

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No. 19/Kol/2014
Assessment Year: 2005-06

Sri Dolarrai Hemani (PAN:ABDPH6206R) Vs. Income-tax Officer, Wd-34(3), Kolkata
(Appellant) (Respondent)

Date of hearing: 08.11.2016

Date of pronouncement: 02.12.2016

For the Appellant: Shri Subhas Agarwal, Advocate

For the Respondent: Shri Sudipta Guha, JCIT

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-XX, Kolkata vide Appeal No. 395/CIT(A)-XX/Wd-34(3)/2007-08/Kol dated 28.10.2013. Assessment was framed by ITO, Ward-34(3), Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2005-06 vide his order dated 26.12.2007.

2. The first issue to be decided in this appeal is as to whether, the Id CITA is justified in upholding the addition of Rs. 6,44,270- treating the same as income from undisclosed sources after rejecting the claim of long term capital gains on sale of shares of M/s G.K.Consultants Ltd, in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee is an individual having business income from partnership firm. The assessee filed the profit and loss account and balance sheet during the course of assessment proceedings before the Id AO. The Id AO observed that the assessee had Long Term Capital Gains (LTCG) on stocks and securities (including units of mutual funds) amounting to Rs. 13,13,482/- besides Short Term Capital Gain (STCG) of Rs. 90,349/-. The assessee claimed LTCG of Rs. 13,13,482/- as exempt. The Id AO observed that the assessee had capital gains from shares of reputed companies such as

Reliance Industries Ltd, ICICI Bank, IOC, IBP etc and on units of mutual funds except from sale of shares of G.K.Consultants Ltd. The assessee claimed to have purchased 3000 shares of G.K.Consultants Ltd on 6.6.2003 @ Rs 3.77 per share for Rs. 11,310/- in cash. He sold these shares on 23.3.2005 for Rs 218.50 per share in the secondary market through a recognized stock broker Mr Rajendra Prasad Shah, member of Calcutta Stock Exchange Ltd. The Id AO observed that the assessee had entered into transactions with Ms. Satco Securities & Financial Services Ltd, Member Stock Exchange, Mumbai and M/s C.D.Equi Search Pvt Ltd, Member Stock Exchange , Mumbai for sale and purchase of shares of reputed companies. But in respect of purchase and sale of shares of G.K.Consultants Ltd, the assessee entered into transaction with Mr Rajendra Prasad.Shah, Member Calcutta Stock Exchange Ltd (CSE).

2.2. The Id AO made the following observations in his order:-

- a) The purchase of 3000 shares of G.K.Consultants Ltd was done on off-market transaction.
- b) The assessee furnished the contract note for purchase and sale of shares from the stock broker.
- c) Purchase transaction was effected by making payment in cash which is against the strict rules of SEBI and the Stock Exchange.
- d) No other shares were ever purchased by the assessee by making payment in cash.
- e) The assessee entered into transaction with Mr Rajendra Prasad Shah only for purchase and sale of shares of G.K.Consultants Ltd and apart from this, he had no transaction with Mr Rajendra Prasad Shah.
- f) The shares of G.K.Consultants Ltd were sent for Dematerialization by assessee only on 18.2.2005 and Demat request was confirmed on 18.3.2005. The assessee already had Demat account with Citi Bank, wherein the transaction of shares of reputed companies were recorded. But inspite of having other Demat account the assessee opened another Demat account with Citi Bank with Client ID 10398306 wherein he had only transaction of G.K.Consultants Ltd in that Demat account during the financial year 2004-05 relevant to Asst Year 2005-06.

- g) The assessee was asked to produce the broker with his books of accounts. The assessee expressed his inability to produce the broker and requested the ld AO to contact him on the address mentioned in the contract notes. The ld AO issued summons u/s 131 of the Act to the broker to produce certain details and his sauda books and books of accounts.
- h) The broker filed a letter with details confirming the transactions with the assessee.
- i) The Calcutta Stock Exchange Ltd found the very contract note and the transaction to be false.
- j) The share price in question was obtained from the office of Deputy Registrar, Ministry of Corporate Affairs (MCA) , New Delhi, which showed that the price of shares of G.K.Consultants Ltd hovered around Rs 6.60 to Rs 8.40 during the relevant period whereas the assessee claimed to have sold the shares at Rs 218.50 per share.
- k) Having an off market transaction for purchase of shares was in violation of the established rule and SEBI guidelines.
- l) The assessee was asked to explain as to why the shares of G.K.Consultants Ltd were sent for dematerialization only in Feb 2005 while he had purchased the shares in June 2003. The assessee was also asked to furnish the details as to when these shares in physical form were transferred in his name and evidences of such transfer.
- m) The assessee produced the contract note for sale of 3000 shares in G.K.Consultants Ltd on 23.3.2005 vide Trade No. 1586 at Rs 218.90 per share, the net sale proceeds after brokerage was Rs. 6,56,040/-. Securities Transaction Tax (STT) of Rs. 493/- was also deducted by the broker.
- n) The contract note was sent by the ld AO to the Calcutta Stock Exchange for verification of the transaction. The Calcutta Stock Exchange Ltd vide its letter no. CSE/MSD/ITAX/0711/2670 dated 12.11.2007 replied that "No trade was done vide trade No. 1586". The assessee was shown the reply of CSE and show caused as to why the LTCG of Rs. 6,44,170/- claimed by him on sale of shares of G.K.Consultants Ltd should not be treated as income from undisclosed sources, since no transaction was made vide Trade No. 1586 as confirmed by CSE.

2.3. The assessee replied both purchase and sale of shares transaction were carried out through registered stock broker with Calcutta Stock Exchange Ltd at the prices prevailing in the market which are duly supported by the contract notes issued by the said stock broker ; STT has been duly suffered on the sale transaction ; purchase transaction was effected through off market and hence no STT could be made liable ; since the purchase cost was less than Rs 20,000/- payments for them were made in cash and the said broker had duly confirmed the transactions before the Id AO and accordingly pleaded for acceptance of the claim of exemption of LTCG on sale of shares of G.K.Consultants Ltd.

2.4. The Id AO concluded that the transaction as a sham and colourful transaction whereby the assessee entered his undisclosed income in the regular channels taking the benefit of false LTCG in collusion and with direct help of broker Mr Rajendra Prasad Shah , who with the help of other agents, by circular and artificial and false trading, issued contract notes for transactions never happened. The false gains were given the colour of LTCG which is exempt from tax. Accordingly, he treated the claim of LTCG as undisclosed income of the assessee.

2.5. Before the Id CITA, the assessee submitted various documents in support of his claim which were subjected to remand proceedings by the Id AO. The assessee before the Id CITA tried to meet each and every allegation raised by the Id AO in his order. It was argued that both the broker M/s Satco Securities & Financial Services Ltd , Mumbai and C.D.Equi Search P Ltd , Mumbai were not dealing in scrip of Kolkata and that is why the shares of M/s G.K.Consultants Ltd were purchased from Mr Rajendra Prasad Shah , who was a member of Calcutta Stock Exchange Ltd and who was dealing in the scrips of Kolkata. It was argued that the Id AO had not referred to any particular rule of SEBI and the Stock Exchange from which it could be established that cash purchase of share was not allowed. Therefore, there was nothing illegal if the assessee had no other transaction with Mr Rajendra Prasad Shah. Hence it was not required to explain the reasons for cash purchase of shares. Again there was nothing illegal if the assessee had no other transaction with Mr Rajendra Prasad Shah excepting the transaction related to purchase and sale of

shares of G.K.Consultants Ltd. It was also argued that the assessee was a regular investor and about 95% of his shareholding were in demat form. Only 5% of the shares were held in physical form. The shares of G.K.Consultants Ltd were received in physical form in the name of the assessee and was kept along with other shares in physical form and hence escaped attention of the assessee. This resulted into delay in sending those shares for demat. The Xerox copies of transfer letter of shares of G.K.Consultants Ltd along with request letter were enclosed by the assessee. Further it was stated that the assessee had three demat accounts – one in his name jointly with his wife, one in his name jointly with his son and one in his single name with Citibank Account No. 10398306. Since the shares of M/s G.K.Consultants Ltd were purchased in single name, they were dematted in Demat Account Number 10398306 with Citibank. The Id AO 's contention that this demat account was opened only for the shares of G.K.Consultants Ltd was not correct as the assessee was also holding some other shares in his single name and hence the account was opened in Sept 2003. The shares of Reliance Industries Ltd and Organo Ltd were dematerialized into his account in October 2003 and January 2004 respectively and copies of these demat statements were also submitted before the Id AO. It was further submitted that the broker Mr Rajendra Prasad Shah complied with the requirement of notice u/s 131 of the Act and confirmed by his letter dated 14.11.2007 that the shares of G.K.Consultants Ltd were purchased and sold by the assessee through him and he delivered such shares and also sold such shares, and payment was made by account payee cheque dated 24.3.2005 of HDFC Bank. In support of this, the share broker also produced the copy of the bank statement reflecting the above transaction , copy of IT returns filed by him with PAN and other explanations and details. It was also argued that just because the broker had not produced his books of accounts in response to notice u/s 131 of the Act, how the assessee could be held responsible for the same, especially when he had duly confirmed having transactions with the assessee and the veracity of the same. It was also argued that the confirmation filed by the broker was subjected to cross verification by Calcutta Stock Exchange Ltd by the Id AO who had stated that trade no. 1586 was not carried on. In this regard, it was argued that apart from issuing a letter to Calcutta Stock Exchange Ltd in respect of verification of shares of G.K.Consultants Ltd, the Id AO took no further steps

when the stock exchange informed that there was no such transaction in it. The Id AO should have issued notice u/s 131 of the Act to Calcutta Stock Exchange Ltd and he could have written letter to SEBI for further information. Without making these requisite enquiries, the Id AO erred in reaching to a conclusion that the share transaction was a colourful and sham transaction and that the assessee had only introduced his undisclosed income in the regular channel taking benefit of false LTCG with connivance with the broker and other agents. It was also reiterated that the broker had issued the contract note in proper form giving settlement number, trade time, trade number, amount of STT (Rs 493) and other details. The shares were transferred to the share broker's account through the assessee's demat account no. 10398306 with Citibank. The assessee also received the payment from the broker after deduction of STT. Once the transaction is routed through a registered broker in a recognized stock exchange with due suffering of STT and which are also duly covered by the requisite documentation, the LTCG so derived thereon could not be doubted with. It would be the responsibility of the broker to ensure that the transaction is properly routed and STT was paid as per stock exchange norms. It was also stated that in the secondary market transactions, no one knows who is the buyer and who is the seller of the shares. The assessee also placed reliance on the following decisions in support of his various contentions :-

Decision of Mumbai Tribunal in the case of Mukesh R Marola vs ACIT reported in (2006) 6 SOT 247 (Mum)

Decision of Hon'ble Calcutta High Court in the case of CIT vs Carbo Industrial Holdings Ltd reported in 244 ITR 422 (Cal)

Decision of Hon'ble Calcutta High Court in the case of CIT vs Emerald Commercial Ltd reported in 250 ITR 539 (Cal)

2.6. The Id CITA ignored all the contentions of the assessee together with the case laws relied upon by the assessee and upheld the action of the Id AO by reiterating the findings of the Id AO. Aggrieved, the assessee is in appeal before us on the following ground no.1 :-

"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs.6,44,270/- made by the AO by wrongly treating the said sum as income from undisclosed sources after rejecting the claim of Long Term Capital Gains on sale of shares of M/s. G. K. Consultants Ltd."

2.7. The Id AR stated that since the Id CITA had not met any of the contentions of the assessee raised before him in his appellate order, he tried to meet each and every allegation of the Id AO regarding the subject mentioned addition with specific reference to the relevant pages of the paper book. He argued that the Id AO had factually erred in stating that the price of the share of G.K.Consultants Ltd during the relevant period as per the data obtained from MCA in as much as the price of the share during October and November 2004 as listed in Bombay Stock Exchange (BSE) was Rs. 6.60 and Rs 8.40 per share respectively. He argued that the shares were traded in Calcutta Stock Exchange and the sale transaction had happened as per the prevailing market prices in the secondary market which are duly supported by the sufficient documentation as stated supra. He argued that it is not the case of the Id AO that the contract note given by the registered broker was fake or the contents mentioned therein are false. The shares were duly transferred in demat form. None of the documents submitted by the assessee and the broker were disputed or rebutted by the revenue except the fact that CSE had stated that there was no transaction vide Trade No. 1586. He argued that this alone would not justify the action of the Id AO to treat the transaction as sham and bogus. He argued that the consideration for the sale of shares at Rs 218.50 per share had been routed through the stock exchange only by account payee cheque and hence if any further enquiry had been conducted with the CSE, the Id AO could have appreciated the contentions of the assessee better. He placed reliance on the decision of the co-ordinate bench of this tribunal in the case of ITO vs Rajkumar Agarwal in ITA No. 1330 (Kol) of 2007 dated 10.8.2007 and DCIT vs Sunita Khemka in ITA Nos. 714 to 718/Kol/2011 dated 28.10.2015 in support of his various contentions, wherein on similar facts in respect of some other scrips and some other stock broker, the decisions were rendered in favour of the assessee.

2.8. In response to this, the Id DR apart from reiterating the findings of the lower authorities stated that the SEBI had blacklisted the broker and made a general statement that the subject mentioned transaction was part of a scam popularly known in Kolkata as Penny Stock scam. He sought time from the bench for production of evidence in this regard and accordingly the case was adjourned and kept as part heard. But in the subsequent

hearing, he could not produce any evidence in the form of SEBI order wherein the concerned broker was suspended or the concerned scrip was suspended from trading either for artificial price rigging or for any other violations as alleged by the Id DR.

2.9. We have heard the rival submissions and perused the materials available on record including the paper book comprising of pages 1 to 32 filed by the assessee containing the relevant documents on the subject mentioned issue. At the outset, we find that the Id DR made a bald statement that the subject mentioned transaction was part of penny stock scam that cropped up in Kolkata in connivance with CSE, wherein some brokers and certain scrip were suspended by SEBI, for which he sought time to produce evidence in this regard. In the subsequent hearing, the Id DR did not advance any argument by producing any evidence to prove his bald allegation on the subject mentioned transaction. In these circumstances, we find that the bald allegation raised by the Id DR that this transaction is part of the scam is hereby dismissed and rejected and we proceed to hear this case and the issue before us based on the materials available on record. We also find that it was never the case of the lower authorities that the subject mentioned transaction was part of any scam that cropped up in Kolkata. We find that the document relied upon by the revenue in terms of MCA data which is reflected in the annual report of G.K.Consultants Ltd (being a listed company) that trading of that share had happened in BSE in Oct and Nov 2004 at Rs. 6.60 and Rs 8.40 respectively. Apart from these two months, no trading had happened in BSE with respect to the subject mentioned scrip. Hence it could be safely concluded that this scrip was thinly traded in BSE and accordingly the assessee brought the shares from CSE where it was traded, through a registered share broker in Kolkata. We also find that the allegation of the Id AO that no other shares were held in the demat account opened with Citibank vide account no. 10398306 is factually incorrect as the assessee was holding the shares of other two reputed companies namely Reliance Industries Ltd and Organo Ltd also in the said demat account.

2.9.1. We find that the assessee had duly submitted the following documents :-

- a) Contract note for purchase of shares in off market for which payment was made in cash. This is not in dispute as the issue before us is only on the treatment of sale consideration of sale of shares as to whether the same is to be considered as LTCG or unexplained cash credit.
- b) Contract Note for sale of shares through a registered stock broker with CSE.
- c) Demat account reflecting the inflow of shares in demat account and outflow thereon pursuant to sale, which is the subject matter of dispute before us.
- d) Payment of sale consideration received by the assessee through account payee cheque.
- e) Shares were duly transferred from the demat account of the assessee to the demat account of the broker and thereafter to the ultimate buyer of the shares through a recognized stock exchange.
- f) STT had been duly suffered on the sale transaction in the sum of Rs. 493/-.
- g) The Broker had confirmed the purchase and sale transactions before the Id AO by furnishing a letter in writing in response to summons issued to him u/s 131 of the Act.

2.9.2. We find that just because the broker does not appear before the Id AO in response to the summons u/s 131 of the Act , but had furnished the requisite details called for thereon, it cannot be automatically concluded that the transaction of the assessee with that broker as bogus and sham and assessee cannot be faulted with for the same. The statute provides unfettered powers to the Id AO for taking action for non-appearance of a person in response to summons u/s 131 of the Act which could have been exercised by the Id AO in the instant case instead of drawing an adverse inference on the transactions of the assessee. In this regard, we find that the reliance placed by the Id AR on the decision of the *Hon'ble Calcutta High Court in the case of CIT vs Cargo Industrial Holdings Ltd reported in (2001) 244 ITR 422 (Cal)* is very well founded wherein it was held that :-

“Perusal of the details furnished revealed that the purchase and sale of the shares could not be accepted as having been transacted on the same date. Payment by account payee cheques had not been disputed. Merely because some broker failed to appear, the assessee should not be punished for the default of a broker, and also on mere suspicion the assessee’s claim should not be denied.”

Similarly in another decision of the *Hon'ble Calcutta High Court in the case of CIT vs Emerald Commercial Ltd reported in (2002) 120 Taxman 282 dated 23.3.2001* , it was held that :-

“Admittedly the details of purchase and sale of shares were furnished. The payment and receipt were by account payee cheque. The identity of seller and purchaser was not in dispute. The disallowance was basically made on the ground that the assessee failed to produce the brokers for verification of the transaction. Following the view on a similar issue in the case of CIT vs Carbo Industrial Holdings Ltd (2000) 244 ITR 422 (Cal) , non-production of the share broker by the assessee did not disentitle it for claim of loss in a genuine transaction of shares, thus, the Tribunal's finding was based on material and not perverse. The findings of the ITO and the Commissioner (Appeals) were based on presumption.”

2.9.3. We find that the revenue had made a remark that the subject mentioned shares of G.K.Consultants Ltd were bought by the assessee in off market which is against the rules framed by SEBI and others. We find from the Bye Laws of CSE placed on record in the paper book , that the said Bye Laws (vide Bye Law No. 9) permit purchase and sale of shares in off market. In any case, this is not relevant in as much as the issue before us is not on the purchase of shares but only the treatment of sale consideration received on sale of those shares.

2.9.4. We find that on verification by the Id AO with the Calcutta Stock Exchange Ltd regarding the purchase and sale of shares of G.K.Consultants Ltd by the assessee through the broker Mr Rajendra Prasad Shah, CSE had confirmed the fact that the share purchase and sale transactions of assessee had happened through the broker Mr Rajendra Prasad Shah on the said date but had only stated there was no trade vide Trade No. 1586. This alone would not automatically make the entire transaction as sham and bogus when other documents as stated supra prove the contrary.

2.9.5. We find that the similar issue had been adjudicated by the *co-ordinate bench of this tribunal in the case of DCIT vs Sunita Khemka in ITA Nos. 714 to 718/Kol/2011 dated 28.10.2015 and in the case of ITO vs Rajkumar Agarwal in ITA No. 1330 (Kol) of 2007 dated 10.8.2007* wherein it was held that when purchase and sale of shares were supported by proper contract notes , deliveries of shares were received through demat accounts

maintained with various agencies, the shares were purchased and sold through recognized broker and the sale considerations were received by account payee cheques, the transactions cannot be treated as bogus and the income so disclosed was assessable as LTCG. We find that in the instant case, the addition has been made only on the basis of the suspicion that the difference in purchase and sale price of these shares is unusually high. The revenue had not brought any material on record to support its finding that there has been collusion / connivance between the broker and the assessee for the introduction of its unaccounted money.

2.9.6. In view of the aforesaid facts and findings and the judicial precedents relied upon, we have no hesitation in directing the Id AO to accept the claim of exemption of LTCG of the assessee arising out of sale of shares of G.K.Consultants Ltd and accordingly allow the ground raised by the assessee in this regard.

3. The next issue to be decided in this appeal is as to whether the Id CITA is justified in upholding the addition made in the sum of Rs. 4,34,400/- by disbelieving the gift received by the assessee from his co-brother in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the Id AO observed that there was a sum of Rs. 4,34,400/- which was credited to the bank account of the assessee, for which assessee explained the same to be gift received of USD 10000 from one Kirti S Zaveri of USA. The assessee also filed a confirmation letter from the said donor in support of his contention which was duly notarized. The Id AO observed that the date of letter was 06.01.2005 whereas it was said to be signed in presence of one Notary Public of USA who put the date as 01.06.2005. But the date put in his official seal was 03.03.2006. The Id AO concluded that the veracity of the very letter is doubtful. The assessee appeared before the Id AO and told that the donor was his co-brother. The Id AO observed that the assessee could not furnish the bank statement, balance sheet, income tax payment details in India or USA or nature of job / business of the donor. He concluded that the creditworthiness of the donor to give the gift was not proved by the assessee with necessary evidences. He also concluded

that no evidence was furnished that the said person falls within the relative definition given in section 56 of the Act. Accordingly, the Id AO treated the gift received of Rs. 4,34,400/- as income from undisclosed sources of the assessee.

3.2. Before the Id CITA, the assessee filed various additional evidences in support of his claim of gift from his co-brother such as IT returns filed in USA by the donor, property tax assessment, affidavit by donor's wife Smt Jyoti Kirti Zaveri confirming the gift given by her husband to assessee. It was also submitted in the said confirmation by her that her husband had given 10000 USD as gift to the assessee vide cheque no. 1670 dated 6.1.05 drawn on RBC Centura Bank, Georgia, USA which was deposited by the assessee into his Citibank (SB A/c No. 5287912007). All these documents were subjected to verification by the Id AO in the remand proceedings, wherein, the Id AO concluded that there was no proper explanation given by the assessee with regard to the occasion to give the gift by the donor and accordingly concluded again that it was a bogus gift. It was submitted before the Id CITA that the donor had sufficient capacity to give the gift of 10000 USD to the assessee in as much as the value of the immovable property of the donor was USD 506200 thereby proving the creditworthiness beyond doubt apart from other statutory documents as stated supra. With regard to the letter issued by the donor dated 6.1.2005, whereas the Notary Public USA had mentioned the date as 1.6.2005 and the date put on official seal was 3.3.2006, the assessee clarified that the date mentioned as 1.6.2005 represents the American date which is quite prevalent in USA and is different from the Indian system of recognizing dates and the same should be read as 6th Jan 2005 and not 1st June 2005. The date mentioned in the official seal as 3.3.2006 represents the expiry date of the licence of the Notary Public. Hence there was no discrepancy with regard to the dates warranting drawing of any adverse inference on the subject mentioned document. The assessee also placed reliance on certain judgements in his support. The Id CITA however, brushed aside all the arguments of the assessee together with the case laws and upheld the action of the Id AO on the ground that occasion to give the gift was not proved conclusively by the assessee. Aggrieved, the assessee is in appeal before us on the following ground no.2 :-

“2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.4,34,000/- made by the AO on account of gift received by the assessee.”

3.3. The Id AR drew the attention of the bench to the various documents that were already filed before the lower authorities and further argued that the identity of the donor, genuineness of the transactions and creditworthiness of the donor have been proved beyond doubt in the various documents relied upon thereon and hence no addition could be made u/s 68 of the Act. Moreover, there was no need to prove the occasion to give the gift between the donor and donee. He argued that the gift received from the donor falls under the definition of ‘relative’ provided in section 56(2) of the Act and hence on that count also, no addition could be made. He placed reliance on the co-ordinate bench decision of this tribunal in the case of Uma Sankar Agarwal vs DCIT in ITA Nos. 449 & 450/ Kol/2012 dated 5.9.2014 and Sunil Kumar Roy vs DCIT in ITA No. 1879/Kol/2010 dated 17.7.2014, in support of his contentions. In response to this, the Id DR argued that just because the monies have been routed through regular banking channels by way of amount debited in the bank account of the donor in USD and corresponding amount getting credited in the account of the donee (assessee herein) does not prove the genuineness of the transaction.

3.4. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee comprising of copy of passport of Kirti Zaveri (donor) and Jyoti Zaveri (donor’s wife and younger sister of wife of assessee) vide pages 33 to 34 of PB ; bank statement of the assessee for the period February 2005 reflecting the credit of gift amount vide pages 35 to 36 of PB; affidavit of Jyoti Zaveri vide page 37 of PB; copy of Joint US IT Return for the year 2004 of Kirti Zaveri and Jyoti Zaveri including their details of assets vide pages 38 to 49 of PB and affidavit of Kirti Zaveri (donor) duly notarized in USA vide page 50 of PB. We find that the Id AO initially proceeded to disbelieve the documents submitted by the assessee based on mistaken understanding of the dates in the confirmation / affidavit and later when those discrepancies were duly addressed, proceeded to shift his focus on the ground that the assessee could not conclusively prove the occasion to receive the gift from his relative. On perusal of the

documents submitted in the paper book, we are convinced to conclude that the gift received by the assessee from his co-brother is genuine which are duly supported by all the required documents in that regard. We hold that the assessee had duly proved the identity of the donor, genuineness of the transaction and creditworthiness of the donor in the instant case. We find that the gift received by the assessee from his relative also falls under the exception clause covered in the said definition in section 56(2)(v) of the Act. We hold that when all the documents prove the factum of gift by the assessee beyond any doubt, dismissing those documents summarily on the ground that there was no occasion to give the gift would, in our considered opinion, in the facts and circumstances of the case, be unjust and accordingly we have no hesitation in directing the Id AO to delete the addition made towards the gift received by the assessee. Accordingly, the Ground No. 2 raised by the assessee is allowed.

4. The Ground No. 3 raised by the assessee is general in nature and does not require any adjudication.

5. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 02.12.2016

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

Dated :02nd December, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Dolarrai Hemani, 209, Pride Purple Square, Aundh Ravet Road, Kalewadi Phata, Wakad, Pune-411057.
- 2 Respondent – ITO, Ward-34(3), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.