



IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH MUMBAI

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.5884/Mum/2024
(Assessment Year :2016-17)**

Rabin Arup Mukerjea 46, Radford House 1, Pembridge Gardens London United Kingdom	Vs.	ITO, Intl. Tax Ward 3(2)(1), Mumbai
PAN/GIR No.FDMPM7366B		
(Appellant)	..	(Respondent)

Assessee by	Shri Ashok Rao /Shri Manoj Raghani
Revenue by	Shri Krishna Kumar, Sr. DR
Date of Hearing	31/12/2024
Date of Pronouncement	21/03/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 21/10/2024 passed by Id. CIT (A)-57, Mumbai for the quantum of assessment passed u/s.147 r.w.s. 144C for the A.Y. 2016-17.

2. In the grounds of appeal the assessee has challenged the reopening of the assessment u/s.148; and on merits has challenged the addition of Rs.7,50,81,605/- on the ground that

donor and donee were not relatives and therefore, the receipt of the property gifted without consideration was chargeable to tax u/s.56(2)(vii)(b) of the Act.

3. The brief facts are that assessee is an individual and non-resident Indian, since assessee did not have any income or source from India, therefore, he was not filing any return of income in India. The assessee had made an application u/s.197 in the month of January 2021 for lower deduction of tax on account of sale of property (Flat No. 80, Marlow, 62B, Sir Pochkhanawala road, Worli, Mumbai – 400 025). This property was received by the assessee as a gift from Ms. Vidhie Mukerjea on 21/01/2016 by way of registered gift deed with Joint Registrar, Mumbai City-III, Mumbai, wherein Ms. Vidhie Mukerjea has been referred to as 'donor' and Mr. Rabin Arup Mukerjea has been referred as 'donee'. According to the ld. AO the donor and donee were not relatives as per the meaning contained in Section 56(2) of the Act and therefore, ld. AO has reason to belief that receipt of the property without consideration are chargeable to tax and accordingly, reasons were recorded and notice u/s.148 was issued on 23/02/2021. The reasons recorded by the ld. AO for reopening the assessment reads as under:-

"Reasons for reopening of the assessment in case of Mr. Rabin Arup Mukerjea for A.Y-2016-17 u/s 147 of the Act.

1. Brief details of the assessee. The assessee is an individual and NRI, has not filed return of income for the A.Y. 2016-17

1. Brief details of Information collected/received.

Registered Gift Deed with Joint Sub Registrar, Mumbai-City-III, Mumbai dated 22-1-2016 between Vidhie Mukerjea referred as "Donor and PIME Arup Mukerjea referred as "Donee"

1. Analysis of Information collected/received. On perusal of the Gift Deed it is observed that Donor has gifted 100% of her rights, title and interest vested in the Flat No. 402. "Marlow", Plot No. 62-8, Pochkhandawala Road, Worli, Mumbai-400 025 to the donee. The transfer of title in the immovable property is made without consideration stating that since the Donor/donee are sister and brother respectively

1. Enquiries made by the AO as sequel to information collected/received:

Pursuant to the above fact, and assessee's pending application u/s. 197 of the Income Tax Act, 1961 enquiries were conducted to find the whereabouts of the Donor and the Donee. The Enquiry revealed that the Donor's mother is Mrs. Indrani Mukerjea. Mrs. Indrani Mukerjea had married third time with Peter(Pratim) Mukerjea. Peter(Pratim) Mukerjea had divorced his first wife Shabnam Singh and had married Indrani Mukerjea. Even the wedlock between Mrs. Indrani Mukerjea and Peter(Pratim) Mukerjea ended in divorce in the year 2019. The judicial decree pronounced (placed on record) by the Hon'ble Principal Judge, Family Court, Mumbai on 26-12-2019 in the divorce petition No. F-2427 of 2018, at para 2 of this order reveals the fact as under. "That there is no child born out of the wedlock of Indrani Mukerjea and Peter(Pratim) Mukerjea. Indrani Mukerjea has a daughter named Vidhie from the previous marriage with Mr. Sanjeev Khanna. Shri Peter(Pratim) Mukerjea has two sons named Rahul Mukerjea and Rabin Mukerjea from the previous marriage with Shabnam Singh

1. Findings of the AO:

The assessee has received the property under consideration as gift from Vidhie Mukerjea on 21-1-2016 and in the said gift deed the donor and the donee are termed as sister and brother. However on the basis of the Hon'ble Family Court finding both are

not the biological sister and brother. Vidhie Mukerjea and Rahul Mukerjen are bom out of different wedlocks. The definition of "relative" contained in section 55 contain only brother and sister. Nowhere in the section refers step brother and step sister to form part of relative

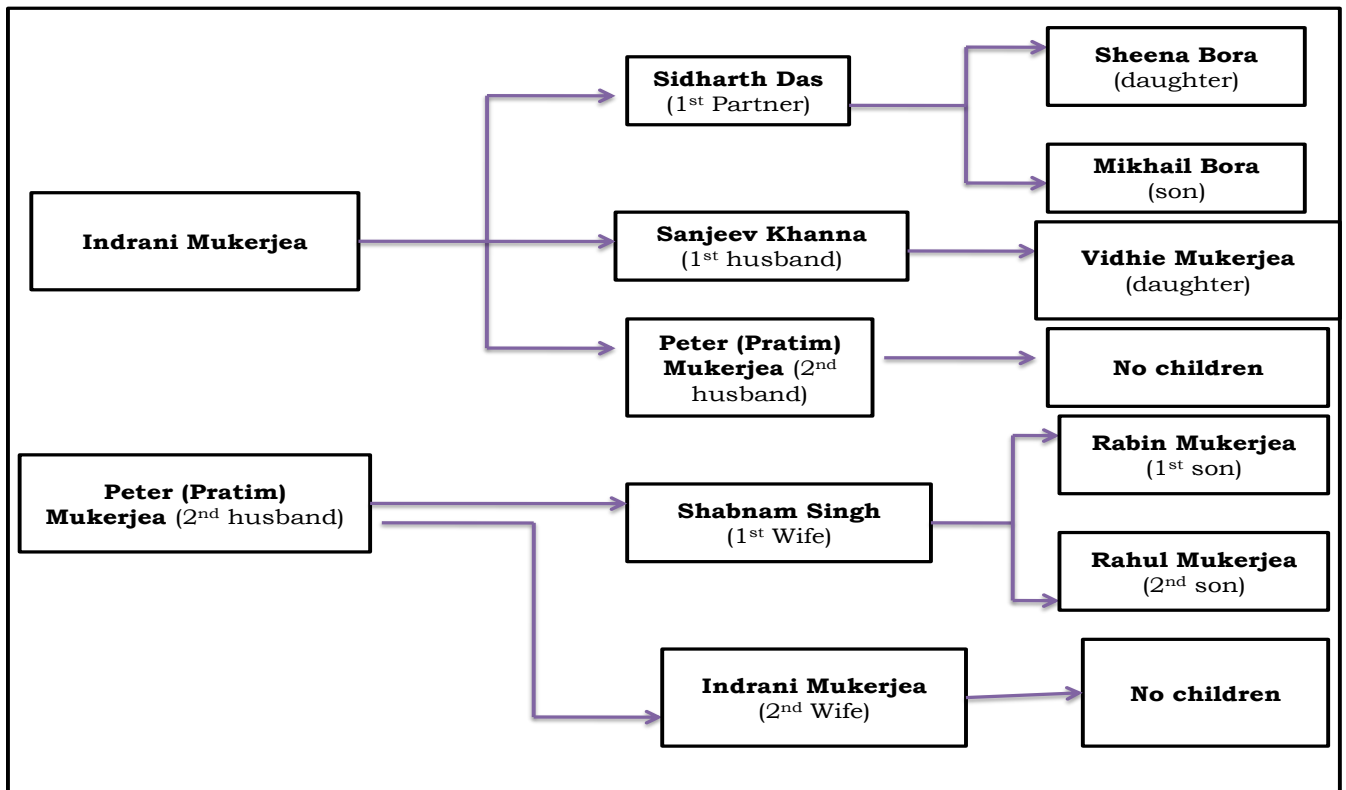
1. Basis of forming reason to believe and details of escapement of income: As per the provisions of Section 56 of the Income Tax Act, the donor and donee do not fall under the purview of "Relative" and therefore the provisions of section 56(1)(vii)(b) is invoked. Hence. I have reason to believe that as the assessee has not filed ROI and has not disclosed these material facts necessary for the assessment income chargeable to tax has escaped

