

Trupti K. Shah, Mumbai vs Assessee on 13 December, 2007

IN THE INCOME TAX APPELLATE TRIBUNAL
"J" Bench, Mumbai

Before Shri R.V. Easwar, President
and Shri B. Ramakotaiah, Accountant Member

ITA No. 421/Mum/2008
(Assessment Year: 2004-05)

Mrs. Trupti K. Shah
Flat No. 56, Shanktikunj
Anand Road, Walad (West)
Mumbai 400064
PAN - AKEPS 3404 Q

Appellant

Income Tax Officer - 24(2)(4)
Vs. Bandra Kurla Complex
Bandra, Mumbai

Respondent

Appellant by: Shri N.M. Porwal
Respondent by: Smt. Maladhi Sridharan

ORDER

Per B. Ramakotaiah, A.M.

This appeal by the assessee is against the order of the CIT(A)- XXIV, Mumbai dated 13.12.2007.

2. Assessee has raised the following grounds: -

"On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (appeals);

1. erred in confirming the disallowance for gifts received of Rs.11,83,302.

2. erred in not considering the detail submission made by the appellant"

3. Briefly stated, the assessee filed the return of income declaring total income of `1,69,037/- on 12.08.2004. The return was processed under section 143(1) of the I.T. Act. Subsequently, the case was selected for scrutiny and notice under section 143(2) dated 29.08.2005 was issued and served upon the assessee on 31.08.2005. Further notices under section 142(1) dated 23.05.2006 and 03.10.2006 were issued and duly served upon the assessee. In response to the above notices, the learned counsel for the assessee submitted the details.

Mrs. Trupti K. Shah During the year in question, assessee received total gift of Rs.11,83,302/- from the following parties:

1) Kishoribhai (N.R.I.) Rs. 7,05,120/- 16-4-2003

2) Ramesh J. Shah (N.R.I.) Rs. 1,09,280/- 18-6-2003

3) Nitesh Shah (N.R.I.) Rs. 1,78,826/- 3-9-03

4) Jitendra Shah (N.R.I.) Rs. 91,136/- 5-9-03

5) Ramesh J. Shah (N.R.I.) Rs. 98,940/- 8-9-03 Total Rs.11,83,302/-

The Assessing Officer was of the opinion that the donors were not related to the assessee, there was no reason of any natural love and affection between the donors and the assessee and there was no motive or occasion for giving the gifts. He asked the assessee to produce the donors for their examination in order to ascertain their identity and nature of transactions. However, she failed to do so. In view of this, the A.O. assessed the gifts as income from other sources.

3.2 Before the CIT(A) the assessee submitted that the donors could not be produced because they were non-residents. However, their confirmations and bank statements were produced. It was submitted that a gift does not warrant any motive or occasion or reciprocity and the assessee established the identity of the creditors and their creditworthiness. Further, the transactions were made through cheques.

2.3 The CIT(A) rejected the submission by holding as under: -

"2.3 I have considered the facts of the case and submissions of Ld. A.Rs carefully. The appellant was required to establish the identity of the donors, their financial capacity and genuineness of gift transactions. She could not produce the donors before the Assessing Officer and so their identity cannot be said to have been established. To judge the genuineness of a gift transaction, one has to look into the aspect of human probability, relationship of donor and donee, occasion for making the gift and existence of reciprocity. In this case there was no relationship between the donors and the donee, there was no occasion for making the gifts and there was no reciprocal gift by the appellant. A gift is given out of natural love and affection. NO fact was shown on the basis of which any kind of natural love and affection between the donors and the donee could have been claimed. Only because the gifts were received in cheques cannot make them genuine transaction."

Mrs. Trupti K. Shah He also discussed the judicial principles in the following cases: -

- i. CIT vs. P. Mohankala 291 ITR 278 (SC)
- ii. Jaspal Singh vs. CIT 290 ITR 306 (P&H)
- iii. ACIT vs. Rajeev Tandon 294 ITR (AT) 219 (Del)

He confirmed the gift holding that the assessee failed to prove the genuineness of the transactions. The assessee is aggrieved.

4. The learned counsel for the assessee drawing our attention to the submissions and evidences filed before the authorities, placed in the paper book, submitted that the 3 donors are related and one is a friend of husband. It was his submission that the assessee filed all the evidences, relationship, etc. to prove the genuineness of the gifts. He referred to the letter dated 09.10.2006 placed at page 6 of the paper book filed before the A.O. It was his submission that the A.O. asked for production of the donors which could not be complied as they reside outside India but the passports, bank statement, confirmation, etc. were filed to prove the genuineness of the gift. The learned A.R. relied on the following cases:

i. CIT vs. Majoj Kumar Sekhri 214 CTR 141 (P&H) ii. CIT vs. Padam Singh Chouhan 215 CTR 303 (Raj) iii. Kanchan Singh vs. CIT 221 CTR 456 (All)

5. The learned D.R., however, relied on the orders of the A.O. and the CIT(A). He placed on record the decision of the Hon'ble Supreme Court in the case of CIT vs. P. Mohankala 291 ITR 278 and other cases relied on by the CIT(A).

6. We have considered the issue of genuineness of the gifts and examined the documents placed on record. The assessee filed confirmations, bank statements and supporting documents including the relationship as under vide letter dated 09.10.2006: -

"1. Shri Ramesh J. Shah - Rs. 1,09,208/- & Rs.98,940/- : -

This donor has submitted the following documents:

(a) Letter of Confirmation of Gift

(b) Bank Statement

(c) Income Tax Challans

(d) Other supporting documents Mrs. Trupti K. Shah You have stated in your notice that there is no immediate family member relationship exists with Shri Ramesh J. Shah. We would like to inform you and state that there is no precondition which should exist between donor and donee to give the gift. The only consideration which the Income Tax Act requires is out of love and affection. Under the various Income Tax judgements love and affection can happen anytime and anywhere and at all time. There is no precondition of any relationship. In spite of the above fact even though relationship is not essence of gift transaction, we would like to inform you that Shri Ramesh J. Shah is assessee's husband's eldest brother and also under hindu family eldest brother is considered as in the place of father. So in other words he is like father in law to the assessee.

2. Shri Jiterndra J. Shah - Rs.91,136/- : -

This donor has submitted the following documents:

(a) Letter of Confirmation of Gift

(b) Bank Statement

(c) Income Tax Challans

(d) Other supporting documents You have stated in your notice that there is no immediate family member relationship exists with Shri Jitendra J. Shah. We would like to inform you and state that there is no precondition which should exist between donor and donee to give the gift. The only consideration which the Income Tax Act requires is out of love and affection. Under the various Income Tax judgements love and affection can happen anytime and anywhere and at all time. There is no precondition of any relationship. In spite of the above fact even though relationship is not essence of gift transaction, we would like to inform you that Shri Jitendra J. Shah is assessee's husband's second eldest brother and also under hindu family eldest brother is considered as in the place of father. So in other words he is like father in law to the assessee.

3. Mr. Nilesh V. Shah - 1,78,826/- : -

This donor has submitted the following documents:

(a) Letter of Confirmation of Gift

(b) Bank Statement

(c) Income Tax Challans

(d) Other supporting documents You have stated in your notice that there is no immediate family member relationship exists with Mr. Nilesh V. Shah. We would like to inform you and state that there is no precondition which should exist between donor and donee to give the gift. The only consideration which the Income Tax Act requires is out of love and affection. Under the various Income Tax judgements love and affection can happen anytime and anywhere and at all time. There is no precondition of any relationship. In spite of the above fact even though relationship is not essence of gift transaction, we would like to inform you that Mr. Nilesh V. Shah is assessee's husband's Sister's son (Nephew).

Mrs. Trupti K. Shah

4. Mr. Kishorebhai - Rs.7,05,120/- : -

This donor has submitted the following documents:

(a) Letter of Confirmation of Gift

(b) Bank Statement

(c) Income Tax Challans

(d) Other supporting documents You have stated in your notice that there is no immediate family member relationship exists with Mr. Kishorebhai. We would like to inform you and state that there is no precondition which should exist between donor and donee to give the gift. The only consideration which the Income Tax Act requires is out of love and affection. Under the various Income Tax judgements love and affection can happen anytime and anywhere and at all time. There is no precondition of any relationship.

The accompanying documents do indicate that the donors are identifiable, they have creditworthiness and the monies are received by the assessee through regular banking channels. In our view the only reason for rejecting the documents on record seems to be non-production of donors before the A.O. We are unable to understand how the donors, who do not reside in India, can be produced before the A.O. in the given time. The assessee even volunteered to produce them if summons were issued directly to them with two months time. The A.O. did not accept this nor enquired on his own. A.O. has not doubted the transactions except stating that there is no genuineness in the gift transactions.

7. In case of CIT vs. Padam Singh Chouhan 215 CTR 303 (Raj) on similar issue the Hon'ble Rajasthan High Court has examined the facts and held as under: -

"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. Instances are not rare, when even strangers make gifts out of very many considerations, including arising out of love, affection and sentiments. When the assessee has produced the copies of the gift deeds and the affidavits of the donors, in the absence of anything to show, that the act of the assessee in claiming gift, was an act by way of money laundering, simply because he happens to receive gifts, it cannot be said that, that is required to be added in his income."

Mrs. Trupti K. Shah

8. In the present case three of the donors were blood relations, hence the receipt of monies cannot be doubted as there was blood relationship. In the case of Mr. Kishorebhai there is no relationship but on the basis of confirmations, it can not be stated that the said person is not genuine or he does not have creditworthiness.

9. As seen from the confirmations, Shri Nilesh Shah has migrated to London in 1997 and to US at the time of confirmation dated 08.06.2006 he was working with Pricewaterhouse Coopers in UK & USA and has paid substantial amounts as taxes in both the countries. So the creditworthiness and genuineness cannot be doubted. In the case of Shri Ramesh Shah the confirmation dated 10.06.2006 indicates that he studied mechanical engineering and is a German passport holder from 1978 and resides at Stuttgart, Germany and the money was donated from his source through Bank LBBW of 4,000 Euros. Likewise Sri Jitendra Shah also confirmed vide letter dated 19.07.2006 that he gifted a sum of \$2,000 from Bank Fund Staff Credit Union. He is a resident of USA for the last 30 years and working with the World Bank. Mr. Kishore Samtani is a resident of Hong Kong for the last 17 years as on 16.06.2006 (date of confirmation) being an NRI for last 23 years and has business in TV Products (HK) Ltd. He also furnished his bank details and tax return copies like others.

10. The letters and confirmations filed by the assessee before the A.O. and the CIT(A) do indicate that the assessee has discharged the primary onus of establishing genuineness of the gifts received and the evidences indicate that these transactions are genuine. As the A.O. rejected only on the pretext of not producing the donors and observed that the assessee has not having any occasion to receive gifts, we are of the opinion that these are not valid reasons to reject the evidence on record. Considering the evidence on record, we hold that the gifts received can be taken as genuine gifts and the receipt of money cannot be taken as unexplained cash credit under section 68/69.

11. In the course of appeal the assessee filed additional grounds as under:-

Mrs. Trupti K. Shah "1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating that it was not possible for the Appellant to earn a sum of Rs.11,83,302/- in one year and that by no stretch of imagination could the Appellant be credited with having earned a sum of Rs.11,83,302/- during the course of Assessment Year 2004-05 when she has not done any business either during the Assessment Year 2004-05 or during the prior years as per the return of income alongwith computation of income filed with the Department during last few years.

2. The Ld. CIT(A) erred in not appreciating the complete absence of source of the business income except the interest and liaison income which the Appellant has been offering for taxation for the last few years as per the return of income and the computation of income filed with the Department.

3. The Ld. CIT(A) erred in not appreciating that the word "may" in Section 68 cannot be interpreted to mean "shall". The Appellant relied on the Hon'ble Supreme Court Judgement in the case of CIT vs. Smt. P.K. Noorjahan 237 ITR 570 (SC).

4. The Ld. CIT(A) erred in not appreciating that where the statute places the burden on proof in income-tax cases on the taxpayer, it is to be understood, that it is only the initial burden. When the Appellant explained the gift by giving evidence of identity i.e. NRE bank statement and passport copy alongwith their confirmations, the Appellant can be said to have discharged her initial burden."

12. These additional grounds are in fact alternate submissions on the issue. These are not considered as we hold that the gifts are genuine. It was also noticed that the assessee is having income under the head 'Business' not only during the year but also in an earlier year. So the contentions in the additional grounds does not apply to the facts of the case, therefore, the additional grounds are rejected.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 16th March 2011.

Sd/-
(R.V. Easwar)
President

Sd/-
(B. Ramakotaiah)
Accountant Member

Mumbai, Dated: 16th March 2011

Mrs. Trupti K. Shah

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) - XXIV, Mumbai
4. The CIT- XXIV, Mumbai City
5. The DR, "J" Bench, ITAT, Mumbai

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

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