

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai**

**Before Shri D. Manmohan, Vice President
and Shri Rajendra Singh, Accountant Member**

ITA No. 2728/Mum/2011
(Assessment Year: 2005-06)

Shri Pradeep Kumr O Bhala
B-86, Shridhar Smruit No. 2
Devidas Extension Road
Borivali (W), Mumbai 400103
PAN - ABJPB 2081 L

Income Tax Officer (3) 2
Vs. Thane

Appellant

Respondent

Appellant by: None
Respondent by: Shri P.K.B. Menon

Date of Hearing: 01.02.2012
Date of Pronouncement: 01.01.2012

ORDER

Per D. Manmohan, V.P.

This appeal by the assessee is against the order of the CIT(A)-I, Thane dated 31.12.2010 for A.Y. 2005-06.

2. The following grounds were raised by the assessee: -

- “1) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in sustaining the addition to total income of Rs.5,00,000/- received as gift on 23rd August, 2004 which was not includible in computing the total income as the same was not an income and being a capital receipt not includible in computing total income.
- 2) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in sustaining the addition Rs.5,00,000/- to total income by disbelieving the gift and by alleging that this gift is nothing but accommodation entry and the same is lacking proof and in sustaining the addition though it was a capital receipt not includible in total income.
- 3) On the facts and in the circumstances of the case and in law the learned CIT(A) erred in sustaining the addition of ₹50,000/- included by the Assessing Officer in total income as undisclosed expenditure for arranging bogus gift.”

3. Though acknowledgement-cum-notice was served upon the assessee, fixing the case on 01.02.2012, none appeared on behalf of the assessee on the said date. Therefore, we assume that the assessee is not interested in prosecuting the appeal. In the light of the decisions of the Hon'ble Bombay High Court in the case of M/s. Chemipol vs. Union of India in Central Excise Appeal No. 62 of 2009 the appeal deserves to be dismissed in limine.

4. Even otherwise no material, whatsoever, was furnished in the form of paper book to support the grounds raised before us. The facts in short are that the A.O. made an addition of ₹5,00,000/- referable to the alleged gift received by the assessee. Though a declaration was furnished in support of the claim of gift received from Mr. Sitaram B. Agarwal the A.O. examined the issue in great detail to arrive at the conclusion that assessee was unable to prove the identity and creditworthiness of the donor and accordingly added the income under section 68 of the Act. The A.O. made further addition of ₹50,000/- referable to the unaccounted expenditure incurred in connection with arranging of the gift. Thus the assessment was completed at a total income of ₹15,50,700/- as against the returned income of ₹3,49,247/-.

5. The learned CIT(A) affirmed the above order by observing in para 4 and 4.4 as under: -

“4. The submission is considered and the decisions are perused. There is no denying fact that, the gift has come through banking channel, the donor has filed return showing taxable income, however, the fact that has not been denied by the appellant is that, he is not aware of anything about the donor. Neither the donor is available at the address given nor has he been produced for examination. The appellant is not even aware of the activities of the donor and his age. The donor is not related to the appellant. Owning of Pan and filing of return is not a conclusive proof that, the gift is genuine. Payment through banking channel cannot be a conclusive proof of the genuineness of the gift. In a word, where, people think twice before parting with one rupee for a beggar, it is unthinkable that an unknown person could gift Rs.5 Lacs to a person who has no knowledge about him or related.

*4.4 I, therefore, in the light of the above decision hold that, the alleged gift is nothing but accommodation entry and the same is lacking proof, I hold that, the action of the AO in taxing the gift as income is within the ambit of law, **accordingly, I dismiss the ground and confirm the addition.**”*

6. No material, whatsoever, was furnished to contradict the findings of the learned CIT(A). We, therefore, do not find any infirmity in the order of the learned CIT(A). As declared in the open court the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 1st February 2012.

Sd/-
(Rajendra Singh)
Accountant Member

Sd/-
(D. Manmohan)
Vice President

Mumbai, Dated: 1st February 2012

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – Thane I*
4. *The CIT– Thane II*
5. *The DR, “C“ Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.