

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5968/Del./2018
Assessment Year 2015-2016

Shri Anoop Jain, F-44, Green Park, New Delhi – 110 049. PAN ACLPJ6529Q	vs.,	The Income Tax Officer, Ward – 70(3), Civic Centre, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Ms. Nisha Singh, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	29.08.2019
Date of Pronouncement :	11.09.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-21, New Delhi, Dated 20.07.2018, for the A.Y. 2015-2016, challenging the addition of Rs.2,30,000/- on account of cash gift.

2. Briefly the facts of the case are that return of income was filed by assessee declaring total income of Rs.13,41,000/-. The case was selected for scrutiny. The A.O. on perusal of the record found that assessee had

deposited cash amount of Rs.2,30,000/-. Show cause notice was issued. The assessee filed reply stating therein that assessee has received cash gift from his mother Smt. Kamla Jain on different dates and out of the said gift amount of Rs.2,30,000/- had been deposited by the assessee. The assessee has not filed the Gift Deed and only copy of ITR of Smt. Kamla Jain for the A.Y. 2015-2016 was filed. The A.O, therefore, held that the same would not prove the creditworthiness of the donor and genuineness of the transaction in the matter. The A.O. accordingly treated Rs.2,30,000/- as undisclosed income of assessee and made the addition.

3. The assessee challenged the addition before the Ld. CIT(A) and it was submitted that during assessment year under appeal, assessee has sold 1/5th share of ancestral property for Rs.2.80 crores which is acquired through Will of his deceased father and similarly, mother of the assessee/donor has sold her 1/5th share in the above property for a sum of Rs.2.80 crores. The A.O. asked for the source of the cash deposit in the bank account of

Rs.2,30,000/- on different dates. The assessee received gift from his mother. Copy of the Sale Deed was filed along with her PAN. Therefore, assessee proved genuineness of the gift in the matter. The Ld. CIT(A) considering the submissions of the assessee in para 6.3 of the Order held as under :

“The contention of the Assessing Officer and the submission of the appellant has been considered and from the bank statement of the mother of the appellant, it is apparent that a cheque of Rs.17,20,000/- was deposited on 27/12/2014 and out of this cash withdrawal of Rs.17,20,000/- was made on 02/01/2015 and Rs.70,000/- on 29/01/2015. This has no nexus with the cash deposit made by the appellant on 28/01/2015 of Rs.30,000/-, 11/02/2015 of Rs.40,000/-, 23/02/2015 of Rs.25,000/-, 03/03/2015 of Rs.30,000/-, 10/03/2015 of Rs.40,000/-, 17/03/2015 of Rs.35,000/- and 24/03/2015 of Rs.30,000/- totaling to Rs.2,30,000/-. From the bank account of the mother it is also apparent that on 26/01/2015 six transfer entries of different

amount were made and deposited in the bank account of the appellant. The mother of the appellant also could have easily transferred this amount through bank account by RTGS to the account of the son i.e. appellant. The preponderance of probability is entirely against the appellant and any prudent person will not transfer money in this manner when both mother and son are having bank account and good banking habit. Just because there is withdrawal of Rs.17,20,000/- on 02/01/2015 and Rs.70,000/- on 29/01/2015 from the mother's account, the deposit in the bank account of the appellant on various dates could not establish the link as submitted by the appellant. Further, the appellant has failed to file any confirmation from the mother of the appellant regarding the said transaction during assessment, proceedings or during appellate proceedings. As per the submission of the appellant, the appellant has also got Rs.2,80,00,000/- as sale consideration during the year and the appellant has

failed to justify the reason to accept petty cash from the mother.”

3.1. The Ld. CIT(A), accordingly, dismissed the appeal of assessee following the rule of human probabilities.

4. I have heard the Learned Representatives of both the parties.

5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to copy of the Sale Deed to show that donor has sold the property along with assessee and others and has sufficient means to make the gift. Learned Counsel for the Assessee also referred to bank statement of the donor to show that she has withdrawn sufficient cash to make gift to the assessee. Learned Counsel for the Assessee also filed confirmation -cum- Gift Deed from the donor Dated 28.03.2019. She has, therefore, submitted that assessee proved the genuine gift in the matter.

6. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that assessee

did not furnish any documentary evidences before the authorities below to prove the creditworthiness of the donor and genuineness of the gift in the matter. The assessee subsequently filed confirmation dated 28.03.2019 which is additional evidence in nature and cannot be considered in favour of the assessee.

7. I have considered the rival submissions and perused the material on record. The A.O. noted that assessee has sold house in which he was having 1/5th share for a sum of Rs.2.80 crores and purchased another house and basement at Green Park, New Delhi for a sum of Rs.2.90 crores. The assessee has made cash deposits of Rs.2,30,000/- in his S.B. A/c, the source of which, was not explained before the A.O. The assessee merely contended that Rs.2,30,000/- was received as gift from his mother Smt. Kamla Jain. However, no Gift Deed was filed before A.O. Thus, the assessee failed to produce any documentary evidence before A.O. to substantiate genuineness of the gift in the matter. Similar is the position before the Ld. CIT(A). Ultimately assessee claimed that mother of the assessee has

gifted the amount in cash after making withdrawal from her Bank account. The Ld. CIT(A) has considered cash withdrawals by the donor from her Bank A/c and the cash deposit made by assessee in his Bank A/c on different dates. The Ld. CIT(A), therefore, rightly came to the conclusion that there was no nexus with the cash deposit made by assessee on different dates totalling to Rs.2,30,000/- and the cash withdrawal made by the donor. No reasons have been explained why the donor has not given the amount in cheque despite she was having sale consideration of the property in her Bank A/c. The assessee did not file any confirmation of the Gift as well before the authorities below. The assessee for the first time filed copy of the confirmation -cum- Gift Deed before the Tribunal Dated 28.03.2019. No request have been made for admission of the additional evidence. No reason have been explained why the same be not filed before the authorities below. Therefore, Ld. D.R. rightly objected to the admission of the same at this stage. In this view of the matter, I exclude the confirmation -cum- Gift Deed from

consideration of the issue. It, therefore, stand proved on record that assessee has failed to explain the nature and purpose of the gift. No confirmation and Gift Deed was filed from the donor. In the absence of any evidence or material on record, the A.O. has correctly treated the Gift to be non-genuine. The assessee failed to prove the creditworthiness of the donor and genuineness of the transaction in the matter. No reasons or occasion of Gift have been filed on record. The Gifts have been made on seven different dates in cash, for which, no explanation have been given, despite donor was maintaining her Bank A/c. Since no sufficient evidence have been filed before the authorities below to prove genuineness of the gift in the matter, therefore, it is clear that gifts are not genuine gifts and are arranged affairs of the assessee. Thus, assessee failed to prove ingredients of genuine gift in the matter. I rely upon Judgment of Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar 292 ITR 554 (Del.), Judgment of Hon'ble Supreme Court in the case of CIT vs. P. Mohankala 291 ITR 278 (SC) and Judgment of Hon'ble Punjab & Haryana High Court in the case of Yashpal Goyal

vs. CIT 310 ITR 75. Considering the above discussion, it is clear that assessee failed to produce sufficient evidence or material on record to prove creditworthiness of the donor and genuineness of the gift in the matter. The Hon'ble Supreme Court in the case of Durga Prasad More 82 ITR 540 (SC) and in the case of Smt. Sumati Dayal 214 ITR 801 (SC) have held that "*the Courts and Tribunals have to Judge the evidence before them by applying the test of human probabilities*". If the said test is applied in the matter, it is clearly established that assessee has failed to prove the genuineness of the gift in the matter. I, accordingly, do not find any merit in the appeal of assessee. Appeal of assessee is accordingly dismissed.

8. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 11th September, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.

Date of dictation	29.08.2019
Date on which the typed draft order is placed before the dictation Member	09.09.2019
Date on which the approval draft comes to the Sr. PS	11.09.2019
Date on which the fair order is placed before the Dictation member for pronouncement	11.09.2019
Date on which the fair order comes back to the Sr. P.S.	11.09.2019
Date on which the final order is uploaded on the website of ITAT	11.09.2019
Date on which the file goes to the Bench Clerk	11.09.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	