

AFR**Court No. - 27**

Case :- INCOME TAX APPEAL No. - 99 of 2005

Petitioner :- Commissioner Of Income Tax (Central), Kanpur

Respondent :- S.K.Jain, Lucknow

Petitioner Counsel :- P.Agrawal

Hon'ble Devi Prasad Singh,J.

Hon'ble Vishnu Chandra Gupta,J.

1. The instant appeal filed under Section 260-A of the Income Tax Act, 1961 was admitted by this Court on the following substantial question of law:-

“(1) Whether the Hon'ble ITAT has erred in law in holding that the assessee had discharged the onus of establishing that the gift of Rs. 10,00,000/- made in his favour by his brother Dr. Chittranjan Jain was genuine?”

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in deciding the deletion of addition of Rs. 10,00,000/- on account of the aforesaid gift,, while the financial capability of the donor and the genuineness of the gift could not be established by the assessee and there was also no evidence before the Hon'ble Tribunal regarding the purpose for which the gift was given?”

2. The present controversy relates to Assessment year 1996-97. The return of income to the tune of Rs. 28,92,297/- was filed by the assessee in January, 1997 and processed under Section 143 (1) (a) by the Assessing Authority. A notice under Section 143 (2) of the Act

was issued and the case was selected for scrutiny. During the course of scrutiny of one of the current account lying in Oriental Bank of Commerce, New Delhi it was found by the Assessing Authority that among other deposits there was a deposit of Rs. 10,00000/- dated 5.7.1995. The assessee explained the deposit stating that the amount has come as gift from one Dr. Chitranjan Jain. In response of the claim of the assessee, the Assessing Authority had required from the assessee to prove the creditworthiness of Dr. Chitranjan Jain alongwith documentary evidence in support of Rs. 10,00000/- as gift. The assessee, in response, stated that the amount of Rs. 10,00000/- received as gift from N.R.E. account. Alongwith response the assessee had submitted a part of transcript of NRE account of Dr. Chitranjan Jain with the City Bank Delhi. As a proof with regard to creditworthiness of Dr. Chitranjan Jain, a copy of income tax return filed in USA was also enclosed. The Assessing Authority had disbelieved the evidence on the ground that response submitted by assessee was only part of transcript of N.R.E. account of the alleged donor. Accordingly, finding has been recorded by the Assessing Authority that it was not sufficient enough to prove the creditworthiness of donor as well as genuineness of alleged gift. Assessing Authority had added the amount of Rs. 10,00000/- as income from other source.

3. The finding recorded by the Assessing Authority was reversed by the CIT (Appeal) with the finding that the income tax return filed by the assessee was sufficient to prove creditworthiness. The CIT Appeal noted that the donor has mentioned the NRE account, the

name of the bank and the cheque number by which the gift was given. The extracts of NRE account were also furnished which indicated that in his NRE account the donor has a sum of about Rs. 40 lacs. Out of this amount, Rs. 10,00,000/- was given to the assessee as gift. The copy of the income tax return of both the donor and his wife filed in USA were also filed. Their income in the year 1995 was US\$ 1.16 lacs. From perusal of these two returns, CIT Appeal arrived to the conclusion that the assertion of Tribunal was not correct. Accordingly, CIT Appeal deleted the amount of Rs. 10,00,000 with a finding of genuine gift transaction between the assessee and the donor. The order passed by the CIT Appeal was reiterated by the ITAT. A finding has been recorded by the ITAT that the creditworthiness of the donor stands proved. Dr. Chitranjan Jain is an American citizen settled in USA for the last 30 years. All these evidences go to show the identity and creditworthiness of the donor as well as the genuineness of the transaction.

4. Shri D.D. Chopra while assailing the concurrent finding of two forum submits that since only a part of transcript of N.R.E was furnished it raises reasonable doubt about the transaction. It is further submitted that burden was on the assessee to prove the creditworthiness before the Assessing Authority with all material and creditworthiness evidence.

5. On the other hand, learned counsel for the respondents reasserted the finding recorded by CIT Appeal and Tribunal and submits that it does not suffer from any perversity or illegality.

6. Shri D.D. Chopra has relied upon a Division Bench judgement of this Court reported in [2006] 280 ITR 547 (ALL), Ram Lal Agrawal Vs. Commissioner of Income Tax. While deciding the case of Ram Lal Agrawal (supra), it was held by the Division Bench of this Court that under Section 68 of the Income Tax Act if any amount is found credited in the books of account of the assessee the burden lies upon the assessee to prove its nature and source. While proving the same the assessee has to prove the identity of the person, genuineness of the transactions and creditworthiness of the person, who has given the money. The observation made by a Division Bench of this Court for convenience is reproduced as under:-

“It is a settled principle of law that under Section 68 of the Act if any amount is found credited in the books of account of the assessee the burden lies upon the assessee to prove its nature and source. While proving the same the assessee has to prove the identity of the person, genuineness of the transactions and creditworthiness of the person who has given the money.”

There appears to be no dispute about the proposition of law with regard to creditworthiness.

7. Section 68 of the Income Tax Act is reproduced as under:-

“Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer,

satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year”

8. A plain reading of the aforesaid provision of the Income Tax Act reveals that the assessee have to fulfill two conditions. Firstly, he has to offer an explanation about the nature and source of creditworthiness and explanation was offered should be satisfactory in the eye of Assessing Officer and secondly the transaction must be genuine one.

9. In ***Blacks Law Dictionary***, Ninth Edition page 426, the word “creditworthy” has been defined as under:-

“creditworthy, adj. (1924) (Of a borrower) financially sound enough that a lender will extend credit in the belief default is unlikely; fiscally healthy-creditworthiness.

In ***The New Lexicon Webster's Dictionary***, the word “creditworthy” has been defined as under:-

“creditworthy, adj. of one who is a good risk as a borrower.”

10. In view of above, what was required for the Assessing Authority is to find out the creditworthiness of the assessee with a judicious approach from the material on record. Assessing authority cannot discharge his obligation arbitrarily or mechanically. The return filed by Dr. Chitranjan Jain and wife Nisha Jain at the face of record reveals the creditworthiness of the donor which according to admitted fact on record is US\$.1.16 lacs.

11. The submission of the learned counsel for the appellant that the Assessing Authority was not satisfied with the explanation submitted by assessee hence rightly the amount of Rs. 10,00000/- was added as additional income of the assessment year in question, seems to be misconceived argument. The satisfaction of the Assessing Authority is not a mechanical one. Assessing Authority discharge a quasi judicial duty under the Income Tax Act and accordingly the satisfaction must not be arbitrary but it should be judicious based on the evidence or material on record. In the present case, the income tax return of the donor namely Dr. Chitranjan Jain and his wife Nisha Jain was filed before the Assessing Authority. No finding has been recorded by Assessing Authority or the CIT Appeal or the ITAT that return filed by Dr. Chitranjan Jain and the Nisha Jain were fake, fabricated or false one. Once genuineness of return is not in dispute then there appears to be no reason to disbelieve that the amount was paid by Dr. Chitranjan Jain. The CIT Appeal after considering the evidence on the ground had noted that Dr. Chitranjan Jain and Nisha Jain are NRI and they have been settled in the United States of America and their income in the assessment year was 1,16,680 \$. Once the income of the donor i.e. Dr. Chitranjan Jain and Mrs. Nisha Jain has not been disbelieved by the Assessing Authority then payment of meager amount of Rs. 10,00000/- by Dr. Chitranjan Jain should not be doubted. Merely because the entire transcript of NRE account was not furnished shall not make out a case to disbelieve the amount paid by Dr. Chitranjan Jain to the assessee. It may be noted that Assessing Authority was concerned only to verify the

genuineness of amount paid by Dr. Chitranjan Jain and once the income tax return filed by Dr. Chitranjan Jain was found to be genuine then there was no occasion for the assessing authority to proceed further asking to supply the entire transcript of the account of Dr. Chitranjan Jain who is not residing in India but in the United States of America. Assessing authority was not seized with the case of Dr. Chitranjan Jain to assess his income under the Income Tax Act. He was only to verify the genuineness of transaction and creditworthiness.

10. In view of above, a finding recorded by the CIT Appeal and Tribunal does not seem to suffer from any impropriety or illegality. The appeal is devoid of merit. Dismissed. Question answered in favour of assessee against the revenue.

No order as to costs.

[Justice Devi Prasad Singh]

[Justice Vishnu Chandra Gupta]

Order Date :- 16.7.2012
Madhu