

Gifts spotted during search won't constitute undisclosed income if they were already shown by assessee in return

Summary – The High Court of Karnataka in a recent case of Manisha A. Sadhwani, (the Assessee) held that where no incriminating material indicating undisclosed income was seized and NRI gifts detected in course of search had already been reflected in original returns, no addition could be made as undisclosed income.

Facts

- A search operation was conducted in the assessee group of companies calling upon the assessee to file his return of income for the block period.
- The assessee in the regular returns filed under section 139(1), had shown the NRI gifts received by her and had claimed exemption from payment of income tax. The Assessing Officer called upon the assessee to substantiate the said gifts. Same was produced. The assessee had disclosed the amounts, which she had received by gift from nearly 25 donors across 20 countries.
- The Assessing Officer was of the view that these donations were not genuine and therefore, he assessed the said amount for tax.
- On appeal to the Commissioner (Appeals), the assessment orders were set aside on the ground that the Assessing Officer without verifying the truth about the gifts and without affording the assessee an opportunity to prove the gift, had added the said sums to the income of the assessee.
- After remand also, the assessee produced the documents. The Assessing Officer also addressed letters to Central Board of Direct Taxes to secure some information on consideration of the aforesaid material on record. Again the Assessing Authority held that the gifts were not genuine and brought the said amount to tax.
- On appeal, the Appellate Authority accepting the case of the assessee and by setting aside the order of the Assessing Authority, granted relief to the assessee.
- On second appeal, the Tribunal confirmed the order of the Appellate Authority.
- On appeal by revenue against the said order:

Held

- An undisclosed income signifies income not stated in the returns filed. If income is disclosed in the return filed, either under section 139(1) or under section 139(4), it cannot be construed as an undisclosed income, then Chapter XIV-B is not attracted. Therefore, the conditions precedent for exercising power under Chapter XIV-B assessing undisclosed income are :

(i) A search under section 132 of the Act where incriminating evidence of undisclosed income is seized;

(ii) The said income, which was found in such search and is not reflected in the returns filed under section 139(1) or 139(4) before the date of search.

- The existence of both these conditions is *sine qua non* for initiation of proceedings and passing of block assessment order under chapter XIV-B.
- In the instant case, the so-called undisclosed income finds a place in the returns filed by the assessee under section 139(1). The search was subsequent to filing of the said returns. In the search, no incriminating evidence of undisclosed income was assessed. What was found in the search was that the assessee had invested huge amount as capital in the firm, in pursuance thereto, when the premises of the assessee were searched, the assessee had filed returns showing this amounts in the return. Therefore, in the first instance, no incriminating material, such as, undisclosed income was seized. Even before search, the amount, which was shown as gift, had been reflected in the returns filed by them. Both the appellate authorities had given a finding that the amounts of gifts treated as an income find a place in the return of income filed before the date of search. Under those circumstances, the Assessing Authority was wrong in concluding that the amounts shown as gift in the return constitute undisclosed income. The Lower Appellate Authority and the Tribunal were justified in setting aside the said order.
- Thus, the substantial question of law was answered in favour of the assessee and against the Revenue. The appeal was to be accordingly dismissed.