

## **Capital introduced from gifted money held as unexplained as donors didn't have capacity to make gift**

**Summary – The High Court of Gujarat in a recent case of Laxmandas Sujandas Dalpat, (the Assessee) held that where assessee did not have any close relation with alleged donors and no cogent material had been brought on record to prove their financial capacity, gifts received by assessee in his capital account could not be treated as genuine and would be added to his income under section 68**

### **Facts**

- The assessee was engaged in the business of developers/housing projects. During the course of assessment proceedings, upon verification of his capital account, it was noticed that certain amount had been credited as fresh capital introduced during the year. The source of the same was shown as gift received from nine persons.
- The Assessing Officer directed assessee to produce persons from whom gifts were received to verify the identity, creditworthiness and genuineness of the gifts made by said persons. Out of nine, the assessee produced only two persons, namely, 'N' and 'P'. The Assessing Officer noted that these people had no relation with the assessee and did not have the capacity or source of making such gifts. Therefore, the Assessing Officer concluded that the amount credited in the capital account of the assessee remained unexplained as the gifts were not genuine in nature and added the same to his total income under section 68.
- On appeal, the Commissioner (Appeals) deleted the addition made by the Assessing Officer by recording that the assessee had given confirmation letters, PAN and copies of returns and bank statements of Indian donors and confirmation letters, copies of passbooks and details of stay of the donors at Dubai.
- On revenue's appeal, the Tribunal reversed the order of the Commissioner (Appeals) and upheld the order passed by the Assessing Officer.
- On appeal before the High Court:

### **Held**

- The Tribunal, after duly appreciating the material on record, has recorded findings of fact for the purpose of coming to the conclusion that the gifts in question are not genuine. The returns of income filed by the Indian donors have been placed on record, which clearly reveal that the donors did not have the financial capacity to gift such huge sums of money. Clearly, therefore, the assessee has failed to prove the creditworthiness of the donors. Even the donors who appeared before the Assessing Officer clearly did not have the capacity to make such gifts. In relation to the gifts received from the NRI donors, except for the fact that such amount was received from banking channel and their confirmations were filed, no other supporting material had been produced by the assessee to prove the identity of the donors, the genuineness of the gifts and the creditworthiness of the

parties. As held by the Supreme Court in the case of *CIT v. P.R. Ganapathy* [2012] 210 Taxman 572/26 taxmann.com 354 the burden is on the assessee to show that the amount received by purported gifts from the donors was a gift in the real sense. In the facts of the present case, the assessee has not led evidence to show whether the alleged donors had adequate funds or that they had the financial capacity to make such gifts. The record reveals that the assessee did not have any close relations with the donors. Insofar as the Indian donors are concerned, except for 'N', as regards the rest of the donors, the assessee in his statement under section 131 has stated that they used to bring customers for his scheme. From the record, there is nothing to reveal that the relationship between the assessee and the donors was the one involving natural love and affection. Having regard to the financial capacity of the donors as emerging from the record, considering the facts of the case from the point of view of a reasonable man taking a reasonable view, it is not possible to believe that the gifts in question are genuine.

- In the light of the above discussion, on the evidence which has come on record, it is not possible to state that the impugned order passed by the Tribunal is based on conjectures or surmises. The Tribunal, on the contrary, has considered all the relevant material and based its conclusions on the findings recorded by it after appreciating the material on record. From the findings recorded by the Tribunal, there is nothing to indicate that it has considered any irrelevant material or that any relevant material has been ignored, nor can it be said that the conclusions arrived at by the Tribunal are in any manner unreasonable or perverse to the record of the case, so as to warrant interference.
- Insofar as the submission advanced by the assessee that in the light of the finding recorded by the Tribunal that the original passports of the NRI donors had not been produced, the matter is required to be restored to the file of the Tribunal, it appears that in the absence of any cogent material having been brought on record by the assessee to prove the financial capacity of the NRI donors or the genuineness of the gifts, no case has been made out for restoring the matter to the file of the Tribunal.