

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.894/Ahd/2013

निर्धारण वर्ष/Asstt. Year: 2008-2009

Smt.Samta Kamal Drolia B-202, Samrajya Flats, Vasna Road Nr.Sabri School, Baroda 390015. PAN : AJPPD 1350 C	Vs	ITO, Ward-2(3) Baroda.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Mukund Bakshi
Revenue by :		Mrs.Smiti Samant, Sr.DR

सुनवाई की तारीख/Date of Hearing : 02/06/2016

घोषणा की तारीख /Date of Pronouncement: 02/06/2016

आदेश/O R D E R

The assessee is in appeal before the Tribunal against the order of the Ld.CIT(A)-II, Baroda dated 20.12.2012 passed in the Asstt.Year 2008-09.

2. Solitary grievance of the assessee is that the Id.CIT(A) has erred in confirming the addition of Rs.2,40,000/- which was received by the assessee (minor so, through mother) as gift from his step-father, Shri Kamal Drolia and Kamal Drolia (HUF).

3. Brief facts of the case are that the assessee had filed his return of income on 11.9.2008 declaring total income at Rs.1,72,700/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued on 19.8.2009. On scrutiny of the accounts it revealed to the AO that the assessee had received a sum of Rs.2,20,000/- through different cheques of Rs.20,000/- each from 1st of

every month i.e. from May to March from Shri Kamal Drolia. He further observed that a sum of Rs.20,000/- was received by the assessee through cheque no.343904 dated 28.4.2007 of ABN Amro Bank. This amount received from M/s.Kamal Drolia, HUF. When the assessee was confronted, with regard to the receipt of this amount, it was contended by the assessee that Shri Kamal Drolia, is step-father of the assessee. He received the amounts in gift. With regard to the amount received from HUF, it was contended that this amount was below the limit of Rs.50,000/-, and therefore, the assessee was not supposed to explain. The Id.AR has rejected the explanation of the assessee on the ground that the assessee is step-son of Shri Kamal Drolia, therefore, their relationship does not fall within the ambit of relationship explained in *Explanation* appended to Section 56(2). Appeal to the CIT(A) did not bring any relief to the assessee.

4. The Id.counsel for the assessee, while impugning the order of the Revenue authorities took me through section 56(2) and the *Explanation* (v), (vi) and (vii) of the Income Tax Act. He submitted that the expression "relative" has been explained in the *Explanation* appended to Section 56(2) of the Income Tax Act. As per the meaning given at serial no.(v), (vi) and (vii), it emerges out that any lineal ascendant or descendant of the individual will be entitled to receive gift. He pointed out that the assessee is an individual. His step-father is the spouse of his mother, and therefore, their relationship shall be within the meaning of "relative" given at serial no.(v), (vi) and (vii) and therefore, entitled for the exemption applicable in the present case. For buttressing his contention, he further made reference to the decision of the Hon'ble Andhra Pradesh High Court in the case of Income-Tax Appellate Tribunal Vs. Estate of Late Nuli Lakshminarayana, reported in 116 ITR 739 (AP). He pointed out that this is related to the Estate Duty Act, 1953. The question arose there was, whether an adopted son can be

regarded as a lineal descendant for the purpose of levy of estate duty. On the strength of this decision, he pointed that the assessee being an individual falls within the ambit of expression "relative" of his step-father.

5. On the other hand, the Id.DR relied on the order of the Id.CIT(A) and contended that this aspect has been considered by the Id.CIT(A) and it has been rightly stated that step-son does not fall within the ambit of relative.

6. I have gone through the record carefully. It is pertinent to take note of the relevant section 56(2) and the *Explanation* appended thereto. They read as under:

"56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

[(vi) where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration, by an individual or a Hindu undivided family, in any previous year from any person or persons on or after the 1st day of April, 2006 [but before the 1st day of October, 2009], the whole of the aggregate value of such sum:

Provided that this clause shall not apply to any sum of money received—

Explanation.—For the purposes of this clause, "relative" means—

(v) any lineal ascendant or descendant of the individual;

(vi) any lineal ascendant or descendant of the spouse of the individual;

(vii) spouse of the person referred to in clauses (ii) to (vi);]

7. A bare perusal of the above *Explanation* would indicate that the expression "relatives" would recognize the relationship between the step-father and step-son for the purpose of exemption available under section 56(2) of the Income Tax Act. Therefore, the gift received by the assessee cannot be treated as income from other sources, and the same is deleted and the appeal of the assessee is allowed.

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

Order pronounced in the Court on 2nd June, 2016 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**