

Sec. 68 additions made without verification of donors of gifts was unjustified; ITAT deleted additions

Summary – The Patna ITAT in a recent case of Sandeep Bansal., (the Assessee) held that where assessee had received gifts but had not discharged his onus completely by producing documentary evidence to prove creditworthiness of donors and genuinity of gifts and at same time revenue had also not restored to verification of said donors by issuing summons under section 131, additions under section 68 could not be made; matter to be remanded for verification of gifts

Facts

- The assessee, RSB was doing wholesale business in medicine. A search and seizure operation under section 132(1) and survey under section 133A were conducted in the residential and business premises of the assessee. During the course of search, copies of gift deed/affidavit pertaining to gifts and papers relating to investment in movable and immovable properties were found and seized by the department. A notice under section 153A also issued to the assessee requiring him to furnish the return of income for the year under consideration and in compliance to the said notice, the assessee furnished the return of income.
- The Assessing Officer besides making other additions had also made additions on account of unexplained gifts by mentioning that the assessee could not prove the identity and creditworthiness and thus, failed to produce supporting evidence regarding genuineness of transaction. Thus, the addition under section 68 was made.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- In instant appeal the assessee had contended that the assessment completed and order passed under section 153A was bad in law. The assessee submitted that the additions made by the Assessing Officer under section 153A. Proceedings being not made on the basis of 'incriminating material' which said to be found by the revenue during search proceeding. He submitted that during the course of search no incriminating material was found.

Held

- The present ground raised by the assessee is regarding legal validity of the additions made by the Assessing Officer under section 153A proceedings under the provisions of section 153A in all cases, where search is conducted under section 132, Assessing Officer is empowered to assess or reassess total income of six assessment years preceding the assessment year in which search was conducted. The section also provides that assessment or reassessment relating to any assessment year falling within period of six assessment years if pending on the date of initiation of search shall abate. There have been divergent views regarding scope of application of section 153A in cases where no incriminating material was found indicating undisclosed income. The Coordinate Benches of Tribunal had taken the view that in case no incriminating material was found, Assessing Officer had no

jurisdiction to make assessment or reassessment under section 153A while some other Benches held that jurisdiction under section 153A was automatic to reassess six immediate preceding assessment years irrespective of the fact whether any incriminating material was found or not. Another aspect on which there had been divergent views was whether even if Assessing Officer had jurisdiction under section 153A, addition can be made in assessment/reassessment only when some incriminating material has been found. All these aspects had been referred to the Special Bench of the Tribunal in case of *Alcargo Global Logistics Ltd. v. Dy. CIT* [2012] 137 ITD 287/23 taxmann.com 103 (Mum.) and order of Special Bench dated 6-7-2012, which has been held in favour of assessee.

- However, as per the facts of the present case, during the course of search at the premises of the assessee, the gift deeds and affidavits were found for the first time by the investigation wing and the same were seized. The Assessing Officer issued notices while complying with the provisions of section 153A. As per the mandate of section 153A, the Assessing Officer was competent to issue notices thereon irrespective of any documents found in the course of search or not.
- From the perusal of the position of section 153 it is found that notwithstanding anything contained in sections 139, 147 etc., the Assessing Officer is competent to issue notice to the person searched requiring him to furnish the return of income for each assessment years falling within 6 assessment years. As per the facts of the present case, the Assessing Officer while complying with the provisions of section 153A, had issued notices upon the assessee and in turn thereof, assessee had filed a reply stating that the return already filed may be treated as a return in response to notice under section 153A. Although at no stage, the assessee had raised any objection before the Assessing Officer or the Commissioner (Appeals) that no incriminating material was found during the course of search, but the same was raised only before this Court. The assessee had filed the regular returns prior to the search which were processed under section 143(1) and there were no scrutiny assessments that were made by the Assessing Officer. The entry of gifts although find mention in the return of income by the assessee, but the revenue had no occasion to verify the same. Pursuant to the search, the gift deeds and affidavits were found and seized and thereby became the subject matter of verification by the Assessing Officer for the first time. The provisions of section 153A categorized that the Assessing Officer is competent to 'assess' or 'reassess' the total income of 6 assessment years immediately preceding the assessment years relevant to the previous year in which search was conducted. As per the facts of the present case, after seizing the documents and while complying with the provisions of section 153A(b), the Assessing Officer had proceeded to assess/reassess the total income of 6 assessment years immediately preceding the assessment year relevant to the previous year of the assessee, and while doing so, the Assessing Officer had noticed that though the assessee was in receipt of gifts from various parties, but had failed to substantiate its veracity by proving the genuineness of the gift and creditworthiness of the donors. At the same time, the revenue has not adopted the due process of law by issuing summons under section 131 for carrying out detailed investigation from the donors, more particularly when the Assessing Officer was already having the information regarding the PAN of the donors, bank accounts of the donors and

other related details. It is not in dispute that the earlier assessments were completed only under section 143(1) wherein the revenue could not get any opportunity to verify the veracity of these gifts which were otherwise disclosed in the regular returns. The purpose behind the underlying intention and scheme of the Act and provisions thereto is only to determine the true and correct income of an assessee. Having this in mind, if the Assessing Officer resorts to verify the veracity of the gifts in section 153A proceedings, then in that event, no prejudice would be caused to the rights of the assessee, as the provisions of section 153A talks about assessment/reassessment of 'total income' only. Hence considering the peculiar facts and circumstances of these cases, the action of the Assessing Officer in resorting to verification of veracity of gifts in section 153A proceedings cannot be questioned and is hereby upheld.

- Now coming to the merits of the addition made towards gifts received by the assessee, it is true that the Assessing Officer had not resorted to verification of the donors by issuing summons under section 131. It cannot be brushed aside that the assessee also at the same time had not discharged his onus completely by producing the donors before the Assessing Officer or any other documentary evidence to prove the creditworthiness of the donors and proving the genuinity of the gifts. Hence, in the interest of justice and fair-play, and while setting aside the order of the Commissioner (Appeals), the issue of verification of gifts is remanded to the file of the Assessing Officer, to decide the same afresh, in accordance with law. Needless to mention that reasonable opportunity of being heard be provided to the assessee. The assessee is also directed to co-operate with the Assessing Officer for expeditious disposal of these set aside assessment proceedings.