

(2010) 08 DEL CK 0169**Delhi High Court****Case No:** IT Appeal No. 932 of 2008

R.N. Jain

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Aug. 3, 2010**Acts Referred:**

- Income Tax Act, 1961 - Section 68

Citation: (2011) 200 TAXMAN 181**Hon'ble Judges:** Reva Khetrapal, J; A.K. Sikri, J**Bench:** Division Bench**Advocate:** Prem Lata Bansal, V.P. Gupta, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

1. Admit. The following question of law arises for consideration:-

Whether ITAT was correct in law in not accepting the genuineness of the gift without examining and appreciating the evidence in support of the same on the ground that documents submitted were not in its opinion properly executed and/or duly certified?

2. The filing of paper book is dispensed with. With the consent of the learned counsel for the parties, we have heard the matter finally.

3. The appellant had received a gift of US\$ 15,000 amounting to Rs. 6,98,775 from Mrs. Madan Mohini Jain, a resident of Canada. She is known to the appellant for the last 25 years and is aunty of the appellant. The appellant had submitted documents in support of identity as well as genuineness of the gift such as copy of passport of the donor, affidavit of the donor, copy of computer generated bank statement of the donor and also copy of letter received from the donor along with bank draft. Copies of bank pass book of the appellant were also submitted. The Assessing Officer duly accepted the identity of the donor. He, however, added the amount as

income of the appellant u/s 68 of the income tax Act alleging that genuineness and creditworthiness of the donor had not been proved. CIT(A) also upheld the addition.

4. The appellant thereafter preferred an appeal before the income tax Appellate Tribunal, which has also been rejected by the Tribunal. Against the order of the Tribunal dated 31-7-2007, the present appeal is preferred raising the aforesaid question of law.

5. The following facts are not in dispute:-

1. The identify of Mrs. Madan Mohini Jain stands established as per the findings of the authorities below.

2. Mrs. Madan Mohini Jain is not only known to the appellant, but it has been established on record that she is the aunt of the appellant.

3. The amount gifted is US\$ 15,000 which is equivalent to Rs. 6,98,775.

4. The amount was remitted by the donor to the appellant through bank. To establish this, computer generated bank statement of the donor was filed before the authorities below. It was supported by the affidavit of the donor.

Notwithstanding the aforesaid admitted facts, the Tribunal rejected the appeal of the appellant on the ground that the affidavit of the donor which was executed before the Notary Public in Canada was not counter signed by the officer of the High Commission of India in Canada. Copy of the computer generated statement was also not considered, observing that the name of the account holder and the account number had been written in handwriting and it is not clear as to who had certified the same. On this basis, the Tribunal though accepted the identity of Mrs. Madan Mohini Jain and her relationship with the appellant, held that the appellant could not prove the capacity of the donor to pay the amount.

6. We are of the opinion that the approach of the Tribunal was highly hyper-technical. The affidavit which is sworn by Mrs. Madan Mohini Jain is notarised and the seal of the Commissioner of Oaths as well as the signatures of the Commissioner of Oaths in Canada have been put thereon. In spite of this, if the authorities were still of the opinion that it should be counter signed by the officer of the High Commission of India in Canada, liberty should have been given to the appellant to produce an affidavit signed by High Commission of India in Canada. Otherwise, in the said affidavit the donor has categorically mentioned that her husband is a professional engineer and has been residing in Canada since 1974; she herself worked in Canada for 20 years and has recently taken retirement; she owns residential property and was having an investment in real estate generating rental income of over US\$ 2400.00 per month; she also maintains investments in stocks and bonds and in long term bank deposits. If these averments made in the affidavit are correct and the transaction in question is supported by the bank statement as mentioned above, there cannot be any doubt about the capacity of the donor to

give a gift of a paltry sum of US\$ 15,000 to her nephew, namely, the appellant. We are, therefore, of the opinion that subject to the appellant furnishing the affidavit duly sworn by the officer of the High Commission of India in Canada, the aforesaid addition made by the Assessing Officer in the return filed by the appellant for the assessment year 2001-02 should be deleted. The appellant shall produce the affidavit with the aforesaid compliance within two months. The question, thus, stands, answered accordingly.