

**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI JOGINDER SINGH, J.M. AND SHRI R.C.SHARMA, A.M.**

PAN NO. : AFRPR2233L

I.T.A.No. 566/Ind/2012.

A.Y. : 2004-05

Smt.Sangeeta Rathi,
Indore

vs

ITO
Ward 5(3),
Indore.

Appellant

Respondent

Appellant by : S/Shri Pankaj Shah & Manoj
Gupta, CAs

Respondent by : Shri R.R.Meena, Sr. DR

Date of Hearing : 07.05.2013

Date of pronouncement : 09.05.2013

ORDER

PER R. C. SHARMA, A.M.

This is an appeal filed by the assessee against the order passed by the CIT(A) dated 29.08.2012, for the assessment year 2004-05, in the matter of imposition of penalty u/s 271(1)(c) of the Income-tax Act, 1961.

-: 2: -

2. Rival contentions have been heard and records perused. Facts in brief are that the assessee was deriving income from stock trading and brokering. During the year under consideration, the assessee received gift of India resurgent bonds amounting to Rs. 6.50 lakhs from non-resident family friend. Before the lower authorities, following disclosures were made and evidences were filed :-

- a. Gift was received in form of India Resurgent Bonds amounting to USD 10,000 bearing certificate no.0066493 and registered folio no.of Trnasferor RIB 417865 issued by SBI.
- b. Copy of Letter from State Bank of India stating the mode of transfer of the bonds in the name of assessee was gift was submitted.
- c. Confirmation of gift from Donor was submitted.
- d. Capital Account of Appellant wherein credit entry was disclosed.

-: 3: -

- e. Gift was made by Mr. Vikram Singh a family friend of Appellant. His Details and address alongwith copy of his passport were also submitted.
 - f. Donor held the Bonds for 6 years which proves his creditworthiness and genuineness.
3. However, the Assessing Officer did not accept assessee's contention and added the amount of gift u/s 68. In the appeal filed before the CIT(A), addition was confirmed. Before the Tribunal, there was delay in filing appeal against the quantum addition, therefore, appeal of the assessee was dismissed on the ground of delay. The Assessing Officer has also levied penalty of Rs. 1,94,487/- on the said amount of gift u/s 271(1)(c) of the Act. By the impugned order, the ld. CIT(A) not only confirmed the action of the Assessing Officer but also enhanced the quantum of penalty. Against the order of CIT(A), the assessee is in further appeal before us.
4. At the out-set, the ld. Authorized Representative placed on record the order of Hon'ble Allahabad High Court in the case of Kanchan Singh vs. CIT reported in 174 Taxman

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383 and the decision of I.T.A.T. Indore Bench in the case of Phoolchand Agarwal in I.T.A.No. 372/Ind/2006, wherein on similar facts, the issue was decided in favour of the assessee. Ld. Authorized Representative further submitted that on identical issue of gift of India resurgent bonds from non-resident, following direct decisions were available, which were in favour of the assessee :-

- a. Kanchan Singh v. CIT
(174 Taxman 383 (All. High Court))
- b. Phoolchand Agrawal (I.T.A.No. 372/Ind/2006)
- c. Gopalbhai Parshotambhai Vs ITO (I.T.A.No. 2083/Ahd/2007) (A.Y.2004-05)
- d. ITO Vs. Nitin Agrawal
(I.T.A.No. 556/Ind/2006)
- e. ACIT Vs Shri Pranav Kumar Jhavar
(I.T.A.No. 521/Ind/2007)
- f. Mahendra P Mehta v. DIT (I.T.A.T. Mum)
(9 Taxmann. Com 34) (2011) (A.Y. 2004-05)
- g. ACIT v. Mukta Goenka
(129 ITD 201) (Jab. TM) 2011)

-: 5: -

5. He also invited our attention to following decisions, which were against the assessee on the same issue under similar facts :-

- a. ITO v. Mukesh Shah (29 SOT464)(Mum)
- b. ACIT v. Deepal H. Shroff
(9 Taxmann. Com 3) (2011)(Mum)
- c. Purshottamdas Rathi
(9 ITJ 99) (ITAT Indore)

6. In view of the above contrary decisions, it was submitted that the issue is highly contentious and debatable, wherein evidently different views have been taken, accordingly, no penalty can be levied where two views are involved and for this purpose, reliance was placed on the following decisions :-

- CIT Vs. Late G.D.Naidu and others (165 ITR 63) (Mad.)
CIT Vs. Calcutta Credit Corporation (166 ITR 29) (Cal.)
CIT Vs. Amarnath (143 CTR 148) (All.)
CIT Vs. Sivananda Steels (256 ITR 683) (Mad.)

7. As per Id. Authorized Representative, there was no conclusive evidence before the Assessing Officer to see that

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money was given by the assessee to the donor in return of gift or that no gift was given by the donor. For this purpose, he submitted that science of probabilities can be used to make the disallowances, however, for levy of penalty, preponderance of probabilities cannot be relied upon and there should be definite finding to indicate that there was concealment of income and there was no genuine gift.

8. On the other hand, the ld. Senior DR relied on the orders of the lower authorities and contended that theory of gift was having a fundamental flaw in so far as there was absolutely no explanation as to why the alleged donor has given gift to the assessee.

9. We have considered the rival submissions and have gone through the orders of the authorities below and found from record that gift was received by the assessee in the form of India resurgent bonds amounting to USD 10,000. Bonds were duly certified by Certificate No. 0066493 and Register Folio No. of transferor RIB-417865 issued by SBI. The donor has filed confirmation of gift. The assessee has also filed copy of letter from State Bank of India stating the mode of transfer

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of the bonds in the name of the assessee. Gift was made by Shri Vikram Singh, a family friend of assessee, whose details and address alongwith copy of his pass-port were also submitted before the lower authorities. Before giving the gift, the donor was holding the bonds for six years, which proves his creditworthiness and genuineness. Hon'ble Allahabad High Court in the case of Kanchan Singh vs. CIT, (supra), have held that where the assessee has established nature and source of money, no addition was justified in respect of gift of Resurgent India bonds. However, the facts in the instant case are more strong insofar as identity of the donor was not in doubt, whose copy of pass port was submitted to the Assessing Officer alongwith gift decalration. Genuineness of gift was also substantiated by the assessee by filing Bank certificate stating the mode of transfer of bond in the name of assessee. Creditworthiness of donor was established in view of his holdings of bond for six years prior to the date of gift. Under these circumstances, the question arises as to whether Assessing Officer was justified in imposing penalty u/s 271(1)(c) by disbelieving the factum of gift. The issue was

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examined by the I.T.A.T., Indore Bench in the case of Phoolchand Agarwal in I.T.A.No. 372/Ind/2006 order dated 26th March, 2012, and it was held that where nature and source of gift in the form of resurgent India bonds is established, no addition was warranted. Here, we are not dealing with the quantum appeal but the facts discussed above fully support our view that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act. Accordingly, we reverse the orders of both the lower authorities and direct the Assessing Officer to cancel the penalty imposed u/s 271(1)(c) of the Act.

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

This order has been pronounced in the open court on 9th May, 2013.

sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

sd/-
(R. C. SHARMA)
ACCOUNTANT MEMBER

Dated :9th May, 2013.

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