

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 3744/Del/2011
A.Y. 2003-04**

Sh. Manohar Lal Thakral
No. 126 R, Model Town
Panipat

vs. ITO, Ward 4
Panipat

PAN: ABBPT 9422 D

(Appellant)

(Respondent)

Appellant by : Sh. KC Aneja, Adv.

Respondent by : Sh. Rajesh Kumar, Sr. D.R.

ORDER

PER J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of Ld.CIT(A), Karnal dated 16.3.2011 pertaining to the Assessment Year (A.Y.) 2003-04. This is the second round of proceedings. Earlier when the matter travelled to the ITAT, this Bench of the Tribunal in ITA No.1795/Del/2006 for A.Y. 2003-04 order dated 24.10.2008 remanded the matter to the file of the Assessing Officer (A.O.) with the following observations.

“However, in respect of gift from Shri Lekh Raj, CIT(A) found that on inquiry of the address of Shri Lekh Raj, the same was found to be not correct. However, the fact remains that the same was not confronted with the assessee. In the interest of justice and fair play we restore the ground taken with respect to Shri Lekh Raj, to the file of the AO for deciding afresh after giving due opportunity to the assessee.”

2. Subsequently the A.O. passed an order u/s 143(3) of the Income Tax Act, 1961 (the Act) on 30.11.2009 making an addition of Rs.10 lakhs. On appeal the First Appellate Authority confirmed the same.

3. Aggrieved the assessee is before us on the following grounds.

“ 1. That on the facts and in the circumstances of the case addition of Rs.10 lakhs alleged unexplained gift of Shri Lekh Raj has wrongly and arbitrarily been made and the Ld.CIT(A) erred in confirming the same.

2. That the AO without caring to the directions of the Hon’ble ITAT added to income Rs.10 lakhs, which is not justified.

3. That the AO without following procedure u/s 131 of the Act and even without confronting bank account of Shri Lekh Raj obtained from the bank, made additions of Rs.10 lakhs which is illegal.

4. That identity, credit worthiness and genuineness of the transactions of the gift of Shri Lekh Raj are proved on record. The AO on mere surmises made addition, which is not warranted.”

4. The Ld.Counsel for the assessee submitted that :

- (a) The A.O. did not comply with the directions given by the Tribunal,
- (b) Proceedings u/s 131 of the Act are required to be conducted by virtue of powers vested under the Code of Civil Procedure 1908 (5/1908) when trying a suit and as the A.O. neither intimated the assessee before issuing of summons u/s 131 of the Act to Sri Lekh Raj or provided any information on the enquiries made on the whereabouts of the donor, the assessment is bad in law.
- (c) He listed out evidences filed in support of the gift which are as follows.

1. Affidavit of Sh. Lekh Raj giving address H.No. B-10/7098 Vasant Kunj Delhi. Holding PAN ADNPR8361B in the jurisdiction of ITO Ward 24(4) Delhi.

2. Gift deed giving above stated address confirming the gift.

3. Copy of filing Income Tax return for 2002-03 Asstt. showing address H.No.B-10/7098 Vasant Kunj New Delhi.

4. Copy of Balance Sheet Dt. 31.03.2002.
5. Copy of intimation given by Income Tax Department allotting PAN on address H.No.B-10 /7098 Vasant Kunj New Delhi.
6. Copy of SF A/c No. 109347 with PNB Karol Bagh New Delhi showing gift amount transferred and showing address H.No.B-10/7098 Vasant Kunj New Delhi.
7. Copy of Ration Card showing address H.No.B-10/7098 Vasant Kunj New Delhi.

He argued that the assessee had discharged the burden of proof that lay on him.

(d) The A.O. did not confront the assessee with the bank account details of the donor which were verified by him.

(e) In terms of S.122 and S.173 of the Transfer of Property Act the appeal of the assessee should have been allowed.

4.1. He relied on the following case laws.

- (i) Murlidhar Lahori Mal vs. CIT (2006) 280 ITR 512 (Guj.)
- (ii) Nek Kumar vs. ACIT (2004) 191 CTR (Raj.)

5. The Ld.Sr.D.R. on the other hand opposed the contentions by submitting that:

- (a) Notice u/s 131 of the Act given to the so called donor Shri Lekhraj was returned by postal authorities with the remark ' flat is vacant, returned' .
- (b) The assessee was confronted with the same but he did not give the correct address of the donor, nor did he produce the donor.
- (c) The statement recorded from the assessee proves that the claim that he received gift from Shri Lekhraj is false.
- (d) The assessee need not be intimated, when summons u/s 131 of the Act is being issued for investigation.
- (e) He relied on the order of the AO as well as of the Ld.CIT(A).

6. After hearing rival submissions and perusing the papers on record we hold as follows.

(i) There is no requirement under the Act to intimate the assessee before issue of summons u/s 131 of the Act to the donor Shri Lekshraj. Such requirement cannot be read into the Act. The assessee had been intimated about the return of the summons and was asked to produce the donor. This was not done. Correct address was also not given.

(ii) Provisions of the Transfer of Property Act do not apply to this case as this is a gift of cash.

(iii) The assessee could not furnish any details of Shri Lekraj, which could have enabled the A.O. to conduct verifications, consequent to return of the summons issued by the AO u/s 131 of the Act issued to the alleged donor Shri Lekshraj.

6.1. From the statement recorded from the assessee by the AO it is clear that the alleged gift is not genuine. The Ld.CIT(A) at para 1.10 held as follows.

“As discussed above, the AO recorded the statement of the appellant. Though the appellant claimed to have received gift of 10 lakh, yet he was even not aware of the age of the donor, his occupation and basic details of his family such as about his family members and their age. The appellant stated that he did not visit to the house of the donor. In view of these facts, the claim of the appellant that the donor was his family friend itself cannot be said to be proved. It is strange that the assessee claimed to have received gift of 10 lakh but did not know any details of the donor. Even he is not aware of about the where about of the donor. The AO deputed the Inspector to visit to the donor at the address provided by the appellant. The inspector visited twice and the claim of the appellant was not found verifiable in as far as that nobody in the neighbors/surroundings was aware of the donor. The facts were confronted to the appellant. But nothing further could be brought on record to establish the genuineness of the gift. The appellant claimed that summons u/ s 131 of the Act were issued to the donor without prior intimation to him. In this regard, it is noted that the summons were issued by the AO, only when the appellant failed to produce the donor in spite of various requests. The same was, however, returned by the postal authorities with the remarks 'flat is

vacant'. These facts were confronted to the appellant and hence the plea of the appellant is not tenable”.

We find no infirmity in these factual finding of the Ld.CIT(A).

6.2. The case laws relied upon by the assessee are not applicable to the facts of this case. On the other hand the Ld.CIT(A) has rightly relied on the order of P&H High Court in CIT, Faridabad vs. Kamal Gupta in ITA 392/2005 order dt. 20.1.2011.

6.3. In view of the above discussion we dismiss this case as devoid of merit.

7. In the result the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 17th March, 2017.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 17th March, 2017 .

- *Manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR