

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Income Tax Appeal No : 77 of 2010

Aalok Khanna

- V/s -

Commissioner of Income Tax, Bhopal

Present : **Hon'ble Shri Justice Rajendra Menon**
Hon'ble Justice Ms. Vandana Kasrekar.

Shri A.K. Shrivastava with Shri Abhijeet
Shrivastava for the appellant.

Shri Sanjay Lal, counsel for the respondent/revenue.

Whether approved for reporting:

Yes / No.

ORDER
28/11/2014

This is assessee's appeal under section 260-A of the Income Tax Act, calling in question tenability of an order-dated 5.1.2010, passed by the Income Tax Appellate Tribunal, Bench Indore in the matter of disallowing a sum of Rs.1,52,67,939/-, which the assessee claims has to be exempted from payment of tax on the ground that it is a 'gift' received by the assessee from non-resident Indians.

2- The only question of law proposed in this appeal is as to whether the order of the Tribunal upholding the aforesaid addition made by the Assessing Officer (hereinafter referred to as 'AO') under section 68 of the Income Tax Act, is a perverse and arbitrary finding.

3- Facts which are necessary for deciding the issue in question goes to show that for the financial year 2001-2002, the assessee filed a return of income showing the income received from M/s Narmada Enterprises – a proprietary concern, owned by the assessee. The assessee

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showed deriving income from salary, house, business and shares. It was stated that the assessee's proprietary concern is engaged in manufacturing tin containers, tin components and also carries on C&F Agencies. During the year in question, the assessee declared a gross profit of Rs. 1,07,23,593/- against a turnover of Rs. 27,43,13,559/-. During the course of assessment, the AO found that the assessee had received 'gifts' from two non-resident Indians namely – one Shri M. Musa from Dubai; and, another Shri V. Balan from Singapore. The amount of 'gift' received from these persons were Rs.66,88,753/- and Rs.85,79,186/- respectively. The AO requested the assessee to prove the genuineness of the said 'gift'. Even though the assessee proved the genuineness of the donors so also the credit-worthiness of the donor, but as the genuineness of the 'gift' was not established, the AO disallowed the entry and subjected the 'gift' for payment of tax. On an appeal being filed, the Commissioner (Appeals) allowed the same and held that once the assessee has proved the genuineness of the donor and the credit-worthiness of the transaction, it was not necessary to do anything more and, therefore, deleted the entry. Aggrieved thereof, an appeal was filed before the Appellate Tribunal by the Revenue and the Tribunal having interfered into the matter, doubting the genuineness of the 'gift' made and having made the addition, this appeal by the assessee under section 260-A of the Act.

4- Shri A.K. Shrivastava, learned Senior Advocate appearing for the appellants, took us through the orders passed by the AO, the Commissioner (Appeals) and the Appellate Tribunal and tried to emphasize that once the genuineness of the donors and the credit-worthiness of the donor is established by the assessee, then the requirement of section 68 of the Income Tax Act is fulfilled and the AO and the Appellate Tribunal committed error in interfering with the matter.

5- Per contra Shri Sanjay Lal, learned counsel for the respondent/department, took us through the findings recorded by the Appellate Tribunal, from paragraph 8 onwards, wherein the Appellate

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Tribunal has doubted the genuineness of the 'gift' made and tried to argue that as the 'gift' is not found to be made genuinely by the donors and as the 'gift' deed itself was not proved in accordance to the requirement of law, the reasonable justification given by the Tribunal for doubting the genuineness of the 'gift' itself is a reasonable finding and it should not be interfered with.

6- In support of his contention, Shri Sanjay Lal invited out attention to a judgment of the Supreme Court in the case of **Commissioner of Income Tax Vs. P. Mohanakala and others, (2007) 210 CTR (SC) 20**, relied upon by the Tribunal and two other judgments – one of the Delhi High Court, in the case of **Rajeev Tandon Vs. Assistant Commissioner of Income Tax, (2008) 215 CTR (Del) 272**; and, another judgment of the Calcutta High Court in the case of **Commissioner of Income Tax Vs. Precision Finance Private Limited, (1994) 121 CTR (Cal) 20**, in support of his contention.

7- We have heard learned counsel for the parties at length and we have gone through the orders passed by all the three authorities namely – the Assessing Officer, the Commissioner (Appeals); and, the Income Tax Appellate Tribunal.

8- It is found by the AO and the Appellate Tribunal that even though the identity of the creditor is established, the credit worthiness of the creditor is also established, but the genuineness of the transaction in the form of a 'gift' is not established.

9- The Commissioner (Appeals), however, found that once the identity of the creditor is established and the credit worthiness of the creditor is also established then nothing further remains to be done and the 'gift' should have been accepted. .

10- We have considered the rival contentions and we find on going through various judgments with regard to the ingredients necessary for making out the requirement of Section 68, that three things are necessary. One – the identity of the creditor; secondly – the genuineness of the transaction; and, thirdly – credit worthiness of the creditor. If all these three are present together then the provision of

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Section 68 may become applicable and the assessee may get benefit of the said provision. In the said case, the AO and the Income Tax Appellate Tribunal have found that even though identity of the creditors and his credit-worthiness are established, but the genuineness of the transaction is doubtful. The Income Tax Appellate Tribunal has gone into details with regard to genuineness of the transaction and from paragraph 8 onwards, has discussed at length as to why the transaction becomes doubtful. The assessee claims to have received 'gift' from two persons, the Tribunal found that these two persons are not related to the assessee. They are residing in two different countries – one in Dubai and the other in Singapore. There is no business relation or any other blood-relation between the assessee and these donors and there is no explanation as to why these two unknown persons, who are infact strangers, would give such a huge amount to the assessee as 'gift'. It is also found by the Tribunal that it is not in dispute that a simple 'gift-deed' on a plain paper has been placed on record and under normal circumstances such a 'gift-deed' can be accepted. However, on going through the 'gift-deed', the Tribunal found that no witnesses are there to identify the execution of the 'gift-deed' in accordance with law. The execution of the 'gift-deed' is not established in accordance to the requirement of law as may be applicable in the countries where the 'gift-deed' is executed. That apart, it is also found by the Tribunal on going through the Bankers Certificate in respect of these two persons that originally in the transaction there is no mention of the word 'gift', but thereafter the word 'gift' has been added by way of interpolation. From paragraph 8, the learned Tribunal has given various reasons for doubting the very nature of the transaction to be a 'gift' and consequently holding that the transaction to be a 'gift' is doubtful, and for so holding reliance is placed on the judgment of the Supreme Court in the case of **Mohanakala** (supra).

11- We have meticulously gone through the findings recorded in paragraph 8, which runs to more than three pages, and we find that the Tribunal has subjectively analysed the nature of the transaction and has

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recorded a positive finding to the effect that the transaction being a 'gift' is doubtful. This finding recorded by the Tribunal is based on due appreciation of the material and evidence available on record and if this is a finding of fact, duly arrived at by two authorities namely – the AO and the Appellate Tribunal, it can be interfered with us only if it is wholly perverse or it can be said that a question of law arises only if we can classify the said finding as a perverse and arbitrary finding unsupported by any material or evidence available on record and a prudent man's approach has not been adopted by the Tribunal.

12- In this regard, if the principle of law laid down by the Supreme Court in the case of **Mohanakala** (supra) is taken note of, it is found that from paragraphs 19 to 22, the Supreme Court has analysed somewhat similar situation and found that if the findings of the Tribunal are based on the material available on record and is not based on conjectures and surmises nor are they imaginary, then a reasonable finding arrived at, based on proper appreciation of facts and material in the surrounding circumstances, which create a doubt with regard to the nature of transaction itself. This is a finding which cannot be termed as a perverse finding and on such a finding no question of law, much less a substantial question of law, arises for consideration by the High Court in a proceeding under section 260-A of the Act.

13- If the findings recorded by the Tribunal as detailed in paragraph 8 is analysed in the backdrop of the requirement of law, as laid down by the Supreme Court in the case of **Mohanakala** (supra), we have no doubt that it is a reasonable finding based on the totality of the facts and circumstances and the material available, and on the same we find no substantial question of law arising for consideration.

14- That apart, the Delhi High Court in the case of **Rajeev Tandon** (supra), considered a transaction identical in nature and relied upon the judgment of the Supreme Court in the case of **Mohanakala** (supra), to hold that if the two donors, who are involved in the said case, had absolutely no connection with the assessee and if they had made the 'gift' which is found to be doubtful in nature, then the only assumption

