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Court : Income Tax Appellate Tribunal ITAT Pune

Decided On : Jul-31-2001

Reported in : (2002)77TTJ(Pune.)789

Appellant : Devichand B. Jain

Respondent : ito

Judgement :

This is assessee's appeal directed against the order passed by the learned Commissioner (Appeals)-I, Pune, dated 3-3-2000, relevant to assessment year 1996-97. The issue involved in this case is with respect to confirmation of addition made of an amount of Rs. 7,84,500 with respect of NRE gift.

The assessing officer has observed in the assessment order of the assessee that the assessee had filed a return of income declaring total income of Rs. 1,57,845 which was accepted under section 143(1)(a).

Subsequently, the case was selected for scrutiny for verification of NRE gift of Rs. 7,84,500 claimed to have been received by the assessee during the financial year 1995-96 and invested in FDRs in Canara Bank as per balance-sheet filed by the assessee. The assessing officer questioned the assessee regarding such gifts and the statement recorded under section 131 of the Act was found to be very specific and relevant in this regard. The assessing officer has quoted the relevant portion of the said statement in the assessment order and in para 4 of the assessment order he observed as under : "The evidence produced by the assessee has no

credence, since the assessee has not produced the original declaration from the donor and also the source thereon. Further, the assessee has not filed the gift deed/confirmation from the donor, along with the return of income for assessment year 1996-97. Secondly, on verification of foreign inward remittance certificate and so-called declaration it is seen that the donor resides in Netherland Anantilles and this island is portion of country Netherlands. Thus, it is apparent from the donor Shri Kriplani resides in Netherlands, but not in the USA as stated by the assessee, in his statement recorded on oath under section 131 of the Act on 26-10-1998.

Thus, from these facts narrated it is seen that assessee has stated contradictory facts in his statement recorded on oath under section 131 and various submissions made by him during the course of assessment proceedings.

The assessee was given further opportunities vide this office letters dated 21-1-1999, 25-1-1999 and 1-2-1999, to explain the discrepancies noticed as regard to the destination of the gift and migration of donor." The assessing officer, therefore, added the entire amount as undisclosed income.

Against the action of the assessing officer the assessee took up the matter in appeal before the Commissioner (Appeals). It was argued before the first appellate authority that according to the assessing officer Mr. Kriplani resides in Netherlands and not in USA, will not make much of difference so long as it is proved that gift received by remittance by DD from outside India. The assessing officer has not proved it otherwise. But has only doubt/suspicion. Shri Sunil Kriplani happened to be in India in the month of June, 1999. He has sworn affidavit before the Executive Magistrate dated 18-6-1999, confirming the fact that he has made gift of Rs. 25,000 US \$ by DD No. 66845, dated 9-8-1995, drawn on Chase Manhattan Bank N.A. to Mr. Devichand Bhabutmal Jain of 1255, New Bhawani Peth, Pune-411 042. The learned Commissioner (Appeals) while considering and rejecting the pleas as taken before him, has concluded in para 3 of his order as under : "I have considered rival submissions. I find that the answers given to certain questions by the appellant in his statement under section 131 are very important. It is clear that there is no connection whatsoever between the donor and the donee. In fact the appellant clearly does not know the donor at all. Under these circumstances, in the

absence of direct evidence of the gift, the doctrine of preponderance of probability has to be employed and in this case from the deposition of the assessee, it is seen that it is least likely that the appellant would have received such gift from a totally unknown person without any immediate cause or without any legitimate reasons. Therefore, the claim of receipt of impugned gift is not proved, The addition made is, therefore, confirmed." Aggrieved, the assessee is in further appeal and while reiterating the submissions as made before the lower authorities, it was pleaded for deletion of the addition made. The learned counsel for the assessee relied upon the decision of the Chandigarh Bench of the Tribunal 56 TTJ 657 (sic) in order to substantiate that neither any relationship nor an occasion could be a condition for making of the gift and since the amount gifted has come through banking channel and person making the gift is school-time friend of the assessee, therefore, there was no occasion for the assessing officer to reject the claim of gift, made by the assessee and the learned Commissioner (Appeals) is also not justified in confirming the action of the assessing officer. It was also submitted that mere discrepancy found in the statement recorded by the assessing officer cannot lead to conclusion that the gift received by the assessee is not genuine. It was thus pleaded for deletion of the addition made and confirmed by the learned Commissioner (Appeals).

The learned Departmental Representative while relying upon the orders of the authorities below has pleaded for confirmation of the impugned order. Reliance was placed on the decisions ITO v. Dr. Jagdish J.Kansagara (1998) 66 ITD 381 (Ahd-Trib), Atmaram J. Manghir Malani (HUF) v. CIT (1998) 62 TTJ (Mum-Trib) 357, CIT v. G. Sagar Sun & Sons & Ors.

(1998) 234 ITR 58 (Del), CIT v. Prof. P.G.A. Nath (1998) 234 ITR 859 (Del) and Sumati Dayal v. CIT (1995) 214 ITR 801 (SC) for upholding the order and to substantiate that neither the gift has been proved to be genuine nor the identity of the donor has been proved and also nothing has been placed on record to show that either the so-called remitter is a man of means or from where he has withdrawn such amount. Therefore, the assessing officer has rightly added the amount of gift as income of the assessee.

We have heard both the sides, gone through the orders of the authorities below and the case law as cited by rival sides and find that the reasoning and basis as given by the learned Commissioner (Appeals) in confirming the order are sound and convincing. From the order of the assessing officer we find that the statement of the assessee has been recorded on oath under section 131 of the Act on 26-10-1998. The assessee replied to some of the questions put by the assessing officer as under : "Q. 4 : On going through your return, it is seen that you have received the gift of Rs. 7,84,500. Please give the details of the gift received.

Ans. : I have received the gift from Shri Sunil K. Kriplani. This amount has been received by demand draft by registered A.D. This gift has been sent by Shri Kriplani from USA. The amount of gift is \$ 25,000.

Ans. : Myself and Shri Sunil Kriplani were classmates, before 1942, in Bombay. We were students of Marwadi Vidyalaya High School, Sandhurst Bridge, Bombay.

Q. 6 : How long were you associated with Shri Sunil Kriplani after 1942 Ans. : I left the school in 1942. He used to occasionally meet me upto 1948 in Bombay. I have resided in Poona from 1948. Sometimes after 1948, I used to meet him at Bombay.

Ans. : He was residing at Colaba in Bombay. I do not know the exact residential address.

Q. 8 : Can you give the details of migration of Shri Sunil Kriplani and the business carried on by him Ans. : Appropriately he has migrated 20/25 years before. He runs a departmental store of cloth. He resides at Sant Martin, U.S.A.

Q. 10 : Can you give details of educational qualification and family members of Shri Kriplani Q.

14 : Can you give the details of business premises of Shri Kriplani Ans. : He runs business at Saint Martin. I do not know the exact address.

Q. 16 : How did you receive the gift from Shri Kriplani, Please furnish full details.

Ans. : Shri Kriplani visited me at Poona. He made desire to gift money and amount was not decided. I do not have any gift deed.

Q. 17 : Do you have any confirmation of Shri Kripalani or affidavit for the said gift received by you Ans. : I do not have any confirmation or affidavit of Shri Kriplani at present.

Q. 18 : I am giving a period of 10 days for filing of affidavit of Shri Kriplani for the gift amount.

Ans. : I will not file any confirmation/affidavit within the said period." Moreover, the assessee vide his letter dated 13-11-1998 has submitted a copy of the declaration made by the so-called donor Mr. Sunil Kriplani.

The assessee has claimed that declaration was received by FAX wherein it is stated that the gift of 25,000 US \$ was made by Shri Sunil Kriplani and the same was accepted by the assessee. The original declaration has not been filed and moreover, on verification of foreign inward remittance certificate it is seen that the donor resides in Netherland and not in USA and demand drafts are also issued from Netherland and not from USA as stated by the assessee. These facts have been found to be contradictory. As per the statement of the assessee no close relationship or contracts with the so-called remitter has been established, so the plea in respect of the claim of the assessee that the assessee knows him from a very long time remains unsubstantiated.

The assessee has also failed to give details of educational qualification, details of family members of Mr. Kriplani and the residential address of the so-called remitter in Bombay in his statement recorded. So it shows the degree of thickness of relationship of so-called remitter with the assessee. It is well settled law that the taxing authority can take note of surrounding circumstances CIT v. Durga Prasad More (1971) 82 ITR 540 (SC). In Sumati Dayal v. CIT (supra) the Apex Court has held that considering the surrounding circumstances and applying the test of human probabilities is a must.

So if we advert to the facts of the present case and apply the test of human probabilities it cannot be accepted that the gifts of Rs. 7,84,500 from the so-called remitter can be given by a person who is stated to have been residing abroad for decades together and was at one time, a school-time friend, and nothing has been

placed on record to show that they were even studying together or in the same school, at Bombay, whose even Bombay address is not known to the assessee, whose qualification is not known to the assessee, whose details of family members is not known to the assessee and details of place of residence and place from where the foreign remittance was made, was also not known to the assessee. It is taken that relationship or occasion is no bar to make a gift to a person in India yet it would be necessary for the assessee to explain the circumstances under which the gift was made so that the genuineness of the gift could be verified and the mere fact that money had been received in India in foreign exchange from abroad would not be sufficient to absolve the assessee from burden of establishing the identity, financial capacity of the donor and the genuineness of the gifts.

In spite of assertion of the assessee, it could not be established that the assessee had any close acquaintance with the so-called remitter. It has also not been established that assessee ever visited abroad, met the so-called remitter or that the so-called remitter occasionally or regularly been meeting the assessee in India from the school-days till the date of making of the gift. It is also necessary to look into the quantum of gift which had to be considered while judging the genuineness of the gift. However, rich a person might be and how much closely he might have been related (in this case there is no relationship) Rs. 7,84,500 as gift out of the blue definitely casts a shadow on the genuineness of the gift as the circumstances under which the gift was made have to be verified so as to ascertain the genuineness of the gift. Taking into consideration all these surrounding circumstances and applying the test of human probabilities, it is held that it is least likely that the assessee might have received such a gift from an unknown person. Since the assessee has miserably failed to either establish the genuineness of the gift or the identity of the person making of the gift, therefore, in our considered view, assessing officer's action in taxing the said amount is justified and the learned Commissioner (Appeals) has rightly confirmed such action. At the cost of repetition, it is observed that even the relationship part or specific occasion for making of the gift can be ignored if genuineness of the gift, identity of the party and financial resources of the donor could be established. In this case, no material or evidence to establish the above, has been placed on record to either prove the

identity of the person making the gift or genuineness of the gift. Therefore, the assessing officer's action in not accepting the claim of the assessee is found to be justified and proper. Therefore, finding no ground to interfere with the order of the learned Commissioner (Appeals) we dismiss the appeal of the assessee while confirming the order of the learned Commissioner (Appeals).

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