

ito Vs. Sunil Mittal

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-28-2007

Judge : P Parashar, D R Shah

Appellant : ito

Respondent : Sunil Mittal

Judgement :

1. This appeal by the assessee is directed against the order of Commissioner (Appeals) XXII, New Delhi dated 9-7-2004.
2. The only issue in appeal is regarding deletion of addition of Rs. 6,00,000 being amount received as gift from one Shri Raman Kumar.
3. During the year the assessee was stated to have received a gift of Rs. 6 lakhs from Mr. Raman Kumar. The gift deed was executed on 16-1-2000 which was filed along with a photocopy of affidavit of the donor. The assessee also filed copy of bank account of donor. The gift was received by two cheques of Rs. 3 lakhs each dated 5-7-2000 and 24-7-2000 drawn on Vijay Bank, Bhorgarh, Delhi. The assessing officer recorded the statement of Mr. Raman Kumar, donor as well as Mr. Sunil Mittal donee, the assessee. Mr. Raman Kumar in his statement before the assessing officer stated that Mr. Sunil Mittal, donee had helped him in various times. At one time he met with an accident when nobody came to help him, Mr. Sunil Mittal the assessee helped him a lot. Relevant question answered in this regard from the statement of Mr. Raman Kumar are extracted herein from page 3

of the assessing order.

Q. No. 10. Please state what is the purpose of this huge amount of Rs. 6 lakhs given to your friend Mr. Sunil Mittal? Ans. As he helped me at various time, as one time I met with some accident and many other times no relative came to me except Mr.

Sunil Mittal. This is just I have in future if, will have more I will no doubt give more.

4. The assessee Mr. Sunil Mittal in his statement before the assessing officer stated that Mr. Raman Kumar the donor is his fast friend. He had no family blood relation with the donor. The assessee had helped Mr. Raman Kumar to establish his business and at one time helped Mr.

Raman Kumar to save his life. The assessing officer held that the gift was received during the course of business; and not on the occasion of any birthday, marriage anniversary festival etc. The assessing officer therefore held that since the amount was received in the course of business, the same is to be treated as income under Section 28(iv) of the Act. Learned Commissioner (Appeals) after considering the rival submission, held as under: I have considered the above submissions of the authorised representative of the appellant. I have looked into the 'gift deed' executed by the donor and the appellant, affidavit of the donor, the bank account of the donor and the appellant and the ratio of judgment in the case of CIT v. Paramanand Uttamchand cited by the assessing officer. I am satisfied with the arguments of the learned authorised representative of the appellant that during assessment proceeding, the appellant established the identity of the donor (by providing the donor himself before the assessing officer along with assessment order for assessment year 2001-02 and IT PAN No. etc.) creditworthiness for making gift (by furnishing the bank account of the donor which had sufficient balance from savings and business), justification for making the gift on the occasion of marriage. Simply because the donor stated before the assessing officer that the appellant had helped him in business, it could not be held that the gift was received in course of business. There is no restriction for making gift by a donor only to a person who is related to him. Further it is noticed according to the judgment cited by the assessing officer, that essential attributes of gift are absence

of quid pro quo and non-recurrence of the incidence of gift. The assessing officer has not brought on record any evidence to prove that any monetary or other consideration was passed by the appellant to the donor in return for the gift. Thus the quid pro quo was absent. According to the statement recorded from the donor, no gift either in past or in future has been given to the appellant apart from the gift which is under consideration. So the 'attribute' of recurrence of gift was also not present.

6. The donor voluntarily made the gift without any consideration in money or money's worth and the appellant satisfied the assessing officer about the genuineness of the gift made by the donor.

7. In view of the above, the gift received by the appellant of Rs. 6,00,000 from Mr. Raman Kumar is treated as genuine and as a result I am unable to sustain the addition made by the assessing officer treating the same as receipt in course of business.

