

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 181/VIZ/2019
(Asst. Year : 2013-14)**

Dr. Vempala Bala Manohar,
D.No. 18-1-27, Harita
Saptagiri Plaza, KGH Down
Road, Maharanipecta,
Visakhapatnam.

vs.

ITO, Ward-1(3),
Visakhapatnam.

PAN No. AAVPM 1093 N
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 01/08/2019.
Date of pronouncement : 06/09/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-6, Hyderabad, dated 01/03/2019 for the Assessment Year 2013-14.

2. The only issue raised by the assessee in this appeal relates to addition of Rs. 12,53,000/- on account of gift received from assessee's brother.

3. Facts of the case, in brief, are that assessee is a Physician deriving income from running hospital and *sono scan* etc., filed his return of income by declaring total income of Rs. 7,57,080/-. A survey u/sec. 133A was conducted in the professional premises of the assessee on 06/07/2012. Since it is a survey case, the case of the assessee was selected for scrutiny and after issuing notices, assessment was completed u/sec. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), dated 23/03/2016. In the assessment order, the Assessing Officer has noted that on verification of books of account and financial statements of the assessee, it is noticed that the assessee has shown gifts of Rs.12.53 lakhs from Shri V. Bala Sudhakar. The Assessing Officer asked the assessee to explain the source of gifts. It was submitted before the Assessing Officer that he has received a gift from brother-V. Bala Sudhakar who is living in Doha, Qatar. He is an employee in Qatar and his wife also employee and getting salary. The assessee has filed confirmation letter from his brother and also TT vouchers showing the amount deposited in cash at Habib Qatar International Exchange Ltd. and City Exchange, Doha, Qatar. The assessee also filed bank statements in which salary of Shri V. Bala Sudhakar is credited. The assessee also filed his bank statement of HDFC, Visakhapatnam wherein the transaction of gift is reflected. The Assessing Officer has examined the withdrawals

made by the assessee's brother at Doha Exchange centre and found that the amount withdrawn by the assessee's brother is not the same amount which is deposited in Habib Qatar International Exchange Ltd. and City Exchange, Doha, Qatar. He further observed that there is no direct evidence to show that money was withdrawn from his bank account to make gifts. The assessee also failed to explain that what is the occasion to give a gift and there is no gift agreement between the donor and donee and creditworthiness is not proved. Therefore, the Assessing Officer is of the opinion that the gift amount of Rs. 12.53 lakhs is not a genuine gift and treated the same as unexplained investment of the assessee. As the assessee failed to produce the evidence in support of the creditworthiness of the donor as well as availability of the funds to be transferred, the same is added to the total income of the assessee as unexplained income.

4. On appeal, Id. CIT(A) confirmed the order of the Assessing Officer.

5. Before us, Id.counsel for the assessee has submitted that the assessee is a Doctor and constructing hospital and he received gift from his own brother and filed a confirmation. The gift amount received through the banking channels and therefore the Assessing Officer is not justified in making the addition as unexplained investment in the hands of the assessee. He further

submitted that once assessee proved the gift received through banking channels, if at all the Assessing Officer is having any doubt, it is the burden on the Assessing Officer to prove that the money received by the assessee is of his own and not gift from his brother. In this case, no such exercise has been done by the Assessing Officer, therefore, the orders of the Assessing Officer and the Id. CIT(A) are not correct in making the addition u/sec. 68 of the Act. He relied on the decision of the ITAT, Visakhapatnam Bench in assessee's own case in ITA Nos. 6, 8 & 10/VIZ/2015, dated 12/08/2016 and requested same may be followed.

6. On the other hand, Id.DR strongly supported the orders of the authorities below.

7. We have heard both the sides, perused the material available on record and orders of the authorities below.

8. In this case, the assessee has received a gift of Rs. 12.53 lakhs from his brother-Shri V.Bala Sudhakar who is working in Qatar. When the Assessing Officer asked the assessee about the source of gift, it was submitted that the gift is received from his own brother and his brother's wife, both are working in Doha, Qatar and his brother is receiving allowances also apart from the salary. The assessee has filed bank statements of his brother-Shri V.Bala Sudhakar who is the donor of the gift. From the facts available on record, the assessee has withdrawn money from his

bank account and the same is deposited in Habid Qatar International Exchange Ltd. and City Exchange, Doha, Qatar and the same amount is credited to the assessee's HDFC Bank account, Visakhapatnam. The case of the Assessing Officer is that the assessee has withdrawn the amount from his bank account on different dates and subsequently deposited in Habid Qatar International Exchange Ltd. and the same is credited to the assessee's HDFC bank account, Visakhapatnam. Therefore, the Assessing Officer is of the opinion that the same amount what was withdrawn from the bank account of the assessee's brother was not deposited in Habid Qatar International Exchange Ltd. and City Exchange, Doha, Qatar. He further observed that there is no occasion for the donor to give gift to the assessee. There is no gift agreement between the donor and the donee, therefore the Assessing Officer is of the opinion that the assessee failed to produce the creditworthiness of the donor, hence he treated the entire amount of Rs. 12.53 lakhs as unexplained investment of the assessee. In this case, it is a fact that the assessee has received gift from his own brother-Shri V.Bala Sudhakar, who deposited money in Habid Qatar International Exchange Ltd. and City Exchange, Doha, Qatar, the same amount is deposited in the HDFC bank of the assessee, Visakhapatnam. The assessee has filed bank statement of the HDFC Bank and also the details of the

deposits made by the donor- Shri V.Bala Sudhakar in Habid Qatar International Exchange Ltd. and City Exchange, Doha, Qatar. It is also the case of the assessee is that in Qatar, the assessee's brother (donor) is working and getting salary and other allowances and his wife also working there and the gifts received through banking channels. The assessee also filed confirmation letter from the donor-Shri V.Bala Sudhakar. By considering the above facts, we find that the assessee has discharged his burden casted upon him that the gift received by him is a genuine gift. If at all, the Assessing Officer has any doubt about the gift transaction, he ought to have made a detailed enquiry and to prove that the gift received by the assessee is not a genuine gift. In this case, no such exercise has been done by the Assessing Officer. We find that the Assessing Officer has failed to prove the gift received by the assessee is not a genuine gift and simply addition is made, the same is confirmed by the Id. CIT(A). In view of the above facts and circumstances of the case, we are of the opinion that the gift received by the assessee cannot be considered as not genuine gift. The assessee has proved the identity of the parties, creditworthiness of the donor and genuineness, therefore, the assessee has discharged burden casted upon him. It is further observed that no occasion is required to receive the gift by the assessee from his brother-Shri

V.Bala Sudhakar. Therefore, the Assessing Officer is not correct in denying the gift received by the assessee is not a genuine gift.

9. Under the similar circumstances, the assessee also received gift in earlier years, the same has been considered by the coordinate bench of the tribunal in assessee's own case in ITA No. 6, 8 & 10/VIZ/2015, dated 12/08/2016 for the A.Ys. 2009-10 to 2011-12 and held that the gift received by the assessee is a genuine gift from his brother and the addition made by the Assessing Officer is deleted. Keeping in view of the facts and circumstances of the case and also by considering the decision of the ITAT, Visakhapatnam Bench in assessee's own case (supra) we are of the opinion that the addition made by the Assessing Officer and confirmed by the Id. CIT(A) cannot survive. Accordingly we cancel the order of the Id. CIT(A). Thus, this appeal filed by the assessee is allowed.

10. In the result, appeal filed by the assessee is allowed.

Order Pronounced in open Court on this 06th day of Sept., 2019.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 06th September, 2019.

vr/-

Copy to:

1. *The Assessee – Dr. Vempala Bala Manohar, D.No. 18-1-27, Harita Saptagiri Plaza, KGH Down Road, Maharanieta, Visakhapatnam.*
2. *The Revenue – ITO, Ward-1(3), Visakhapatnam.*
3. *The Pr.CIT-1, Visakhapatnam.*
4. *The CIT(A)-6, Hyderabad.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.