IN 1. Escapement of income chargeable to tax in relation to any assets (including financial Interest in any entity): In this case the value of the property mentioned in the Registered Pavli No. 620 dated 22.01.2016 by the Joint Sub-Registrar, Mumbai City-VII. Mumbai is 7,50,68,525/ The value of this property is chargeable to tax in the hands of the assessee has escaped assessment. Moreover the stamp duty and Registration fees paid of 38,30, 820/- is incidental cost for the gift received by the assessee and is ought to have been paid by the assessee and therefore the source of these payments need to be verified. Therefore the aggregate amount of 7,88,99,345/-has escaped assessment.

1. Applicability of the provisions of section 147/151 to the facts of the case: As discussed above, I have reason to believe that the receipt of the immovable property without consideration amounting to 7,50,68,525/- and the expenditure related to receipt of the immovable property of 38,30,820/- both aggregating to 7,88,99,345 has escaped assessment within the meaning of Explanation 2 of Sec. 147 of the Income Tax Act Therefore, it is a fit case for issue of notice u/s 148 r.w.s 147 of the IT Act for the A.Y-2016-17 Accordingly, approval of u/s 151(2) of the I.T. Act, 1961 is required in the case, for issuing notice under section 148 of the I.T. Act. 1961."

4. In response to the notice assessee filed return of income and after getting the reasons recorded, has filed his detailed

objections which has been incorporated in the impugned order from pages 4-7. In sum and substance, assessee’s objection based on various propositions of law was that, the step brother and step sister are related which are covered within the ambit of definition of “relative” provided in Section 56(2)(vii) r.w. Clause E of Explanation, i.e., **“brother and sister of the individual”**. The ld. AO in his order for disposing objection has referred to various Acts to define various relatives and held that step brother and step sister cannot be treated as relative. The ld. AO has drawn a pictorial family tree of the members in the family to narrate the co-relation between the family members which for the sake of ready reference is drawn herein below:-



5. Accordingly based on his own interpretation, Id. AO rejected the claim of the assessee holding that gift given by Ms. Vidhie Mukerjea to the assessee who are step sister and step brother do not fall in the category of 'relatives' and therefore, gifted property of Rs.7,50,68,525/- is taxable as income from other sources.

6. The Id. CIT(A) has confirmed the action of the Id. AO in his detailed order and held that the definition stated in Section 56(2) is to be interpreted keeping the blood relationship, lineal ascendant and lineal descendant and hence, no further meaning could be ascribed to this term. Therefore, relationship between Ms. Vidhie Mukerjea and the assessee is not covered by these terminologies. He upheld the stand of the Id. AO that the term 'step' cannot be automatically incorporated and interpreted such relationship unless explicitly specified in the relevant provision of the Act. He also rejected the assessee's reliance placed on dictionary meaning and commonsense of the term 'brother and sister' to impute step brother and step sister where both the parties are different. He held that even though Mr. Peter Mukerjea (husband) and Ms. Indrani Mukerjea (wife) and Ms. Vidhie Mukerjea **are connected by affinity**, however, it cannot be held that assessee and Ms. Vidhie Mukerjea are related by affinity, because brother has the name with the same parent and it is essential that relationship of brother and sister to share the same parent or at least one of the parent should be common. His further conclusion in this regard reads as under:-

“6.8.2 The remand report of the AO as well as the rejoinder filed by the appellant and other submissions filed in this regard have been perused. It is noted that the natural father of Ms. Vidhie Mukerjea is Mr. Sanjeev Khanna, who was the erstwhile husband of Ms. Indrani Mukerjea Subsequently since Ms. Indrani Mukerjea who is natural mother of Ms. Vidhi Mukerjea divorced Mr. Sanjeev Khanna and later married Mr. Peter Mukerjea, Mr. Peter Mukerjea may be termed as "step-father" of Ms. Vidhie Mukerjea. However, the relationship of Ms. Vidhie Mukerjea being natural daughter of Mr. Sanjeev Khanna does not change as a result of divorce of Mr. Sanjeev Khanna and Ms. Indrani Mukerjea and still continues. Therefore, while the natural father of Ms. Vidhie Mukerjea is Mr Sanjeev Khanna, who continues to be one of her parent also, the stepfather is Mr. Peter Mukerjea. Therefore, the presence or absence of father's name as Mr. Peter Mukerjea in the document presented as additional evidences by the appellant does not change the above factual position, which is undisputed Further, in the instant case, no documentary evidences etc have been submitted by the appellant nor it has been argued that Mr. Peter Mukerjea has legally adopted Ms. Vidhie Mukerjea as his daughter. It is further noted that the additional evidence filed by the appellant includes the Bachelor's Degree dated 16/04/2020 whereas Ms. Indrani Mukherjea and Mr Peter Mukherjea were already divorced on 26/12/2019 Based on the above discussion, it is seen that the additional evidences filed by the appellant does not help the arguments and stand of the appellant as stated in the grounds of appeal in any manner.”

7. We have heard both the parties at length, perused the relevant finding given in the impugned order. Here, moot question is, whether the gift given by step sister to a step brother falls within the definition of ‘relative’ as given by Section 56 (2) of the Act.

8. The brief background of the relationship between the assessee and Ms. Vidhie Mukerjea is that, Ms. Vidhie is the daughter of Ms. Indrani Mukerjea from her husband, Mr. Sanjeev Khanna, whereas, Mr. Rabin Mukerjea is the first son of Mr. Peter Mukerjea with his first wife Mrs. Shabnam Singh. After the marriage of Ms. Indrani Mukerjea with Mr. Peter Mukerjea, Ms. Vidhie Mukerjea and Mr. Rabin Mukerjea became step sister and step brother due to alliance of marriage between their respective parents. We have already incorporated the family tree to show the relationship between various members of the family from the first and second marriage of Ms. Indrani Mukerjea and Mr. Peter Mukerjea. Mr. Peter Mukerjea after marrying Ms. Indrani Mukerjea had gifted half share of his property, i.e., the impugned flat at Worli, vide gift deed dated 28/08/2003. Thereafter, both Mr. Peter Mukerjea and Ms. Indrani Mukerjea further gifted their half share each to Ms. Vidhie Mukerjea by deed of gift dated 07/01/2011, i.e., to the daughter of Ms. Indrani Mukerjea (through her ex-husband Mr. Sanjeev Khanna). Accordingly, Ms. Vidhie Mukerjea became full owner of the property. Later on Ms. Vidhie Mukerjea gifted the entire flat to Mr. Rabin Arup Mukerjea, i.e., assessee vide deed of gift dated 21/01/2016. In the gift deed, it was stated that the donor and donee are sister and brother respectively. The copy of gift deed has been placed before us in the paper book from pages 57-61.

9. Later on, assessee decided to sell the property and submitted an application u/s.197 of the Act for a certificate of low rate of TDS. It is from this information, ld. AO came to the conclusion

that Ms. Vidhie Mukerjea was not the 'sister' and therefore, not a relative of the assessee and accordingly, based on his interpretation that step brother and step sister are not relative who do not fall within the definition of 'brother and sister', the case was reopened u/s.147 and notice u/s 148 was issued for the A.Y. 2016-17. In response to the notice, assessee has filed the return of income disclosing the exempt income of Rs.7,50,68,525/- i.e. the stamp value of the property gifted by Ms. Vidhie Mukerjea to the assessee.

10. **Clause (e)** to Explanation below Section 56(2)(vii) states that 'relative' means:-

"relative" means,—

(i) in case of an individual—

(A)-----;

(B) brother or sister of the individual;

(C) -----;

(D) -----;

(E) -----;

(F) -----;

(G) -----.

11. Ergo, the Act uses the word '*brother and sister of an individual*'. In common parlance, there are 5 kinds of brother and sister relations-

➤ *Firstly*, **Uterine** brothers and sisters - where the mother is the same;

- *Secondly, **Consanguine*** brothers and sisters - where the father is the same;
- *Thirdly, **Germane*** (also, biological) brothers and sisters - where both the parents are the same;
- *Fourthly, **Step***, that is, step brothers and step-sisters - where both the parents are different; and
- *Lastly, **Adopted children***- who would become brother/sister through law.

Though, often there are other terms to define brother and sister such as “whole blood” and “half blood”, which fall in first three categories.

12. Before us, various provisions have been cited of different Acts to canvass that ‘step’ child has been recognised under the various Acts, for example **Section 2(15B) of the Income Tax Act, 1961** defines the word “child”. It states that **“any relation to an individual, includes a step child and an adopted child of that individual”**; thus, a step child has been treated as a child for the purpose of the Income Tax Act and if this analogy is taken into consideration, then step brother and step sister should also be reckoned as brother and sister. Further, **Section 45S of the Reserve Bank of India Act, 1934** provides the list of relatives which includes “step brother and step sister”. Similarly, **Section 2(77) of the Companies Act, 2013** includes step brother and step sister within the meaning of term “relative”. Although under the Income Tax Act, step brother or step sister has not been defined, but here if we are interpreting the word

‘relative’ to understand the relation between step brother and step sister, whether they can be treated as relative for the purpose of Income Tax Act, then some inference can be drawn from the aforesaid provision from different Acts.

13. In **Black’s Law Dictionary “relative” means:** *"a kinsman, a person connected with another by blood or affinity. When used generically, includes persons connected by ties of affinity as well as consanguinity, and, when used with a restrictive meaning, refers to those only who are connected by blood. **Individual related by affinity of consanguinity within the third degree as determined by common law, or individual in a step or adoptive relationship within such third degree.** A person or thing having relation or connection with some other person or thing; as, relative, rights, relative powers."* Thus, according to the Black’s Law Dictionary, ‘relative’ includes persons connected by ties of affinity as well as consanguinity and when used with a restrictive meaning, refers to those only who are connected by blood. Individual related by affinity also include individual in a step or adoptive relationship. Thus, the term ‘relative’ would also include ‘step brother and step sister’.

14. Although the Indian Succession Act, 1925, step brothers and step sisters unless duly adopted are not considered legal heirs and do not have the right to inherit the property of the step parents; and step children do not have any claim of the property of the step parent whether movable or immovable property. If the person dies intestate, the property is distributed according to the

Rules outlined in the Indian Succession Act and the property is to be given to legal heirs like children, spouse and parents, etc., The person related by whole blood are preferred over those related by half blood if the nature of relationship is the same in every other aspect. Although Indian Succession Act is applicable for the right of inheritance where step child has no legal right to inherit the property of his or his step parent, but it does not lead to inference, i.e., step brother and step sister who are related by affinity because of marriage of the respective parents cannot be reckoned as brother and sister within the term 'relative'. Here what is to be seen whether the step brother and step sister can be said to be relative by way of affinity.

15. The term affinity has been elaborated in different dictionaries in the following manner:-

In the Sixth Edition of Black's Law Dictionary (Page 59) as under:

"Affinity" A close agreement, relation, spiritual relation or attraction held to exist between certain persons. State ex inf. Norman v. Ellis, 325 Mo, 154, 28 S.W.2d 363, 367. Relation which one spouse because of marriage has to blood relatives of the other. State v. Hooper, 140 Kan. 481, 37 P.2d 52.

The connection existing, in consequence of marriage, between each of the married persons and the kindred of the other Kest v. Lewis, 169 Ohio St. 317, 159 N.E.2d 449, 450.

Degree of relationship by affinity are computed as are degrees of relationship by consanguinity. The doctrine of affinity grew out of the canonical maxim that marriage makes husband and wife one. The husband has the same relation, by affinity, to his wife's blood

relatives as she has to them by consanguinity and vice versa. State v. Hooper, 140 Kan. 481, 37 P.2d 52.

Affinity is distinguished into three kinds: (1) Direct, or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood; (2) secondary, or that which subsists between the husband and his wife's relations by marriage; (3) collateral, or that which subsists between the husband and the relations of his wife's relations.

In a larger sense, consanguinity or kindred.

Quasi affinity. In the civil law, the affinity which exists between two persons, one of whom has been betrothed to a kinsman of the other, but who have never been married.

(ii) In P. Ramanatha Aiver's "The Law Lexicon" (Reprint 2001) (Page 73) as under:

"Affinity" - Relationship by marriage as distinguished from consanguinity, or relationship by blood. (Wharton, Burrill; Webster); The tie which arises from the marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. (2 Steph Com. 259).

An artificial relationship between persons of different blood, regarded as analogous to consanguinity; the relation between families or individuals created by intermarriage.

AFFINITY is the tie arising from marriage betwixt the husband and the blood relations of the wife, and betwixt the wife and the blood relations of the husband. Thus the relations of the husband stand in the same degree of affinity to the wife in which they are related to the husband by consanguinity, but there is no affinity betwixt

the kinsmen themselves; thus the husband's brother and the wife's sister have no affinity. (See Tomlin's L.D.).

Affinity is thus of three kinds:-

- (1) Direct, that subsists between the husband and his wife's relations by blood or between the wife and her husband's relations by blood;
- (2) Secondary, that subsists between the husband and his wife's relations by marriage; and
- (3) Collateral, that subsists between the husband and the relations of his wife's relations.

Accordingly, step sister and step brother are part of the family by affinity and in common sense they are related to each other as brother and sister.

16. Thus, as per the Dictionary meaning of the term 'relative', it includes a person related by affinity, which means the connection existing in consequence of marriage between each of the married persons and the kindred of the other. If the aforesaid Dictionary meaning is to be referred and relied upon, then the term 'relative' would include step brother and step sister by affinity. If the term 'brother and sister of the individual' has not been defined under the Income Tax Act, then, the meaning defined in common law has to be adopted and in absence of any other negative covenant under the Act, in our view, brother and sister should also include step brother and step sister who by virtue of marriage of their parents have become brother and sister. Accordingly, we hold that gift given by step sister, i.e., Ms.

Vidhie Mukerjea to a step brother, i.e., Mr. Rabin Arup Mukerjea falls within the definition of 'relative', that is, they are to be treated as brother and sister as per Section 56(2)(vii) and consequently, property received by brother from sister cannot be taxed u/s.56(2). Accordingly, the claim of the assessee that gift received by his step sister Ms. Vidhie Mukerjea is exempt from being taxed as income from other sources is accepted and accordingly, the addition made by the ld. AO is deleted.

17. Since, we have deleted the addition on merits, the various objections raised on validity of reopening u/s.148 is treated as academic.

18. In the result, appeal of the assessee is allowed on merits.

Order pronounced on 21st March, 2025.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 21/03/2025
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumba