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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 10th February, 2015

+ ITR 17/2002

COMMISSIONER OF INCOME TAX Petitioner
Through Mr. Balbir Singh, sr. standing counsel
with Ms. Rubal Maini, Adv.

versus

RAMESH SURI Respondent
Through Mr. Prakash Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The following reference has been received under the erstwhile Section 256(2) of the Income Tax Act. It is agreed that the question of law which this Court has to answer is “*Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the amount of US Dollars 16000 equivalent to ₹1,84,860/- received from Arjun C. Waney was in the nature of gift in the hands of Shri Ramesh Suri and hence not taxable?*” The undisputed facts are that one Mr. Arjun C Waney settled in United States, gifted an aggregate of \$3 lakhs vide a letter dated 10.1.1984 to one Sh. Ashwani Suri. A letter and the other correspondence – which was placed on the record of the Income Tax Authority, directed the beneficiary Mr. Ashwani Suri to distribute the sum



received in different proportions. The relevant extract of the letter reads as follows :

“As discussed I intend to make further gift of US \$ 300,000 in favour of your various family members and M/s Divya International Pvt. Ltd. your family concern, with details as under :

<i>Divya International P. Ltd.</i>	<i>\$ 150000</i>
<i>M/s G. Sagar Suri & HUP</i>	<i>50000</i>
<i>Mr. G. Sagar Suri</i>	<i>16000</i>
<i>Mr. Ujval Sagar Suri</i>	<i>16000</i>
<i>Mr. Narinder Suri</i>	<i>16000</i>
<i>Mr. Ramesh Suri</i>	<i>16000</i>
<i>Mrs. Leela Suri</i>	<i>9000</i>
<i>Mr. Roshan Lal Suri</i>	<i>9000</i>
<i>Yourself</i>	<i><u>18000</u></i>
	<i><u>\$ 300000</u></i>

Please send me letters of acceptance of the gifts from your above relations and M/s Divya International Pvt. Ltd. so that I may remit the amount to them. As suggested by you, I will be sending one draft US \$ 300000 in your name to be distribution on my behalf to the above family member amounts indicated against each.”

2. Mr. Ashwani Suri, the original donee complied with the directions of the donor contained in the letter and transmitted the relevant amounts to each of the beneficiaries named in the said letter. These transactions were made out by each of the beneficiaries. The revenue sought to bring to tax these amounts, on the plea that the sources of income were undisclosed, and were liable to be added back under Section 68, since they were not genuine gifts. The assessee, including the present assessee, resisted these proceedings and relied upon various letters which are set out in the order of



the CIT. The said letters are as follows :

“i) Letter dated 10.1.84 from Sh. Arjun C. Waney to Sh. Ashwani Suri inclusive of 16000 UD dollars favouring Shri Ramesh Suri.

ii) Letter dated 12.1.84 from Sh. Ashwani Suri to Sh. Waney regarding gift of 300000.

iii) Letter dated 25.1.84 from Sh. Ramesh Suri Ramesh to shri Waney regarding gift of \$16000

iv) Letter dated 10.2.84 from Sh. Waney to Sh. Ashwani Suri regarding gift of \$ 300000.

v) Copy of advice of Bank of America, N. Delhi dated 28.9.84 to Sh. Ashwani Suri dercredit (sic) to his a/c.”

3. The AO rejected the contentions of various assesseees including the present assessee, and brought to tax a sum of ₹1,84,860/- being the equivalent of US Dollar 16,000 received, pursuant to Mr. Waney’s directions to Mr. Ashwani Suri. The CIT(Appeals) upon being approached, considered the conspectus of circumstances and reversed the AO’s decision holding as follows :

“The copies of correspondence on which the appliance has placed reliance have been filed. The fact of the receipt of the amount from abroad stands established without going into the question of the person in who hands the amount should be added there appears to the basis for making the addition in the hands of the because the link between the receipt of the amount by shri Ashwani Suri from abroad and by the assessee has been established. In these circumstances that in treating the amounts as income of the assessee from undisclosed sources is not justified and cannot be upheld. The addition is deleted.”

4. The Income Tax Appellate Tribunal (hereinafter referred to as “the ITAT”) rejected the revenue’s appeal. In doing so, it followed its previous



ruling in the case of the original donee Mr. Ashwani Suri. This led to a payment by the revenue, for a reference which was rejected. Revenue therefore approached this Court under Section 256(2). That was disposed of by a judgment reported as *CIT v. G. Sagar Sun & Sons & Ors.* (1998) 234 ITR 58 (Del). The revenue's claim was upheld and the ITAT was directed to frame appropriate questions, which it did. It is in these circumstances that the question adverted to above has been referred.

5. It is contended, on behalf of the revenue, that the ITAT fell into error in holding that the sums gifted to the assessee were genuine. The learned counsel pressed upon that fact that, essentially, the donee was Mr. Ashwani Suri and that the onward transmission of the amounts did not satisfy the test of genuineness. The learned counsel submitted that under Section 68, it is not only the identity of the person making the donation or giving the money which is to be looked into, but also the creditworthiness and the genuineness of the transaction. Counsel submitted that there was no explanation as to why Mr. Waney wished to make a donation. Although his relationship with Mr. Ashwani Suri was known, being his brother-in-law, the amounts to be disbursed in particular, to the assessee, were unknown. Equally, submitted counsel for the revenue, the creditworthiness of the donor was not made known and, in these circumstances, the assessee had to discharge the onus of discharging whether transaction was genuine. The revenue relied upon the decision of the Supreme Court in *CIT V. P. Mohanakala & Ors* (2007) 291 ITR 278 (SC).

6. The learned counsel for the assessee, on the other hand, submitted that the question of whether one underlined transaction (which led to the receipt of ₹1,54,000/-) was genuine or not, in the circumstances of the case, is a



pure finding of fact which has been concurrently upheld by the CIT(Appeals) and the ITAT, and it would be perverse in law, if this Court should analyze the reasons given by either or both of those Tribunals.

7. It was submitted that the modes for gifting amounts of properties cannot be really gone into by the revenue, so long as the identity or relationship is established, which has been done in the present instance. This Court considered the factual matrix. The revenue does not dispute the present relationship between the donor (through Mr. Waney) and Mr. Ashwani Suri. It also does not dispute that the letter in terms of which the initial donation was made to Mr. Ashwani Suri, directed the disbursement of amounts in a particular proportion, which he did. The assessee is also related to Mr. Ashwani Suri. In these circumstances, the underlined transaction whereby the donor directed amounts to be disbursed by Mr. Ashwani Suri to specified or named individuals cannot be treated as unnatural. Both the authorities – the CIT(Appeals) and the ITAT took note of these facts and further noticed that all the gifts were rooted to normal banking transactions. While Section 68 certainly enables the AO to bring to tax amounts which are suspect, in a transaction of the present kind, where the identity and the relationship of the donor are known, the AO in our opinion ought not to have concluded that the transaction – by which the assessee received the amount of ₹1,84,860/- was ingenuine.

8. As far as the reliance placed on *P. Mohanakala & Ors* (supra) is concerned, this Court noticed that the findings of the AO and the CIT(Appeals) went against the assessee in that case; more importantly the donor had no relationship save a business connection with one of the donees. Furthermore, the statement of the parties i.e. the donees themselves, was



inconsistent and secondly, the donor had operated through no less than three different names. Moreover, the ITAT spoke in a divided voice, in that there was difference of opinion. Given this matrix of circumstances, the Supreme Court was of the opinion that the claim that there was a genuine donation was suspect.

9. As noticed earlier, the relationship between the donor, Mr. Ashwani Suri and Mr. Ramesh Suri i.e. the assessee is not disputed. In these circumstances, to require further proof, considering that the donor was an NRI at the given point of time in 1984, might have been asking for too much. In any event this Court is of the opinion that since a concurrent finding has been rendered largely based on facts no interference is called for. Reference is accordingly rejected.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

FEBRUARY 10, 2015
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