

income Tax Officer Vs. Arihant X-ray and Sonography

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Court : Income Tax Appellate Tribunal ITAT Ahmedabad

Decided On : Nov-14-2006

Reported in : (2007)111TTJ(Ahd.)528

Judge : R Garg, Vice, I Bansal

Appellant : income Tax Officer

Respondent : Arihant X-ray and Sonography

Judgement :

1. This appeal by the Revenue is directed against the order of CIT(A), Gandhinagar for asst. yr. 2000-01.
2. The only dispute in this appeal is against the deletion of addition of Rs. 11,10,000 made by the AO under Section 68 of the Act as the assessee was not able to prove the credit appearing in the books of account in the name of-(i) Smt. Vimlaben S. Shah and (ii) Dr. Asim V.Shah satisfactorily.
3. The AO observed that Smt. Vimlaben S. Shah is an old lady of 80 years and having no independent source of income except small amount of interest does not have the capacity to give loan to the extent of Rs. 10,00,000, therefore, her creditworthiness is not proved at all. As regards Dr. Asim Shah, he observed that the assessee has not given any reply regarding alleged loan of Rs. 1,10,000 and therefore, the source of the aforesaid loans has not been established. He accordingly made addition of Rs. 11,10,000 (Rs. 10,00,000 + Rs. 1,10,000) to the

income of the assessee. The CIT(A) deleted the addition by observing in para 2.4, as under: 2.4 I have carefully considered the relevant facts. With reference to Smt Vimlaben S. Shah, the basic reason stated by the AO in the assessment order as well as in the remand report is that she was a lady of 80 years old and was not having any independent source of income. I however, find that there was no requirement under the law that there should be an independent source of income to advance a loan. What was required under the law was the availability of accounted funds for advancement of loan. The AO, in the assessment order as well as in the remand report has not responded to this basic argument of the appellant. The appellant has repeatedly submitted during the course of assessment proceedings as well as during the course of appeal proceedings that the funds in the hands of Smt. Vimlaben S. Shah were not out of income earned but were basically generated from the gift of Rs. 6,00,000 received from Mr.

Vinod Shah and another loan of Rs. 4,32,096 also received from Mr.

Vinod Shah, who was son of Smt. Vimlaben S. Shah. The funds were basically originating from Mr. Vinod S. Shah, who was duly examined by the AO. Shri Vinod S. Shah had sufficient funds received on retirement from a bank and was separately assessed to tax. The same has also been referred to by the AO on pp. 3 and 4 of the assessment order. The above gift amount and the loans amount have been received through banking channels and the AO has not raised any doubt regarding the sources of funds in the hands of Mr. Vinod Shah for advancement of the above gift and loans to Smt. Vimlaben S. Shah.

The observations of the AO that there was opening balance of only Rs. 3,127 in the bank account on 1st April, 1999, is of not much relevance for the reasons that the manner in which funds accumulated in the bank account of Smt. Vimlaben S. Shah are duly explained in the relevant bank passport and it is seen that on 13th Nov., 1999, when Smt. Vimlaben S. Shah advanced a loan of Rs. 10,00,000 to the appellant company through a cheque, there was sufficient balance in the bank account. In fact the AO has himself narrated on p. 5 of the assessment order as to how the funds were accumulated in the hands of Smt. Vimlaben S. Shah. I, thus, find that the loan amount in this case was received through banking channels and

identity of the person who advanced the loan was duly established. The sources of funds in the hands of Smt. Vimlaben S. Shah have been duly explained and it is seen that all the funds accumulated in the hands of Smt.

Vimlaben S. Shah are through banking channels and the respective persons are also duly identifiable. This loan transaction of Rs. 10,00,000 from Smt. Vimlaben S. Shah, thus, has similar facts as in the case of Dy. CAT v. Rohini Builders . In a similar manner, with reference to the loan of Rs. 1,10,000 from Dr.

Asim V. Shah, which the AO added on the ground that there was no reply given by the assessee, I find that while explaining the total loan of Rs. 4,77,981 from Dr. Asim V. Shah the appellant gave full particulars as the AO himself has narrated on p. 7 of the assessment order. These details clearly indicate that the identity of the depositor was duly established and his income-tax and other relevant details were available on record. It is also placed on record that the whole loan amount was received through banking channels and that the accumulation of funds even in the hands of Dr. Asim V. Shah was through banking channels. I, therefore, find that the facts in this case were also similar to the case of Dy. CIT v. Rohini Builders (supra). I, therefore, find that the total loan amount of Rs. 11,10,000 from Smt. Vimlaben S. Shah and Dr. Asim V. Shah was duly explained by the appellant inasmuch as the identity of the creditors were duly established, the sources of funds in their hands were also duly explained and that all the relevant transactions were through banking channels. I. thus, do not find any merit in the addition of Rs. 11,10,000 made by the AO and the same deserves to be deleted particularly by following the decision of Hon'ble Gujarat High Court in the case of Dy. CIT v. Rohini Builders (supra). The AO is accordingly directed to withdraw the addition of Rs. 11,10,000 and grant appropriate relief to the appellant. This ground of appeal is accordingly treated as allowed.

4. We have heard the parties and considered the rival submissions.

Admittedly, Smt. Vimlaben S. Shah is an income-tax assessee, her address and P.A. number were given along with passbook of the depositor. She also attended before the AO and explained that she had received gift from Shri Vinod Shah, whose address, P.A. number bank passbook and copies of IT returns, were also

given. Similarly, the identity of Dr. Asim V. Shah was proved, he appeared before the AO, his copy of contra accounts were produced, the address, P.A. number and copies of IT returns were also furnished. In these circumstances, in our opinion, the CIT(A) was justified in allowing the claim of the assessee and the matter stands covered by the Gujarat High Court (decision) in the case of CIT v. Rohini Builders CIT v. Orissa Corporation (P) Ltd. and CIT deleted the addition by observing that the Tribunal found that the assessee had discharged the initial onus which lay on it in terms of Section 68 by proving the identity of the creditor and complete address, GIR number/PA number and the copies of assessment orders wherever readily available, that it had also proved the capacity of the creditor showing the amounts were received by the assessee by account payee cheque drawn from the creditors and the assessee was not expected to prove the genuineness of the cash deposits in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source. We, accordingly, allow the claim of the assessee by upholding the order of the CIT(A).

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