

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No. 133/2003**

% **Reserved on: 5th December, 2014**
Date of Decision: 4th February, 2015

Sarita Aggarwal **....Appellant**

Through Mr. A.K. Singla, Sr. Advocate with
Mr. Deepak Raja, Advocate.

Versus

The Income Tax Officer **...Respondent**

Through Mr. Rohit Madan, Sr. Standing Counsel
with Mr. Akash Vajpai and Ruchir Bhatia
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J.

This appeal by Sarita Aggarwal under Section 260A of the Income Tax Act, 1961 (Act, for short), pertains to assessment year 1994-95. In the return of income for the said year filed on 11th January, 1995, the assessee (Sarita Aggarwal) had shown credit of Rs.2,60,000/- in the capital account under the narration 'Gift'. The Assessing Officer disbelieved the claim and made an addition of the aforesaid amount to the income as declared, holding that the assessee was unable to establish genuineness of the gift. However, the assessee succeeded before the Commissioner of Income Tax (Appeals), who by order dated 27th February, 1998, deleted the addition after taking on record additional evidence. Revenue on appeal, has succeeded before

the Income Tax Appellate Tribunal ('Tribunal', for short) by the impugned order dated 5th December, 2002.

2. The present appeal was admitted for hearing vide order dated 13th January, 2004, on the following substantial question of law:

“Whether the finding arrived at by the Tribunal is perverse in view of the material placed before the Tribunal and the lower authorities?”

3. The short question is whether the assessee had discharged onus and proved genuineness of the gift of Rs.2,60,000/-.

4. A gift, as defined under Section 122 of the Transfer of Property Act, 1882, is transfer of property made voluntarily and without consideration by a donor to the donee. For a gift to be effective and valid there has to be acceptance of the gift by or on behalf of the donee. Gift of a movable property does not require registration and can be effected by mere delivery of actual or constructive possession.

5. In the assessment order, it is recorded that by order sheet entry dated 10th October, 1996, the assessee was asked to file evidence in support of her claim regarding receipt of gift. The assessee took adjournments and did not file evidence. Order sheet entry dated 23rd December, 1996, narrates that the assessee was again asked to file evidence in support of the purported gift received from a non-resident Indian. On 24th January, 1997, a letter written by Chhatrapalsinh Jadeja, a resident of Mumbai, was filed stating that he had made a gift of Rs.2,60,000/- in November, 1993, from his bank account with the Standard Chartered Bank, Dubai. Copy of passport of Chhatrapalsinh

Jadeja was also filed. This letter by Chhatrapalsinh Jadeja was dated 17th January, 1997, and was duly notarised. The Assessing Officer was not satisfied and called upon the assessee to furnish evidence to show and establish Chhatrapalsinh Jadeja's capacity and creditworthiness. The assessee, thereafter, did not attend the hearing held on 24th February, 1997. By another letter issued on 26th February, 1997, the assessee was specifically called upon to prove capacity of the donor and furnish evidence in support of genuineness of the gift. In response thereto, the assessee filed photocopy of the draft of Rs.2,60,000/- issued by the Standard Chartered Bank, Deira, Dubai. No other material or evidence was brought on record. The Assessing Officer held that the aforesaid evidence did not show and prove the financial status and capacity of the donor. Further, the donor was not related to the assessee and the assessee had not explained the circumstances and reasons which necessitated making of the gift. The Assessing Officer observed that as it was a case of cash credit, the onus was on the assessee to establish identity, capacity or creditworthiness of the donor and also the genuineness of the transaction. In cases of gift, the degree of proof was substantially higher. The donor and donee should have a close association with each other.

6. In the first appeal, as noted above, the assessee succeeded. The order passed by the Commissioner of Income Tax (Appeals), records that Chhatrapalsinh Jadeja was working as a Regional Manager with Air India in Dubai and was maintaining an account with the Standard Chartered Bank, Dubai. Chhatrapalsinh Jadeja had purchased the demand draft and made the said gift to the assessee. He held that the

Assessing Officer was not justified in holding that the assessee had not been able to establish identity the donor or his creditworthiness. It was accordingly held:-

“I have examined the contentions of the assessee’s A.R. The assessee received a gift of Rs.2,60,000/- from Shri R.K. Chattarpal Singh Jadeja who was an employee of AIR India working as its Regional Manager at Dubai. He was maintaining his bank a/c with Standard Chartered Bank Deira Branch, Dubai where from he had obtained a draft for Rs.2,60,000/- which was gifted to the appellant. Corresponding sum has been debited his bank a/c. Since the donor is a Senior Executive of AIR India working as Regional Manager at Dubai and gift had been made by bank draft issued by Standard Chartered Bank, Deira Branch, Dubai the A.O. was not justified in holding that the identity and creditworthiness of the donar (*sic, donor*) could not be proved. I therefore, delete the addition made by the A.O.”

7. By the impugned order, the Revenue had succeeded before the Tribunal wherein it was held that the assessee had failed to prove or establish a close relationship with the donor and had not been able to show the circumstances under which the gift was made. It was observed that the donor was a stranger to the donee. The fact that the money had originated from a foreign bank account maintained by the donor was not sufficient to establish genuineness of the gift. One of the essential and intrinsic ingredients of gift is that it should be impelled by love and affection and should be without consideration. The want of this ingredient was noticeable in the present case. The submission that the gift was made by way of a demand draft, it was held, would not absolve the assessee from proving genuineness of the gift.

8. Learned counsel for the assessee has drawn our attention to the letter dated 25th September, 1996 and the subsequent letter dated 26th

February, 1997 to highlight that in the former, the Assessing Officer had not specifically asked the assessee to prove genuineness of the gift. In contrast, in the subsequent letter dated 26th February, 1997, the assessee was categorically and specifically called upon to prove capacity of the donor as well as genuineness of the transaction. The Assessing Officer by the said letter had accepted that the assessee had adequately proved the identity of donor, but had asked the assessed to prove capacity of donor and the genuineness of transaction by way of evidence or by producing the donor himself, noticing that the donor was then living in Bombay (now Mumbai). Further, the assessment order specifically refers to order sheet entry dated 10th October, 1996 requiring the assessee to furnish evidence in support of the gift received. The Assessment order was passed on 26th March, 1997, i.e. nearly 5 months thereafter. The only document filed before the Assessing Officer was one letter dated 17th January, 1997, written by Chhatrapalsinh Jadeja and a copy of the demand draft issued by the Standard Chartered Bank, Dubai. Noticeably, the letter dated 17th January, 1997, is a brief one and reads as under:

“Dear Sarita,

I wish to place on record that when I was resident abroad as a Non Resident India, I had made a gift of Rs.2,60,000/- to you, in November, 1993, the amount was drawn from by bank, The Standard Chartered Bank in Dubai. The said amount could be used as you wished.

Yours sincerely

Sd/-

(Jadeja Chhatrapal Sinh)”

9. The reply quoted above is conspicuously silent and does not set forth and propound a close relationship either by way of blood or friendship between the donor and the assessee. Noticeably, the letter dated 26th February, 1997 was lucid and called for straightforward and clear answers. The letter was met with impassive silence and reluctance, justifying the adverse assumption against the assessee. When an assessee does not produce evidence, tries to avoid and digress the issue before the Assessing Officer, it necessarily creates difficulties and prevents ascertainment of true and correct facts as the Assessing Officer is denied the advantage of scrutinising the factual assertion and claim of the assessee. In case where the assessee deliberately and intentionally fails to produce evidence, creates hurdles to any inquiry or investigation, an adverse view might be justified. It would be different, if the details and evidence were not available with the assessee or it was explained and justified why the details and evidence could not be furnished. Without being oblivious to the constraints of the assessee, an objective and fair approach and determination is required by the Assessing Officer. Thus, no assessee should be harassed and harried but any dishonest façade and smokescreens which masquerade as pretence should be exposed and not accepted.

10. In the first appeal, the assessee had filed copy of passport of Chhatrapalsinh Jadeja, his bank account statement as well as letter written by Chhatrapalsinh Jadeja asserting that he was employed in Dubai, U.A.E. and that as he had started residing in Bombay (now Mumbai), and therefore, it had taken time for him to collect the requisite information from Dubai. This submission again cleverly and

conveniently fails to acknowledge and explain the primary issue to be dealt with, i.e. genuineness of the gift. The questions which remained unanswered were, how did the donor know the assessed, what was the occasion or the reason for the gift, and what prompted the donor to be so magnanimous so as to part with Rs.2,60,000/- in 1997. These pertinent questions remained conspicuously disregarded, unanswered or concealed. The hesitation and reluctance to amplify and exposit the details is manifest and apparent.

11. Learned counsel for the appellant has drawn our attention to affidavit of the appellant filed in this court on 19th August, 2003, enclosing therewith letter dated 19th July, 2003 purportedly written by the donor, Chhatrapalsinh Jadeja. The aforesaid letter is a typed letter stating that in November, 1993, the donor had gifted Rs.2,60,000/- to the appellant by way of demand draft from his bank account in Dubai and at that time his family comprised of wife and two children. In 1993, he was working with Air India and was posted at Dubai as Regional Manager for the Gulf and the Middle East. His salary was Rs.6 lacs per annum with additional perquisites which included a house and conveyance. He joined Air India in 1962 and retired after 33 years of service. In the last paragraph, it was stated,

“6) As you are aware I am a friend of your husband, who has a close relationship with us for a long period of time.”

12. The aforesaid affidavit and the letter dated 19th July, 2003 was filed pursuant to order dated 22nd May, 2003 recording that the appellant would file affidavit of the donor, namely Chhatrapalsinh Jadeja giving details of his family including the age, and other assets held by him at the relevant time. It is peculiarly noticeable that the

affidavit of donor was not filed. Thus, the donor has evaded and refrained from making any deposition on oath. What repudiates and belies the assertion that the appellant and the donor were known to each other or were close family friends, is that this proposition was never asserted or propounded before the Assessing Officer, and even the order of the first appellate authority is quiet on the said aspect. The impugned order of the Tribunal records that the donor was a complete stranger to the donee and no evidence had been brought on record to show their relationship.

13. The Tribunal records the submission on behalf of the appellant that since the gift was received from an NRE account or a non-resident's account, it should be accepted without raising objection about the genuineness. The said submission holds no water and has to be compellingly rejected. The gift from an NRE or non-resident's account is not sacrosanct and unquestionable; the appellant must prove genuineness of the gift and the fact that it was made out of love and affection. It was the duty of the Assessing Officer to ask and the assessed inescapable obligation to truthfully answer. The Assessing Officer would necessarily have verified and cross checked the assertion.

14. In case the said facts and evidence in the form of affidavit or even a letter, would have been pleaded and relied upon before the Assessing Officer, the factual assertions would have been appropriately and adequately examined and gone into. It would not be correct but rather assumptuous at this stage to take the letter of the donor and the affidavit of the appellant as satisfactory proof that the donor was a long

standing and an age old friend of the husband of the appellant. This will amount to introducing and taking on record new and fresh evidence and accepting a factual assertion without permitting the Revenue to confront the donor and the donee, check and ascertain the true and correct facts. An appeal under Section 260A of the Act is maintainable on a substantial question of law only. Though provisions of Rule 27 of Order XLI of the Code of Civil Procedure, 1908, would be applicable, but good and judicious grounds and reasons have to be shown for taking additional evidence at this stage. These are perspicuously missing. In ITA No.218/2012, titled ***CIT versus Focus Exports Pvt. Ltd.***, decided on 16th September, 2014, the Delhi High Court held,

“9. A bare reading of Section 68 of the Act suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be a sum during the previous year and if the assessee offers no explanation about the nature and source of such credit or the explanation offered is not satisfactory, then the sums so credited can be treated as income of the assessee for that previous year. The expression 'no explanation is offered' or 'the explanation offered is not satisfactory' puts an onus on the assessee to offer a lucid, reasonable and acceptable explanation before the Assessing Officer and thereupon the Assessing Officer should form an opinion accepting or rejecting the explanation based upon appreciation of facts/materials and other attending circumstances. Section 68 of the Act was examined in *Govindarajulu Mudaliar (A.) versus CIT*, (1958) 34 ITR 807 (SC) observing that there were ample authorities for the proposition that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during an accounting year, the Assessing Officer is entitled to draw inference that the receipts are of an assessable nature. Whether explanation should be accepted or not is not to be examined factually but having regard to test of human probabilities and normal course of conduct. Reference can be made to *CIT versus Durga Prasad More* (1971) 82 ITR 540 (SC), *CIT versus Daulat Ram Rawatmull*, (1973) 87 ITR 349 (SC) and other cases referred to in *CIT versus Nova Promoters and*

Finlease Private Limited, (2012) 342 ITR 169 (Del). In these cases, it has been observed that what is apparent must be considered real until it is shown that there are reasons to believe that the apparent is not real. Caution must be exercised on self-serving statements made in the documents as they are easy to make and rely upon in case an assessee wants to evade taxes. Proof is required and the assessing authorities should not put blinkers while looking at the documents before them. Surrounding circumstances are equally important.”

(emphasis supplied)

15. Learned counsel for the appellant has drawn our attention to two decisions of this Court in ***Commissioner of Income Tax, Delhi versus Mayawati*** (2011) 338 ITR 563 (Del) and ***Commissioner of Income Tax, Delhi versus R.S. Sibal*** [2004] 269 ITR 429 (Del). In *Mayawati* (supra), there were registered gift deeds in respect of immovable properties and the third addition related to gift of Rs.2 lacs by way of cheque from a third person. Documents in form of gift deeds, affidavit of the donors, bank account details etc. were filed and all the donors had appeared before the authorities and had confirmed the gifts on oath. The donor making the gift of the immovable property had asserted that the assessee was *Rakhi/Dharm* sister. The High Court primarily dismissed the appeal on the ground that the issue raised was factual and the donors had asserted their relationship with the assessee which was proved by evidence, affidavit on oath and photographs. Reference was also made to some other decisions of this Court in which the contention of the assessee on genuineness of the gift was accepted. These decisions, namely ***CIT versus R.S. Sibal***, ITA No.264/2003, decided on 12th November, 2003 (reported as [2004] 269 ITR 429 (Del)); ***Muralidhar Lahorimal versus CIT***, ITA No.225/1994 decided on 14th November, 2005; ***CIT versus Mrs. Sunita Vachani***,

ITA No.101/1999 (*sic*, 1989) decided on 5th February, 1990 (reported as [1990] 184 ITR 121 (Del)); ***CIT versus Orient Enterprises***, ITA No.91/1987 (*sic*), decided on 10th January, 1990 (reported as [1990] 185 ITR 156 (Del)); and, ***CIT versus Shri Kulwant Rai***, ITA No.86/2006 decided on 13th February, 2007 (reported as [2007] 291 ITR 36 (Del)), we perceive proceed on their own facts. In ***R.S. Sibal*** (*supra*), it was specifically mentioned that mere identification of donor and payment through banking channels would not be sufficient to prove genuineness of the gift and the onus lies on the assessee not only to establish the identity but also the capacity of the donor to make the gift. In the said case, the Assessing Officer had remained quiet and had not conducted enquiry or questioned the transaction, even when the donor had made a declaration in the written document that the gift was made on account of love and affection. In ***Muralidhar Lahorimal*** (*supra*), the donor had appeared in person before the Assessing Officer and had also borne gift tax but these facts were not taken into account. In ***Sunita Vachani*** (*supra*), the Tribunal after examining the factual matrix reversed the order of the Commissioner of Income Tax under Section 263 of the Act on the ground that no error was committed by the Assessing Officer as requisite material had been placed on record to show that the gifts were genuine. In ***Orient Enterprises*** (*supra*) the assertion of the Revenue that the findings of the Tribunal were perverse was rejected in view of the confirmatory certificates and statements of witnesses, etc. In ***Kulwant Rai*** (*supra*), it was held that no substantial question of law arose as the dispute was entirely factual.

