

Income Tax Appeal No.49 of 1999

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Income Tax Appeal No.49 of 1999
Date of Decision: 29th January, 2016

The Commissioner of Income-tax (Central) Ludhiana ..Appellant

versus

Shri Jawahar Lal Oswal ..Respondent

Income Tax Appeal No.48 of 1999

The Commissioner of Income-tax (Central), Ludhiana ..Appellant

versus

Ms. Monica Oswal ..Respondent

Income Tax Appeal No.169 of 1999

The Commissioner of Income-tax (Central),Ludhiana ..Appellant

versus

Ms. Ruchika Oswal ..Respondent

and

GTA No.10 of 2004

Commissioner of Gift-tax, (Central),Ludhiana ..Appellant

versus

Shri Jawahar Lal Oswal ..Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Rajesh Katoch, Advocate, for the appellant.

Mr. Sanjay Bansal, Senior Advocate
with Mr. B.M.Monga, Advocate,
for the respondent.

RAJIVE BHALLA, J.

The revenue has filed Income Tax Appeal Nos.48, 49, 169 of 1999 and GTA 10 of 2004 challenging orders passed by the Income Tax Appellate Tribunal, Chandigarh (for short “the Tribunal”). As the controversy and the substantial questions of law are common to all appeals, facts are being taken from ITA No. 49 of 1999.

The dispute in hand, briefly put, relates to the genuineness of two monetary gifts received by the assessee for and on behalf of his daughters on the occasion of their marriage. The gifts, as admitted, were received from Dr. O.S.Gill and Shri B.P.Bhardwaj, by demand drafts, while the assessee was in London. The Assessing Officer, served a notice under Section 143 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), addressed queries to the assessee, obtained information through the Central Board of Direct Taxes, from the Inland Revenue, Great Britain, examined Dr. O.S.Gill but as he was not satisfied with the explanation proffered by the assessee, on the basis of material on record, held that the assessee has not been able to prove the genuineness of the gifts. The Assessing Officer, therefore, raised an inference, under Section 69-A of the Act and held that the gifts represent the income of the assessee and added these amounts to the income of the assessee. A protective assessment was made in the hands of Ms Monica and Ruchica Oswal.

The assessee and his daughters filed separate appeals, which were partly allowed by the Commissioner of Income Tax (Appeals) by accepting the gift made by Dr. O.S.Gill but rejecting the gift made by Shri B.P.Bhardwaj.

Aggrieved by this order, both the assessee and the revenue, filed separate appeals. The Tribunal, vide the impugned orders, accepted the appeals filed by the assessee and his daughters but rejected the appeals filed by the revenue by holding that the assessee has proved the genuineness of the gifts. The Tribunal has held that the revenue has not brought forth any credible material that would raise an inference under the deeming provision of Section 69-A of the Act that the gifts represent the income of the assessee. The appeal against orders imposing gift tax was decided in terms of the order passed by the Tribunal.

The revenue filed four appeals, one in the case of Jawahar Lal Oswal, two each in the case of his daughters and the fourth pertaining to gift Tax. The appeals came up for consideration before a Division Bench of this Court. After considering the questions framed, the Hon'ble Judges comprising the Division Bench differed in their opinion, with one opinion, allowing the appeals and the other dismissing the appeals. The appeals were, therefore, placed before a third Hon'ble Judge.

Before the third Hon'ble Judge, the revenue urged that as the Division Bench has not framed the questions of divergence, the matter should be returned unanswered. The respondents,

however, urged to the contrary and prayed that the matter may be decided by ascertaining and answering the divergence of opinion.

After examining the divergent opinion, it was held that though points of divergence have not been spelt out, this discrepancy is at best, a technical irregularity and after examining the divergent opinion, fresh questions of law can be framed and answered. A relevant extract from order dated 08.4.2002 reads as follows:-

“ In my opinion, failure of the Bench of two or more Judges which is entrusted with the task of hearing the appeal in the first instance to state the point of law upon which they differ is by itself not sufficient to decline an answer on the points of law which arise for determination. This omission can, at the best, be treated as a technical irregularity and the Bench to which the case is referred can, on its own, frame the point(s) of law on which the two members of the Bench have expressed divergent opinion.

Hence, it is held that omission on the part of the Division Bench to state the point of law is inconsequential and the appeals deserve to be heard with reference to the questions of law which arise from the order of the Tribunal and the divergent opinion expressed by the Hon'ble members of the Division Bench.

In my view, the following points of law need determination by the Court:-

- (i) Whether the assessee had discharged the onus of

establishing that gifts of \$200,000 made in favour of Ms Monica Oswal and Ms Ruchika Oswal through him by Shri O.S.Gill and Shri B.P. Bhardwaj were valid?

(ii) Whether the amounts gifted by Shri O.S.Gill and Shri B.P.Bhardwaj to Miss Monica Oswal and Miss Ruchika Oswal are to be treated as the income of the assessee under section 69A of the Act?"

At this stage, it would be appropriate to point out that neither the revenue nor the assessee have challenged order dated 8.4.2002 and have, in fact, prayed that questions framed vide order dated 8.4.2002, alone have to be answered. The appeals shall, therefore, be decided by answering the questions of law framed, on 08.4.2002.

The nature of the questions framed, namely, whether onus to prove genuineness of gifts, has been discharged and whether these amounts are to be treated as the deemed income of the assessee under Section 69-A of the Act required an appraisal of the opinion recorded by the Assessing Officer, under Section 143(2) (i) or Section 143(2)(ii) of the Act, the queries addressed to the assessee, replies etc. material placed by the assessee and material collected by the Assessing Officer. The revenue was, therefore, called upon to produce the entire record but expressed its inability to trace the record. Eventually, pursuant to interim directions, the revenue filed a synopsis of relevant facts accompanied by photostat copies of certain documents, after, admittedly, obtaining them from the assessee.

Counsel for the revenue submits that the assessee, admittedly, received two gifts, valued at \$200,000, each for and on behalf of his daughters Ms. Monica Oswal and Ruchika Oswal, from Dr. O.S.Gill and Shri B.P.Bhardwaj, respectively, in London. The onus to prove that the gifts are genuine and not a mere device to evade tax, lay upon the assessee. The assessee has failed to discharge this onus by producing any tangible evidence that would even remotely prove the genuineness of the gifts. The assessee has failed to prove that the donors had a close relationship, whether personal or professional with the assessee or his daughters. The donors are total strangers to the assessee not being related whether by relationship, business or friendship. The bank drafts bear consecutive numbers and were prepared on 22.3.1994, by Midland Bank, in the United Kingdom. The assessee has not been able to prove the financial capacity of the donors to gift such a large sum of money. The mere fact that Dr. O.S.Gill appeared before the Assessing Officer and his account in England was verified or he has an annual income of \$120000 is not sufficient to discharge the onus or prove the genuineness of the gifts, particularly in the absence of any evidence of any relationship, or business dealings. The answers proffered by Mr. Gill to queries addressed by the Assessing Officer are vague and unclear and though Dr. O. S.Gill has proved that he was drawing an annual salary of \$ 120000 and came all the way from England to depose before the Income Tax Officer but as he could not disclose his bank account number and prove his credit-worthiness, the Assessing Officer was right in

holding that the genuineness of the gift has not been proved. The findings recorded by the CIT (Appeals) and the Tribunal that the gift made by Dr.O.S.Gill is genuine, are perverse and arbitrary. The onus lay upon the assessee to prove the genuineness of the gift but the CIT (Appeals) and the ITAT have shifted the onus to the revenue.

As regards Mr. B.P Bhardwaj, the other donor, counsel for the revenue submits that the fact that he did not appear before the Assessing Officer, is by itself sufficient to answer the first question against the assessee. The fact that his account was verified by the Inland Revenue Great Britain or that money was received by a demand draft, is not sufficient to raise an inference regarding his financial capacity or the source of these funds or the bona fides of the gift, particularly as he stated that money was given to him by one Shri Varinder Sharma, who is an associate of the assessee. A further perusal of the statement made by the assessee reveals that there is no reference to any exchange of letters or gifts between the assessee and the donors. Both the Assessing Officer and the CIT (Appeals), therefore, rightly recorded that the assessee has failed to discharge his onus to prove the genuineness of the gift made by Mr. B.P.Bhardwaj but the Tribunal has reversed this finding by assigning perverse and arbitrary reasons namely:- verification from the Inland Revenue Services of Great Britain, which neither proves the genuineness of the gifts nor the capacity of the donor to make such a gift or a relationship between the parties. The donors may have stayed with the assessee on two occasions but this merely proves a causal relationship and nothing more. The argument that gifts were

made, out of love and affection to the daughters on occasion of their wedding, is too far fetch to believe, as the amounts gifted are too large.

Counsel for the revenue further submits that the Tribunal ignored another significant fact, namely that Shri B.P.Bhardwaj had stated that the money was given to him by one Shri Varinder Sharma. The onus to disclose the relationship between Shri Varinder Sharma or at least his address and whereabouts lay upon the assessee. The assessee's simple denial of any relationship with Shri Varinder Sharma rightly led the Assessing Officer to raise an inference that the gifts represent the income of the assessee and, therefore, are his deemed income.

Counsel for the assessee submits that the Commissioner of Income Tax (Appeals) has rightly accepted the genuineness of the gift made by Dr.O.S.Gill. The Tribunal has also affirmed this finding and dismissed the appeal filed by the revenue. The Tribunal has recorded detailed reasons after appraising the entire record and as the process of reasoning and the reasons assigned are legal, valid and plausible, the impugned orders do not call for interference. Counsel for the assessee submits that Section 260A of the Act, confines consideration to substantial questions of law. The questions framed, by the revenue, in the grounds of appeal or in order dated 8.4.2002 are mere questions of fact that are entirely dependent upon appreciation of evidence. The CIT (Appeals) and the Tribunal have recorded concurrent findings of fact that the assessee has discharged his onus and proved that the gift made by

Mr. Gill is genuine. As these findings are neither perverse nor arbitrary, they cannot be set aside by reappreciating evidence. An appeal under Section 260A of the Act confines consideration to appraisal of impugned orders to ascertain whether the process of reasoning and the reasons assigned are perverse, arbitrary, contrary to law and give rise to a substantial question of law. The fact that two Hon'ble Judges of this Court recorded divergent opinion, on the same facts, is indicative of the fact that the opinion recorded by the CIT (Appeals) (in the case of Dr. O.S.Gill) and the Tribunal (in the case of both gifts) is plausible and, therefore, cannot be said to raise a substantial question of law.

Counsel for the assessee further submits that Section 69-A of the Act is a deeming provision that places the initial onus on the revenue and then if sufficient material is available shifts the onus to the assessee but if the assessee adduces evidence and proves relevant facts within his knowledge, the onus reverts to the revenue to prove that facts disclosed by the assessee are incorrect or that the material on record is sufficient to raise an inference that the gifts reflect the income of the assessee. The Assessing Officer based his opinion primarily on the quantum, his ill conceived perceptions and drew an inference without referring to concrete facts. The Assessing Officer held that as B.P.Bhardwaj has stated that the amount was given to him by Shri Varinder Sharma and as Varinder Sharma is an associate of the assessee, the failure of

the assessee to disclose the whereabouts of Varinder Sharma or disclose his address is sufficient to raise an inference that the gifts are the deemed income of the assessee. The Assessing Officer has failed to refer to any material that would even *prima-facie* establish a link between the assessee and Shri Varinder Sharma. The onus to probe and prove a link between the assessee and Shri Varinder Sharma lay upon the Assessing Officer and in the discharge of this onus was required to ascertain the address and whereabouts of Shri Varinder Sharma and only if Shri Varinder Sharma was proved to be an employee or an associate of Shri Jawahar Lal Oswal, could the Assessing Officer raise an inference that the gifted amount is the deemed income of the assessee. The Assessing Officer could not call upon the assessee to prove the source of the money with Shri B.P.Bhardwaj. The learned Tribunal has, therefore, rightly reversed the orders passed by the Assessing Officer and the CIT (Appeals) and has affirmed the genuineness of the gift.

I have heard counsel for the parties, perused the impugned orders, the entire paper-book, the synopsis of facts filed by the revenue and faced, as I am, with two conflicting orders on the same set of facts and a third order, framing two new questions of law, proceed to answer, as urged by counsel for the parties, the questions framed vide order dated 8.4.2002 but before answering these questions, a brief narrative of the facts would be necessary.

The Assistant Commissioner of Income Tax, Central Circle-V, Ludhiana, exercising the power of the Assessing Officer, called upon the assessee to prove the genuineness of gifts received for and on behalf of his daughters. The Assessing Officer addressed various queries to the assessee, collected evidence and one of the donors Dr. O.S.Gill appeared in evidence. The Assessing Officer rejected the explanation and evidence adduced by the assessee and by invoking Section 69-A of the Act, raised an inference that the amount received as gifts, reflects the deemed income of the assessee. The Assessing Officer also made a protective assessment in the hands of the daughters.

Aggrieved by these orders, the assessees filed appeals. The CIT (Appeals) partly allowed the appeals by accepting the genuineness of the gift made by Dr. O.S.Gill but rejected the gift made by Shri B.P.Bhardwaj. Both the assessees and the revenue filed separate appeals before the Tribunal, with the assessees asserting that the gift made by Shri B.P.Bhardwaj has been wrongly rejected and the revenue asserting that gifts made by Dr. O.S.Gill and Shri B.P.Bhardwaj have been wrongly accepted.

The Tribunal, after referring to the principles for proving whether a gift is genuine or not held that, the Assessing Officer was required, at the out-set, to raise a doubt as to the genuineness of a gift by reference to material available before him. The onus, thereafter, shifts under section 69-A of the Act to the assessee to prove that the money, the jewellery and articles

etc. received as gifts, are genuine. If thereafter the assessee fails to adduce credible evidence, to prove the genuineness of the gifts, the Assessing Officer may legitimately treat the gifts as the deemed income of the assessee, under Section 69-A of the Act. If, however, the assessee proffers a credible explanation, the onus reverts to the revenue to adduce evidence sufficient to raise an inference, under Section 69-A of the Act, that the gifts reflect the deemed income of the assessee. Counsel for the parties do not disagree with these principles but assert that the assessee has or has not discharged this onus, depending upon which side is addressing arguments.

After holding as above, the Tribunal went on to hold as follows:-

“30 Coming to the two “gifts” in question, we will first take up the case of Shri O.S.Gill and see the nature of evidence placed on record which is as under:-

1. Memorandum of Gift dated 22-3-94 written in London confirming the gift of \$ 200000 to Miss Ruchika Oswal, daughter of Shri Jawahar Lal Oswal.
2. Copy of Bank A/c of Miss Ruchika Oswal with Allahabad Bank showing deposit of Rs.6210442/- equivalent of \$ 200000.
3. Copy of declaration of inward remittance sent to the Reserve Bank of India by Miss Ruchika Oswal.
4. Letter dated 14-3-96 sent by Sh. O.S.Gill to the

A.O along with affidavit sworn by him and duly notarised confirming the gift and giving all other relevant details, i.e., address, details of draft and the bank on which it was drawn.

5. Reconfirmation of the gift vide letter dated 24-5-96 filed by the donor with the A.O.

6. Relevant extract from the Passport of the donor showing that he was a British citizen.

7. Copy of Special Power of Attorney given by Miss Ruchika Oswal authorising her father Sh.Jawahar Lal Oswal to receive the gift on her behalf in London and the confirmation of this by the donor Shri O.S.Gill. In addition, the Inland Revenue also investigated the matter and did not find anything adverse or incriminating. In fact, they were able to contact Shri O.S.Gill and in a communication dated 10-2-97 to Joint Secretary, Govt. of India (C.B.D.T.) wrote:- U.K. Stating the following:-

“1 The gift was given to Miss Oswal on the occasion of her forthcoming marriage. The amount given was \$ 200000.

2. The amount was given as a gift and was by means of a bank draft.

3. There is no agreement between D.R. Gill and Miss Oswal on repayment of any of the amounts given.”

“30.1 Further, Shri O.S.Gill on a visit to India was examined by the AO and his statement was also recorded. According to the AO the financial capability of Shri O.S.Gill was not proved as he did not file any evidence to prove his creditworthiness. The specific reference was to the copy of the bank account and income tax assessment order. It must be appreciated that Shri O.S.Gill was on a visit to India and could not be carrying such documents with him expecting that he would be asked to file these with the A.O. On being asked he gave the following specific replies:-

“Q 11: Please give name and address/designation of the officer with whom you are assessed to income tax in U.K.

Ans: I do not have the name of the assessing officer. However, my accountant knows the same.

Q.12 Please let me know the bank account maintained in U.K.

Ans: I maintain account with Midland Bank, however, I don't remember the account number which is maintained by our account department.

Q : Have you brought with you the copy of your bank account out of which gift of 2 lac U.S dollars was made and can you produce any evidence in regard with to prove your creditworthiness.

Ans. No, I have not got copy of bank account since I was

not asked to produce the copy and evidence in regard with creditworthiness.

