has been made to the assessee vide cheque No.98464.
- d) The assessee has filed annual report of the year 1998 of *Hind Hotels Ltd the worth of which is USD 5,87,000* and Shri Channulal Jhunjhunwala is said to have been holding 7,50,000 equity shares of the company of face value of Singapro \$ 1 each.
- e) A copy of e-mail dated April, 6, 2005 from Channulat Jhunjhunwala to one *Mr. Ravi stating that the source of funds for the FD are from Hongkong.*

- f) Also a letter is filed dated 08.01.2005 enclosing the certificates from Bankers.

Copy of certificate from Indian Bank, Singapore Branch is filed that states as under:-

"This is to Certify that Mr. C. L. Jhunjunwala of 55, Gaden Road, Apartment GD, Estonil Court, Hong Kong is a constituent of our Bank for over a decade. He is a seasoned businessman with varied business interests and investments in Singapore, Thailand, Hong' Kong etc.

As per Market reports, he and his family members are reportedly worth around USD 100 million. To the best of our knowledge, he does not undertake or commit himself for any financial transaction, he cannot honour.

This information is given to you in strict confidence, without any responsibility on the part of the Bank or the signatory, whatsoever."

- g) Another certificate from Citigroup has been filed that states as under:-

"Mr. Chhanulal Jhunjunwala, the holder of Indian passport Z-1508017, has established a trust of which Cititrust (Bahamas) Limited is the Trustee. The trust is revocable by Mr. C. L. Jhunjunwala. As at 19-01-2004, the revocable trust has net assets of US\$ 15,714,527.68.

In providing this information, Cititrust (Bahamas) Limited accepts no liability for any consequences howsoever or whatsoever arising from its use."

- h) *The assessee has also filed a copy of FDR made in Centurion Bank Ltd. on 10.07.1997 for 3 years and maturing on 10.07.2000 and maturity amount is Rs.82,82,301.97.*

5. On the basis of these documents, the assessee argued that genuineness of the transactions and creditworthiness of the donor or his capacity to donate cannot be doubted. It is claimed by the assessee that it is not necessary for the donor to disclose the FDR maintained in India to Singapore authorities. The FDR is a document of Centurion bank showing FDR No.0002003749-001 made on 10.7.1997 and maturity date being 10.7.2000 for Rs.80,00,000/- in the joint name of Shri V.I.Jhunjunwala and Shri Ramesh Jhunjunwala (FOS). The FDR is

from NRE account for a period of 3 years and the interest rate is 14% p.a. The maturity value of the FDR is not specified in print but subsequently it is written by someone in hand to be Rs.82,82,301.37. We find that the AO and his predecessor in original assessment proceedings verified the identity of Mr. CL Jhunjhunwala through CBDT and IRS authorities, Singapore and also during reassessment proceedings of Deepa Shorewala and there was no question on his identity. The reference right or wrong to IRS Singapore and reply proves the identity of the donor his status, capacity etc. but only observation was that the NRE account in Indian Overseas Bank was not disclosed in his Tax Returns in Singapore. The disclosure of foreign assets may or may not be required in Singapore and Hongkong as per local laws, hence, it is not relevant here to disclose Bank account at Singapore. We find that the assessee is able to prove the identity of the donor before the assessing authority in India. The assessee is able to explain the source of funds and to support this he filed copy of bank statement of NRE account with Bank from which gift was given. We also find that the above said gift was received from NRE account No.025 maintained with Indian Overseas Bank, Nariman Point, Mumbai which is mentioned in the covering letter of the confirmation of gift on oath. We also observed from the records that the AO has reopened assessee's case solely on the basis of gifts entries in this bank account obtained in the case of Mrs Deepa Shorewala. The AO has no question on the source of the gift except that the said bank account is not disclosed in the Income Tax Returns filed in Singapur by the donor.

6. From the records we observed that the queries of CBDT to confirm the donor & gift were specific with reference to the gift of Rs. 27 lacs received by Deepa Shorewala from Mr. Channulal Jhunjhunwala and reply of IRA Singapore is with reference to the queries relating to Deepa Shorewala. But, there was no query or mention about the gift received by the assessee. However, there is nothing in the reply of IRA Singapore which invalidates the gift or prove the gift in-genuine on account of identity, source, capacity of the donor. It is on the contrary, positive reply on all queries of Mrs. Vani is his wife and Ramesh is

his son and director of Hind Hotels Ltd, whose FDRs in Joint names are credited in the Bank account from where the gift is given. No money is remitted from Bank to Singapore and there is no requirement of disclosing gift given etc. as per Singapore law or he may not be resident of Singapore hence worldwide income is not taxable in that country, the income of that country is only taxed.

7. We find from above facts that when the Bank account, covering letter of the gift, statement on oath and Bank's letters on solvency and worth, all contains the address of Hong Kong given above, he may be assessed there and if requirement of law, the Indian Overseas Bank account or gifts might have been disclosed. In view of the above, we can presume that the assessee has proved the identity of the donor, source of fund, capacity of the donor, genuineness etc. with evidences and hence, we delete the addition of unexplained cash credit made by AO and confirmed by CIT (A) u/s.68 of the Act and allow the appeal of the assessee.

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

Order pronounced in the open court on 18-10-2016.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 18-10-2016
Lakshmikanta Deka/Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI

Sr. No.	Particulars	Date	Initials	Member Concerned
1	Dictation given on	18/10/16	LK Deka	JM
2	Draft placed before author	19/10/16/ 26/10/16		
3	Draft proposed/placed before The second Member			
4	Draft discussed/approved by Second member			
5	Approved Draft comes to the Sr.PS			
6	Kept for pronouncement on			
7	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			