16. The judgment in the case of *Mayawati* (supra), also refers to decisions of Division Bench of this Court in *CIT versus Anil Kumar* [2007] 292 ITR 552 (Del). This decision in favour of the Revenue observes that when there was nothing on record to show financial capacity of the donor, their creditworthiness and what kind of relationship the donors had with the assessee, addition would be justified. In *Rajeev Tandon versus Assistant Commissioner of Income Tax* [2007] 294 ITR 488 (Del), the genuineness of the gift was not accepted as the two donors had no connection with the assessee. This it was observed, was quite unusual and also unnatural. The Court held that it was incredible for a complete stranger to make gift of lacs of rupees only because the person wanted money to purchase a house. The surrounding circumstances are material when the authority/court examines whether the gift is genuine or not. In *Sajan Dass & Sons versus CIT* [2003] 264 ITR 435 (Del), it has been held that the onus lies on the assessee to establish not only the identity of the person making the gift, his capacity to make gift but also that what was actually received was a gift from the donor. It is the last aspect which is important and relevant, and cannot be proved and established by merely showing that the money was paid through banking channels. The details and proof of genuineness must be adduced by the assessed as these facts are in his exclusive knowledge. It would be relevant and prudent to refer to and quote decision of this Court in *Pawan Kumar Aggarwal versus Income Tax Officer*, ITA No.137/2003, decided on 27th November, 2014,

“8. Possibly, some of the information/confirmation may not have been possible for the appellant assessee to procure, but the close relationship, not necessarily blood relationship, between the

parties could have been asserted and fortified. Genuineness of the transaction has to be examined by not only taking into consideration the paper/documents, which were executed, but surrounding circumstances are also relevant. These aspects are of significance and importance, when genuineness of a transaction is in issue. A gift is a voluntary act, by a person who out of love and affection transfers of money, moveable or immoveable asset to another person. Element of personal and close relationship between the two is the motivating factor as the donor parts with and transfers what belongs to him to someone, whom he/she loves and cares. This mandates and requires a close association between the donor and the donee, except where gifts are made for charity and philanthropic purposes. In the present case, the appellant merely relies upon the form of declaration by Bhupinder Kumar that the gift was made out of love and affection. ...

9. ... In fact, this section [Section 68] casts a burden on the assessee to show genuineness of the transaction by establishing identity of the person from whom the payment was received, the source of payment, which necessarily need not be confined only to the details of the bank account from which payment was made but also corroborating and surrounding circumstances. This has always been the legal position, even prior to insertion of Section 68 of the Act. It was a well-accepted principle that income/cash credits which are not satisfactorily explained might be assessed as income. Even long prior to the introduction of Section 68 in the statute book, courts have held that where any amount was found credited in the books of the assessed in the previous year and the assessed offered no explanation about the nature and source thereof or the explanation offered was in the opinion of the Assessing Officer not satisfactory, the sums so credited could be charged to taxed as income of the assessed for the relevant previous year. ...”

(emphasis supplied)

17. Referring to the facts of the present case, we find the order passed by the Tribunal is justified and correct. They were right in holding that the assessed has not been able to prove genuineness of the gift and also the factum that the transaction was out of love and affection, a *sine qua non* to establish a genuine gift.

18. In view of the aforesaid discussion, we accordingly answer the question of law against the appellant assessee and in favour of the respondent Revenue. In the facts of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

February 4th, 2015
kkb