**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DIVISION BENCH, CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No.901/Chd/2015**
(Assessment Year : 2007-08)

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| Smt.Reena Gambhir,<br>N-56, Panchsheel Park,<br>New Delhi. | Vs. | The Principal C.I.T.,<br>Gurgaon. |
| PAN: AAGPG8771N<br>(Appellant) | | (Respondent) |

Appellant by : Shri Parikshit Aggarwal, CA
Respondent by : Shri Ravi Sarangal,CIT DR

Date of hearing : 29.08.2017
Date of Pronouncement : 21.09.2017

## ORDER

**PER ANNAPURNA GUPTA, A.M.:**

This appeal has been preferred by the assessee against the order of Ld. Principal Commissioner of Income Tax (Central) (hereinafter referred to as Ld.Pr.CIT), Gurgaon dated 3.11.2015 relating to assessment year 2007-08 passed under section 263 of the Income Tax Act, 1961 (in short 'the Act').

2. The brief facts leading to the present appeal are that, pursuant to search conducted on the assessee,initially assessment order u/s 153A(1)(b) of the Act was passed on 31.1.2014 for the impugned assessment year. Thereafter on examining the records, the Ld.Pr.CIT found that the assessee had received two gifts of Rs.10 lacs and Rs.5 lacs during the year from M/s Ramesh Chandra Kapoor & Sons (HUF), which according to him was taxable in the hands of

the assessee as per the provisions of section 56 of the Act. He found that the Assessing Officer had failed to tax the same and therefore, there was a prima facie case of the assessment order being erroneous as well as prejudicial to the interest of the revenue. Accordingly, notice u/s 263 of the Act was issued to the assessee to show cause as to why the assessment should not be revised u/s 263 of the Act. In response the assessee stated that the impugned gift was not taxable and relied upon the judgment of the Rajkot Bench of the I.T.A.T. in the case of Vineetkumar Raghavjibhai, Bhalodia Vs. ITO, 140 TTJ 58 in this regard. The Ld.Pr.CIT rejected the contention of the assessee, distinguishing the case law relied upon by the assessee and holding the gift to be taxable in the hands of the assessee. The Ld.Pr.CIT thereafter directed the Assessing Officer to enhance the income of the assessee by Rs.15 lacs.

3. Aggrieved by the same, the assessee has filed present appeal before us raising following grounds:

> *"1. That the order of the Id. Principal Commissioner of Income tax(Central)(PCIT), Gurgaon passed on 3.11.2015 was illegal, erroneous, perverse and thus uncalled for.*
>
> *2. That the Id. PCIT is not justified in invoking the provisions of section 263 of the Income tax Act, 1961, which is void ab-initio and thereby holding the order passed by the Id. Assessing Officer (AO) u/s 153A(l)(b) of the Income tax Act, after perusing for complete details as even filed along with the Income tax return and after due application of mind and perusing the concerned provisions of Income tax Act, 1961.*

3. *That section 263 of the Act. confers power to examine an assessment order so as to ascertain whether it is erroneous and prejudicial to the interest of the revenue but does not confer jurisdiction to substitute his opinion for the opinion of the AO.*

4. *That gift of Rs.15.00 lacs made under Gift Deed between Karta of (HUF)Mr.Ramesh Chander Kapoor (father) for her daughter(appellant) Smt.Reena Gambhir out of natural love and affection. Surjeet Lai Chhabda v CIT (1975) 101 ITR 776 (SC) recognize HUF constitutes all persons lineally descended from a common ancestor. All these persons fall in the definition of relative as provided in explanation to clause (vi) of section 56(2) of the Act. HUF is a group of relatives.*

5. *That section 56(2)(vi) along with the explanation to that section and on understanding the intention of legislature from the section it could be seen that a gift received from relative, irrespective of whether it is from individual relative or from a group of relatives is exempt from tax as a group of relatives also falls within the explanation to section 56(2)(vi) of the Act. It is not expressly defined in the explanation that the word relative represent a single person.*

6. *That section 6 of the Hindu Succession (Amendment) Act, 2005, express that devolution of interest in coparcenaries property, the daughter of coparcener shall a) by birth become a coparcener in her own right in the same manner as the son; b)have the same rights in the coparcenaries property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenaries property as that of a son.*

7. *That the appellant craves leave to add, amend or delete any of the grounds of appeal on or before the disposal of the present appeal."*

4. As is evident from the grounds of appeal raised before us, the assessee has contested the order passed on both the legal issue of assumption of jurisdiction u/s 263 of the

Act as well as on the merits of the case of making addition of the impugned gift in the hands of the assessee.

5. We shall first be dealing with the legal ground raised by the assessee in ground No.2. Before us Ld Counsel for the assessee first contended that the order passed by the Assessing Officer could not be held to be erroneous at all since the AO could not have made the impugned addition in the said order as per law. The Ld. counsel for the assessee pointed out that the impugned order had been passed u/s 153A of the Act in pursuance to search conducted on the assessee. He thereafter pointed out that as on the date of initiation of search, assessment stood completed since the time period for issuing notice u/s 143(2) of the Act had expired. The Ld. counsel for assessee thereafter stated that in such cases addition in assessment framed u/s 153A could be made only on the basis of incriminating material found during the course of search which in the present case was absent vis-à-vis the gift received by the assessee. Therefore, addition on account of the said gifts could not have been made in any case in the order passed u/s 153A and assumption of jurisdiction by the Ld.Pr.CIT holding the order passed u/s 153A as erroneous on this count is, therefore, incorrect. The Ld. counsel for assessee drew our attention to the following facts to substantiate is pleadings:

a) Assessment year involved 2007-08

b) Return for the impugned assessment year was filed on 31-07-2007.

c) The date for issuing notice u/s 143(2) expired on 30-09-08 and no notice was issued to the assessee.

d) Search conducted on the assessee on 8.9.2011

6. The Ld. counsel for assessee pointed out that the above facts clearly show that the assessment for the impugned year stood completed on the date of initiation of search. The Ld. counsel for assessee thereafter drew our attention to the fact that in a number of cases the Hon'ble Courts have held that in case of completed assessments, assessment u/s 153A could be made only on the basis of incriminating material found during the course of search.

1) CIT Vs. Kabul Chawla, 380 ITR 573 (Del)
2) The Principal CIT Vs. Lata Jain
ITA No.274/2016 order dated 29.4.2016 (Del)
3) DCIT Vs. Times Finvest & Commerce Ltd. & Anr.
(2015) 45 CH 324 (Chd.Trib.)

7. The Ld. counsel for assessee also pointed out that the order of the Ld.Pr.CIT makes no mention of any incriminating material relating to the gifts received by the assessee found during the course of search. The Ld. counsel for assessee stated that the order of the Assessing Officer was, therefore, not erroneous at all and the Ld.Pr.CIT had erred in assuming the jurisdiction u/s 263 of the Act. Reliance was placed on the decision of the Hon’ble Delhi High Court in the case of Pr.CIT vs. Shri. Mahesh Kumar Gupta in ITA 810/2016 & CM Nos.43256-43257/2016 dt.22-11-2016 in this regard.

8. The Ld. DR, on the other hand stated that non-inclusion of gift which was clearly taxable in the hands of the assessee u/s 56 of the Act, tantamonted to error having been crept in the order of the Assessing Officer which caused prejudice to the interest of the Revenue and the assumption of jurisdiction by the Ld.Pr.CIT was, therefore, valid.

9. Having heard both the parties we find merit in the contention of the Ld. counsel for assessee. Undisputedly, the assessment order which had been held to be erroneous by the Ld.Pr.CIT was passed in pursuance to search conducted, u/s 153A of the Act. Also it is not disputed that as on the date of initiation of search the assessment for the impugned year stood completed. The Assessing Officer, therefore, could have made addition in the order passed u/s 153A of the Act only on the basis of incriminating material found during the course of search. Various decisions of Hon'ble High Court and ITAT Chandigarh Bench have laid down the above proposition. The Hon'ble Delhi High Court in the case of Cit vs Kabul Chawla (2016) 380 ITR 573(Del) laid down this proposition holding as under

> *"On a conspectus of Section 153A(1) read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges was that, firstly, once a search takes place u/s 132, notice u/s 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place. Secondly, Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise. Thirdly, AO will exercise normal assessment powers in respect of the six years previous to the*

*relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax". Fourthly, Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material." Fifthly, In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153A was relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings. Sixthly, Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment u/s 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.* ***Seventhly, Completed assessments can be interfered with by the AO while making the assessment u/s 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."***

10. The same was reiterated in the following decisions also

PRINCIPAL COMMISSIONER OF INCOME TAX vs.
SAUMYA CONSTRUCTION P. LTD.(2016) 387 ITR 0529 (Guj)

PRINCIPAL COMMISSIONER OF INCOME TAX vs.
MS. LATA JAIN (2016) 384 ITR 0543 (Delhi)

PRINCIPAL COMMISSIONER OF INCOME TAX vs.
DEVANGI ALIAS RUPA (2017) 98 CCH 0051 Guj HC

11. Having said so we further find that the order of the Ld.Pr.CIT passed u/s 263 of the Act finds no mention of any incriminating material found during the course of search relating to impugned gifts. In fact, the Ld. counsel for assessee has demonstrated before us that it was during the course of assessment proceedings u/s 153A that a

questionnaire was issued to the assessee dated 7.8.2013 asking the assessee to file details of any gift made or received during the impugned year, in response to which the assessee had filed the copy of capital account disclosing the impugned gifts received from Ramesh Chander Kapoor & Sons (HUF). It is evident, therefore, that it was on the basis of this information which was procured during the course of assessment proceedings and not on the basis of any incriminating material found during the course of search which led the Ld.Pr.CIT to believe that an error had crept in the order of the Assessing Officer.

12. We therefore agree with the Ld. counsel for assessee that since no information relating to the impugned gifts was found during the course of search the Assessing Officer could not have made any addition vis-à-vis the said gifts in the order passed u/s 153A and, therefore, the Ld.Pr.CIT cannot now hold the order of the Assessing Officer as erroneous for not making addition on account of the same. The Hon'ble Delhi High Court in the case of CIT vs Mahesh Gupta(supra) has in identical factual matrix, where the order sought to be revised was passed u/s 153A and the addition sought to be made was not based on any incriminating material found during search, held the assumption of jurisdiction by the CIT u/s 263 as bad. The relevant portion of the order of the Hon'ble High Court is as under:

> *1. The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) and urges that the impugned order, inasmuch as it upset and set aside the addition*

*made by the Commissioner of Income Tax (CIT) in exercise of the powers under Section 263 of the Income Tax Act, 1963 (in short the Act) bringing to tax certain amounts as "deemed dividend" under Section 2(22)(e) of the Act, was erroneous.*

*2. The brief facts of the case are that further to search and seizure proceedings the assessee filed its returns under Section 153A of the Act. The assessment was completed by the Assessing Officer (AO). The jurisdictional CIT was of the opinion that the assessment order was both prejudicial and erroneous to the interest of the Revenue and directed its revision inasmuch as an addition under Section 2(22)(e) of the Act was mandated. The assessee successfully appealed to the ITAT.*

*3. The ITAT concluded based upon the materials available that the search and seizure operations did not yield any fresh material warranting addition under Section 153A of the Act, and therefore, could not clothe the CIT with the authority to add an amount on the basis of a fresh appraisal of the existing materials that formed part of the original assessment. It is urged by the Revenue that CIT acted within his jurisdiction in concluding that the AO erroneously did not bring to tax the amount that had to be included under Section2(22)(e)facially itself, therefore, the CIT's order was justified, consequently, the ITAT should not have interfered with that determination.*

*4. There is no dispute that the search and seizure proceedings in this case did not result in anything, therefore, material either in the form of books of account or other documents related to the issue of deemed dividend under Section 2(22) of the Act. The amounts paid were in fact originally declared in the assessment returns of the assessee. The CIT, therefore, had opportunity to exercise his powers as it were on the basis of returns as filed originally and validly under Section 263 of the Act.*

*5. In the circumstances in the absence of any material disclosing that the issue of deemed dividend had been willfully derived or had been deemed or otherwise withheld from the assessment an addition under Section 153 A was warranted-based on the proposition taught by this Court in judgment dated 28.08.2015 in ITA 707/2014 titled:* ***CIT vs Kabul Chawla.*** *Therefore, we concur with the ITAT's opinion in this regard. The search and seizure proceedings in such cases are undoubtedly meant to bring to tax amount that are to be determined on the basis of materials seized in the course of such searches; permitting anything over and above that would virtually amount to letting the Revenue have a third or fourth opinion as it were. Searches - to quote the view of Attorney-General (NSW) vs Quin (1990) HCA 21 in another context are "not the key which unlocks the treasury" of the Revenue's jurisdiction in regard to matters that had attracted attention in the regular course of assessment.*

*6. For the above reasons, we are of the opinion that no questions of law arise. The appeal is, therefore, dismissed."*

13. For this reason alone we hold that the Ld.Pr.CIT has erred in assuming the jurisdiction u/s 263 of the Act to revise the order of the Assessing Officer. We, therefore, set aside the order of the Ld.Pr.CIT.

14. Since we have held the assumption of jurisdiction by the Ld.Pr.CIT u/s 263 of the Act to be invalid, we do not consider it necessary to deal with the merits of the addition made since it would only be an academic exercise. Nor do we consider it necessary to deal with other legal grounds raised by the assessee. In view of the above, the appeal of the assessee stands allowed.

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

Order pronounced in the Open Court.

| Sd/- | Sd/- |
|---|---|
| **(SANJAY GARG)** | **(ANNAPURNA GUPTA)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated : 21st September, 2017

*Rati*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh