Tax dept. can't demand copies of tax return of NR donor whose creditworthiness is proved by donee: ITAT

Summary – The Chandigarh ITAT in a recent case of Nirmal Rani, (the Assessee) held that where assessee had adequately discharged her onus of proving identity of donor, capacity of donor as also genuineness of transaction, addition could not be made under section 68 and by asking assessee to file their income tax return and bank statement, revenue was verifying source of source which could not be done

Facts

- The assessee, an individual, had received gifts amounting to Rs. 45 lakhs from her brothers residing in UK and Italy through NRE accounts maintained by the above persons in Indian Bank, Ambala Cantt.
- The assessee filed confirmations on plain paper along with copies of passport from these persons during the course of assessment proceedings. The Assessing Officer asked the assessee to furnish copies of the returns of income of the persons from whom the so-called gifts were received, the sources of income of the donors abroad, capacity of the donors to give the gift and copy of bank account maintained by the donors abroad.
- No documentary evidence was filed by the assessee. The Assessing Officer, therefore, treated the said gifts as unexplained money of the assessee under section 68 and made an addition of Rs. 45 lakhs to the income of the assessee.
- The Commissioner (Appeals) rejected the claim of the assessee on ground that the said amount was not in the nature of a gift since no such gifts had been made to the assessee by her brothers in the past, nor had the brothers given any such gift to any other person and also for the reason that there was no occasion to give the gift and even the assessee had never gifted anything to her brothers.
- On appeal

Held

- The assessee has duly explained the sum received by her as also the nature and source of the amount received. The identity of the creditor/donor, is not in dispute in the present case. The relationship with the donors is proved by the identical name of parents reflected in their respective copies of passports and further corroborated by the confirmations filed by the donors. The nature of the amount also cannot be called in question since it is absolutely normal for bothers to give gifts to sisters and there is no reason at all to disbelieve the same merely because no gifts were given in the past. The only aspect remaining is regarding the capacity of the donors to make the impugned gift as also the genuineness of the said gift having not been adequately proved by the assessee and the reason given by the revenue for the same is that the assessee did not file the copies of Income-tax

returns of the donors and also the copies of the bank statements of the donors maintained in the countries of their residences, *i.e.*, UK and Italy.

- As for the capacity of the donors to make the gift, it is not disputed that the said gifts have been made from NRE account of the donors in Indian Bank, Ambala. On going through the bank accounts, it is found that there was enough balance in both the accounts to make the said gifts to their sister. In the case of one donor there was an opening balance of Rs. 33,40,059 in the beginning of the year. The gift given by him to the assessee is Rs. 33 lakhs. Further, there are no deposits in this bank account during the year. What emerges, therefore, is that the gift has been made from the opening balance, in the NRE account of the donor meaning thereby that in the first place there was sufficient balance with the donor to make the gift as at the beginning of the year itself which adequately proves the capacity of the donor to make the gift. Coupled with it, the fact that no sum was credited in the said account during the year. No addition on account of undisclosed income in any case can be made in the impugned year since the said gifts received cannot by any stretch of imagination be attributed to any income earned during the year.
- As for gift received from other one, perusal of his bank account placed shows that there was an opening balance of Rs. 9531 during the year, which increased to Rs. 12,97,493, before the gifts were made, by way of four deposits made in the said account, and none of which were cash deposits. It was out of this balance of Rs. 12,97,493 that the gift of Rs. 12 lakhs was given to the assessee. Even thereafter, there has been deposits amounting approximately to Rs. 30 lakhs in the said account during the year, none of which are cash deposits. Clearly, the availability of Rs. 12,97,493 in the said bank account, before the gift was made being established and none of which can be attributed to any cash deposits in the said account and also the fact that none of the credits in the said account have even remotely been linked to the assessee in any way, the entire amount in the said account can safely be said to belong to the donor, thus, providing his capacity to make the said gift, as also the genuineness of the transaction.
- In view of the above, the identity of the donors not being in dispute and the genuineness of the gift as also the capacity of the donors to make the said gifts having been proved by the assessee and further there being no tangible material with the revenue which may cast any doubt on the genuineness of the gifts, no addition under section 68 could be made in the hands of the assessee.
- There is merit in the contention of the revenue that for proving the capacity of the donor it is essential to file income-tax returns of the donors as also copy of the bank accounts maintained in their countries of residences. As stated above, the bank accounts from which the stated gifts had been given were NRE accounts, all deposits in the said accounts could be made only out of the earnings made outside the country and no cash deposits had been found in the said accounts. Further, there were enough deposits in the said accounts to make the impugned gifts. When the availability of funds has been adequately proved, the capacity of the donors to make the gifts also stands proved. By asking the assessee to file copies of the Income-tax Returns and also their bank statements in their country of residence, the revenue is indulging in the exercise of verifying the

source of the source which is settled law, cannot be done in this case. The onus to explain the credit being on the assessee, reflects the general rule of law of evidence codified in section 106 of the Evidence Act, 1872, as per which the source of income is a matter with the exclusive knowledge of the assessee which he has to prove and demonstrate. It is for this reason only that the source of source, which is not within the knowledge of the assessee at all, is not required to be proved by the assessee.

- The addition has been made merely on the basis of suspicion, without any *iota* of evidence to even lead to the fact that the amount received as gifts were actually the assessees' income only. This cannot be the basis of making an addition under section 68 in the present case.