5. Learned Departmental Representative Shri B. Koteswara Rao submitted that the addition is not made as bogus gift or unexplained cash credit under Section 68 of the Act. Since the amount was received in the course of carrying on business, the amount is chargeable under Section 28(iv) of the Act. For this purpose reliance was placed on the decision of Hon'ble Madras High Court in the case of Boeing v. CIT . The learned Departmental Representative also relied upon the decision of this Tribunal in the case of Smt. Naushaba Rana v. Asstt. CIT 6. Learned Counsel for the assessee on the other hand strongly relied upon finding in appellate order. He submitted that the amount was received as gift only and not in the course of carrying on the business. This fact has been confirmed by the donor as well as donee.

The amount has been paid by account-payee cheque when the donor was possessing sufficient balance in his bank account. Due to the fact that the assessee helped the donor to set up his business and due to the fact that assessee was instrumental to save the life of donor while he met with an accident, the gift was given as a gracious gesture. Thus the identity, the creditworthiness and the genuineness of transactions are proved and hence cannot be considered

as unexplained gift. He also relied upon the following decisions: Devichand B. Jain v. ITO 7. He also distinguished the cases relied by in case law by learned Departmental Representative and those cited in the grounds of appeal.

8. We have carefully considered relevant facts, argument advanced and the case law cited. The question before us is not whether the gift is genuine or not. It is accepted fact that the addition is not made under Section 68 as unexplained cash credit. It is also accepted that the identity and creditworthiness of the party are established and the transaction is genuine. The limited question is whether the amount is taxable under Section 28(iv) of the Act. As per Section 28(iv) the value of any benefit or perquisite, whether convertible into money or not arising from the business or the exercise of a profession shall be treated as income chargeable to income-tax under the head "Profits and gains of business or profession". It is to be noted that the amount is received by cheque and is not in any intangible form in the nature of benefit or perquisite. The amount is not received in that kind. Thus it cannot be treated as benefit or perquisite. Secondly the amount was not received by the assessee in the course of carrying on his own business.

The assessee helped the donor on various occasions. Thus it is not in the course of carrying on assessee's business that any benefit or perquisite was received. Rather the donor was helped by the assessee and the gift was given. Thus the same is outside the scope of income within the meaning of Section 28(iv) of the Act. Accordingly, the finding of the assessing officer is ill founded and the addition cannot be made under Section 28(iv) of the Act. As regards decision of Hon'ble Madras High Court relied upon by learned Departmental Representative, in the said case the assessee received an Ambassador Car as a gift under scheme formulated by the company of which it was the dealer. The scheme was formulated in its centenary year which was directed at increasing the sale of its manufactured goods through such dealers of which the assessee was one. If the target was achieved, the assessee was entitled to receive certain incentive. Under the circumstances, it was held as income under Section 28(iv) of the Act. The facts of the present case are far away from the facts in the said case. In the case of Smt. Naushaba Rana (supra), this Tribunal of which one of us (AM) was a signatory held that one of the criteria to judge the genuineness of gift is to see

whether the donors are related to the assessee or whether there was any occasion. However, the same was not the only criteria while upholding that the gift was not genuine. The Tribunal also held that: It is true that even stranger can give gifts and it is also held in some cases that there is no need for any occasion to give gifts.

However, when all the circumstances like absence of relation, absence of occasion, no counter gifts, gifts from persons of no means to the so-called wealthy and influential persons etc., all put together and lead to one and only conclusion that gifts are not genuine. A person who is speaking true will not shirk his responsibility as well as liability to say the same before any examining authority. In some cases a person may not be available instantly but why and in what circumstances he will not come forward to tell the truth should be demonstrated. None of the donors has stated any reason as to why they are not available for examination.

The assessee has not been able to produce any such reason. Thus all the circumstances put together lead us to hold that the gifts are not genuine.

9. Since we are not dealing with the genuineness of gift but are considering the limited question whether the amount received is income within the meaning of Section 28(iv) the case laws relied by the counsel of assessee are not discussed, as in the present case we have found that the amount received is not income within the meaning of Section 28(iv) of the Act.

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