

## **Unexplained gifts once assessed in block assessment, can't be reassessed in regular assessment**

**Summary – The High Court of Gujarat in a recent case of Mukesh M Sheth, (the Assessee) held that Once gifts are assessed in block assessment proceedings, same cannot be subject matter of assessment in regular assessment; whether in block assessment, Assessing Officer has found gift to be genuine or non-genuine can be of no consequence**

### **Facts**

- The assessee, individual had filed the return of income showing receipts of gift of cash from one BKB, an NRI. The return was accepted under section 143(1) without scrutiny. Subsequently, the assessee was subjected to search operation. The Assessing Officer passed block assessment order for the block period between 1-4-1996 to 12-9-2002. The main issue discussed by the Assessing Officer in such order was whether the on-money received by the assessee was through sale of land and whether this on money was routed into the assessee's bank accounts through gifts which were non-genuine. The Assessing Officer made detailed observations with respect to these two issues and held that the undisclosed income through sale of land was already taxed in the hands of the partnership firm of whom the assessee was the partner and, therefore, it was not necessary to tax the assessee separately. He held some of the gifts to be genuine and the rest as non-genuine.
- After this block assessment order was passed, the Assessing Officer issued notice under section 147, reopening of the assessment of the assessee for the same assessment year. Sole ground in the reasons recorded was of the non-genuineness of the gifts received by the assessee. The Assessing Officer passed an order of reassessment and held that the gift was not genuine and taxed the same under section 68.
- On appeal, the Commissioner (Appeals) reversed the view of the Assessing Officer both on the ground of the validity of the reassessment proceedings as well as on merits.
- On further appeal, the Tribunal also confirmed the order passed by the Commissioner (Appeals).
- On appeal to High Court:

### **Held**

- As noted, the return filed was accepted without scrutiny. Subsequently, the assessee was subjected to search operations. Block assessment was carried out for the block period between 1-4-1996 to 12-9-2002. In such block assessment proceedings, the Assessing Officer examined two principal issues whether the assessee had received as a partner of a firm on money through sale of land and whether this amount was routed in his account through bogus gifts. In the order of assessment, he held that during the search, incriminating details of on money receipts on the sale of plots in one of the sales of 'S' group was found. However, since the entire on money has been taxed in the hands of the firm in which the assessee is the partner, it was not taxed again in his hand. He thereupon

proceeded to examine the question of investment of such on money receipts. He considered the assessee's contention that the gifts were genuine.

- Few things need to be culled out from this order at this stage. Important is that the Assessing Officer while framing the block assessment seem to have accepted some of the gifts as genuine. Remaining gifts were found to be non-genuine and tracing the trail to the undisclosed income of the assessee through sale of land.
- After this order was passed, the Assessing Officer desired to reopen the assessment of the assessee for the said assessment year 2001-02 on the ground that the gifts were non-genuine. Section 158BA pertains to assessment of undisclosed income as a result of search.
- *Explanation* clauses (b) and (c) are important. In order to avoid any doubt, these clauses provide that the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period and conversely the income assessed in this chapter, i.e., the block assessment, shall not be included in the regular assessment of any previous year including the block period. Therefore, once a question of the genuineness of the gift was already examined by the Assessing Officer in the block assessment proceedings, it was thereafter not open for him in the regular assessment to undertake the very same scrutiny. In the block assessment, the Assessing Officer proceeded on the basis that whatever the on money income the assessee has received, was routed through the bogus gifts. One is informed that during such block assessment proceedings, the Assessing Officer had carried out detailed inquiry with respect to the gifts. In fact, the donors were summoned, they appeared before the Assessing Officer and the statements were recorded, in which, they owned up the gifts and also cited reasons for giving such lavish gifts. The Assessing Officer having come to definite conclusion in this respect after such detailed inquiry, it can be safely concluded that these amounts of gifts were part of the block assessment proceedings and could therefore not have been made part of the regular assessment all over again. Whether in such assessment, the Assessing Officer had found the gift to be genuine or non-genuine is of no consequence, once the gifts were assessed in the block assessment proceedings, could not be subject matter of assessment in the regular assessment.
- In the present case, as noted, some of the gifts were held to be genuine. Allowing the Assessing Officer to examine the same issue in the regular assessment and as in the present case, leaving the possibility of coming to conclusion that the gifts were not genuine, would give rise to two conflicting opinions of the authority of the same rank, and as in the present case, at times by the same officer.
- For the above noted reasons which are some what different from those adopted by the Commissioner (Appeals) and the Tribunal, it is not proposed to interfere with the Tribunal's final verdict. This is not a classical case where an assessment previously framed without scrutiny is sought to be reopened, nor it is the case where original assessment was after scrutiny, in which, the Assessing Officer had examined certain issues, expressed his opinion which is the subject matter of reopening bringing the principle of change of opinion.

- There is yet another supplementary reason why the revenue, in any case, cannot succeed. If the revenue's proposition is that the assessee had received on money through sale of land, which was introduced in the assessee's accounts through non-genuine gifts, the revenue having attempted to tax the on money receipts, could not have taxed the gifts again with the aid of section 68.
- On the question of genuineness of the gifts, the Tribunal has made certain observations. Since, in one's opinion, this issue was not germane in the regular assessment, though sought to be examined by the Assessing Officer, one would not make conclusive observations in this respect. Nevertheless, a few remarks may not be out of place. As is well settled, whenever any cash is found credited in the account of the assessee, the onus lies on the assessee to establish the source, genuineness and creditworthiness. In the present case, the assessee had established the identity of the donor and his or her creditworthiness. When however, large amounts are stated to have been gifted, that too by a person having no blood relation with the assessee, the question of genuineness of the gifts would require closer scrutiny. If the assessee does not point out any special occasion for a lavish gift being received from such a source, the burden to establish the genuineness of the gift cannot be lightly taken to have been discharged. The crux of the judgments cited by revenue is that the nature of gift and its genuineness would call for case wise scrutiny and the answer would depend on range of facts and attendant circumstances. No single formula of rigid application can be laid down. One is compelled to make these observations because in rather peculiar and somewhat perplexing set of facts, the Tribunal has made superficial observations and mechanically accepted the genuineness of the gifts. In view of conclusions, with respect to the first issue, this question is left at this stage.
- In the result, in facts of the present case, it was not open for the Assessing Officer to examine the question of genuineness of the gifts in regular assessment for which he has resorted to reopening of assessments. No conclusive opinion is expressed on the question of genuineness of the gifts *per se*.