IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai

Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member

ITA No. 6591/Mum/2014
(Assessment Year: 2010-11)

Shri Vikas Chimakurty No.2, Naad Brahma CHS Ltd. Khar (W), Mumbai 400052	Vs.	DCIT, Range 26(2) Mumbai

PAN - ACEPC5167E

Appellant **Respondent**

Appellant by: Shri Himesh G. Thanawala
Respondent by: Shri S.R. Kirtane

Date of Hearing: 26.05.2016
Date of Pronouncement: 03.06.2016

O R D E R

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of the CIT(A)-28, Mumbai dated 19.08.2014 for A.Y. 2010-11.

2. The facts of the case, briefly, are as under: -

2.1 The assessee, an employee of the Kotak Investment Advisors Ltd., having income from salary and other sources, filed his return of income for A.Y. 2010-11 on 28.07.2010 declaring income of ₹1,90,66,894/-. The case was taken up for scrutiny and the assessment was concluded under section 143(3) of the Income Tax Act, 1961 (in short 'the Act')`vide order dated 28.02.2013, wherein the income of the assessee was determined at ₹1,93,06,890/-. This was in view of the addition of ₹2,40,000/- made by the AO on the grounds that the notional interest on deposit of ₹20,00,000/- given by his employer to the landlord for accommodation provided by the employer to the assessee is to be considered as perquisite. On appeal, the CIT(A)-28 dismissed the assessee's appeal for A.Y. 2010-11 vide order dated 19.08.2014, holding that the action of the AO in considering 12% of the amount of deposit of ₹2,40,000/- as perquisite

value, in addition to the perquisite value offered to tax towards the rent free accommodation provided by the employer, is correct and accordingly upheld the order of the Assessing Officer (AO).

3.1.1 Aggrieved by the order of the CIT(A)-28, Mumbai dated 10.08.2014, the assessee has preferred this appeal raising the following ground: -

> *"The Learned CIT(A), failed to appreciate and did not honor the respected Bombay High Court Judgement dated 06.09.2011, in case of CIT-26 versus Shankar Krish Nan that Notional Interest on Deposit given by employer securing rented premises should not be treated as perquisite value, therefore addition of ₹2,40,000/- should be deleted entirely."*

3.1.2 The learned A.R. for the assessee was heard in support of the grounds raised. It was submitted that the facts of the matter are that in the period under consideration the assessee's employer had provided accommodation to the assessee for which the employer paid the landlord an annual rent of ₹2,10,000/- and a security deposit of ₹2,10,000/-. The AO, on perusal of the Form No. 12BA of the employer, was of the view that while the perquisite value of rent paid amounting to ₹20,00,000/- was considered in the hands of the assessee, the security deposit of ₹20,00,000/- was not considered as a perquisite and proceeded to work out the perquisite value thereof at ₹2,40,000/- as per I.T. Rul 3(A)III @12% of the deposit of the deposit of ₹20,00,000/- and added the same to the assessee's income. The learned A.R. contended that this addition is not sustainable in law since this very issue, on similar facts, has been considered and held in favour of the assessee by the Hon'ble Bombay High Court in the case of CIT vs. Shankar Krishnan in ITA NO. 356 of 2010 dated 06.09.2011 wherein the Hon'ble High Court has held that notional interest on deposit given by employer for securing rented premises for use of employee should not be treated as perquisite value. The learned A.R. prayed that since this issue is covered in favour of the assessee by the decision of the Hon'ble Bombay High Court (supra) therefore the addition of ₹2,40,000/- on account of notional interest on deposit of ₹20,00,000/- for securing the rent free premises for its employee, the addition, should be deleted

3.2 Per contra, the learned D.R. supported the impugned order of the authorities below.

3.3.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record, including the judicial decision cited (supra). Admittedly, the assessee's employer, i.e. M/s. Kotak Investment Advisors Ltd., had provided rent free accommodation to assessee for which it paid rent of ₹2,10,000/- and a deposit of ₹20,00,000/-. As per the records in Form No. 12BA, it was seen that the perquisite value of rent paid of ₹2,10,000/- was considered in the hands of the assessee. The authorities below were of the view that the perquisite value of the deposit of ₹20,00,000/- was also to be considered as perquisite and proceeded to value the same notionally @12% of the deposit, i.e. ₹2,40,000/- as exigible to tax in the assessee's hands. The contention of the assessee is that notional interest on deposit of ₹20,00,000/- given by the employer for securing the rented premises for the assessee is not to be treated as a perquisite.

3.3.2 In this regard, we have perused the decision of the Hon'ble Bombay High Court in the case of Shankar Krishnan in ITA No. 3516 of 2010 dated 06.09.2011 and find that the same is rendered on the very same issue on similar facts. The question for consideration by their Lordships therein was as under: -

> *"1. Where an employer takes residential premises on rent by giving security deposit for the benefit of employees, whether the notional interest on such security deposit is liable to be included in the perquisite value of the accommodation given to the assessee employee is the question raised in this appeal?"*

At para 9 thereof the Hon'ble High Court has held that: -

> *"on a plain reading of Rule 3, it is seen that the perquisite value of the residential accommodation provided by the employer shall be the actual amount of lease rent paid or payable by the employer and not on notional basis. Therefore, in our opinion, the contention of the Revenue that the notional interest or deposits paid by the employer to the landlord has to be taken into consideration while computing the perquisite value of the residential accommodation cannot be accepted in view of the express words used in Rule 3 of the Income Tax Rules, 1962 as amended w.e.f. 01.04.2001."*

3.3.3 Respectfully following the above decision of the Hon'ble Bombay High Court in the case of CIT vs. Shankar Krishnan in ITA No. 3516/2010 dated 06.09.2011 (supra), we hold that the contention of the authorities below that notional interest on the deposit of ₹20,00,000/- paid by the employer to the landlord for securing accommodation while computing the perquisite value of the residential accommodation is to be included in the assessee's income is not sustainable in view of the express words used in Rule 3 of the I.T. Rules, 1962 as amended w.e.f. 01.04.2001 and accordingly direct the AO to delete the addition of ₹2,40,000/- made in this regard. Consequently, the assessee's ground of appeal is allowed.

4. In the result, the assessee's appeal for A.Y. 2009-10 is dismissed.

Order pronounced in the open court on 3rd June, 2016.

Sd/-	Sd/-
(Sandeep Gosain)	**(Jason P. Boaz)**
Judicial Member	**Accountant Member**

Mumbai, Dated: 3rd June, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -28, Mumbai*
4. *The CIT - 26, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.