30.2 In our opinion, the replies given by Shri O.S.Gill were those expected from a person placed in his position, i.e., a NRI visiting India and deposing before the AO about a gift made to an Indian citizen. The statement has to be read as a whole and conclusions drawn and in the present case these cannot be adverse as Shri O.S.Gill has stated all relevant facts on oath reaffirming the gift and also indicating amply his financial status, i.e., annual salary, shifting to a larger residence etc. No untruth or inconsistency has been pointed out by the AO in the statement vis-a-vis the evidence placed on record.

30.3. Even in the case of Shri B.P.Bhardwaj, identical documents were filed the only distinguishing feature being the non appearance of the said person before the AO in India whereas Shri O.S.Gill the other “donor” deposed and his statement was recorded. As already stated by us the main fact which weighed in the case of Sh. Varinder Sharma but we have already dealt with this aspect of the matter at length earlier in this order.”

At this stage, it would be appropriate to reproduce findings recorded by the Tribunal with respect to the gift received from Shri B.P.Bhardwaj:-

“28. In the present case, the Inland Revenue, U.K.

Made enquiries about the two alleged donors and personally contacted Shri B.P.Bhardwaj. The addition in respect of his "gift" was made by the AO and sustained by the CIT(A) mainly on the basis of a letter dated 15-10-96 received by the Joint Secretary, Department of revenue, Ministry of Finance, Govt. of India, New Delhi from the Inland Revenue, U.K. Stating the following:-

“ a gift of US Dollars 200000 was made to Miss Oswal' on the occasion of her forthcoming marriage” on or around 22 March 1994. The funds were provided by Mr. Varinder Sharma of Flat 184, Building 9A, Raminki Moscow. Mr. Sharma arranged the draft and gave it to Mr. Bhardwaj. Mr. Bhardwaj handed it over to Miss Oswal”s father who was at the time passing through London.”

29. What has weighed with the AO and the CIT(A) is the reply allegedly given by Shri B.P.Bhardwaj that the funds were provided by Shri Varinder Sharma of Moscow. It must be appreciated that neither the AO nor the assessee participated in the enquiry and none of them had an opportunity to examine Shri Varinder Sharma or for that matter the donor Shri B.P.Bhardwaj, although we must mention that Shri

Varinder Sharma was known to Sh. Jawahar Lal Oswal as accepted by him in his deposition although the learned counsel contended otherwise but the allegation of the revenue is that he is an employee of Sh. Jawahar Lal Oswal but no material to prove so was placed on record by them and Shri Jawahar Lal Oswal denied that Shri Varinder Sharma was his employee. The other allegation on the part of the revenue was that Sh. Jawahar Lal Oswal was the Managing Director of certain companies which were carrying on business with Russia and these were the unaccounted funds of such business which were coming back in the form of gifts. This allegation according to us is entirely in the field of suspicion, surmises and conjectures for which there is no room while invoking a deeming provision which assumes a position different from what is obvious. No evidence was placed on record by the revenue. For all intents and purposes Sh. B.P.Bhardwaj is treated as the donor as the gift has been given by him and this being an arrangement between him and Shri Varinder Sharma.

29.1 Another allegation on the part of the revenue was that Shri Varinder Sharma was physically

present in the U.K on the relevant date when the gift was received by Shri Jawahar Lal Oswal on the basis of the power of attorney but there is no evidence for this allegation, the assessee Sh. Jawahar Lal Oswal denying and no such fact emerging from the enquiry made by Inland Revenue, U.K.”

A perusal of the impugned orders, particularly the extracts reproduced above, reveal that the Tribunal has, after an appraisal of the evidence, the questions put and answers proffered by the assessee, the material received from the Central Board of Direct Taxes, i.e., the bank statements, the documents received from the Inland Revenue Service, Great Britain, the statement made by Dr. O.S.Gill before the authorities and statement made by B.P.Bhardwaj before the Inland Revenue, affirmed the deletion made by the CIT (Appeals) on account of the gift made by Dr. O.S.Gill and deleted the addition on account of the gift made by Shri B.P.Bhardwaj. The Tribunal has also recorded findings that the assessee has been able to prove the genuineness of the gifts by holding as follows:-

“ 43 Coming back to the respective cases in the light of the earlier discussion in the case of Shri Jawahar Lal Oswal, the only connection which he had with the gifts was that he received these in U.K. being authorised to do so by his daughters who were the donees. The moneys were deposited in the bank accounts of the daughters

who were majors and there was nothing on record to show that Sh.Jawahar Lal Oswal was the beneficiary in any way. The entire documentary evidence mentioned the names of the daughters and there was not an iota of evidence brought on record by the revenue to prove that Sh.Jawahar Lal Oswal was the “owner” of the funds and which it was required to do within the meaning of section 69A after the necessary evidence had been placed on record by the assessee. The entire addition has been based on suspicion and doubt which as already held should not find place in a deeming provision. The revenue did not carry any of its doubts to a logical conclusion by converting them into hard facts on the basis of evidence .

By no stretch of imagination was the addition warranted in the case of Sh.Jawahar Lal Oswal.

“44 The CIT(A) has drawn some distinction between the gifts of Sh. O.S. Gill and Sh. B.P.Bhardwaj but even if both of these are considered on the touchstone of section 69A, the entire addition stands to be deleted. As regards the distinguishing features, i.e., the role of Sh.Varinder Sharma and the non appearance of Shri B.P.Bhardwaj before the A.O. in India, we have already dealt at length with the effect on the gift.

45 In the final analysis, we uphold the action of the CIT(A) in deleting the addition in respect of the gift of

Shri O.S.Gill and further delete the addition in respect of the gift of Sh. B.P.Bhardwaj.”

The Tribunal has also set aside the protective assessments made in the cases of Ms.Monica and Ruchica Oswal.

Before answering the questions posed, it would be appropriate to record that suspicion and doubt may be the starting point of an investigation but can not, at the final stage of assessment, take the place of relevant facts, particularly where a deeming provision is sought to be invoked. The principle that governs a deeming provision is that the initial onus lies upon the revenue to raise a prima facie doubt on the basis of credible material. The onus, thereafter, shifts to the assessee to prove that the gift is genuine and if the assessee is unable to proffer a credible explanation, the Assessing Officer may legitimately raise an inference against the assessee. If, however, the assessee furnishes all relevant facts within his knowledge and offers a credible explanation, the onus reverts to the revenue to prove that these facts are not correct. The revenue cannot draw an inference based upon suspicion or doubt or perceptions of culpability or on the quantum of the amount, involved. Any ambiguity or any ifs and buts in the material collected by the Assessing Officer must necessarily be read in favour of the assessee, particularly when the question is one of taxation, under a deeming provision. Thus, neither suspicion/doubt, nor the quantum shall determine the exercise

of jurisdiction by the Assessing Officer. The above exposition shall not be misconstrued to restrict the power of the revenue to raise an inference as to the efficacy of material produced by or before the Assessing Officer.

At this stage, it would also be necessary to deal with the submissions regarding jurisdiction under Section 260A of the Act. The exercise of appellate power under Section 260A of the Act is statutorily circumscribed by the word “substantial”, used before the words “question of law”, thus, requiring an answer to a “substantial question of law”. A question of fact may, however, partake the nature of a substantial question of law if the process of reasoning or the reasons assigned are perverse and/or arbitrary or relevant facts have been ignored or misconstrued. A set of facts may admit, as they often do, to two different and diametrically opposing views but interference under Section 260-A of the Act, would only be warranted, if findings are so incomprehensible as to be perverse and/or arbitrary. If, however, the findings admit to two views and the view adopted by the Tribunal is plausible, though debatable, a court exercising power under Section 260-A of the Act, must desist from substituting its own opinion for the opinion of the Tribunal. The quantum of tax or the alleged amount of evasion are irrelevant as what is relevant is the substantial question of law that arises for adjudication.

The first substantial question of law, as framed, by order dated 8.4.2002 is, whether the assessee has discharged the onus of establishing that the gifts are genuine. Admittedly, the gifts were received by the assessee for and on behalf of his daughters, while he was in London. Alleging that the gifts were the deemed income of the assessee, the Assessing Officer called upon the assessee to show cause why the gifts be not treated as his income. The Assessing Officer also initiated a protective assessment against the daughters. The Assessing Officer may have been right in serving a notice and initiating an investigation as these large monetary gifts would raise suspicion about their genuineness but was apparently so convinced of the nature of the funds that he forgot that he is dealing with a deeming provision and proceeded to initiate an inquisition instead of an inquiry.

The assessee replied to the queries, addressed by the Assessing Officer, disclosed the identity of donors and denied that the gifts were his income. The assessee produced Dr. O.S.Gill, before the Assessing Officer, who stated that he had an annual income of \$ 12,0000. The Assessing Officer was dissatisfied and sought information through the Central Board of Direct Taxes, which, in turn, sought information from the Inland Revenue Service, Great Britain. The information received, confirmed that Dr. O.S.Gill and B.P.Bhardwaj had accounts in Midland Bank, United Kingdom and the demand drafts were prepared by this bank. The income of Dr.O.S.Gill was verified.

Dr.O.S.Gill appeared before the Assessing Officer and admitted the gift. As regards the gift made by Shri B.P.Bhardwaj, the latter did not appear before the Assessing Officer but his account was verified from the Inland Revenue Service, Great Britain.

The question that arises from an examination of the material on record and the findings recorded by the Tribunal, which have been reproduced in detail in preceding paragraphs, particularly in the context of the questions of law framed on 08.4.2002, is whether the assessee has discharged his onus to prove that gifts are valid and there cannot be treated as his deemed income under Section 69-A of the Act. As already recorded, the Tribunal has, after examining the entire material, in detail, recorded a finding that the assessee has discharged onus to prove that the gifts are genuine, thereby affirming the opinion recorded by the CIT (Appeals), as regards the gift made by Dr. O.S.Gill but reversing the opinion as regards the gift made by B.P.Bhardwaj. The findings are neither perverse nor arbitrary and may, if at all, be debatable. Dr. O.S.Gill appeared before the Assessing Officer, his income and accounts were verified from the Inland Revenue Service, Great Britain but the Assessing Officer drew an inference against the assessee as Dr. O.S.Gill could not disclose his account number, his answers were held to be vague and there does not appear to be any such

relationship between the parties that would warrant such a large gift. As Dr.O.S.Gill appeared before the Assessing Officer, admitted that it was his money and admitted the gift, his accounts and income were verified, his failure to remember his account number, which was already known to the revenue, could not justify the raising of an inference against the assessee.

A question may, however, legitimately arise that such a large amount could not be given as a gift on the marriage of the assessee's daughter but this question is speculative and cannot form the basis for raising an inference against an assessee. The Assessing Officer was apparently over-awed by the amount of the gift and, therefore, proceeded to base his opinion on his perception that no one would gift such a large amount. A deeming provision requires the Assessing Officer to collect relevant facts and then confront the assessee, who is thereafter, required to explain incriminating facts and in case he fails to proffer a credible information, the Assessing Officer may validly raise an inference of deemed income under section 69-A of the Act. As already held, If the assessee proffers an explanation and discloses all relevant facts within his knowledge, the onus reverts to the revenue to adduce evidence and only thereafter, may an inference be raised, based upon relevant facts, by invoking the deeming provisions of Section 69-A of the Act. It is true that inferences and presumptions are integral to an adjudicatory process but cannot by themselves be raised to the status of substantial

evidence or evidence sufficient to raise an inference. A deeming provision, thus, enables the revenue to raise an inference against an assessee on the basis of tangible material and not on mere suspicion, conjectures or perceptions. It would also be necessary to reiterate that it is not perceptions but concrete facts that underline quasi judicial determinations and where concrete facts are not available, relevant facts, as would raise a credible inference of culpability requiring an assessee to rebut the inference so raised. More often than not, revenue authorities, for want of relevant material, institute "inquisitions", as opposed to inquiries and by addressing questions that the more inculpatory in nature, seek to build their case, from answers proffered by an assessee. The findings of fact recorded by the CIT (A) and the Tribunal regarding the gift made by Dr. O.S.Gill are plausible, though debatable, do not call for interference. The first question of law is, thus, answered against the revenue as regards the gift made by Dr. O.S.Gill.

As regards the gift made by B.P.Bhardwaj, a perusal of orders passed by the Assessing Officer and the CIT (Appeals) reveal that the reasons assigned by them for rejecting the gift made by Shri B.P.Bhardwaj are, firstly, failure to produce Shri B.P.Bhardwaj, secondly that B.P.Bhardwaj stated that the money was given to him by Shri Varinder Sharma and other reasons that are similar to the reasons assigned in the case of Dr.

O.S.Gill. The Assessing Officer and the CIT (Appeals) ignored the fact that the drafts were prepared from the account of Shri B.P.Bhardwaj and if the Assessing Officer was to rely upon the statement made by Shri B.P.Bhardwaj that he had received the money from Shri Varinder Sharma of Moscow, the onus lay upon the revenue to pursue this lead and trace Shri Varinder Sharma but, unfortunately, no further enquiry was carried out but instead the assessee was asked to disclose the whereabouts and his connection with Sh. Varinder Sharma. The assessee denied any association, business or otherwise with Shri Varinder Sharma but admitted that Shri Varinder Sharma was known to him. The onus, therefore, shifted to the revenue to prove that Shri Varinder Sharma was an associate or an employee and only thereafter could the revenue raise an inference that the assessee had routed his funds through Shri Varinder Sharma, in the garb of a gift drawn in the name of his daughters. A perusal of the record reveals that the Assessing Officer did not pursue the matter any further and merely based his opinion on an assumed connection between the assessee and Shri Varinder Sharma and has failed to refer to any material, howsoever perfunctory, that would indicate that Shri Varinder Sharma was an employee or an associate of the assessee. The Assessing Officer, thus, drew an adverse inference against the assessee for his failure to “disprove” his relationship with Shri Varinder

Sharma.

An arrangement between a donor and another is an arrangement between the donor and his source of money. The onus to probe and prove this aspect lies upon the revenue and not upon the assessee, particularly where the income is being dealt with under a deeming provision. A person who receives a gift, is not required to prove the source of the money of his donor.

A suspicion may, however, arise that Shri Varinder Sharma was in some way connected with the assessee. The Assessing Officer was required to investigate this matter but for reasons that have not been spelt out or explained whether in the assessment order or by counsel for the revenue, did not investigate the matter any further and raised an inference against the assessee. The assessee having denied any connection or any knowledge about the whereabouts of Shri Varinder Sharma, the onus squarely fell upon the Assessing Officer to enquire into the matter and then by reference to some material establish the link between Varinder Sharma and the assessee, to raise a valid inference that the gifts reflect the income of the assessee.

The revenue may have a credible argument based upon the fact that Shri B.P.Bhardwaj did not appear before the Assessing Officer or that he has stated that he has received

money from one Shri Varinder Sharma, but it was for the revenue, to establish a link between Shri Varinder Sharma and the assessee, which, as already, recorded, it has failed to establish. At this stage, it would be appropriate to point out that to a specific query addressed to counsel for the revenue to point out any material on record that proves a link between the assessee and Varinder Sharma. The answer by counsel for the revenue is in the negative. A perusal of the assessment order and the record produced before this Court reveals that it is bereft of any material that could even prima facie prove a link between the assessee and Shri Varinder Sharma. As already noticed, an inference under a deeming provision, has to be based upon relevant facts. The assessee disclosed the identity of the donors, the Assessing Officer collected information from the Inland revenue, B.P.Bhardwaj made a statement that Varinder Sharma gave him the money, the assessee was asked to disclose the whereabouts of Varinder Sharma but the Assessing Officer rejected the gift by holding that Varinder Sharma is an associate of the assessee, without reference to any material or evidence before him. The Assessing Officer would have been justified in raising such an inference if there was a shred of material to link B.P.Bhardwaj, Varinder Sharma to the assessee.

The Tribunal has held that there is no evidence or

material to link Varinder Sharma to the assessee and that findings have been recorded on mere suspicion, conjectures and surmises. The Tribunal has also held that the assessee, who accepted the gift for and on behalf of his daughters, was not privy to any information regarding the source of funds with Mr. B.P.Bhardwaj. One cannot be oblivious to the fact that such a large gift received from a foreign country is bound to raise suspicion but can not disregard the fact that suspicion and doubt cannot replace proof or translate into reasons, much less reasons for invoking a deeming provision to hold that gifts represent the income of the assessee, particularly in the absence of relevant facts.

A further perusal of orders passed by the Assessing Officer reveals that he proceeded as if the entire onus lay upon the assessee, ignored the material received from the Central Board of Direct Taxes from the Inland Revenue Service, Great Britain and failed to follow the matter any further with respect to Shri Varinder Sharma and on the basis of suspicion, held that gifts are not genuine. Having already held that it was for the revenue to proceed to investigate the matter further, I find no error in the opinion recorded by the Tribunal, which has been reproduced in detail in preceding paragraphs or that in the facts and circumstances of the case, a different opinion could be recorded. Consequently, the substantial question of law is

answered against the revenue.

As regards the second question, the question having been answered while answering the first question, it is held that the Tribunal has rightly opined that the gift could not be treated as a deemed income of the assessee. Consequently, the substantial questions of law are answered against the revenue and the appeals are disposed of accordingly.

29th January, 2016
VK

(RAJIVE BHALLA)
JUDGE