



% 07.12.2009

Present: Mr. Anil Sharma for the appellant.
Ms. Prem L. Bansal with Ms. Anshul Sharma and Mr. Paras Chaudhry for the respondent.

+ ITA No. 1392/2008

In the return filed by the appellant for the assessment year 2001-02, the appellant had shown gift of Rs.2.50 lacs received by him from one Shri Arun Kumar Goyal through banker's cheque dated 8.5.2000. The Assessing Officer, while framing the assessment, added the aforesaid amount of gift as unexplained cash credit. He did so after inquiring into the creditworthiness of the purported donor. The appellant filed appeal before the CIT(A) and even carried the matter to the ITAT, though unsuccessfully, as both these appellate for a have decided the case against the appellant sustaining the aforesaid addition.

We may, however, note that the ITAT has allowed this addition under Section 69-A of the Income Tax Act, 1961 and not under Section 68 of the Act. From the detailed order passed by the CIT(A) as well as the ITAT, we find that finding of facts are recorded by these authorities in the following manner :-

- a) Shri Goyal was a complete stranger to the assessee and was not related to him in any way.



- b) Shri Goyal did not have sufficient means to make donation. His income was just near to the exempt limit, i.e. for the assessment year 2001-02, he had shown his income as Rs.66,460/-. His bank balance was Rs.5,167/- only.
- c) Deposits in this bank account in the sum of Rs.1,01,350/- and Rs.1,48,700/- were made in cash on 5.5.2000 and 8.5.2000 respectively and thereafter withdrawal of Rs.2,50,250/- was made on 8.5.2000 on which date the gift in question was given by the said donor to the assessee in the form of banker's cheque.
- d) The donor failed to bring on record any supportive evidence to show why he was so emotionally surcharged that out of love and affection towards the assessee he parted with an amount of Rs.2.50 lacs by giving the same as gift to the assessee, when in past he had never given such gifts even to his own family members.

From the above, the authorities below have arrived at a finding of fact that the transaction of gift in question was of dubious nature and cannot be treated as a genuine gift, more so when the assessee failed in establishing the creditworthiness of the donor as well as his financing



capacity to give the said gift. We also note that the assessee has approached the Settlement Commission and filed a settlement application whereby he not only surrendered the gift in question, but in the application filed before the Commission he had surrendered gifts worth Rs.21.70 lacs for the assessment year 2000-01, Rs.2.50 lacs in the assessment year 2001-02 (i.e. the assessment year in question) and Rs.5.0 lacs in the assessment year 2002-03. Likewise, his wife had also filed similar application before the Settlement Commission wherein she surrendered gift worth Rs.7.50 lacs in the assessment year 2000-01.

These facts clearly demonstrate the manner in which the assessee is eliciting such gifts. In these circumstances, adding the aforesaid amount as unexplained cash ^{credit}, on the basis of the aforesaid findings which are pure findings of fact, cannot be faulted with.

No question of law arises in this case and we, accordingly, dismiss this appeal.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

December 07, 2009
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