

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai**

**Before Shri C.N. Prasad, Judicial Member
and Shri Rajesh Kumar, Accountant Member**

ITA No. 6143/Mum/2016
(Assessment Year: 2006-07)

Income Tax Officer-16(1)(1) Room No. 436A, 4th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	Shri Ashwin M. Savani 5B Feltham House 10 JN Heredia Road, Ballard Pier, Mumbai 400001
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PAN – AAFPS1656P

Appellant

Respondent

Appellant by: Ms. Neha Thakur
Respondent by: Ms. Rupal Vora

Date of Hearing: 08.10.2018
Date of Pronouncement: 12.10.2018

ORDER

Per Rajesh Kumar, AM

This appeal filed by Revenue is directed against the order of the CIT(A)-4, Mumbai dated 20.07.2016 and it relates to A.Y. 2006-07.

2. The grounds raised by the Revenue are as under: -

- “1) On the facts and circumstances of the case and in law, whether the Ld.CIT(A) was justified in holding that the Indian Millennium Deposit (IMD) bonds would not be taxed in the hands of the assessee without appreciating that the expression "sum of money" as used in Section 56(2) of the Act would also include IMD deposits as they could be converted into cash on redemption.
- 2) On the facts and circumstances of the case and in law, whether the Ld.CIT(A) was justified in holding that the Indian Millennium Deposit (IMD) bonds would not be taxed in the hands of the assessee without appreciating that the expression "sum of money" as used in Section 56(2) of the Act need not be only cash in hand but also those instruments which could easily be converted into cash on redemption.
- 3) On the facts and circumstances of the case and in law, whether the Ld.CIT(A) was justified in relying on the order of Hon'ble ITAT in the case of ACIT Vs. Haresh N. Mehta (ITA No. 6804/Mum/

2010 dt. 31.10.2010) in view of the facts that the said decision is already contested by the Department before the Hon'ble High Court Mumbai on 02.07.2012 vide appeal No. ITXA 1169 of 2012.

4) The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing officer be restored.”

3. The brief facts of the case are that the assessee has received gifts of Indian Millennium Deposit (IMD) bonds from Shri K.L. Narayansa, NRI amounting to US\$2,00,000 on 03.06.2005 and US\$50,000/- on 27.09.2008, respectively. The said IMD bonds were also confirmed by letter No. IMD/2012-13/10 dated 01.08.2012 of State Bank of India, copy of which is on record. The said two IMD bonds were matured on 29.12.2005 and the maturity value including interest was put in the fixed deposit by the assessee in Industrial Bank on 26.04.2007. While verifying the Balance Sheet the AO noticed that there was an increase in the FDR which were added to the income of the assessee under Section 69 of the Act on account of non furnishing of details and evidences during assessment proceedings. The matter travelled up to ITAT and the ITAT set aside this issue to the file of the CIT(A). Therefore this is the second round of appeal. The learned CIT(A) sought a remand report from the AO who have verified the genuineness of the transactions, identity of Shri K.L. Narayansa, veracity of the letter of SBI and remittances of IMD bonds. The learned CIT(A), after considering all the facts and report of the AO and also the decision of the ITAT and various other judgements, deleted the addition of principal amount of ₹1,12,52,500/- and interest of ₹15,72,151/-. Now the Revenue is in appeal before us.

4. At the outset the learned A.R. of the assessee pointed out that the issue stands squarely covered in favour of the assessee by the several decisions of the Coordinate Benches holding that the gift of Indian Millennium Deposit (IMD) bonds is valid gift and therefore the same should be decided by following these decisions. The assessee relied on the following decisions:-

i) ACIT vs. Anju Agarwal, ITA No. 4945/Mum/2008 dated 14.10.2009

- ii) ACIT vs. Harresh N. Mehta, ITA No. 6805/Mum/2010 dated 31.01.2012
- iii) Sharat Kumar Babulal Jain vs. Income Tax Officer, ITA No. 29/Vizag/2011 dated 11.08.2011
- iv) CIT vs. Kasturi and Sons Ltd., Supreme Court dated 06.03.1999
- v) H.H. Sri Rama Verma vs. CIT, 187 ITR 308 (SC)
- vi) Hatkesh Co. Op. Hsg. Society Ltd. vs. ACIT, ITA No. 328 of 2014 and other (Bom) dated 22.08.2016.
- vii) ACIT vs. Anju Jitendra Mehta, ITA No. 6399/Mum/2010 dated 05.09.2012
- viii) ACIT vs. Rohan Jitendra Mehta, ITA No. 6398/Mum/2010 dated 18.04.2012

5. The learned D.R., on the other hand, opposed the contentions raised by the learned A.R. on the ground that the genuineness and identity of the person who gifted the money is not adequately established and moreover the assessee is not in blood relation of the donor. Therefore the order of the CIT(A) should be reversed and the appeal of the revenue should be allowed.

6. We have heard the rival contentions and perused the material on record including the decisions cited by the learned A.R. After perusal of the various case laws cited by the learned A.R. we find that the issue of gift of Indian Millennium Deposit certificate is not taxable in the hands of the assessee who received the same upon gift and also under the terms and conditions as stipulated in the Indian Millennium Deposit Certificate. It was provided that the said certificates can be gifted by NIR/banks only once to any person resident in India but the IMD bonds will be passed on to the donee including the gift for premature encashment. However, non resident only will be entitled to transfer the said IMD certificates. In the case of Shri Sarad Kumar Babulal Jain vs. Income Tax Officer the Coordinate Bench has held as under: -

"7. In the instant case, the assessee has received "IMD Bonds". There cannot be any doubt that "IMD bonds" falls in the category of "Securities". Hence the receipt of securities without adequate consideration, i.e. Gifts in kind, is subjected to tax, only if it is received only on or after 1.10.2009. In the instant case, the impugned

IMD amount has been received by the assessee prior to 1.10.2009. Hence, the provisions of section 56(2)(v), which was invoked by Ld. CIT is not applicable to the impugned transaction. We notice that similar view has been expressed by Mumbai Bench of ITAT in the case of Anuj Agarwal, supra. Hence, the directions issued by Ld. CIT to tax the receipt of IMD Bonds u/s 56(2)(v) of the Act in the instant case do not have legal sanctity and accordingly the said direction is liable to be set aside. Accordingly, we set aside the impugned order of the Ld. CIT on this issue.”

7. Further we also perused various decisions relied upon by the assessee and find that the IMD bonds falls under the category of securities and therefore it does not fall within the meaning of any some of money. We, therefore, after considering the facts of the case of the assessee’s case in the light of the various decisions as cited supra come to the conclusion that the order passed by the CIT(A) is quite reasoned and therefore we do not find any reason to deviate from the same as it has elaborately discussed various case laws and the factual aspect of the matter and the conclusion of the ld CIT(A) appears to be correct. Accordingly we dismiss the appeal of the Revenue.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 12th October, 2018.

Sd/-
(C.N. Prasad)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Mumbai, Dated: 12th October, 2018

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -4, Mumbai
4. The Pr.CIT-16, Mumbai
5. The DR, “A” Bench, ITAT, Mumbai

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.