

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

DB Income Tax Appeal No.476/2011  
Smt. Jyoti Jajoo Vs. The Commissioner of Income-Tax II

Judgment reserved on 18<sup>th</sup> May, 2016  
Judgment pronounced on 1st June, 2016

**Hon'ble Mr. Justice M.N. Bhandari**  
**Hon'ble Mr. Justice J.K. Ranka**

Mr. Mahendra Gargiya with  
Ms. Manisha Surana, counsel for the appellant

**BY THE COURT (Per: Hon'ble J.K. Ranka, J.)**

1. Instant appeal under Section 260A of the Income Tax Act, 1961 (for short, 'Act') is directed against the order dt.21/08/2007 passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur 'A' Jaipur (for short, 'Tribunal'). It relates to the assessment year 2002-03

2. Brief facts noticed for disposal of the appeal are that the appellant-assessee had received an alleged gift of Rs.5,00,000/- by demand draft No.386511 dt.04/03/2002 drawn on Indraprastha Sehkari Bank Ltd., Model Basti, New Delhi from one Smt. Preeti Maheshwari W/o Sh. Vinod Kumar Maheshwari, resident of 9/6420, Mukherjee Gali, Gandhi Nagar, Delhi. During the course of the assessment proceedings, a declaration of gift, a certificate and an affidavit was filed stating therein about the gift by Smt. Preeti Maheshwari to the appellant. The Assessing Officer (for short, 'AO') being

not satisfied with the purported gift of the said amount of Rs.5,00,000/- desired the assessee to prove identity, capacity and genuineness of the so claimed gift by the donor Smt. Preeti Maheshwari and since compliance was not made repeatedly, the AO desired personal appearance of the assessee as also the appellant. The AO examined the assessee and the assessee stated in the statements that there is no blood relation of the assessee with the donor Smt. Preeti Maheshwari and that Smt. Preeti Maheshwari, the donor of the gift, is daughter of close friend of her grand father-in-law Shri Mohan Lalji Jajoo and her grand father-in-law had gifted a set of diamond bangles worth Rs.50,000/- to Smt. Preeti Maheshwari in her marriage in 1975 due to weak financial condition of the father of Smt. Preeti Maheshwari and in order to return this obligation, Smt. Preeti Maheshwari has gifted the amount of Rs.5,00,000/- to the assessee on her birthday on 01/03/2002. On being questioned that what were the gifts given by the assessee and her family members to Smt. Preeti Maheshwari, the assessee replied that she has never given any gift to Smt. Preeti Maheshwari. However, an amount of Rs.1,100/- was gifted by her mother-in-law to Smt. Preeti Maheshwari on her last visit and shown ignorance of any gift given by her family even to Smt. Preeti Maheshwari. On a further

questioning about any further gift by the assessee to any other relative of Smt. Preeti Maheshwari or/and any evidence to prove the gift given by her grand father-in-law to Smt. Preeti Maheshwari, she showed ignorance. She also replied that none of the family of the assessee attended the marriage of the daughter of Smt. Preeti Maheshwari in 1997 and no gift was given by the assessee or her family members on the occasion of the marriage of daughter of Smt. Preeti Maheshwari nor there was any proof of Smt. Preeti Maheshwari attending the marriage of the appellant. On certain other questions relating to the family background of Smt. Preeti Maheshwari and the capacity of grand father-in-law of the appellant of gifting diamond bangles worth Rs.50,000/- in the year 1975, she showed her ignorance. During the course of statement, she also informed to the AO that she will produce Smt. Preeti Maheshwari on the next date of hearing. During the course of the assessment proceedings, a letter was filed on 17/01/2005 signed by the appellant where husband of the assessee, who himself is a Chartered Accountant, offered to surrender of the said amount of Rs.5,00,000/- mentioning therein about the serious differences with the donor. Another letter dt.25/01/2005 was also submitted reiterating what was stated in letter on 17/01/2005 Accordingly, the AO placing reliance on the

said surrender added a sum of rs.5,00,000/- as unexplained income and taxed the same under Section 68 of the Income Tax Act.

3. Though surrender was made but an appeal came to be filed by the assessee before the CIT(A) and before whom a plea was raised that the assessee was pressurized to surrender the said amount under duress/coercion which cannot be said to be justified and the CIT(A) accepted this contention and deleted the addition.

4. On an appeal by the Revenue before the Tribunal, the Tribunal went into merits of the case again and upheld the order of the AO reversing the findings of the CIT(A).

5. Learned counsel for the appellant contended that the gift was genuine, supported not only by a certificate but also a declaration of gift duly signed by and between the donor and donee and also an affidavit of Smt. Preeti Maheshwari submitted during the course of the assessment proceedings. He also contended that a copy of the demand draft as also withdrawal from the account of Smt. Preeti Maheshwari was placed on record and Smt. Preeti Maheshwari in her declaration and affidavit clearly stated about she being an income tax assessee and out of the love and affection the amount was gifted. He contended that in a gift, there is no necessity of having a blood relationship or close

relationship and closeness or even friendship as has been proved on record between the two families is sufficient. He further contended that though the assessee had desired Smt. Preeti Maheshwari to produce her but unfortunately it transpired that when they had gone to south on account of Sunami did not return. He also contended that copy of the assessment records of Smt. Preeti Maheshwari alongwith her capital account all were placed on record to prove identity, capacity and genuineness of the transaction. He further contended that the AO put pressure and coercion on the appellant being a lady and there was no alternate except to surrender the said amount but the same was retracted by filing of the appeal against the said surrender and once the assessee had filed an appeal and the CIT(A) entertained and accepted contention of the assessee, the retraction was accepted by the appellate authority and thus the Tribunal has grossly erred in holding the same to be otherwise. He relied upon the judgments rendered in the case of Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala & anr.: (1973) 91 ITR 0018; Nek Kumar Vs. ACIT: (2005) 274 ITR 0574; CIT Vs. Padam Singh Chouhan: (2009) 315 ITR 0433; CIT Vs. Arun Kumar Kothari: (2012) 79 DTR (Raj.) 0193; Aravali Trading Co. Vs. ITO: (2008) 8 DTR 0199; CIT Vs. Jai Kumar Bakliwal : (2014) 366 ITR 217 (Raj.)

and CIT Vs. M. Pyngrope: (1993) 200 ITR 0106.

6. We have heard learned counsel for the assessee and have perused the impugned order and other material.

7. We have already given the facts of the amount having been received by the appellant as alleged gift from Smt. Preeti Maheshwari and also some of the questions put to the appellant and her answers. From the answers given by the appellant to the AO, it can be made out that there may be a possibility of the appellant and the family of the donor being apparently close but the facts have not been brought on record as to closeness being such which developed into gifting of a sizable amount of Rs.5 lac to the appellant in the year 2002. Though blood relationship is not necessary prior to 01/04/2005 and even a close relationship or even a friendship sufficiently developed over the years can be a ground for giving of a gift which should be voluntary and out of love and affection. However, it is also an admitted fact as observed by the AO as well as Tribunal that some serious differences appeared to have happened in between the two families as observed in the order of the Tribunal. The Tribunal has observed as under:-

*“The assessee was asked to produce the donor but the same was not produced and no confirmation on the fixed date of 27.12.2004*

*from the donor was produced except a bank account of the donor and that to for the month of March, 2002. On 11.01.2005 the assessee furnished a letter that the donor will reach Jaipur on 11.01.2005 for the reasons mentioned hereinbefore. On 17.01.2005 Sh. Sunil Jajoo C.A./AR and husband of the assessee furnished a letter that due to serious differences with the donor, he is not able to furnish the necessary evidence required by the AO and therefore the said amount of Rs.5,00,000/- claimed as gift be treated as income of the assessee from business.*”

8. It is apparent on perusal of the above that there appeared to have been serious differences with the donor and therefore, the appellant was unable to bring more material or produce the donor which could have gone in her favour. Merely producing copy of the computation of income or bank statement, in our view, is of no avail. Another letter was submitted by the appellant surrendering an amount of Rs. 5 lac during the course of the assessment proceedings vide letter dt.25/01/2005 and the salient features of the said letter are reproduced here under:-

*“The Income Tax Officer,  
Ward 4(2),  
Jaipur.*

*Sub: Assessment proceedings for Asst. Year  
2002-03.*

*Reg.: Smt. Preeti Maheshwari*

*During last date of hearing i.e. on 11-1-2005 I have explained to you that Smt. Preeti Didi and her family was on a religious and pleasure trip. I am unable to contact her and requested you to give me further time, so that I can produce her, but your Honour shown unwillingness to accept my request.*

*Further to bring a peace of mind and as a moral responsibility towards my sister Didi,*

who have so kind towards me to gave a gift of Rs.5,00,000/- I agree to surrender the amount before you on the condition that you will not levy any penalty on me.”

.....

Only on such condition I have deposited Rs.25,000/-. The photocopy of the challan is here with enclosed, rest of amount I will deposit in five instalment of Rs.25,000/- each.

Hence, I hereby further request to not to levy any penalty or issue any notice in use. you consider my requests of surrendering the amount & oblige.

Thanking you,

Yours faithfully,

For JAJOO RASHMI REFRACTORIES

Sd/- Jyoti

Prop.”

9. It is apparent on perusal of the said letter that not only the amount was surrendered but alongwith the letter an amount of Rs.25,000/- as tax was also deposited towards the said surrender and a copy of the challan of Rs.25,000/- was also enclosed and it was assured that she will deposit the balance amount in five installments of Rs.25,000/- each. In the backdrop of the above, the argument of the counsel for the appellant that the assessee was pressurized and coerced to surrender is wholly unjustified and an afterthought. It would also be relevant to observe that the husband of the appellant himself is a practising Chartered Accountant was regularly appearing the hearings and was knowing full well the consequences of the amount to be surrendered. During the course of the assessment proceedings, on 17/01/2005 Sh. Sunil Jaju, Chartered

Accountant and husband of the assessee appeared and furnished a letter of the assessee surrendering the gifted amount of Rs.5 lac as income of the assessee, the contents of which are being reproduced as under:-

*“....Kindly refer to Assessment Proceedings in progress for the Assessment Year 2002-03.*

*In the aforesaid context I wish to state that a sum of Rs.5.00 lacs claimed as Gift having been received vide DD No.386511 dated 4-3-2002 drawn on HDFC Bank may kindly be treated as my income from business as due to serious differences with the donor, I am unable to furnish necessary evidence in the matter please.*

*The offer of inclusion of aforesaid amount is made to purchases of peace as looking to my peculiar family circumstances at Jaipur and the heat generated in the joint family I am seriously disturbed. However, the offer to include the amount in income is subject to non-levy of penalty u/s 271(1)(c) of I.T. Act 1961.*

10. We have already quoted both the letters of the appellant-assessee submitted before the learned AO coupled with the later letter dt.25/01/2005 where the assessee herself deposited an amount of Rs.25,000/- towards part payment of the tax and prayed for granting time for depositing the balance in five installments of Rs.25,000 each. In our view, the said two letters, particularly in the presence of husband Mr.Sunil Jajoo who himself is a qualified Chartered Accountant and appeared before the AO in the proceedings cannot be discarded. Not a single letter immediately or later was placed on record to assert about the pressure or coercion on the appellant. Neither there is any

letter/affidavit moved to the higher authorities about any pressure/coercion inflicted during the course of the assessment proceedings nor any assertion later. The retraction, if any, ought to have been as soon as possible and not to await till an order is passed. In our view, the retraction, if any, was required to be made by the appellant by a duly sworn affidavit supported by convincing evidence demonstrating that the statement initially recorded was under pressure/coercion and was factually incorrect.

10.1 The contention of counsel for the appellant that an appeal was filed objecting/challenging the addition, itself proves that the surrender, if any made earlier, stood retracted, however, we are unable to subscribe to this contention. If this plea is accepted, then there would be no sanctity of a surrender and then to challenge immediately after the assessment order is passed. Equally important is the fact that there is neither a specific ground of appeal brought to our notice about challenging before the CIT(A) about retraction or otherwise. It is also apparent that before the Tribunal Revenue preferred an appeal raising following ground:-

*“On the facts and in the circumstances of the case and in law the ld. CIT(A)-II, Jaipur has erred in deleting an addition of Rs.5,00,000/- made on account of unexplained gift received from Smt. Preeti Maheshwari and surrendering the same at the time of assessment proceedings”*

10.2 It shows that the assessee had duly surrendered the same and therefore, the order of the CIT(A) was not proper. However, the plea of retraction was neither raised before the Tribunal either by way of a cross appeal or cross objection. The Tribunal gave a finding of fact in Para 6 of its order which reads ad-infra:-

*“From the findings of authorities below and arguments of the parties, we are of the view that the assessee made a surrender of Rs.5,00,000/- and there was no pressure on him to make the surrender of the said amount. No retraction in this respect was made by the assessee in writing before the AO and even before the CIT(A) except the arguments made by the ld. AR before the ld. CIT(A) no such retraction has been placed on record in the paper book pages 1 to 31 filed before us. The assessee has made the part payment of taxes of the surrenders made as is evident from the order of the authorities below.”*

10.3 In the backdrop aforesaid, the argument of the counsel for the appellant does not stand, is contrary to the material on record and deserves rejection.

11. We may deal with some of the authorities cited by counsel for the appellant.

12. In the case of Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala & anr. (supra) the assessee had shown an expenditure of Rs.79680/- to be capital expenditure and was also shown in the books of accounts and the Apex Court was of the opinion that “it is no doubt true that entries in the books of accounts of the assessee amount to an admission that the amount in

question was let out or expanded for the cultivation, upkeep or maintenance of immature plants from which no agricultural income was derived during the previous year. An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect.” There can be no two argument on the said proposition in so far as making of entires in the books of accounts is concerned and they may not be relevant at all. However, in the instant case, the assessee has herself voluntarily surrendered certain amount and has also paid due tax and there is no question of any accounting entries being wrong.

13. In the case of *Nek Kumar Vs. ACIT (supra)*, this Court found that both the donor and donee knew each other very well and donor also visited Jaipur so many times and stayed in the family of donee and gift was given and on this premise the gift was found to be genuine whereas the admitted fact in the instant case is that though earlier friendship between grand father-in-law and father of the donor has been stated but there is merely an assertion unsupported by any affidavit or other material to prove even the so-called friendship developed in the last several years, neither she went to the family of the donor nor the donor came and visited the donee and except an amount of Rs.1,100/- when

Smt. Preeti Maheshwari the donor visited several years back, her mother-in-law had given the said amount and even there is no corroboration of the same and nothing was exchanged by the two during the last so many years. Therefore, the judgment in the case of Nek Kumar Vs. ACIT (supra) is distinguishable.

14. In the case of CIT Vs. Padam Singh Chouhan (supra), the AO did not find the gifts to be genuine. However, the CIT(A) as well as the Tribunal and the High Court found that merely on conjectures the gifted amount cannot be disbelieved.

15. In the case of CIT Vs. Arun Kumar Kothari (supra), this Court found that the gift was received from the real brothers and the two appellate authorities were satisfied about identity, creditworthiness and genuineness of the gifts and this Court found no substantial question of law involved in the case.

16. The cases of Aravali Trading Co. Vs. ITO (supra) and CIT Vs. Jai Kumar Bakliwal (supra) are on genuineness of cash credits, identity of cash creditors and on different proposition and are distinguishable on facts. The judgment in the case of CIT Vs. M. Pyngrope (supra) is on the proposition that if an income is exempt under the provisions of the Income Tax Act and the assessee did not claim the same in the return of income, on such premise the Court held that if the income is

exempt and not liable to tax, the appeal can always be filed and genuine claim available under law ought to be allowed. However, the facts in the instant case, as observed herein above, relate to surrender of the gift made during the course of assessment proceedings and thus on a different proposition.

17. Accordingly, in our view, no question of law much less substantial question of law can be said to arise out of the order passed by the Tribunal so as to call for interference as the order of Tribunal is based on appreciation of evidence and letters filed by the appellant herself, we find no perversity in the order impugned.

18. Consequently, the appeal, being devoid of merit, is accordingly dismissed.

**[J.K. Ranka],J.**

**[M.N. Bhandari],J.**

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**Certificate:All corrections made in the judgment/order have been incorporated in the judgment/order being e-mailed.**

**Raghu, Sr. PA.**