

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 7184/Mum/2018

(निर्धारण वर्ष / Assessment Year 2007-08)

आयकर अपील सं./ ITA No. 7185/Mum/2018

(निर्धारण वर्ष / Assessment Year 2012-13)

Bindu Sunil Gandhi C62, Om Dariya Mahal, 80, Nepean Sea Road, Mumbai-400 006	Vs.	Asst. Commissioner of Income Tax, Central Circle- 8(3), [Erstwhile ACIT CC- 46) R.M No.659, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 026
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. ACYPG2603D		

अपीलार्थी की ओर से / Appellant by : Shri PK Sasidharan, AR

प्रत्यर्थी की ओर से / Respondent by : Shri SK Bepani, DR

सुनवाई की तारीख / Date of hearing:	23.10.2018
घोषणा की तारीख / Date of pronouncement :	23.10.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These two appeals by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-50, Mumbai [in short CIT(A)], in



appeal Nos. CIT(A)-50/IT-991&992/2013-14 vide dated 22.09.2017. The Assessments were framed by the Asst. Commissioner of Income Tax, Ward-46, Mumbai (in short 'ACIT/ AO') for the A.Ys. 2007-08 & 2012-13 vide order of even date 25.02.2014 under section 153A read with section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these appeals of assessee is against the order of CIT(A) confirming the addition made by AO of Gift received from son of ₹ 13,39,289/- in AY 2007-08 and Gift of ₹ 25,01,074/- in AY 2012-13. For this assessee has raised the identically worded grounds in both the years and the grounds as raised in AY 2012-13 reads as under: -

"1. On the facts and circumstances of case the learned Commissioner of Income tax (Appeals) erred in dismissing the income tax appeal for assessment year 2012-13.

2. On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.25,01 074/- on account of gift received from Mr.Nirav Sunil Gandhi.

3. The Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the donor has made the gift from his bank account outside India and hence his credit worthiness should not have been judged on the basis of the income declared in India."

3. The facts and circumstances are exactly identical in both the years and hence, I will take the facts from AY 2012-13. Briefly stated facts are



ITA no.7184 & 7185/Mum/2018

that during the FY 2011-12 relevant to AY 2012-13 the assessee has received a gift of ₹ 25,01,074/- from her son Shri Nirav Sunil Gandhi. On AO's request the assessee filed copy of gift confirmation along with a copy of foreign inward remittance certificate along with supporting documents. The assessee claimed that her son, Shri Nirav Sunil Gandhi is a resident of Belgium since many years and establish his business in that country. Shri Nirav Sunil Gandhi filed his return of income for AY 2012-13 declaring total income arising out of interest earned from bank deposits in NRI Bank account maintained with Indian Bank amounting to ₹ 7,16,705/-. But it was explained before the AO by the assessee that this gift of ₹ 25,01,074/- has been received from Nirav S Gandhi's account at National bank of Ras A1 Khaimah UAE. The assessee before AO, CIT(A) and now before me filed following documents: -

- “1. Copy of certificate of Foreign Inward remittance from Union Bank of India.*
- 2. Copy of certificate of capital of Mr. Nirav S. Gandhi.*
- 3. Copy of confirmation of gift from Mr. Nirav S. Gandhi.*
- 4. Copy of Union Bank of India statement of the appellant for the year ended 31.03.2012.”*

4. The certificate of foreign inward remittance of Union Bank of India, Nepeansea Road Branch of Mumbai clearly states that the foreign currency amounting to US dollar of 56392.50 equivalent to Indian ₹ of 25,01,571/- is received by the assessee from her son Nirav S Gandhi. This amount was received by assessee on 21.07.2011 and credited in the Union Bank of India at A/c No. 31860201001107 but none of the



authorities below i.e. CIT(A) or the AO accepted this document and held the receipt of this gift amount of ₹ 25,01,074/- as unexplained in term of section 68 of the Act. Aggrieved against the order of CIT(A) assessee is in appeal before Tribunal.

5. I have heard the rival contentions and gone through the facts and circumstances of the case. From the above facts it is clear that the assessee has filed confirmation of foreign inward remittance from Union Bank of India and the amount is transferred from National bank of Ras A1 Khaimah UAE on 21.07.2011. The assessee also produced copy of certificate of capital account of Shri Nirav S Gandhi and copy of confirmation of gift from Nirav S Gandhi along with bank statement of Union Bank of India maintained by assessee in the year ended 31.03.2012. The above facts are clearly shows that the gift received by assessee is explained and Revenue could not contest the facts produced by assessee before me.

6. Similar are the facts in AY 2007-08, wherein the gift received by assessee is amounting to ₹ 13,39,829/-. Hence, taking a consistent view I treat the gift received in both the years as explained and deleted the addition.

7. One more issue raised by assessee in AY 2007-08 i.e. is regarding validity of search assessment under section 153A of the Act. The facts are that the assessee filed its original return of income on 06.07.2007 declaring the receipt of the gift which was accepted by AO as explained while completing the assessment under section 143(3) of the Act vide order dated 31.12.2009. A search in this case was conducted on 11.02.2013 and on that point of time no proceedings were pending before the AO regarding the assessment. According to assessee, there is no incriminating material found during the course of search in respect of this



ITA no.7184 & 7185/Mum/2018

gift and in the absence of any incriminating material the assessment framed under section 153A of the Act is bad in law. I find that the argument of the assessee is quite convincing and covered by the decision of Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 374 ITR 645 (Bom).

8. On this ground also this addition in AY 2007-08 is deleted.

9. **In the result, both, the appeals of assessee are allowed.**

Order pronounced in the open court on 23-10-2018.

आदेश की घोषणा खुले मे दिनांक 23-10-2018 को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 23-10-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI