



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.209/CTK/2018

Assessment Year : 2014-2015

ITO, Kendrapara Ward, Kendrapara	Vs.	Sudhansubala Rout, D/O- Prafulla Samal, At: Chatrapatna, Kendrapara
PAN/GIR No.AFWPR 6481 F		
(Appellant)	..	(Respondent)

Assessee by : Shri J.M.Patnaik , AR
Revenue by : Shri J.K.Lenka, DR

Date of Hearing : 17 /08/ 2020
Date of Pronouncement : 25/08/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the revenue against the order of the CIT(A), Cuttack dated 22.3.2018 for the assessment year 2014-15.

2. The revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in absence of any gift deed executed by the donor, the Id CIT(A) is not justified in accepting the contentions of the assessee that the amounts deposited in cash in her bank account represented gift from her husband, Sri Bijay Kumar Rout thereby deleting the addition of Rs.1,31,00,000/- made by the AO u/s.69 of the I.T.Act, 1961.

2. On the facts and in the circumstances of the case and in view of the express provision of section 17 of the Indian Registration Act, 1908, the Id CIT(A) is not justified in accepting the contentions of the assessee that the alleged gift of Rs.1,25,00,000/- was received from her husband,."

3. Facts in brief are that the assessee is an individual deriving income from supply of building of construction materials. During the course of assessment proceedings, the Assessing Officer found that there were cash deposits to the tune of Rs.1,31,00,000/- to the bank account of the assessee. The A.O required the assessee to explain the source of the cash deposits. In reply the assessee stated that on 29.3.2014 and 31.3.2014 the cash deposits of Rs.50,00,000/- and Rs.75,00,000/-, respectively totaling to Rs.1,25,00,000/- were received as gifts from her husband, Sri Bijoy Kumar Rout. As regards cash deposit of Rs.4,00,000/- on 5.8.2013 and Rs.2,00,000/- on 30.9.2013, it was explained that the assessee had filed income tax return on presumptive basis u/s.44AD of the Act, hence, the receipt of said amount has been subsumed in scheme of presumptive taxation and have already been taken into account while declaring income u/s.44AD of the Act. The A.O did not accept the contention of the assessee and added the total cash deposits of Rs.1,31,00,000/- to the total income of the assessee as unexplained.

4. Being aggrieved with the assessment order, the assessee went in appeal before the CIT(A). Before the CIT(A) it was contended by the assessee that the assessee had received Rs.50,00,000/-and Rs.75,00,000/- from her husband as gift on 29.03.2014 and 31.03.2014 respectively. It was further contended that in course of assessment proceedings, necessary evidences with regard to identity, creditworthiness and I. T. Particular of the

donor Sri Bijoy Kumar Rout were produced before the A.O but the A.O did not accept the evidences. The CIT(A) considering the submissions of the assessee deleted the addition, observing as under:

"I have perused the assessment order of the A.O. and also the documents placed before me by the assessee's counsel. It is seen from the bank account of Mrs. Sudhansubala Rout (Allahabad Bank, A/c. no: 20628258336] that on 29/03/2014 and 31/03/2014 cash deposits of Rs.50,00,000/- and Rs.75,00,000/- respectively have been received. The counsel for the assessee has stated that the same represented a gift from the husband of the assessee, Shri Bijoy Kumar Rout. Now, in order to ascertain the genuineness of the gift, it is necessary to establish the identity and credit worthiness of the donor and also to ascertain the authenticity of the transaction. From the documents placed before me, it is seen that Shri Bijoy Kumar Rout is a regular income tax filer having PAN. No. ADBPR99995H. For A.Y.- 2014-15, a return of income of Rs. 2,78,66,138/- has been filed with ACIT, Circle-I(I), Cuttack. Further, a perusal of the current A/c. no: 50173036800 of Shri Bijoy Kumar Rout, Prop: M/s. Sarathi Engineering and Developers, in Allahabad Bank, Bhubaneswar shows a debit entry of Rs.54,00,000/- on 29/03/2014 and another debit entry of Rs. 75,00,000/- on 31.03.2014. Examining the Account no. 20628258336 in Allahabad Bank, Bhubaneswar of the assessee Mrs. Sudhansubala Rout, it is seen that on 29/03/2014 and 31/03/2014 there are credit entries of Rs.50,00,000/- and of Rs.75,00,000/- respectively. Hence the contention of the assessee that the cash deposits in the assessee's account had their source in the current account no.50173036800 of Shri Bijoy Kumar Rout, has merit and deserves to be accepted. Further, by establishing the identity and credit worthiness of the donor, the assessee has fully discharged the initial burden cast upon her by the Assessing Officer to establish the genuineness of the gift. The onus then shifted to the Assessing Officer to establish that the cash deposits in the assessee's account had an origin other than the current account of her husband Shri Bijoy Kumar Rout and that the money deposited in the assessee's account was not the same cash that was withdrawn by Shri Bijoy Kumar Rout from his current account no. 50173036800 in Allahabad Bank, Bhubaneswar on 29/03/2014 and 31/03/2014. This the A.O. has failed to do in his order and he has simply rejected the valid explanation of the assessee without advancing any cogent reasons. Hence, out of the addition of Rs.1,31,00,000/- made by the A.O., an amount of Rs. 1,25,00,000/- is deleted on account of the same being a genuine gift to the assessee from her husband, Shri Bijoy Kumar Rout. As regards the cash deposits of Rs. 4,00,000/- on 05/08/2013 and Rs.2,00,000/- on 30/09/2013, it was explained that the assessee had filed the return of income for A.Y.- 2014-15 in form 1TR-4S declaring income on presumptive basis u/s. 44AD of the I.T. Act, 1961. Consequently, it was submitted that

the receipt of Rs.6,00,000/- in his bank account are subsumed in the scheme of presumptive taxation and have already been taken into account while declaring income u/s. 44AD. I have considered the submission of the assessee's counsel and find merit in them. Once income is declared u/s.44AD, the various credit entries in the bank account which are related to the business of the assessee are presumed to have already been taken into account. It was also established before me that these entries of Rs.6,00,000/- represented trade receipts earned in the course of business and were included while computing the assessee's taxable income u/s. 44AD. This argument of the assessee is being accepted and the addition of Rs.1,31,00,000/- made by the A.O. both on account of unexplained cash gift of Rs.1,25,00,000/- received by the assessee and on account of cash deposits of Rs.6,00,000/- is hereby deleted.

5. Aggrieved, the revenue is in appeal before the Tribunal.
6. At the time of hearing, Id D.R. submitted that the assessee claimed before the A.O that she had received gift from her husband. In support of the gift, the assessee only submitted an affidavit sworn by the donor. He submitted that as per section 17 of the Registration Act,1908 gift of movable property can be effected either by delivery of movable property or by executing a gift deed signed by or on behalf of the donor and registered with the Sub-Registrar. Registration is mandatory in case of gift of movable property only when it is effected by a deed of gift signed by the donor. Since the assessee has failed to produce gift deed in respect of gift received from her husband, the A.O has rightly rejected the claim of the assessee and added the amount of Rs.1,25,00,000/- as unexplained investment u/s.69 of the Act. Therefore, the CIT(A) is not justified in accepting the claim of the assessee and deleting the addition. Further, on the second issue, Id DR submitted that the CIT(A) is also not correct in accepting the cash deposits of Rs.4,00,000/- on 05.08.2013 and Rs.2,00,000/- on

30.09.2013 totalling to Rs.6,00,000/- being from trade receipts of the assessee in absence of any documentary evidence especially when the assessee does not maintain books of account. Therefore, Ld D.R. submitted that the order of the Id CIT(A) be set aside and the order of the AO be restored.

7. Replying to above, Id A.R. submitted that first of all, undisputedly, impugned gift was given by the husband of the assessee to his spouse i.e. wife and, therefore, the Id CIT(A) is just and proper in granting relief to the assessee and the conclusion drawn by him is supported by Explanation (1) of Clause (vi) of sub-section (2) of Section 56 of the Income tax Act, 1961. Ld counsel submitted that as per Section 17 of the Registration Act, 1908 (herein after 'Registration Act'), gift of movable can be effected either by delivery of movable property or by executing a gift deed signed by or on behalf of the donor and registered with the Sub-Registrar. Ld counsel also submitted that section 17 of Registration Act has no application to the facts and circumstances of the present case because the impugned gift is not an immovable property requiring mandatory registration. Ld counsel vehemently pointed out that nowhere in section 17 of the Registration Act, it has been provided that in case of gift of movable property, registration is mandatory. Therefore, the AO was not justified and correct in calling upon the assessee to substantiate the transaction of gift between the appellant and her husband by way of submitting a registered gift deed. Ld counsel

submitted that as per section 17 of Registration Act, gift can be effected either by delivery of movable property which has been completed in the present case by way of transferring or delivering of amount of gift from donor husband to donee wife, present assessee and transaction has been completed which requires no registration. Therefore, non-registration cannot be a ground for addition in the hands of the assessee.

8. Ld A.R. strenuously contended that there is no provision in the Income tax Act, which requires the assessee to substantiate transaction of gift of movable property from husband to wife by way of registered gift deed. Moreover, once substance of Gift from husband to wife has been accepted by the AO and Id CIT(A) u/s. 56 of the Income tax Act,, then provisions of section 69 of the Act cannot be pressed into service against the assessee treating the same as unexplained investment in the hands of the assessee in absence of registration of gift deed. Ld counsel submitted that the order of the Id CIT(A) is quite correct, just and proper and by no stretch of imagination, it cannot be faulted with. When the order has lawful origin, judicial review is uncalled for.

9. Supporting the findings of the Id CIT(A) on another issue, Id counsel submitted that the cash deposit of Rs.4 lakhs 5.8.2013 and Rs.2 lakhs on 30.9.2013 totaling to Rs.6 lakhs being trade receipts of the assessee, which

cannot be treated unexplained cash credit in the hands of the assessee in absence of any documentary evidence, especially when the assessee does not maintain books of account. Reiterating the submissions made before the authorities below, Id counsel submitted that the deposit of Rs.4,00,000/- on 5.8.2013 and Rs.2,00,000/- on 30.8.2013 are the trade receipts which have been taken into consideration while filing the return u/s.44AD of the Act and hence, said amounts have been subsumed in the scheme of presumptive taxation and have already been taken into account while computing income u/s. 44AD of the Act and showing the same in the return of income. Id counsel lastly submitted that there is no deficiency or mistake in the order of the Id CIT(A). Therefore, same may kindly be upheld by dismissing the grounds of the revenue.

10. We have heard the rival submissions and perused the record of the case. The Assessing Officer observed that the cash deposits in assessee's account was the gift received from her husband on different dates and the AO did not accept the transaction as genuine and made addition of Rs.1,31,00,000/- treating the same as unexplained cash deposits. The Id CIT(A) on perusal of the current account of Sri Bijoy Kumar Rout, found that there were debit entries of Rs.54,00,000/- and Rs.75,00,000/- on 29.03.2014 and 31.03.2014 respectively. On the same day there were credit entries of Rs.50,00,000/- and Rs.75,00,000/- respectively in the assessee's

account maintained in Allahabad Bank. The CIT(A) further held that the A.O has simply rejected the valid explanation of the assessee without advancing any cogent reasons. Accordingly, he deleted an addition of Rs. 1,25,00,000/- out of the total addition of Rs.1,31,00,000/-.

11. With regard to the cash deposit of Rs.4,00,000/- and Rs.2,00,000/- made on 05.08.2013 and 30.09.2013 respectively, the CIT(A) held that these entries of Rs.6,00,000/-represented trade receipts earned in course of business and were included while computing the assessee's taxable income u/s.44AD . Accordingly, he deleted the cash deposit of Rs.6,00,000/-.

12. We also observe that the husband of the assessee Shri Bijoy Kumar Rout is a regular income tax assessee having PAN No.ADBPR 9995H and for the assessment year 2014-15, he has filed return declaring income of Rs.2,78,66,138/-. Therefore, the genuineness of gift received from her husband is not in doubt. Since, the amount has been remitted from the husband's bank account, the assessee has established the identity and creditworthiness of the donor.

13. The Id representatives of respective parties made arguments before us on merits supporting their stand. However, in view of the quantum addition deleted by the Id CIT(A), we are of the considered view that this appeal of the revenue is covered by the CBDT Circular No.17/2019 dated 8th

August, 2019, and is not maintainable and should be dismissed due to low tax effect.

14. In the result, appeal of the revenue is dismissed.

Order pronounced on 25 /08/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 25 /8/2020
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant :ITO, Kendrapara Ward, Kendrapara
2. The Respondent. Sudhansubala Rout, D/O-Prafulla Samal, At: Chatrapatna, Kendrapara
3. The CIT(A)-, Cuttack
4. Pr.CIT- , Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack