

## Legitimacy of gift by grandmother to grandson not to be doubted.

**Summary – The Allahabad High Court in a recent case of Kanhaiya Lal Agarwal., (the Assessee) held that gift made by an old lady to her son or grandson with whom she spent her last days cannot be doubted.**

### Facts

- A search was conducted at the residence and the business premises of the assessee as well as residence of his sons.
- During the course of search, the assessee admitted an unaccounted excess investment of Rs. 5 lakhs and ownership of 20.150 kg silver ornaments.
- The return was filed declaring above undisclosed income. The Assessing Officer did not accept the computation and determined the value of silver bullion weighing 240 kg which the assessee claimed to belong to his sons as part of income of the assessee.
- On appeal, the Tribunal held that since bullion of 240 kg had to be considered in hands of the assessee's sons as the same was seized from house belonging to the assessee's sons.
- On appeal before the High Court.

### Held

- The HC held that the ITAT had recorded a categorical finding of fact, which is based upon appreciation of material on record that the assessee's father Late 'B' was carrying on business in silver. He had given 240 kgs. silver bullion to his wife just a few days prior to his death in the year 1968, which silver was handed over by his wife *i.e.* the assessee's mother for being given to two sons of the assessee *viz.*, 'A' and 'M'.
- It is also not in dispute that the assessee's mother was residing with the assessee and not with the assessee's brother. An affidavit of the maternal grandson of Late 'B', the assessee's father, has also been filed stating the aforesaid facts, which remained uncontroverted. Moreover, the silver bullion was found from the residence of the assessee's son.
- Under sub-section (4A) of section 132, a presumption has been drawn that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing, which is found in the possession or control of any person in the course of search belong to such person. Even otherwise in Indian culture it is but natural that grandmother, who is residing with one of his son, who is taking care of her old age and other problems generally gives all the property to the son or the grandson with whom she is living and in this case to her grandson.

- The HC accordingly held that the Tribunal had not committed any illegality in holding the explanation given by the assessee regarding 240 kgs silver bullion as plausible and has rightly accepted it.
- Therefore, the order of the Tribunal does not suffer from any legal infirmity. It does not raise any question of law much less any substantial question of law.