

FORM NO.(J2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:
Hon'ble Justice Girish Chandra Gupta
And
Hon'ble Justice Asha Arora

G. A. NO.584 of 2005
ITA NO. 51 of 2005

PRAHLAD BHATTACHARYA
Versus
THE CIT, KOLKATA – XVI & ANR.

Advocate for the appellant: Mr. Ananda Sen, Adv.
Mr. Biswajit Mal, Adv.

Advocate for the State: Mr. Asha G. Gutgutia, Adv.
Ms. Swati Keshwani, Adv.

Hearing concluded on: January 8, 2016

Judgment delivered on: 04/03/2016.

GIRISH CHANDRA GUPTA J. The assessee has come up in appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') against a judgment and order passed by the Income Tax Appellate Tribunal, 'D' Bench, Kolkata in ITA No.2541 (Cal) of 2003 dated 29th April, 2004 pertaining to the assessment year 1996-97.

The following substantial questions of law arise for determination in the instant appeal:-

- I) Whether on a true and proper interpretation of Section 68 of the Act the Learned Tribunal was correct in law in treating the accumulation of capital in the books of the petitioner as an undisclosed income when on the contrary there was enough materials on record to prove that the capital found in the books of account of the petitioner was nothing but contributions received by way of gifts by the petitioner from various persons, proof of which had been adduced before the first appellate authority i.e. the CIT(A) who had on a proper appreciation of the facts deleted the addition?
- II) Whether the order of the Learned Tribunal giving a complete go-bye to the findings of the CIT(A) and thereafter confirming the order of the Assessing Officer was perverse?

Briefly stated the facts and circumstances of the case are as follows:-

The assessee an individual, filed his return of income for the assessment year 1996-97 indicating therein a total income of Rs.42,760/-, which was processed u/s.143(1)(a). Upon examining the return filed for the assessment year 1995-96 the Assessing Officer (hereinafter referred to as 'the AO') observed that the closing stock appearing in the Trading and Profit and Loss Account for the year ended on 31st March 1995 was Rs.85,960/- whereas the opening stock appearing in the Trading and Profit and Loss Account for the year ended on 31st March 1996 was Rs.1,35,960/-. Hence there was a difference of Rs.50,000/-. Similarly, the closing capital in the Balance-Sheet as at 31st March 1995 was Rs.49,550/- and the opening capital according to the Balance-Sheet as at 31st March 1996 was Rs.3,76,100/- and hence there was a difference of Rs.3,26,550/-. The A.O. reopened the

assessment under Section 147 and issued notice to the assessee u/s.148. However no one appeared in response to the notice. Thereafter the case was fixed for hearing on three several occasions but even then no one turned up. By an order dated 14th March, 2001 u/s. 144 r/w 147, the assessing officer made an addition of Rs.3,26,550/- on account of increase in opening capital and an amount of Rs.50,000/- on account of increase in opening stock. The assessing officer by the aforesaid order held as follows:-

"As nobody appeared to explain the case it is assumed that the assessee has no valid explanation regarding this increase in opening stock and opening capital. It is treated that this increase of Rs.50,000/- in opening stock and Rs.3,26,550/- in opening capital is income from undisclosed source of the assessee. This amount is added back to the total income of the assessee."

The assessee appealed before the Commissioner of Income Tax (Appeals) (hereinafter referred to as the 'CIT(A)') against the order of the assessing officer. Before the CIT(A) the assessee raised the contentions that:-

1. he had handed over all the notices to his Advocate who did not attend the hearings and that he himself was unaware of this non-compliance on the part of his Advocate;
2. he is an under graduate with income from pooja and other allied activities. In the year 1986 he started a business in the name of "Sona Cycle Mart" with an initial investment of Rs.25,900/-. He filed income tax return for the first time in the assessment year 1990-91 indicating therein business income under the name "Sona Cycle Mart" but never filed his personal balance-sheet till the assessment year 1998-99;
3. in the assessment year 1996-97 he introduced capital from his personal account into the business.

The CIT(A) called for remand report from the AO under Rule 46 of the Income Tax Rules, 1962.

The AO vide his letter dated 8th April, 2003 stated as follows:-

- a) As regards increase in opening stock the addition was justified as the assessee could not furnish any explanation.
- b) As regards the addition of opening capital of Rs.3,26,500/- an amount of Rs.2,40,000/- was obtained by way of gifts from relatives and others which was mentioned in the personal balance sheet.

After verifying the gifts and sources of the donors the assessing officer reported as under:-

" In case of Rani Bala Bhattacharya (Donor)

The donor is the mother of the assessee. She made a statement in response to notice u/s 131 that she made gift Rs.85,000/- in several dates in cash (copy of statement against 131 enclosed herewith). The 2 source of fund were out of sold of her agricultural land in favour of the same, she submitted some copy of land deed. She has not any IT file.

In case of Manasi Metia (Donor)

The donor is wife of the assessee and she is a schoolmistress 85 IT file is available. She made a statement in response to notice u/s 131 (copy enclosed) where she stated that she made gift Rs.65,000/- to her husband in cash in various date out of his salary income.

In case of Haridas Sinha [Donor]

The donor is brother-in-law in relation of the assessee. He declared in the statement in response to notice u/s 131 (copy of statement enclosed) that he made gift Rs.40,000/- in cash in several dates to Sri Prahallad Bhattacharya out of his pension & MIS income. The donor is an ex-employee of CPT & he bears IT file.

In case of Sanjay Panda [Donor]

The donor has not any blood relation with the donee. As per ITI's report the said donor made a gift Rs.10,000 on 15-01-95 in cash out of his Agricultural Income. He had not IT file. He could not produce any evidence except declaration & gift deed.

In case of Dhrubajyoti Bhattacharya (Donor)

The donor is elder brother in relation. As per ITI's report he made gift Rs.30,000/- in two several dates (on 02-01-95 & on 12-02-96) in cash out of his salary. He is an employee of SBI. He produce no evidence except declaration & gift deed.

In case of Rabindra Nath Ghorai (donor)

The donor has not any blood relationship with dale donee. As per ITI's report the donor had made cash gift Rs.10,000 on 10-04-95 out of his business & agricultural income & could not produce any evidence except declaration & affidavit."

The CIT(A) by an order dated 14th March, 2001 deleted the addition of Rs.2,40,000/- which was claimed to have been received by way of gifts. The disallowance of the balance amount of Rs.86,550/- was maintained. Furthermore, addition of Rs.50,000/- on account of discrepancy in the opening stock was also maintained. The CIT(A) held as follows:-

"As regards the difference of Rs.50,000/- between the closing stock and opening stock, the A. R. could not file any satisfactory evidence. Hence the addition is confirmed on this ground.

As regards addition on account of introduction of capital amounting to Rs.3,26,550/-, I have considered the argument of the A. R. and the report of the A. O. The appellant has received gift from several donors which has been verified by the A. O. In case of donor Rani Bala Bhattacharya, Manasi Metia, Haridas Sinha & Dhrubajoyti Bhattacharya the source of gift has been established as per report of A. O. But in case of Sanjay Panda and Rabindra Nath Ghorai who have donated Rs.10,000/- each out of their agricultural income, the A.O. has reported that they have no IT file and they could not produce any evidence except declaration and affidavit. The A. O. has not given a conclusive report and they do not have any source to advance Rs.10,000/-, nor the A. O did establish that the gifts were bogus. I considered the introduction of capital amounting to Rs.2,40,000/- and addition of the same amount as income from unexplained source cannot be sustained. Hence the addition of Rs.2,40,000/- is deleted.

As regards balance amount of Rs.86,550/- (i.e. 3,26,550 - 2,40,000) the A. R. argued that the appellant had income from profession since 31.3.80 and the accumulated capital was introduced in one year.

I have considered the argument and I find that the A. R. could not produce any evidence of professional income since 1980 except filing a Chart. Hence the addition of Rs.86,500/- is held to be justified."

The assessee and the revenue both appealed against the order of the CIT(A) before the Tribunal. The Tribunal by an order dated 29th April, 2004 confirmed the addition of Rs.2,40,000/- which was

previously deleted by the CIT(A), the addition of Rs.86,550/- and Rs.50,000/- were also upheld. The Tribunal held as follows:-

"We have seen from the record that the assessee never filed any personal balance sheet till assessment year 1998-99. The theory of opening capital and the gift was introduced first time before the CIT(A) in which it was explained that the assessee allegedly received certain donations from most unlikely source.

(a) In the case of Smt. Rani Bala Bhattacharya, who is the mother of the assessee, the donor is alleged to have made the gift of Rs.85,000/- in several dates in cash. It was alleged that the sources of the funds were selling of agricultural land. In respect of that she furnished some copy of land deed. No evidence of sale was provided.

(b) In the case of Manasi Metia, the donor is the Wife of the assessee and she is a schoolmistress who made a statement u/s. 131 that she had made gift of Rs.65,000/- to her husband in cash. There was no evidence that she could accumulate Rs.65000/- out of her income and though the gift of Rs.65,000/- was chargeable to gift-tax, there was no evidence that gift-tax was paid.

(c) In the case of Haridas Sinha, the donor is the brother-in-law of the assessee and he declared that he had made a gift of Rs.40,000 on several dates from out of his pension income. It was never explained as to what his pension was and the reason for making the gift of Rs.40,000/- .

(d) In the case of Sanjay Panda, the donor is not any blood relation. In this case there was a declaration of gift but there was no evidence on record to show that this donor had ability to make the gift as alleged.

(e) In the case of Dhrubajyoti Bhattacharya, elder brother of the assessee, he is alleged to have made gift of Rs.30,000/- on two dates in cash out of his salary. he is an employee of State Bank of India. This donor happens to a bank employee. In spite of that he does not appear to have maintained bank account to which he could have drawn cheque if the gift was genuine. There was no such effort on the part of the assessee to establish the genuineness of the gift.

(f) In the "case of Rabindranath Ghorai also this donor was no blood relation and for some strange reason he appears to have made cash gift of Rs.10,000 to the assessee on 10.04.95.

6. It was admitted before the CIT(A) also that the cash difference between the closing stock and opening stock of Rs.50,000/- could not be established by any cogent reason. Such being the case, we find it was a very weak effort on unsubstantiated submissions to try to explain away the closing balance and opening balance of Rs.3,26,550/- by making certain story about unproved alleged gifts to cover up the difference. Before the CIT(A), there was not even an iota of evidence that the gifts were genuine on the basis of any admissible evidence. Therefore, we are of the view that the CIT(A) had, without any reason, deleted the addition; of Rs.2,40,000/- which is not sustainable.

7. Regarding the opening balance also since the assessee never provided any personal balance sheet till 1998-99, the theory of opening balance in the capital account has remained a myth and cannot be taken for granted. Therefore, we observe that this entire addition made by the AO is on the correct basis and/ or evaluation of the facts on

record which the CIT(A) should not .have interfere with Reversing the order of CIT(A), we confirm the addition of Rs.2,40,000 and agreeing with the order of CIT(A), we uphold the addition of Rs.86,550/- being unexplained opening balance.

8. In the result, the assessee's appeal is dismissed and the departmental appeal is allowed."

The assessee has come up in appeal against the impugned order of the Tribunal.

Mr. Ananda Sen, learned advocate appearing for the assessee contended that genuineness of a gift received from a blood relation should not be doubted. In support of his submission he relied on the judgement of the Delhi High Court in the case of CIT-vs- Suresh Kumar Kakar reported in (2010) 324 ITR 231 for the proposition that when the donor and the donee are in blood relationship with each other, the donor does not need any particular occasion to make any gift.

He also relied on a judgement of the Rajasthan High Court in the case of CIT-vs- Padam Singh Chouhan reported in (2009) 315 ITR 433 for the proposition that:-

"There is no legal basis to assume, that to recognize the gift to be genuine, there should be any blood relationship, or any close relationship, between the donor and the donee. He further submitted that instances are not rare, when even strangers make gifts, out of very many considerations, including arising out of love, affection and sentiments."

The learned Counsel appearing for the revenue supported the order of the tribunal and contended that the genuineness of the alleged gifts could not be ascertained from the remand report furnished by the assessing officer before the CIT(A). He further contended that the assessing officer had duly served notice u/s.148 on the assessee. On three separate occasions the case of the assessee was fixed for hearing but no one turned up. Therefore the assessing officer was compelled to

carry out ex-parte assessment u/s.144. It was in these circumstances that the assessing officer by his order dated 14th March 2001 u/s. 144 r/w. 147 rightly concluded that the assessee had no explanation to offer regarding the increase in opening stock and opening capital and the same was income of the assessee from undisclosed sources. In this view of the matter the action of the assessing officer in adding back these amounts to the total income could not be faulted and the CIT(A) fell in error by interfering with the same.

We have heard the arguments advanced at the Bar and perused the records.

The learned Tribunal in coming to its own conclusion should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the CIT(A) in support of the order of deletion but should also express reasons to hold that the deletion was not justified.

In this case the learned Tribunal has gone on to reject the entire evidence on record by merely making a bald statement that "*Before the Cl'T'(A), there was not even an iota of evidence that the gifts were genuine...*". From the order of the CIT(A) quoted above, it is evident that each donor had offered an explanation supported by documentary evidence. Furthermore a donor cannot be expected to disclose or answer any question which was not specifically put to him in the course of proceedings u/s.131. The inspector deputed by the assessing officer had full opportunity to make inquiry and the assessee should not suffer on account of a lapse on the part of the inspector.

It is no doubt true that in an appeal against the order of the CIT(A) the Tribunal being the final fact finding authority has full power to review the evidence and to reach its own independent conclusion. Nevertheless while reversing the order of the CIT(A) the Tribunal is duty bound to examine and discuss the reasons given by the CIT(A) to hold one way or the other and then to dispel those reasons. If the Tribunal fails to make such an exercise the judgment will suffer from serious infirmity. We are supported in our view by the following judgments of the Supreme Court. In *Padma Uppal v. State of Punjab*, reported in (1977) 1 SCC 330 wherein the Apex Court while discussing the scope of appellate power held as follows:-

"Moreover, there is a prudent condition to which the appellate power, generally speaking is subject. A Court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong. (See Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty [1959 Supp 1 SCR 404 : AIR 1959 SC 429 : 1959 Cri LJ 526] ; Dattatraya Shankarbhat Ambalgi v. Collector of Sholapur [(1971) 3 SCC 43] and Dollar Company, Madras v. Collector of Madras [(1975) 2 SCC 730] .)"

The Supreme Court in *S.V.R. Mudaliar v. Rajabu F. Buhari*, reported in (1995) 4 SCC 15 held as follows:-

"...we have no doubt in our mind that before reversing a finding of fact, the appellate court has to bear in mind the reasons ascribed by the trial court. This view of ours finds support from what was stated by the Privy Council in Rani Hemanta Kumari Debi v. Maharaja Jagadindra Nath Roy Bahadur [10 CWN 630 : 8 Bom LR 400] wherein, while regarding the appellate judgment of the High Court of Judicature at Fort William as "careful and able", it was stated that it did not "come to close quarters with the judgment which it reviews, and indeed never discusses or even alludes to the reasoning of the Subordinate Judge"."

We are thus clearly of the opinion that the Tribunal fell into an error in interfering with the order of the CIT(A) without first dislodging the reasons given by him. Assuming that another view was possible, that itself would be no ground to interfere with the order of the CIT(A) unless it is shown that the appreciation of evidence by the CIT(A) was either

perverse or untenable and that in holding in favour of the assessee the CIT(A) either ignored material evidence or that the view taken by him was patently untenable.

In that view of the matter question No. 1 formulated above is answered in the negative and in favour of the assessee. Question No. 2 formulated above is answered in the affirmative and in favour of the assessee.

The appeal is thus allowed.

(GIRISH CHANDRA GUPTA J.)

I agree.

(ASHA ARORA J.)