

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.4981/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2006-07)

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| Ramesh Jhaveri (HUF), SMRUTI Building, 4 th Floor, Plot No.16, Road No.5, JVPD Scheme, Vile Parle (W), Mumbai – 400 056 | बनाम/ Vs. | Income Tax Officer, Range - 21(3)(3), Bandra, Mumbai |
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स्थायी लेखा सं./ PAN :AAAHR4425E

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| अपीलार्थी ओर से / Assessee by | Shri Anuj Kishnadwala |
| प्रत्यर्थी की ओर से/Revenue by | Shri B S Bist |

सुनवाई की तारीख / **Date of Hearing** : **06.09.2016**
घोषणा की तारीख / **Date of Pronouncement** : **22.09.2016**

आदेश / ORDER

PER RAJESH KUMAR, AM

This appeal has been filed by assessee against the order of Commissioner of Income-Tax (Appeals)-32, Mumbai, dated 04.07.2014 for A.Y. 2006-07 on following grounds:

- “1. The learned CIT (A) has erred in law and in facts in confirming the addition of income of Rs.82,39,653/- being gift of India Millennium Deposit received as unexplained credit under section 68 of the I. T. Act, 1961.

2. It is respectfully submitted that proceeds of India Millennium Deposit cash not be brought to tax in the hands of appellant by invoking provisions of Section 56(2)(v) of the I.T. Act, 1961.”
2. The issue raised in this appeal is against the confirming the addition of Rs.82,39,653/- by Id. CIT(A) by upholding the action of the AO of treating the gift of Indian Millennium Deposit (hereinafter called as 'IMD') bond as unexplained credit u/s 68 of the Income Tax Act, 1961 and the Ground No.2 is with regard to raising the issue of India Millennium Deposit cash not be brought to tax in the hands of appellant by invoking provisions of Section 56(2)(v) of the Act.
3. The facts of the case are that the assessee has filed his return of income on 31.10.2006 declaring a total income of Rs.22,168/-. Thereafter the case of the assessee was selected for scrutiny and statutory notices u/s 143(2) and 142(1) were issued and served upon the assessee. The assessee firm derived income from the share of profit from registered firm, short term capital gains and interest. During the course of assessment proceedings, the AO found that the assessee has claimed IMD bonds of Rs.82,39,653/- in the bank account as gift and claimed the same as exempt under the provisions of Section 10(15)(iid)(c) of the Act. The assessee submitted before the Assessing Officer that gift from three persons aggregating to Rs.120 US\$ = Rs.52.81 lakhs in terms of Indian currency was received by the assessee. The said gifts were transferred by the

donors in favour of the assessee vide letter dated 30.9.2005 and these deposits bonds were encashed on 29.12.2005 and maturity proceeds of Rs.82,39,653/- including interest of Rs.28,38,452/- were received i.e. The assessee also submitted before the AO that the said gifts were not taxable under the provisions of section 56(2)(v) of the Act as the language used in the said section is 'any sum of money' and the IMD bonds received by the assessee did not fall within the ambit of 'any sum of money'. As regards the taxability of interest on the IMD Bonds the assessee submitted that the same was exempt u/s 10(15)(iid)(c) of the Act. The assessee also specifically asked by the AO that as to how the gift received in the month of September, 2005 was exempt from tax as the provisions of section 56(2)(v) have undergone changes after September, 2004 i.e. any gift received from non relative is liable to be taxed in the hands of the donee exceeding Rs.25000/- which is received after September, 2004. The AO finally not convinced with the submissions of the assessee as made from time to time during the course of assessment proceedings added Rs.82,39,653/- to the total income of the assessee as unexplained cash credit u/s 68 of the Act by framing the assessment u/s 143(3) of the Act vide order dated 24.10.2008 by assessing the income at Rs.82,61,821/-.

4. The Id. AR vehemently argued that the case of the assessee stands covered in its favour by the decision of the Co-ordinate Bench of the Tribunal

in the case of Nilesh Jhaveri (HUF) V/s ITO in ITA. No. 4980/Mum/2014(AY:2006-07) dated 04.08.2016 and be allowed accordingly.

5. On the other hands, the Id. DR while strongly opposing the arguments of the Id.AR submitted that the provisions of section 56(2)(v) of the Act were amended retrospectively and therefore any gift received from non relative is taxable under the said section. The Id. DR heavily relied on the orders of authorities below.

6. We have carefully considered the rival contentions and perused the materials placed before us including the orders of authorities below. We find that the assessee has received gifts from the following three persons :

| S.No. | Name of donor | IMD Worth in USD | Date of transfer of IMD to donor | Date of receipt of gift of IMD to assessee |
|-------|-----------------|-------------------------|----------------------------------|--|
| 1 | Sunil Gandhi | US\$90,000 | 11.8.2004 | 13.9.2005 |
| 2 | Mitesh Shah | US\$10,000 US\$5,000 | 8.9.2001 8.8.2001 | 27.9.2005 27.9.2005 |
| 3 | Jagdish H Karia | US\$5,000 | 10.7.2001 | 27.9.2005 |

We find that an identical issue has been decided by the Co-ordinate Bench of the Tribunal in the case of Nilesh Jhaveri (HUF) (supra) in another family HUF family of assessee on identical facts, where the Tribunal has decided the issue as under:

"2.2 Matter was carried before the First Appellate Authority, wherein various contentions were mainly raised with regard to IMDs are not any sum of money and further, regarding genuineness of creditor. Assessee

raised various submissions and considering the same, CIT(A) confirmed the order of Assessing Officer.

2.3 Same has been opposed before us on behalf of assessee inter alia submitting that:

- i. Assessee has received IMD as gift of IMD of US\$ 1,00,000/- on 31.08.2004 from Shri Sunil Kumar Khimchand Gandhi and not on 26.09.2005 as alleged by the Assessing Officer.*
- ii. It was submitted that these IMDs were repaid / matured on 29.12.2005 and the assessee received the total amount of Rs.68,66,378/- on maturity of IMDs comprising of principal amount of Rs. 45,00,911/- and interest amount of Rs. 23,65,467/- and that the said amount was claimed as non taxable by the assessee.*
- iii. It was further submitted that the IMD certificate is not "any sum of money" and therefore it would not fall within the ambit of Section 56(2)(v) r.w.s. 2(24)(xiii) of the Act.*
- iv. It was further contended that gifts are genuine as the identity of the donor i.e. Shri Sunil Kumar Khimchand Gandhi was proved through his Indian Passport. It was further submitted that although he resides at Dubai his capacity of giving of US\$1,00,000/- is proved.*
- v. It was further contended that close relationship between donors' family and donee's family was proved by photographs on different family occasions.*
- vi. It was contended that interest amount of Rs. 23,65,467/- is exempt u/s.10(15)(i) of the Act.*
- vii. It was further submitted that the copies of IMDs certificate clearly reveal that the donor was previous holder of IMDs before passing them to the assessee by way of gift.*
- viii. It was also submitted that the donor Shri Sunil Kumar K Gandhi was having annual income of US\$ 15,00,000/- and therefore the gift of US\$ 1,00,000/- to a close family friend was not unusual.*
- ix. The creditworthiness of the donor got proved as the donor was holding IMDs for substantial period. Assessee ultimately contended that the genuineness of these gifts of IMD from close family friends need not be doubted.*
- x. To prove the creditworthiness, assessee had submitted net worth certificate of Shri Sunil Kumar Khimchand Gandhi and affidavit confirming the above facts.*

2.4 In this background, assessee requested to delete addition made by Assessing Officer. To strengthen its contention, Id. Authorized

Representative also relied on the decision of ITAT, Agra Bench (Third Member) in case of Avnish Kumar Singh vs. ITO [2010] 126 ITD 145 (Agra)(TM), wherein third Member observed that in the instant case, following facts were not in dispute:

- (a) the identity of the donor was not in doubt;*
- (b) gift was given by a declaration deed;*
- (c) donor had given an affidavit affirming the making of the gift;*
- (d) there was a confirmation through post of gift per demand draft;*
- (e) affirmation of the assessee in examination on oath recorded by the Assessing Officer;*
- (f) affirmation of the donor in examination on oath recorded;*
- (g) direct reply of the donor to the Assessing Officer confirming the gift;*
- (h) donor was stated to be a friend of the assessee's father;*
- (i) donor was doing some finance business; and*
- (j) source of the gift was the receipt through a cheque of Rs.2,46,000 received by the donor from 'B' Ltd. and a cash amount of Rs.3,500.*

2.5 All these facts establish the fact that a gift was received by assessee and the sources thereof are satisfactorily explainable and proved putting its genuineness beyond doubt. The adverse facts as pointed out by the Accountant Member:

- (i) that the assessee or his father never made any gift of any amount to anybody;*
- (ii) that the gift was not on any occasion or function;*
- (iii) that the donor visited his house one or two times though never beyond the drawing room;*
- (iv) that the donor was a person of low financial status having monthly income of less than Rs.5,000/- and has shown withdrawals from his capital account less than Rs.3,000/- per month;*
- (v) that the donor has no house, no telephone number, no fixed deposit and not any other immovable assets; or that the original deposit by the donor of Rs.1,25,000/- with 'B' Ltd. was not proved, were not so material to hold the gift was not a genuine one or sources thereof unsatisfactory so long as the immediate source of the gift was admittedly established to be from a third party. The donor had appeared in person before the Assessing Officer and confirmed the making of the gift and the reasons which persuaded him to make the gift, he being the friend of the assessee's father who helped him in past.*

Sec. 68 provides for charging the sum credited in assessee's books of account as income of assessee if assessee offers no explanation about the nature and sources of sum so credited or if the explanation offered by assessee thereof was not satisfactory. On the facts and circumstances as narrated above, in my opinion, are such as satisfactorily explains the nature and sources of the credit by way of gift. Therefore, gift could not be said to be credit, the sources of which were not explained satisfactorily. It was a genuine gift and the assessee has proved its sources satisfactory. Therefore, the impugned gift was held genuine and consequently no addition thereof can be made to the income of assessee as income from other sources u/s.68 of the Act held by Third Member.

2.6 In this background, assessee claimed that they had received the gifts totaling to USD1,00,000/- equivalent to approximate Rs.68,66,378/- from one person, namely, Shri Sunil kumar K Gandhi on 31.08.2004 and the said IMDs were encashed by assessee on 29.12.2005 including interest totaling to Rs.68,66,378/-. In regard to issue of taxability of gifts the assessee's main stand has been that section 56(2)(v) of the Act mentions the word "any sum of money" and according to the assessee the gift of IMDs did not fall within the purview "any sum of money". Assessee also claimed that in the instant case the gift was received before 01.09.2004, which was much prior to the insertion of section 56(2)(v) of the Act inserted by the Finance Act w.e.f 01.04.2005. Assessee also filed the copies of certificates of IMDs bearing numbers C151871 to C151875 and C161772 to 161776. In view of this, we hold that gift in question does not fall within the purview of any sum as envisaged in Section 56(2)(v) of the Act.

2.7 Further, Id. Authorized Representative relied on the relevant portion of ITAT in Avinash Kumar Singh (supra) held as under:

"7. When there are two possible views one in favour of the assessee and the other in favour of the Revenue, which view should be accepted is a million dollar question before us. The view in favour of the assessee is fortified with numerous evidences which forms a complete chain of events, as has been discussed above. The occasion of having made this gift has been explained by the donor himself that he was obliged by the father of the donee in the year 1994 during his visit to deity Vaishno Devi when the father of the assessee helped him and his family members. Thus, the occasion and reason for making a gift are also given by the donor, albeit, as

of now these are no longer the requirements of a valid gift in view of recent decision of the Tribunal in Miss Mayawati's case, including the one of this very Bench. The source of gift has also been explained with the help of possible and feasible evidences which are available on the record. Against that are pitted the inferences of learned AO that this is not proved that is not proved and other whys and wherefores. In these circumstances, it would be too harsh and too illogical to decide against the assessee who has produced entire evidences desired, required and insisted on by learned AO and that would result in an illegality and injustice. We have to go by evidences available on the record. The possibilities and realities of life come only thereafter, and when the adverse possibilities are also found to be explained there should be an end of these "possible realities", otherwise no gift would be or can be treated as genuine, as the reality of life, in this era is that even a father would not give a gift to his son. Thus, we are bound by the positive evidences which are available on record and form a complete chain of events. Here, we accept this gift as genuine because the identity and the creditworthiness of the donor have been established on record. The reason for making this gift is also stated and its genuinity stands proved. Entire evidences, which have been referred to above like the declaration of gift, affidavit of donor, direct letter sent to AO, statement on oath both of donor and the donee, proof of source of the draft of Rs. 2,50,000 with further evidence, inter alia, go to prove the claim of the assessee. Therefore, we delete the impugned addition and allow this appeal."

2.8 Nothing contrary was brought to our knowledge. Facts being similar, so, following same reasoning, this issue is decided in favour of assessee.

2.9 Regarding interest, assessee relied on notification u/s.10(15)(i) of the Act which reads as under:

"Section 10(15)(i) of the Income-tax Act, 1961 – Exemptions – Income by way of interest, etc., on bonds, securities – Specification of bonds, securities, etc. issued by Central government.

NOTIFICATION NO. 188/2005 [F.NO. 178/43/2005-IT(A-I)] S.O. 1114(E), DATED 10-8-2005

In exercise of the powers conferred by the sub-clause (i) of clause (15) of section 10 of the Income-tax Act, 1961 (4 of 1961), the central government hereby specifies the India Millennium Deposits, being bank instruments representing foreign currency denominated deposits in the form of Promissory Notes, issued by the State Bank of India, a bank constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955), as deposits/for the purposes of the said sub-clause."

2.10 In view of above, interest in question is exempt. Summing up gift in question does not fall within the ambit of Section 56(2)(v) of the Act and same is exempt as discussed above.

3. In the result, the appeal filed by assessee is allowed as indicated above."

7. We find from the order of co-ordinate Bench, the issue and facts mentioned therein and the issue in hand are identical. Therefore, we are of the considered opinion that the case of the assessee is fully covered by the above said decision. We, respectfully following the same, set aside the order of the Id.CIT(A) and direct the AO to delete the addition.

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

Order pronounced in the open court on 22.9.2016.

Sd
(MAHAVIR SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 22.9.2016

Sr.PS:SRL:

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

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

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai