

**आयकर अपीलीय अधिकरण ,मुंबई न्यायपीठ 'डी', मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI**

सर्वश्री राजेन्द्र, लेखा सदस्य, एवं राम लाल नेगी, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM**

आयकर अपील सं./ITA No.6547/Mum/2011

(निर्धारण वर्ष / Assessment Year: 2003-04)

The Asst. CIT Central Circle-23, Room No. 464, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K.Marg, Mumbai- 400020.	Vs.	Shri. Rikin Barot. B-22,Ashirwad, V.M.Road, Vile Parle (W), Mumbai- 400049.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AENPB9147G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

&

प्रत्याक्षेप सं./C.O.No.259/Mum/2012

(Arising out of ITA 6547/Mum/2011)

(निर्धारण वर्ष / Assessment Year: 2003-04)

Shri. Rikin Barot. B-22,Ashirwad, V.M.Road, Vile Parle (W), Mumbai- 400049.	Vs.	The Asst. CIT Central Circle-23, Room No. 464, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K.Marg, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AENPB9147G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri. B.S.Bist

राजस्व की ओर से /Revenue by : Shri. Vijay Mehta

सुनवाई की तारीख / Date of Hearing : 16/02/2016

घोषणा की तारीख/Date of Pronouncement : .../03/2016

**आदेश / ORDER**

**PER RAM LAL NEGI, JM**

The present appeal has been filed by the revenue against order dated 28/01/2010 passed by the Ld. CIT(Appeals)-40, Mumbai pertaining to the assessment year 2003-04. The assessee has also filed Cross Objection no. 259/Mum/2012 against the aforesaid order along with an application for condonation of delay of 133 days in filing the present cross objection.

**2. ITA No. 6547/Mum/2011 A.Y. 2003-04.**

2.1 The revenue has challenged the impugned order dated 28/01/2010 passed by the Ld. CIT(A) on the following effective ground:-

*“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the amount of Rs. 53,03,678/- as received by the assessee on the pretext of gift was not to be disallowed u/s. 68 of the I.T.Act, 1961 without appreciating the fact that the assessee failed to put forth all such details and evidences to prove that the said transaction was in the nature of gift.”*

2.2 Brief facts of the case are that in a search and seizure action under section 132(1) of the Income Tax Act 1961(in short ‘the Act’) carried out on 19/7/2007, at the premises of the Barot group of assessees, cash, certain documents, jewellery and other valuable articles including backup data pertaining to the group assessees were seized. Assessee was one of the family members of the Barot group. Accordingly a notice under section 153C read with section 153A of the Act was served upon the assessee. In response thereof the assessee filed return of income on

17/12/2008 declaring total income of Rs. 9, 86, 865/-. Notice under section 143(2) of the Act issued on 5/1/2009, was served on the assessee.

2.3 The assessee had shown income from salary, income from house property and income from other sources. On perusal of the details filed by the assessee it was observed that the assessee had received the proceeds of encasement of State bank of India Millennium Deposit-USD (IMD) non-cumulative series amounting to Rs. 53,03,678/- as gift from Mr. Naresh C Makhija and Mr Suresh T Jadhvani. The AO treating the same as unexplained cash credit in the books of assessee added the said amount to the income of the assessee under section 68 of the Act holding that the assessee's claim of receipt of gifts amounting to Rs. 5303678/- are not genuine.

2.4 Aggrieved by the impugned assessment order the assessee challenged the same before the CIT (A), *inter alia* on the ground that the AO has wrongly treated the amount in question as unexplained income under section 68 of the Act. It was argued on behalf of the assessee that IMDs are transferable merely by endorsement and delivery by NRIs and the assessee has submitted all relevant papers, furnished addresses of the donors, their nature of business and relationship with the assessee etc in order to establish the genuineness of the transaction. The learned CIT(A) allowed this ground of appeal holding that as per the terms and conditions, income on IMD is not taxable. Since the State Bank of India has issued the IMDs in question, the gifts in question cannot be called into question.

3. The revenue is in appeal before the Tribunal against the said order of the Learned CIT(A). The sole grievance of the revenue is that the learned CIT(A) has wrongly set aside the findings of the AO with the direction to

treat the gifts in question as genuine and delete the addition of Rs. 53,03,678/-made under section 68 of the Act.

4. Before us the learned DR submitted that the learned CIT (A) has allowed this ground of appeal of the assessee despite the fact that assessee has failed to establish the parameters laid down by the courts to prove the transition of a valid gift. Since the assessee has failed to discharge the onus, the amount in question was certainly required to be treated as unexplained cash under section 68 of the Act. Therefore, the impugned order is erroneous. On the other hand, the learned AR reiterated the stand taken by the assessee before the authorities below and further submitted that the learned CIT(A) has rightly set aside the findings of AO. The cases referred by the AO are not applicable to the present appeal as the facts of the present case are entirely different. The findings of the learned CIT(A) are, therefore, in accordance with the settled law. The learned AR relying on the order of the Kolkata bench of ITAT, passed in *Income Tax Officer versus Sneha Goyal, ITA No/1367/KOL/2010*, for the assessment year 2006-07, dated 11/3.2011, submitted that similar issue has been decided by the Kolkata Bench of ITAT in favour of the assessee and the appellants case is covered by the said decision.

5. We have heard the rival contention and also perused the material placed before us including the decisions/case laws cited by the parties. The learned CIT(A) has set aside the findings of the AO holding that as per the terms and conditions income on IMD is not taxable and the fact that State Bank of India has issued the IMDs in question establishes the holding capacity of the donors, therefore, the gifts in question cannot be called into question, the appellant has submitted all necessary papers to substantiate his claim.

6. The Kolkata Bench of ITAT has decided the similar issue in favour of the assessee in Income tax officer versus Sneha Goyal (supra) holding as under:-

*“Thus, the only issue that is to be decided by us is as to whether the amount of Rs. 34,33,189/- credited in the books of account of the assessee was unexplained in terms of section 68 or not. There is no dispute that the said amount was received by the assessee on redemption of India Millennium Deposit. Copy of the cheque for receiving the said amount from SBI, NRI Branch Mumbai has been furnished by the assessee, available at page 54 of the APB. In this view of the matter, we are of the considered opinion that it cannot be said that the credit of the said amount in the assessee’s books of a/c was not properly explained in terms of section 68 of the Act. Thus, we hold that the amount cannot be added under section 68 of the act. The grounds taken by the revenue are, therefore rejected.”*

7. In our considered view, the facts of the present case are identical to the facts of the aforesaid case. Therefore, respectfully following the decision of the ITAT Kolkata, we hold that the impugned order does not suffer from any legal infirmity to interfere with. Accordingly, we uphold the order of the learned CIT(A) and dismiss this ground of the appeal filed by the revenue .

**2. CO No. 259/Mum/2012 A.Y. 2003-04.**

The assessee has filed the present cross objection against the order of the learned Commissioner of income tax (A) – 40, Mumbai, has raising the following effective grounds of objection:

*“1. On the facts and circumstances of the case and in law, in the absence of any material found in the search relating to this assessee and /or recording of the satisfaction for issuing the notice u/s 153C and also communicating the same to the appellant, the learned CIT (A) erred in confirming the action of the LD. AO of issuing notice u/153C of the Act and passing assessment order under section 143 (3) r.w.s.153C thereafter. The entire proceeding is bad in law and assessment order needs to be quashed.*

*2. On the facts and circumstances of the case and in law, in the absence of any incriminating material found in the search relating to this assessee on the subject of a receipt of gift or any item of income for this year the learner CIT (A) erred in holding that the act does not specify that the documents concerned must be incriminating.”*

2. Since the assessee had already filed an application for condonation of delay of 133 days in filing the present cross objection, the learned AR at the very outset submitted that delay in filing cross objection is neither intentional nor the negligent act but it has happened due to *bona fide* mistake and communication gap between the assessee and the concerned CA. The learned AR relying on the decisions passed in *Collector Land Revenue v. Mst.Katiji & Others* (167 ITR 471), *N. Balakrishnan v. M.Ramamurthy* (1998,7SCC 123) *Sonerao Sadashivrao Patil & Another v. Godawaribai* (1999, 2Mh.L.J. 273) and *Venkatadri Traders Ltd. v. CIT* (248 ITR 681 Mad.) further submitted that in view of the ratio laid down in the aforesaid cases, the application for condonation of delay may be allowed in the interest of justice. After hearing the learned DR, we allowed the application of the assessee and permitted the learned AR to argue the case on merits.

3. The learned AR submitted that since no incrementing material was found during the course of search action and no satisfaction was recorded for issuing notice under section 153C of the Act, the learned CIT(A) has erred in confirming the action of the AO. Relying upon the various judgments/decisions, the learned AR submitted that the assessment order passed under section 143 (3) read with section 153C of the Act is bad in law. On the other hand the learned DR submitted that the learned CIT(A) has given details of documents seized on the basis of which proceedings against the assessee were initiated in its order. The facts of the cases relied upon by the assessee are different from the facts of this case. Therefore, the learned CIT(A) has rightly dismissed this ground of appeal of the assessee.

4. We have heard the rival submissions and perused the material placed before us. We have noticed that the learned CIT(A) has mentioned the details of documents seized during the search and seizure action u/s 132(1) of the Act, on the basis of which the proceedings were initiated. The learned CIT(A) has rightly pointed out that where the assessing officer finds that the seized articles belong to some other person, only then, he is required to send a satisfaction note to the assessing officer having jurisdiction to assess such person. However, in the present case since the assessing officer is the same, his satisfaction cannot be called into question. We, therefore, do not find any legal infirmity in the findings of the learned CIT(A) and uphold the same. This ground of cross objection of the assessee is accordingly dismissed.

5. So far as the second ground is concerned, since the same is connected to the sole ground the revenue's appeal in ITA No 6547/Mum/2011 A.Y. 2003-04, and we have already decided the related issue in favour of the

revenue, in our considered opinion there is no need to adjudicate this issue separately.

6. In the result, the appeal filed by the revenue and the cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 31<sup>st</sup> March, 2016

Sd/- (RAJENDRA) ACCOUNTANT MEMBER	Sd/- (RAM LAL NEGI) JUDICIAL MEMBER
मुंबई Mumbai; दिनांक Dated:31/03/2016	

**आदेश 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
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

*Pramila*