IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

Income Tax (Search & Seizer) Appeal Nos.128 & 129/Ahd/2016
(Assessment Years : 2008-09 & 2009-10)

DCIT, Central Circle -2, Baroda.	Vs.	Shri Arvind N. Nopany, 11-A, Nilamber -1, Saiyed Vasna Road, Baroda.
[PAN No. AAAPN 8927 F]		
(**Appellants**)	..	(**Respondent**)

Appellant by :	Shri R. C. Danday, CIT-D.R.
Respondent by :	Shri M. K. Patel, A.R.
Date of Hearing :	02/01/2019
Date of Pronouncement :	24/01/2019

ORDER

PER Ms. MADHUMITA ROY - JM:

These two instant appeals filed by the revenue are against the order dated 28.01.2016 passed by the Commissioner of Income Tax (Appeals) - 12, Ahmedabad [Ld.CIT(A) in short] for Assessment Year (AY) 2008-09 & 2009-10 arising out of the order u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 27.02.2015 passed by the DCIT Central Circle -2, Baroda with the following grounds in IT(SS)A No.128/Ahd/2016:

[1] "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of gift of Rs.5,00,00,000/-, by ignoring the facts that relation of donor (sister's husband) with the assessee is not falling u/s 56(ii) and (vii) of the Act and gift was given without any reason and occasion.

[2] On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of gift of

Rs.5,00,00,000/- , by ignoring the facts that in spite of ample opportunity the assessee has never produced donor before AO for further verification.

[3] On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

[4] It is, therefore, prayed that the order of the CIT (A) may be set aside and that of Assessing Officer may be restored to the above extent."

The issues involved in these cases are identical and thus the same are heard analogously and are being disposed of by a common order. ITA No.128/Ahd/2016 is taken as the lead case.

2. A search was conducted u/s 132 of the Act on 29.09.2011 in the Nopany Group cases at Baroda including the case of the assessee. Accordingly, u/s 153A(a) of the Act a notice was issued to the assessee on 07.02.2012 directing him to furnish the return of income within 45 days thereof. In compliance to the same, the assessee filed his return of income on 27.07.2012 declaring total income at Rs.10,22,830/- same as declared in the original return of income filed u/s 139(1) of the Act on 19.06.2008. A notice u/s 143(2) of the Act was issued on 30.07.2012 followed by a further notice u/s 142(1) of the Act along with a detailed questionnaire on 14.01.2013. It is relevant to mention that the assessee during the year under consideration shown income from companies in which he was director, house property, business or profession, capital gain and income from other sources. The documents which were received from the residents as well as the factory premises of companies in which assessee was a director during search proceeding revealed following amounts were received by the assessee as gift:

Sr. No.	Dated	Amount	Cheque No.
1.	23.11.2006	6,00,00,000	848692
2.	16.10.2007	5,00,00,000	973868
3.	06.05.2008	5,00,00,000	107949

The said gift amounts were received from one Shri Narotam Sekhsariya. A show-cause was issued directing the assessee to prove the identity, creditworthiness and genuineness of the above transaction mentioned as gift. In reply, the assessee categorically mentioned that

the said Shri Narotam Sekhsariya was the brother-in-law of the assessee being the founder of Ambuja Cements Ltd. and remained its Managing Director till recently. Shri Narotam Sekhsariya was the 40th richest Indian according to Forbes.com. Details of his net worth and the credential were also mentioned in the said reply dated 23.01.2015 as filed before the Assessing Officer. However, the assessee was further directed by the Learned AO to produce the donor before him to prove the genuineness of the transaction of 16 crores along with evidence of his identity, creditworthiness and genuineness of transaction. The assessee thereafter produce the following documents of the said Shri Narotam Sekhsariya to prove his identity and creditworthiness:

1) Copy of his PAN card **(Annexure B)**
2) Capital account statements for the assessment year 2007-08, 2008-09 and 2009-10 (on a perusal of these statements, your goodself will observe that the Donor had large capital base and have duly reflected these gifts given to me) – **(Annexure -C)**
3) Copy of his Bank Statements reflecting the gifts **(Annexure - B)**
4) Assessment orders for the Assessment years 2008-09 and 2009-10 **(Annexure - E)**

It was the case of the assessee that out of his natural love and affection the donor has gifted amount to the assessee from his income/capital. The donor is a high net worth individual. According to the assessee, the gifts were not liable to income tax in his hands under Income Tax Act as they were 'capital receipts'. Section 56(2)(vi) also exclude gifts from individuals from certain specified relatives including 'brother-in-law' from the purview of taxation. Further that, since the donor resides in Mumbai, it was not possible for him to come down to Baroda before the Assessing Officer within such short notice. It was categorically mentioned in the said reply that the donor was a regular tax payer and is regularly assessed to tax for these years. The copies of his assessment order were also attached along with the said reply before the Learned AO. It is relevant to mention that such document has also before the first appellate authority and before us as well being part of record annexed in the Paper Book.

However, such plea of the assessee was not found acceptable by the Learned Assessing officer. Upon perusal of the evidence so placed before him by the assessee so as to prove the identity and creditworthiness of the donor he then added Rs.5,00,00,000/- in the hands of the assessee which was deleted by the Learned CIT(A). Hence, the instant appeal.

3. At the time of the hearing of the instant appeal, the Learned DR question the veracity of the order impugned passed by the Learned CIT(A) in deleting the addition made by the Learned AO on this particular premise that the amount in question was received by the assessee from the husband of his sister who is not a blood relative and thus not saved by proviso of Section 56 of the Act, neither exempted from tax. The genuineness of the gift has also been doubted by him since the assessee was adopted son of Shri Narayan Prasad Nopani and Chandradevi Nopani. He thus relied upon the order passed by the Learned AO.

4. The Learned Counsel appearing for the assessee submitted before us that though the assessee is an adopted child under the Hindu Law, mainly Hindu Adoption and Maintenance Act, 1956 the assessee is having same status as of the own child of a spouse in this case, Mr. and Mrs. Nopani. Apart from that, the genuineness and creditworthiness of the donor since categorically explained by the assessee before the authorities below so as to prove the genuineness of the transaction, the question of making addition does arise. He, therefore, rely upon the order passed by the Learned CIT(A).

5. We have heard the respective parties, perused the relevant materials available on record. We find that the Learned AO came to a finding that there was no specific reason to give the said amount of Rs.16 crores in total to the assessee by the said Shri Narotam Sekhsariya. While making an addition to the tune of Rs.5,00,00,000/- for the year under consideration the Learned AO *inter alia* observed as follows:

"….d. The capital account of Mr Narottam Sekhsariya is verified. As per the submission made by assessee, Mr Narotam Sekhsariya has donated to various individuals and so gift given to assessee is just one of them. As per the capital account of Mr Sekhsariya, it is seen that most of the donations given by him are to various trusts and thus he must be getting benefit u/s VI A deductions. Other than assessee, the highest recipient of donations from Mr Sekhsariya is Pulkit Sekhsariya who is son of Mr Sekhsariya as submitted during hearing, and Vaidehi Trust which is the trust established in the name of the daughter of Mr Narotam Sekhsariya (Rs 5 crore in F.Y.2007-08) .As can be seen ,other than trusts and his son, no other relative of Mr Sekhsariya has received a gift of substantial amount such as Mr Arvind Nopany during the years under consideration. So the question comes why only Mr Arvind Nopany has received such substantial amount of gift of Rs 16 crore from Mr Narotam Sekhsariya when there was no specific reason to give the gift. This factor questions the genuineness of the transaction termed as gift*

e. It is important to highlight inconsistency of this transaction that the money as discussed herein above has been paid by Shri Sekhsariya who is husband of Smt Nalini who is allegedly sister of assessee. It is unheard of in this part of country that a brother who is financially very well shall accept a gift from his sister although converse of same is very common. Thus genuineness of this transaction as gift is not proved beyond doubt and lot remains to be proved, which assessee has preferred not to substantiate."

……

The above affidavit is assessee's own assertion that his father Lt. Shri Narayan Prasad Nopany was not having any legal heir other than the assessee and Smt. Chandadevi Nopany. However, it is common knowledge that as per Hindu Succession Act if at all there was a daughter of Lt. Shri Narayan Prasad Nopany, she should have been legal heir. This is evidence that the claim of assessee that Smt Nalini Sheksariya is his sister does not appear true and full of suspicion. In such a scenario only Shri Narotam Sheksariya or Smt Nalini Sheksariya could have proved it that they are related to assessee at all. But even after giving two opportunities, Shri Sekhsariya has not presented himself before this office which raises more doubts regarding genuineness of this transaction.

i. Fact narrated in the para g above has also been supported by the page no. 17, 18, 20 of Annexure BI-1 of seized documents. In this document exactly same has been submitted by the assessee in the office of Tehsildar, Jhunjhunu, Rajasthan.

5.6 From all the above proceedings, discussion, facts and circumstances there are compelling reasons for not considering the alleged gift transaction as a genuine transaction between relatives as prescribed in section 56 of Income Tax Act, 1961. As the exemption from considering the transaction as non-taxable is not proved the whole of the amount of Rs.5,00,00,000/- is taxable income of assessee as Income From Other Sources. Accordingly, addition of Rs.5,00,00,000/- is made under the head Income From Other Sources u/s 56 of the Act and added back to the total income of the assessee. ***Penalty proceedings u/s 271(l)(c) of the Act are being initiated separately for concealment of income."***

6. In appeal, the Learned CIT(A) deleted such addition made by the Learned AO with the following observation:

"12. In view of the above, I further recognize the fact that Nalini and appellant both being the children of Narayan Prasad Nopany from 7/3/78, they are siblings in law and are therefore brother and sister, simplicitor and without any conditionally, qualification or reservation in this behalf from 7/3/78, The seized affidavit, the pivot of AO's adverse conclusion, in my considered opinion, is only a good starting point of enquiry by the AO, but certainly not conclusive evidence of the fact that Nalini and appellant are not brother-sister. The AO, as rightly submitted by the AR, only conveniently read the affidavit and jumped :o the conclusion, completely overlooking the context of the averment made therein, It has been satisfactorily explained by the appellant, and confirmed by his 'sister' Nalini and Mother Chandadevi, that why a factually wrong averment, though in good faith, was made in affidavit filed before Tehsildar by the appellant. The appellant also submitted the copy of land-mutation entry in consequence of the 'wrong affidavit' to highlight that even the authority before whom the affidavit was filed$_s$ has not considered the contents of the same sacrosanct. The mutation ultimately happened in three names: Chandradevi Nopany, Arvind Nopany and Nalini Sekhsaria. As per the AR, this also would additionally and strongly imply the factual by the Tehsildar that Naloi, being a daughter and heir to Narayan Prasad Nopany. is rightfully entitled to share in the land. Thus, the (wrong) averment in affidavit has not persuaded even the Tehsildar to conclude that Nalini is not daughter of Narayan Prasad Nopany or sister of the appellant. Therefore, 1 agree with the appellant that the averment of the appellant in the seized affidavit has been successfully repelled and explained by the appellant. Since the status of spouses een Nalini and Narottam Sekhsaria is not doubted or questioned by the AO, it needs, ***as a fact, to be recognized that the donor Shri Narottam Sekhsaria is the brother-in-law of the appellant.***

13. The AO has doubted the genuineness of the gift. In my considered opinion, the appellant has established the genuineness of the gifts not once but twice: during original assessment u/s 143(3) for AX 08-09 and again during the proceedings u/s 153A. The evidences available in the paper-book and listed by the appellant and extracted by me in para 5 above including copies of assessment orders, bank accounts, capital accounts and confirmation of the donor establish doubtlessly and satisfactorily the identity and capacity of the donor and the genuineness of the transaction. The appellant clearly and fully discharged the onus. Though thereafter the AO asks the appellant to produce the donor, the appellant only ensures attendance by donor's AR with further confirmation, assessment orders and bank-statement of the donor. The AO has thereafter not made any enquiry nor brought any adverse material on record and not provided any further opportunity to explain any further aspect to the appellant, and still holds against the appellant without discharging her onus and also without clarifying how submission of the appellant is not acceptable. Moreover, vide appellant's submissions reproduced in para 7 above, each objection of the AO in the assessment order and further in remand report including the absence of gift deed has been satisfactorily met by the appellant. The observations of the AO about what gifts the donor has generally made or what happens in normal Hindu family etc are wholly irrelevant to decide the issue. Similarly, the observation of trie AO with regard to "complex financial transactions" in donor's bank account is equally out of place and irrelevant in appellant's case. It is thus clear that the appellant successfully discharged the onus, and the AO had no authority, without shifting the burden back to the appellant by gathering cogent and credible evidences casting serious doubts on the veracity of evidences already filed by the appellant, to ask the appellant to further produce oral evidence of the donor, and still thereafter, however, the appellant did comply substantially and meaningfully. Thus, there is no ground for holding the gifts non-genuine. ***Thus and therefore it is further held that the amounts of Rs. 5 crore each received by the appellant from Shri Narottam Sekhsaria represent the explained and genuine gifts for respective years.***

14. The last issue to be decided is whether Narottam Sekhsaria would qualify as "relative" within the meaning of ***s. 56(2)(vi) proviso clause a*** *so as to make gift from him to the appellant exempt. It would be necessary to have a look at the provisions:*

Income from other sources.

"56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from ***other*** *sources", if it is not chargeable to income-tax under any of the heads* ***specified*** *in section 14, items A to E.*

(2) In particular, and without prejudice to the generality of the provisions of sub-section (I), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

(i). ……
[(v) where any sum of money exceeding fifty thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of April, 2006 23[but before the 1st day of October, 2009}, the whole of such sum :
Provided that this clause shall not apply to any sum of money received—
(a) from ***any relative; or***
(b) ……..
*Explanation.****—For the purposes of this clause, "relative" means-***
(i) ……..
(ii) brother or sister of the individual;
(iii) *brother or sister of the spouse of the individual;*
……..
(vii) spouse of the person referred to in clauses (ii) to (vi);]"

The Ld. AR, after taking me through the provisions, submitted that the brother-in-law would fall in the category of "relative" when explanation (ii) and (viii) are read, as required, together, I have perused the provisions- I firstly find, as submitted by the AR, that there is no mention of "blood relative" in the whole section. Receipts exceeding Rs, 50,000/- without consideration is taxable u/s 56 unless saved by proviso. Explanation defines "relative", and as per clause (ii) read with clause (vii), the sister's husband is also a relative. Thus, 1 am in absolute agreement with the Ld. AR that the Ld. AO's attempt to some-how read "blood relative" in proviso, when plainly and clearly only "relative" is mentioned and is defined in proviso to s. 56, shows that the Ld, AO has misread the provisions and applied the same unreasonably. 1 am satisfied, in view of my earlier finding after quoting from Hindu Adoption and Maintenance Act, 1956, in para 12 above that the receipts from Shri Narottam ikhsaria are clearly covered by clause (a) of proviso to s. 56(2) read with explanations (ii) and (vii). ***Thus, it is held that the gifts of Rs. 5 crore in both the yeas received from Narottam Sekhsaria, being from a "relative", i.e. brother-in-law of the appellant, is not taxable u/s 56.*** *The gifts having been fully established as genuine and from explained sources, the receipts are also not taxable u/s 68,* ***Thus the addition of Rs. 5 crore each made by the AO for both the assessment years under appeal is not sustainable and therefore the same***

is deleted. The appellant gets equivalent relief. The related grounds succeed."

7. We find that the details of the donor starting from PAN number, capital gain statement, bank statement and others is annexed to the paper book, which was duly placed before the authorities below. It appears that when Shri Narottam Sekhkaria was not brought to the Learned AO by the assessee no further enquiry was conducted by him, no record against the assessee was also brought. Apart from that, the creditworthiness and/or genuineness of the transaction though doubted by the Learned AO, the same has not been proved by any cogent document in favour of the revenue. Further that we find that the Learned AO acted beyond his jurisdiction by raising doubts regarding the relationship of the assessee and the donor ignoring the statutory provision in this regard as already been highlighted by the assessee before him in his written reply dated 04.02.2015. Without rebutting the submission made by the assessee the order of addition was made by the Learned AO. Further that, whether the gift so received by the assessee from his brother-in-law is exempted from tax under section 56 of the Act has been considered on a wrong notion. Instead of relative as provided by the statute "blood relative" has been considered by the Learned AO and as a result whereof addition was made which is absolutely erroneous as rightly pointed out by the Learned CIT(A) as it reflects from the order impugned. Thus, in the absence of any infirmity in the order passed by the Learned CIT(A) we decline to interfere with the same. Hence, the Revenue's appeal is dismissed.

8. In the result, both the revenue's appeals in IT(SS)A No.128 & 129/Ahd/2016 are dismissed.

This Order pronounced in Open Court on 24/01/2019

Sd/-	Sd/-
(PRAMOD KUMAR)	(Ms. MADHUMITA ROY)
VICE PRESIDENT	**JUDICIAL MEMBER**

Ahmedabad; Dated 24/01/2019

Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-12, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad