

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “B”, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.3553/Mum/2013 (Assessment Year- 2005-06)**

Mr. Mehul Chandrakant Patel 32, Garden View, 45 August Kranti Marg, Gowalia Tank, Mumbai-400036. PAN: AABPP5157C	Vs.	Income Tax Officer, Ward 16(1(1), 2 nd Floor, Aayakar Bhavan, Matru Mandir, Tardeo, Mumbai-400007.
(Appellant)		(Respondent)

Assessee by : Shri K.P. Kapadia (AR)
Revenue by : Shri Suman Kumar (DR)
Date of hearing : 11.04.2017
Date of Pronouncement : 26.05.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee u/s 253 of the Income-tax Act ('the Act') is directed against the order of Id. CIT(A)-5, Mumbai dated 23.01.2013 for AY-2005-06. The solitary ground of appeal raised by assessee raised is "that Id. CIT(A) erred in confirming the addition of Rs. 14,41,368/- u/s 68 of the Act by disallowing gift received from relative.
2. Brief facts of the case are that the assessee filed return of income for relevant AY on 29.08.2005 declaring total income of Rs. 4,14,650/-. The assessment was completed u/s 143(3) of the Act on 20.12.2007. The Assessing Officer (AO) while passing the assessment order made the addition of Rs. 14,41,368/- on account of non-genuineness of gift received from relative and treated the same as unapproved cash credit u/s 68 of the Act. On appeal before the Id. CIT(A), the addition was upheld. Hence, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

3. We have heard the Id. Authorized Representative (AR) of assessee and Id. Departmental Representative (DR) for Revenue and perused the material available on record. The Id. AR of the assessee argued that assessee received gift from his relative. The donor of the gift Mrs. Kalpana Patel is real sister of father of assessee. During the assessment, the assessee was asked to file the details of gift received, creditworthiness of the donor and genuineness of the gift. The assessee filed the required details. However, the assessee could not file Foreign Remittance Certificate. During the first appellate proceeding, the assessee filed the additional document. On furnishing the additional evidence, the Id. CIT(A) referred the document to the AO for his remand report. In the remand report, the AO contended that assessee could not prove the creditworthiness of the donor. The Ld. AR of the assessee further submitted that the assessee has now before the Tribunal, have filed all details of donor including the confirmation of the donor, the Foreign Remittance Certificate. It was further argued that the Foreign Remittance Certificate was filed before Id. CIT(A) in the appeal filed by assessee against the levy of penalty. The Id. CIT(A) in Appeal No. IT-93/2012-13/63/2013-14 vide order dated 29.11.2013 accepted the said document. The Id. CIT(A) after considering the contention of assessee concluded that the assessee has discharged her onus of fulfilling the three condition to prove the gift viz. identity or creditworthiness of the donor and genuineness of the claim. The Id. CIT(A) deleted the penalty levied by AO on disallowance of the gift, which is the subject matter of the present appeal. It was further argued that the Revenue has not filed any appeal against the order of Id. CIT(A) dated 29.11.2013. On the other hand, Id. DR for the Revenue supported the order of authorities below. The Id. DR for the Revenue further submitted that the assessee has filed the additional evidence which required verification by AO or by Id. CIT(A) and without giving opportunity to the AO, the additional document filed by assessee may not be considered at this stage.
4. We have considered the rival contention of the parties and gone through the order of authorities below. We have also gone through the order of Id. CIT(A) dated

29.11.2013 wherein the penalty levied by AO was deleted. The Id. CIT(A) concluded that assessee has filed copy of credit advice for inward remittance of HDFC Bank, which clearly mentioned that the purpose of remittance, “gift from family members”. Remitters name is also mentioned as Kalpana M. Patel. The beneficiary name is of assessee. The Id. CIT(A) further concluded that assessee has discharged his onus of fulfilling all three conditions to prove the gift viz. identity and creditworthiness of the donor and genuineness of the gift. The Revenue has not filed any appeal against the said order. The order attains finality. Considering the order of Id. CIT(A) in penalty proceeding, we do not find any merit in the submission of Id. DR for the Revenue for further verification of the said document by AO, which has already been accepted by Id. CITA). Hence, the ground of appeal raised by assessee in the present appeal is allowed.

5. With these observations, the appeal of the assessee is allowed.

Order pronounced in the open court on 26th day of May 2017.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

Mumbai; Dated 26/05/2017

S.K.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.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai