

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri Mahavir Singh, JM & Shri Waseem Ahmed, AM]

**I.T.A No.1131/Kol/2012**  
**Assessment Year: 2002-03**

Anil Kumar S. Gathani & Ors. (HUF)  
(PAN: AABHG5869D)  
(Appellant)

Vs. Income-tax Officer, Wd-37(3), Kolkata  
(Respondent)

Date of hearing: 11.03.2016  
Date of pronouncement: 16.03.2016

For the Appellant: Shri Manish Tiwari, AR  
For the Respondent: Shri Sallong Yaden, JCIT, Sr. DR

**ORDER**

**Per Shri Mahavir Singh, JM:**

This appeal by assessee is arising out of order of CIT(A)-XXIV, Kolkata vide Appeal No. 674/CIT(A)-XXIV/37(3)/09-10 dated 30.04.2012. Assessment was framed by ITO, Wd-37(3), Kolkata u/s. 143(3)(ii)/254 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2002-03 vide his order dated 29.12.2009.

2. At the outset, Ld. Counsel for the assessee stated that the only issue in this appeal of assessee is against the order of CIT(A) confirming the addition of unexplained gift amounting to Rs. 9 lacs received from nine donors i.e. Rs. 1 lac each added by AO u/s. 68 of the Act. Ld. Counsel for the assessee stated that the addition was made and confirmed by CIT(A) only on the premise that the assessee failed to produce original gift deeds and original papers relating to gifts i.e. names, address and any other information. According to Ld. Counsel, now he has every document with him to prove the identity of the donor, capacity to make the gift and relationship. We find from the assessment order and the order of CIT(A) that in the absence of these documents, the addition was made and confirmed by first appellate authority. The relevant finding of CIT(A) in para 2.3.3 reads as under:

*“2.3.3. The same principle is also applicable in this case. The surrounding circumstances and the human probabilities do not support the case of the appellant. In the circumstances of the case, the gifts are quite unusual and unnatural. Considering the fact of the case, I am of the opinion that the appellant has failed to prove the identity of the donors, the financial capacity to make the gift, human probabilities, the relationship between the donor and the donee, the occasion for making gift and the existence of reciprocity. In view of the above discussion, the addition of Rs.9,00,000/- made by the AO is confirmed. These grounds of appeal are dismissed.”*

On this, Ld. Counsel for the assessee stated that in case the issue is remitted back to the file of the AO it could explain the gifts. On query from the Bench, the Ld. Sr. DR has not objected to the proposal of remitting the issue back to the file of the AO for de novo deciding the issue of gift. In view of the above facts and circumstances and as agreed by both the sides, we set aside the orders of the authorities below and remit the issue back to the file of AO to decide after taking information from the assessee in respect to identity of these parties and capacity of making gift and genuineness of transaction. In term of the above, we remit this issue to the file of the AO and appeal of assessee is allowed for statistical purposes.

3. In the result, appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.03.2016.

Sd/-  
(Waseem Ahmed)  
Accountant Member

Sd/-  
(Mahavir Singh)  
Judicial Member

Dated : 16th March, 2016

Jd. Sr. P.S

Copy of the order forwarded to:

1. Appellant – Anil Kumar S. Gathani & Ors. (HUF), 22, Rabindra Sarani, Kolkata-700 013.
2. Respondent – ITO, Wd-37(3), Kolkata.
3. CIT(A) , Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.