

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1050/KOL/ 2015
Assessment Year: 2008-2009**

Shri Banwarilall Shah,.....Appellant
Bulbulchatti,
P.O. Kharagpur,
Dist. Paschim Medinipur-721 301
[PAN : AMBPS 8280 K]

-Vs.-

Income Tax Officer,.....Respondent
Ward-39(4), Midnapore,
Sahoo Bhawan, Opposite to Zilla Parishad,
Paschim Medinipur-721 101

Appearances by:

Shri Gautam Ghosh, Advocate, for the assessee
Shri Prabal Choudhury, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : January 07, 2016

Date of pronouncing the order : January 13, 2016

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XXXVI, Kolkata dated 30.06.2014 for the assessment year 2008-09.

2. As noted, at the outset, there is a delay of 311 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the said delay on the following grounds:-

(1) That your petitioner received the appeal order dated 30.06.2014. On 22.07.2014 there being some mistakes apparent on record your appellant filed a petition for rectification u/s 154 of Income Tax Act, 1961 on 31.07.2014.

(2) That the petition was heard on 12.11.2014 and your appellant filed all the documents in support of the claim but till date no order has been passed.

(3) That your appellant being dissatisfied with the no action of the ld. CIT(Appeals). Your appellant filed this instant appeal u/s 253 of Income Tax Act, 1961.

(4) That the delay in filing the appeal was due to the fact that you're appellant filed a rectification application u/s 154 of the Income Tax Act, 1961 against the appeal order before the ld. CIT(A)-XXXVI on 31.07.2014 and the same is pending.

Keeping in view the reasons given by the assessee in his application, I am satisfied that there was a sufficient cause for the delay on the part of the assessee in filing his appeal before the Tribunal. Ld. D.R. has also not raised any contention to dispute this position. I, therefore, condone the said delay and proceed to dispose of the appeal of the assessee on merit.

3. In Ground No. 1, the assessee has disputed the disallowance of Rs.57,100/- made by the Assessing Officer and confirmed by the ld. CIT(Appeals) on account of interest.

4. The assessee in the present case is an individual, who filed his return of income for the year under consideration on 09.03.2009 declaring total income of Rs.1,99,460/- including agricultural income of Rs.25,000/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has utilized the interest bearing borrowed funds for giving personal loans to his two sons Mr. Manoj Shah and Mr. Rajesh Shah amounting to Rs.9,60,000/- and Rs.4,83,000/- respectively. He, therefore, worked out the interest attributable to the said loans on proportionate basis at Rs.57,100/- and made a disallowance to that extent. On appeal, the ld. CIT(Appeals) confirmed the said disallowance.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. The limited contention raised by the ld. Counsel for the assessee before me is that a loan of Rs.9,60,000/- only was given by the assessee to his son Mr. Manoj Shah out of interest

bearing borrowed funds, but there was no such loan of Rs.4,83,000/- given by the assessee to his son Mr. Rajesh Shah in the year under consideration as alleged by the Assessing Officer. The Id. D.R. has contended that this plea raised by the assessee for the first time before the Tribunal requires verification by the Assessing Officer. I find merit in this contention of the Id. D.R. and since the Id. Counsel for the assessee has also not raised any objection in this regard, I restore this issue to the file of the Assessing Officer for the limited purpose of verifying the claim of the assessee that there was no loan of Rs.4,83,000/- given by the assessee at all to his son Mr. Rajesh Shah during the year under consideration warranting any disallowance on account of interest attributable to such loan. Ground No. 1 is accordingly treated as partly allowed for statistical purposes.

6. The issue raised by the assessee in Ground No. 2 relates to the addition of Rs.5,55,662/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of gift given by the assessee to his son treating the same as income of the assessee from undisclosed sources.

7. During the year under consideration, the assessee had given gift of Rs.5,55,662/- in cash to his son Mr. Manoj Shah on 23.07.2007. During the course of assessment proceedings, the assessee was called upon by the Assessing Officer to explain the source of funds utilized for giving the same gift. The explanation offered by the assessee in this regard was not found acceptable by the Assessing Officer and he added the amount of gift of Rs.5,55,662/- to the total income of the assessee treating the same as his undisclosed income for the following reasons given in paragraphs no. 7 of his order:-

"7. In reply to the show cause letter, the assessee has stated that the gift of Rs.5,55,662/- towards Mr. Manoj Shah, for the purpose of land purchase, was made out of business and in his letter dated 25/05/2010, the assessee has stated that capital has actually been withdrawn from M/S Suraj Service Station for the purpose of the said gift. The reply and the explanation is not accepted as the total withdrawal from M/S Suraj Service

station is Rs.13,48,386/- (Rs.7,26,172/- is gift made towards Manoj Shah for the business purpose +Rs.4,17,714/- is loan made to Manoj Shah + Rs.2,00,000/- loan to Rajesh Shah +Rs.4,500/-) only and it has also been established from the Audited capital and balance sheet of the firm and the ledger account of Mr. Banwarilal Shah. So it has been established that the amount of Rs.5,55,662/- given to his son Mr. Manoj Shah is from his undisclosed income and that income is added to his total income as income from undisclosed sources”.

8. During the course of appellate proceedings, the assessee filed a detailed submission along with cash flow statement to explain the source of fund utilized for giving gift in question. The Id. CIT(Appeals), however, did not find the same to be acceptable and confirmed the addition made by the Assessing Officer on this issue for the following reasons given in paragraph no. 4.3 of his impugned order:-

“4.3 Appellant's submission and facts available on record is carefully considered. The assessment record was also called for and verified. On perusal of the record, and as highlighted by AO in the order, it is evident that total withdrawal by assessee from Suraj Service Station during the year was Rs.13,48,386/- only. Out of this withdrawal Rs.11,43,886/- was given by cheques in January,2008 to his son Manoj Saha. The balance sum out of the withdrawal of Rs.2,00,000/- was given to other son Rajesh Saha. So there was no source to explain cash gift of Rs.5,55,662/- made in the month of July'07 by the assessee. Assessee's claim that the source was out of withdrawal from the firm M/s. Suraj Service Station is non-existent as explained above and as is borne by record of drawings from the firm as available in assessment record. Therefore, the AO was correct in adding the gift having been made from undisclosed sources. The addition made in this regard is sustained”.

9. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, the relevant figures taken by the Id. CIT(Appeals) while rejecting the explanation of the assessee as regards the source of funds utilized for giving the gift in question in his impugned order, are not tallying with the figures appearing in the cash flow statement prepared and furnished by the assessee before the Id. CIT(Appeals) (copy of which at page 22 of his paper book). He has also submitted that the assessee has already moved an application under

section 154 seeking rectification of the impugned order of the Id. CIT(Appeals), but the same has not been disposed of by the Id. CIT(Appeals) so far. He has also pointed out that some of the sources of funds given by the assessee in cash flow statement have not been taken into consideration by the Id. CIT(Appeals) while deciding the issue against the assessee. Keeping in view all these submissions made by the Id. Counsel for the assessee, I consider it fair and proper and in the interest of justice to remit this matter back to the Id. CIT(Appeals) for deciding this issue afresh after taking into consideration the cash flow statement furnished by the assessee and after giving the assessee proper and sufficient opportunity of being heard. Ground No. 2 is accordingly treated as allowed for statistical purposes.

10. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open Court on January 13, 2016.

Sd/-

**(P.M. Jagtap)
Accountant Member**

Kolkata, the 13th day of January, 2016

- Copies to :
- (1) **Shri Banwarilall Shah,
Bulbulchatti,
P.O. Kharagpur,
Dist. Paschim Medinipur-721 301**
 - (2) **Income Tax Officer,
Ward-39(4), Midnapore,
Sahoo Bhawan, Opposite to Zilla Parishad,
Paschim Medinipur-721 101**
 - (3) *Commissioner of Income-tax (Appeals)-XXXVI, Kolkata,*
 - (4) *Commissioner of Income Tax, Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*