

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, E, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.4335/Mum/2014
Assessment Year: 2003-04**

Sanjay Kohli, 1101-106, Ocean View Bldg, Deccan CHS, Union Park, Khar (W), Mumbai-400052	बनाम/ Vs.	ACIT Central Cir-25, Mumbai
(Assessee)		(Revenue)
P.A. No.AFDPK4255M		

निर्धारित की ओर से / Assessee by	Shri Nishi Gandhi (AR)
राजस्व की ओर से / Revenue by	Shri J. Saravanan (DR)

सुनवाई की तारीख / Date of Hearing :	23/12/2015
आदेश की तारीख / Date of Order:	8/01/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Revenue against the order of Ld. Commissioner of Income Tax (Appeals)-39, Mumbai {(in short Ld. CIT(A)} dated 3.03.2012 for the

assessment year 2003-04, decided against the quantum order u/s 271(1)(c) of the Act passed by the Assessing Officer (in short 'AO').

2. During the course of hearing, arguments were made by Shri Nishi Gandhi, Authorised Representative (AR) on behalf of the Assessee and by Shri J. Saravanan, Departmental Representative (DR) on behalf of the Revenue.

3. In this appeal, assessee has challenged the levy of penalty u/s 271(1)(c) on the amount of gift of Rs.50,00,000/-.

3.1. We have heard both the parties. It is brought to our notice that impugned amount of addition on which penalty was levied has been deleted by the Tribunal in order dated 14.01.2015 ITA No.3831/Mum/2012, the relevant portion of the above said order of the Tribunal is reproduced below:

“7. We have heard the rival contentions and perused the record. The admitted facts are that the assessee had duly disclosed the receipt of gift of Rs.50.00 lakhs in the original return of income filed for this year well before the date of search. It is also an undisputed fact that the assessing officer, during the course of original assessment proceedings, has made enquiries about the gift not only with the assessee, but also with the donor directly. Both the assessee as well as the donor has duly replied to the queries raised by the AO. Having satisfied with the

genuineness of the gift, the assessing officer did not make any addition.

8. During the course of search proceeding, the department has found the gift confirmation letter and the AC has proceeded to examine the same on the basis of this document. In this regard we agree with the contentions of the Ld A.R that this gift confirmation letter cannot be considered to be an incriminating material warranting an examination, since it only confirms the disclosure already made by the assessee and not against such disclosure. A material can be considered to be an incriminating material, only if it shows that the apparent was not real. A perusal of the present assessment order also shows that the assessing officer has only revisited the concluded matter relating to the gift and assessed the same on certain new grounds not emanating from the search.

9. In our view, the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of Mural' Agro Products Ltd (supra) comes to the support of the assessee. i.e. the assessing officer is not entitled to disturb the concluded assessments in the absence of any incriminating material. Accordingly, we are of the view that the Ld CIT(A) was not justified in confirming the assessment of gift amount of Rs.50.00 lakhs in this year. We notice that the assessee has raised this legal ground before the Ld CIT(A), but the first appellate authority has declined to admit the same. In our view,

the action of Ld CIT(A) in rejecting the legal ground is not justified. Accordingly, we set aside the order of Ld CIT(A) and direct the assessing officer to delete the addition of Rs.50.00 lakhs relating to the gift receipt.”

3.2. Thus, it is noted from the above that the basis of levy of penalty ceased to exist. Under these circumstances, penalty cannot be sustained. Therefore, penalty is directed to be deleted.

4. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 8th January, 2016.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated ; 8/01/2016

Patel, P.S./नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai