

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3370/Mds/2016
निर्धारण वर्ष /Assessment Year: 2002-03

Late Shri Je. Jenardhanan, Rep. by
Wife & (L/R) Smt. P.J.Sujatha,
No.61, Usman Road, T.Nagar,
Chennai-600 017.

Vs. The Asst. Commissioner of
Income Tax, Non-Corporate
Circle-1, 121, Mahatma
Gandhi Road,
Chennai-600 034.

[PAN: AADPJ 4514 H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.G.Baskar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.A.V.Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing

: 06.03.2017

घोषणा की तारीख /Date of Pronouncement

: 03.05.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 28.10.2016 of Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.13/CIT(A)-2/2013-14 for the AY 2002-03.

2.0 The assessee filed return of income declaring total income of Rs.71,01,710/- and the assessment was completed u/s.143(3) on total

income of Rs.83,81,890/- and the AO has made the addition of Rs.7,90,000/-u/s.68 in respect of gift received by the assessee and initiated penalty u/s.271(1)(c). The assessee went on appeal before the Ld.CIT(A) on the quantum addition and filed confirmation letter from the Donor which was forwarded to the AO calling for Remand Report. Since, the AO did not submit the Remand Report, the Ld.CIT(A) deleted the addition.

3.0 Aggrieved by the order of the Ld.CIT(A) on quantum addition, the Department filed appeal before the ITAT and the ITAT in its order Nos.2202 to 2205 in Para No.7.5 set-aside the order of the Ld.CIT(A) and confirmed the addition made by the AO. For the sake of convenience and clarity, the same is extracted from the ITAT's order as under:

7.5 We have heard the learned Departmental Representative and perused the relevant records. We find that there was no confirmation of the gift received produced before the Assessing Officer. However, the same has been submitted before the learned Commissioner of Income Tax (Appeals) who also did not make any verification to ascertain the veracity of averment in the said confirmation. Under the circumstances, the unverified confirmation cannot be a basis of deletion of addition.

Against the addition of Rs.7,90,000/-, the AO imposed the penalty u/s.271(1)(c) amounting to Rs.3,40,889/-. Aggrieved by the order of the AO for imposing penalty the assessee filed appeal before the Ld.CIT(A) and the Ld.CIT(A) confirmed the order of the AO which is a subject matter of this appeal.

4.0 All the grounds of the appeal are related to the levy of penalty u/s.271(1)(c) of IT Act.

Appearing for the assessee, the Ld.AR argued that the assessee has received a gift from Shri Dasaradhan Madhavan a sum of Rs.30,000/- Singapore dollars on 09.02.2008. At the time of assessment, the assessee could not place the confirmation letter before the AO due to non-availability of the Donor being NRI. The amount was transferred by telegraphic transfer from NRI account at Chennai. However, at the time of appeal, the assessee could able to obtain the confirmation from the Donor which was submitted by the Ld.CIT(A) as an additional evidence. The Ld.CIT(A) accepted the additional evidence and forwarded the same to the AO before passing the Penalty Order. The confirmation given by the Donor was very much available to the AO as well as the Ld.CIT(A) before passing the penalty order. Without cross verifying the information available with the AO, the AO cannot conclude the gift as bogus and impose penalty u/s 271(1)(c). The assessee also argued that the time limit for imposing penalty is barred by limitation and according to the assessee his case is covered by Sec.275(a) of Income Tax Act. Further, the Ld.AR argued that notice issued u/s.271(1)(c) is bad in law since the irrelevant columns of printed notice were not struck off. The Ld.AR argued that the penalty is not sustainable on deemed addition u/s.68 and relied on 327 ITR 447. On the other hand, the Ld.DR relied on the orders of lower authorities.

5.0 We heard the rival submissions and perused the material placed on record.

The AO has made the addition of Rs.7,90,000/- relating to the gift received from Shri Dasaradhan Madhavan who happens to be brother-in-law of the assessee. At the time of assessment, the assessee could not furnish the confirmation letters, hence, the AO has rightly made the addition. At the time of the penalty proceedings confirmation, letter was made available to the assessee which was forwarded by the Ld.CIT(A) by calling for the Remand Report. The details furnished in the confirmation letter shows that the Donor was an NRI and the amount was transferred by telegraphic transfer and made from NRI account. The Donor also stated in the letter that the Donor's turnover was around Rs.2.00 Cr. and gift was solely motivated by pure love and affection. In the instant case, the donor is a brother-in-law of the assessee and the gift amount was transferred from NRI a/c and the entire information was available before the AO as well as the Ld.CIT(A). Both the Ld.CIT(A) and the AO have not made any verifications regarding the genuineness and correctness of the gift received by the assessee even though the information is available to the AO. The decision of the Tribunal in (2010) 127 ITD 0361 (Chennai) and ITA No.3095/Ahd/2009) relied upon by the assessee also supports that mere making addition u/s.68 does not lead to concealment of income u/s.271(1)(c) automatically. Hon'ble ITAT confirmed the order of the AO on quantum addition since the Ld.CIT(A) has deleted the addition without verifying the credentials of confirmation. The assessee has placed confirmation letter before the Ld.CIT(A) on 09/02/2008 which was forwarded to the AO. The AO has passed the penalty order on 29th June

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2011 without making any verification of the contents of the confirmations either with the Bank or with the donor. Once the confirmation letter is furnished with all the particulars onus shifts on the department to disprove the contents and the revenue failed discharge it's onus. Therefore, we are of the considered opinion that Revenue has not made out a case for furnishing of inaccurate particulars or concealment of income to impose the penalty u/s 271(1)(c) of I.T act. Therefore we set-aside the orders of the lower authorities and cancel the penalty imposed by the AO. Since, we have decided the appeal on merits and the penalty is cancelled by us we are of the view that the alternate grounds regarding the limitation and technical issue relating defects in the notice need not be adjudicate upon. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 3rd May, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 3rd May, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF