IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA No. 379/Ahd/2020
Assessment Year 2012-13

The ITO, Ward-3(1)(5), Ahmedabad (Appellant)	Vs	Dr. Satish Natwarlal Shah C/o. Baroda Nursing Home Anandpura, Nr. Govt. Press Raopura, Vadodara-390001 PAN: AJPPS2772P (Respondent)

Appellant by : Shri Samir Tekriwal, CIT/DR
Respondent by : None

Date of hearing : 11-10-2022
Date of pronouncement : 19-10-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This is an appeal filed by the Revenue against the order dated 12.02.2020 passed by the Commissioner of Income Tax (Appeals)-1, Vadodara, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. The Registry has noted that there is delay of 56 days in filing the above appeal by the Revenue. This appeal is filed by the Revenue on 26.06.2020. This period falls under COVID-Pandemic situation, thus following Hon'ble Supreme Court judgment dated 23.3.2020 in suo moto Writ Petition (Civil) No.3 of 2020, vide Hon'ble Supreme Court has extended time limit for filing appeals w.e.f. 15.3.2020. Thus, there is no delay in filing the above appeal and we take the appeal of the assessee for adjudication

3. The brief facts of the case is that the assessee is an individual and doctor by profession. The assessee filed his Return of Income declaring total income of Rs. 16,34,278/-. The case was selected for scrutiny assessment. It is noticed by the Assessing Officer that on perusal of the capital account of the assessee, it is seen that the assessee has received a gift of Rs. 3,12,24,009/- wherein Rs. 2,61,82,207/- is by way of various company shares. The assessee also gifted Rs. 1,06,65,848/- to his relatives during the Financial Year and sought for explanation.

3.1. The assessee replied that he received the gifts in the form of shares and debentures of Rs. 2,61,82,207/- on 04.10.2011 from his brother Shri Sanjay N. Shah residing in U.S.A. Similarly, the assessee received gift of Rs. 44,00,000/- on 25.11.2011, Rs. 13,436/- on 02.01.2012 and Rs. 1,736/- on 04.01.2012 from his brother and filed a copy of declaration of the gift and the same is made out of natural love and affection towards his brother namely the assessee hearing. The A.O. also found that the assessee had

gifted Rs. 53,71,016/- to Seema S. Shah, Rs. 26,71,238/- to Shailja S. Shah and Rs. 7,53,138/- to Sapna S. Shah who are the three daughters of his assessee's brother Shri Sanjay R. Shah. The Assessing Officer disbelieved the above gifts from assessee's brother to assessee and assessee's gift to his nieces. Thus the A.O. held that the assessee failed to provide source of investment into shares by his NRI brother, which eventually the assessee is getting in the form of gift. Thus the onus is not established and assessee's gift to the nieces has no logic. Even if this transaction of gifting is to be believed, it appears to be a kind of family arrangement for equalization of wealth among members of family. Relying upon various case laws, the A.O. treated the above gift as unexplained and added Rs. 3,06,13,009/- as the income of the assesse and demanded tax thereon.

4. Aggrieved against the reassessment order, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals), Vadodara. During the appellate proceedings, the assessee filed additional evidences namely DMAT A/c opening details by NRI brother, evidence of purchase of shares by NRI brother which were gifted to the assessee, bank statement of Axis Bank Ltd. of NRI brother showing debit entries for gifts made to the assessee. Letter dated 16.11.2015 from NRI brother stating that he is Non Resident since December, 1966 and the he filed his Tax Return in USA from 1966 to 2016.

4.1. The Ld. CIT(A) called for the Remand Report from the Assessing Officer. The Ld. A.O. objected to the admission of additional document and also submitted that the transfer of shares is not reflected in the statement submitted by NSDL, the assessee failed to prove source of investment in shares by the donor.

4.2. The assessee in his Rebuttal explained that off market transactions would not be reflected in the statement of NSDL since the assesse's brother by way of gift transferred the shares to the assessee which is not a sale or purchase. A copy of the DMAT A/c of donor and donee both showing transfer of shares from the account of the donor to the account of the donee have been submitted and examined by the A.O. during the course of assessment proceedings. Hence this objection has no merits.

4.3. Regarding the source of investment of donor, the assessee had already submitted copies of the Income Tax return filed by the donor under the USA laws showing the source of income of the donor and the shares are held by the donor from the date of de-materialization namely 20.12.2004 onwards, the present assessment year is 2012-13. Though the A.O. cannot ask source on source, however the assessee properly explained the same during the assessment proceedings itself. Thus the assessee pleaded that it had proved the identity, creditworthiness and genuineness of the gift as required u/s. 68 of the Act and requested to delete the addition of Rs. 3,06,13,009/- made by the Assessing Officer.

4.4. After considering the above submissions, the Ld. CIT(A) held that the A.O. accepted the purchase of shares by assessee's brother under NRI quota, the source of fund were paid through assessee's brother NRE bank account. Thus satisfied genuineness of the gift but however doubted the "occasion of the gift" in the absence of any family functions namely marriage, etc.

4.5. The Ld. CIT(A) relying upon Visakhapatnam Tribunal judgment in the case of Dr. Vempala Bala Manohar vs. ITO reported in 88 taxmann.com 410, Hon'ble Rajasthan High Court judgment in the case of Arun Kumar Kothari reported in 31 taxmann.com 258 and the Hon'ble Andhra Pradesh and Telangana High Court Judgment in the case of Pendurthi Chandrasekhar reported in 91 taxmann.com 229 held that accepting a gift from a relative for which no occasion was to be proved, more particularly, the relationship as explained u/s. 56(2)(v) of the Act fits into the facts of the case. Thus the Ld. CIT(A) deleted the addition made by the Assessing Officer.

5. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

> *1. On the facts and circumstances of the case, the C.I.T(Appeal) erred in deleting the addition of Rs. 3,06,13,009/- on account of explained cash credits u/s.68 of the Act.*
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> *2. The Ld. CIT(A) failed to appreciate the fact that the return of income of the donor for last 3 years which the assessee has submitted, in Schedule-A of the return of income, an aggregate of U.S,$155847 only was reflected. Thus, the assessee has not discharged the onus to prove the creditworthiness of the transactions and capacity of the donor.*

3. The Ld.CIT(A) failed to appreciate the facts that the evidences before the Ld.CIT(A), are nothing but fresh evidences and not additional evidences and that the admission of such fresh evidences is not within the purview of Rule 46A.

6. The Ld. D.R. appearing for the Revenue strongly supported the order passed by the assessing Officer and requested upheld the same. Whereas None appeared on behalf of the assessee and the notice served also returned as "no such person" in the above address. Therefore we proceed with this appeal with available materials on record and with the assistance of Ld. CIT/DR. It is an admitted case that genuineness of the gift though doubted by the Assessing Officer, during the appellate proceedings, however he is satisfied with the evidences produced by the assessee by way of additional documents and satisfied with the genuineness of the gift by assessee's brother who is an NRI. The only remaining doubt of the Assessing Officer was that there is no justification in gifting such a huge sum without there being any big occasion in the assessee's family namely wedding, etc. It was held by the Co-ordinate Bench of the Tribunal in the case of Dr. Vempala Bala Manohar (cited supra) that lack of occasion cannot be a ground to doubt the gift transaction between family members. Visakhapatnam Bench of the Tribunal held as follows:

"Section 68 of the Income-tax Act, 1961 - Cash credits - (Gift) - Assessment years 2009-10 to 2011-12 - Once relationship is established between donor and donee, there is no reason for Assessing Officer to doubt gifts by stating that there is no occasion for giving gifts; there being nothing to show that transaction was by way of money-laundering, addition could not be made towards gifts, when identity of donor and genuineness of transactions was proved to satisfaction of Assessing Officer."

6.1. Similarly, the Hon'ble High Court of Rajasthan in the case of Aurn Kumar Kothari (cited supra) held that gift without occasion cannot be doubted as follows:

> *"Section 68 of the Income-tax Act, 1961 - Cash credits [Gifts] - Assessment year 2006-07 - Assessing Officer disallowed three gifts received by assesses from his brothers on ground that creditworthiness of gifts was not proved and there was no occasion for giving said gifts - On appeal, both, Commissioner (Appeals) as well as Tribunal, were satisfied with regard to identity and creditworthiness of donors and genuineness of gifts and, therefore, deleted addition -Whether questions of identity and creditworthiness of donors were question of fact and there being a concurrent finding of fact by both authorities below, no interference was called for by High Court - Held, yes"*

6.2. Similarly the Hon'ble Andhra Pradesh and Telangana in the case of Pendurthi Chandrasekhar (cited supra) held that unexplained credit addition u/s. 68 with respect to gift received by the assessee from his maternal aunt was to be deleted since accepting a gift from a relative, no occasion was to be proved. The relevant portion of the judgment is reproduced as under:

> *"21. The further observation of the AO that the assessee appeared to have opened the bank account only for the purpose of receiving cash in the guise of a gift, is also flimsy. When the donor herself has given a confirmation letter clearly stating therein that she has transferred the amount of Rs.73,00,000/- to the account of the assessee and further declaring that she gave the said gift out of her natural love and affection towards her nephew, the AO ought not to have entertained further doubts. If for facilitating receipt of a gift the assessee has opened an account, we do not find anything wrong in that. In our opinion, the whole approach of the AO is wholly perverse which cannot be sustained. Equally, the reasons assigned by the two appellate bodies confirming the order of the AO are also perverse.*

> *22. The finding CIT(A) that gifts are traditional in nature, that they are given in functions like marriages etc., that there was no such occasion warranting receipt of gift from Nirmala to the assessee, and that it is very odd to note that the entire amount received from her daughter has been diverted to the assessee as a gift without any consideration, look to us to be empty sermons as the CIT (A) evidently judged the conduct of the parties from his personal perception, which is wholly impermissible.*
>
> *23. When the Act itself does not envisage any occasion for a relative to give a gift, it is well-nigh impermissible for any authority and even for that matter for the Court to import the concept of occasion and develop a theory based on such concept. The donor being no other than the assessee's own maternal aunt, is a 'relative' as defined under the explanation to Section 56(2)(v) of the Act and in the light of the plea of the assessee that she was brought up by the assessee's parents, and her daughters having already been married off and in a well-to-do position, it cannot be said that such a gift falls beyond "human probability" test as quite often applied by the Courts. Hence, it is not permissible for the AO to judge the conduct of the donor sitting in his arm chair.*

7. Respectfully following the above judgments, the assessee received the gift from his own brother who is a Non-Resident from the year 1966. The allotment of shares were made under NRI quota to the assessee's brother in USA. Thus the source and genuineness is being proved beyond doubt, the assessee having received the above gifts from his brother, who is as per the Explanation 2 to Section 56(2)(v) of the Act, there need not be any "occasion" for receipt of gift by the assessee.

7.1. In our considered opinion, the whole approach of the A.O. is wholly perverse which cannot be sustained in law and therefore the deletion of Rs. 3,06,13,009/- by the Ld. CIT(A) does not require any

interference. Thus the Grounds raised by the Revenue are without merits and the same are liable to be rejected.

8. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 19 -10-2022

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER True Copy	**JUDICIAL MEMBER**

Ahmedabad : Dated 19/10/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद