

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.1026 OF 2010**

The Commissioner of Income Tax-3,  
Mumbai, Room No.613,  
Aayakar Bhavan,  
Mumbai-400020.

...Appellant.

Vs.

Sunita Makhija,  
7, Candy House, Mandlik Road,  
Colaba, Mumbai-400005.

...Respondent.

Mr. Vimal Gupta for the Appellant.  
Mr. Subhash Shetty for the Respondent.

**CORAM : S.J.VAZIFDAR &  
M.S. SANKLECHA, JJ.**

**DATE : 24<sup>th</sup> July, 2012**

**JUDGMENT ( PER M.S. SANKLECHA, J.):**

This appeal by the revenue under Section 260A of the Income Tax Act (hereinafter referred to as the "said Act") is filed against the order dated 27/3/2008 of the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal") relating to the block period 1/4/1997 to 29/1/2003. The appellant has formulated the following questions of law for the consideration of this court.

(A) Whether on the facts and in the circumstances of the case and in law the Tribunal was right in deleting the addition of Rs.8.65 lacs made by the Assessing officer by holding that there was no evidence on record to prove that any cash has been paid by the assessee over and above the documented consideration of Rs.71,35,000/- on the purchase of Candy House property even though the seized material shows the value of Candy property as Rs.80/- lacs?

(B) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in deleting the addition of Rs.22,75,000/- made by the Assessing Officer being amount introduced by the assessee in her accounts as gifts received from various donors even though there was clear evidence on record to show that the donors did not have the financial capacity to make the said gifts to the assessee and further the assessee has not been able to prove the genuineness of the said gifts?

**Re :Question (A)**

2) A search was conducted under Section 132 of the said Act at the residential premises of the respondent. Consequent to the search, the respondent filed return of income on 12/11/2012 for the

block period 1/4/1996 to 29/1/2003. During the course of the search a paper was seized in the handwriting of the father of the respondent-assessee *inter alia* showing the property Candy house valued at Rs.80.00 lacs while the respondent assessee had shown the purchase price of the property at Candy house for a consideration of Rs.71.35 lacs. Consequent to the above, while passing an assessment order for the block period the Assessing officer treated the difference between Rs.80.00 lacs and Rs.71.35 lacs of Rs.8.65 lacs as undisclosed income of the assessee for the assessment year 2003-04 and sought to tax the same. The CIT (Appeals) by an order dated 18/8/2005 allowed the appeal of the respondent-assessee and held that the amount of Rs.8.65 lacs cannot be held to be undisclosed income of the respondent as amount of Rs.80.00 lacs shown in respect of the flat at Candy House was for the purpose of division of property in the family. The Tribunal by its order dated 27/3/2008 upheld the finding of the Commissioner of Income Tax (Appeals). The Tribunal held that there was no evidence on record to prove that any cash had been paid by the respondent-assessee over and above the document at consideration of Rs.71.35 lacs to purchase the property at Candy House. Further the noting on the paper were in the handwriting of the father of the respondent-assessee and not of the assessee herself.

3) Mr. Vimal Gupta, Advocate for appellant revenue contends that the amount of Rs.8.65 lacs being the difference between Rs.80.00 lacs shown in the seized document and Rs.71.35 lacs shown in the document evidencing to purchase of Candy House property represents unexplained cash paid by the respondent for purchase of the Candy House and has to be added as her undisclosed income. It

is his submission that it was for the respondent to discharge the onus on her to explain the noting found during the search of the premises which indicated Rs.80.00 lacs as the value of the Candy House property. In view of the failure of the respondent to discharge the burden an amount of Rs.8.65 lacs has to be added as undisclosed income of the respondent Mr. Subhash Shetty learned counsel for the respondent supports the order.

4) We find that prior to the order of assessment the respondent by her letter dated 27/1/2005 had informed the department that the figure of Rs.80.00 lacs mentioned in the note was the resale value of the premises at Candy House and the same was noted by her father as a rough measure for the division of property and the family assets in the family. The appellant-revenue has not been able to bring on record other evidence in support of its contention that the amount in excess of Rs.7.35 lacs was paid for the purchase of Candy House property. The document found during the search at the respondent-assessee's premises in the handwriting of the respondent's father has been explained satisfactorily viz. that it is the resale value of the property and the figures were recorded only for the purpose of distribution of the property within the family. The aforesaid findings are pure findings of fact and the Commissioner of Income tax (Appeals) and the Tribunal concurrently held that no cash consideration in excess of Rs.71.35 lacs was paid for the purchase of the property. The aforesaid findings are not alleged to be perverse. Consequently no substantial question of law arises. Therefore, question (A) is dismissed.

**Re-Question (B):**

5) So far as Question(B) is concerned, during the course of assessment proceedings for the block period, the Assessing officer found that for the assessment years 2002-03 and 2003-04 the respondent had received gifts aggregating to Rs.22.75 lacs. The gifts were given to the respondent by her cousins. The Assessing officer by his order dated 31/3/2005 found that the gifts were not genuine and they were also given by persons who were younger cousins of the respondent. Accordingly, in the assessment order dated 31/3/2005 the entire amount of Rs.22.75 lacs was treated as undisclosed income of the respondent and added to the respondent's income for tax purposes.

6) The Commissioner of Income Tax (Appeals) found that during the course of the appellate proceeding the respondent assessee had pointed out that the gifts were given by her cousins as her father had helped her cousin's family during their bad days. These gifts were given by her cousins, during her difficult financial period. Further, the amount gifted to her were by account payee cheques and came from refund of an advance which donors had made in one M/s. Innovative Investment. Necessary details were provided. So far as balance-sheet and capital gain accounts are concerned, it was pointed out the same were taken by the department during the search of the respondent's premises. The Commissioner of Income Tax (Appeals) was of the view that the appellant had reasonably discharged the onus to prove the genuineness of the gift transaction and the same cannot be doubted without bringing on record material

evidence to prove that gift transactions were paper transactions. Therefore, the appeal of the respondent-assessee was allowed by Commissioner of Income Tax (Appeals).

7) On appeal by the revenue, the Tribunal by order dated 28/3/2008 upheld the findings of the Commissioner of Income Tax (Appeal).

8) Mr. Vimal Gupta, Advocate for the revenue submits that the gifts of Rs.22.75 lacs were not genuine as according to him it was respondent-assessee's money which were routed through her cousin as gift and therefore, must be added to the income of the respondent assessee as undisclosed income. Mr. Subhash Shetty counsel for the respondent assessee points out that during the assessment proceedings the respondent had pointed out the capacity and the source of the gifts by furnishing the copies of the pass books, income tax details and PAN of the donors. Further the source of the monies gifted being the refund from M/s. Innovative Investment by account payee cheque was also filed. Consequently according to him the order of the Tribunal does not call for any interference.

9) We find that the respondent has sufficiently discharged the onus casts upon her to establish the source of gifts and credit worthiness of the donors. The issue under consideration namely whether the gifts are genuine or not is a question of fact. Both the Appellate authorities have concurrently arrived at a finding of fact that the gifts received by the respondent of Rs.22.75 lacs were genuine. This finding was based on evidence and it is not the case of the

revenue that the findings of the Commissioner of Income Tax (Appeals) and the Tribunal are perverse. In the circumstances, no substantial question of law arises and question ( B ) is also dismissed.

10           The appeal is dismissed. No order as to costs.

**( M.S. SANKLECHA, J. )**

**( S. J. VAZIFDAR, J. )**