

आयकर अपीलीय अधिकरण, मुंबई ई, न्यायपीठ, मुंबई

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'E' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं

श्री बी.आर. भास्करन, लेखा सदस्य के समक्ष

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

आयकर अपील सं. / **ITA No.6232/MUM/2011**

निर्धारण वर्ष /Assessment Year: 2008-09

Miss Sannidhi C. Patel, C/o. G.P. Mehta & Company CAS, 807, Tulsiani Chambers 212 Nariman Point, Mumbai-400021	Vs.	The Income-tax Officer, Ward 11(1)(4), Aayakar Bhavan, 4 th Floor, M.K.Road, Mumbai-400020
(अपीलार्थी / Appellant)		(प्रत्यर्थी /Respondent)
P.A. NUMBER : AAJPP3244J		

अपीलार्थी की ओर से / Appellant by:	Shri G.P. Mehta
प्रत्यर्थी की ओर से / Respondent by :	Shri Neil Philip

सुनवाई की तारीख / Date of Hearing :	11/12/2014
घोषणा की तारीख / Date of Pronouncement :	17/12/2014

ORDER

PER JOGINDER SINGH, JM:

The assessee is aggrieved by the impugned order dated 12/07/2011 of the ld. First Appellate Authority, Mumbai. The first ground raised pertains to upholding addition of Rs.25 lakh taking recourse to section 56(2)(vi) of the Income Tax Act,

1961(hereinafter the Act). The crux of argument advanced by Shri G.P. Mehta, Id. Counsel for the assessee, is that the Id. First Appellate Authority, without appreciating the fact and the evidences brought on record sustained the impugned addition which is clearly disregarded to the statutory provisions and judicial propositions. On the other hand, Shri Neil Philip, Id. DR, defended the conclusion arrived at in the impugned order.

2. We have considered the rival submissions and perused the material available on record. The facts, in brief are that the assessee, an individual, derives income from salary, capital gains, business and other sources, declared total income of Rs.2,55,870/- in its return filed on 30/03/2009. In response to the notice, issued to the assessee, u/s 143(2) of the Act submitted the details called for alongwith explanation. However, the Assessing Officer made addition of Rs.25,45,513/- to the returned income.

2.1. The assessee was given a sum of Rs.25 lakh by Ustad Zakir Hussain (an eminent Tabla Artist) in pursuance of a general Power of Attorney dated 01st March, 2002, for the purpose of making investment with HSBC Bank, portfolio management scheme on his behalf. The said amount was deposited in bank account number 6882 (Bank of Baroda). The assessee issued a cheque for deposit in HSBC Bank account for investment in portfolio management scheme. The copy of bank pass-book of Ustad Zakir Hussain (SB AC No.6715 with Bank of Baroda) is

available on record (paper book pages 11 to 15) from which is evident that the amount was debited/withdrawn on 09/05/2007 (page-13 of the paper book). Shri Zakir Hussain offered Short Term Capital Gain of Rs.3,11,884/- (page -17 of the paper book showing computation of total income) and by mentioning a note claimed it exempt u/s 10(34) of the Act as dividend received from Indian companies and mutual funds. We further note that during assessment proceedings, the assessee filed her balance sheet with schedule of investment, details of short term capital gain and confirmation from Zakir Hussain confirming that the impugned amount was given to the assessee for making investment on his behalf. However, the ld. Assessing Officer taking recourse to section 56(2)(vi) of the Act made the addition. For better appreciation of facts, we are reproducing hereunder the relevant provision of the Act:

“Section 56(2)(vi): In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income tax under the head “Income from other sources”, namely :- (vi) where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration, by an individual or a Hindu Undivided Family, in any previous year from any person or person’s on or after the 1st day of April, 2006 but before the 1st day of October, 2009, the whole of the aggregate value of such sum;”

We find that section 56 of the Act deals with income from other sources. Sub-clause (vi) to section 56 (2) was inserted by taxation laws (amendment) Act, 2006, with effect from 01/04/2007. The plain reading of the aforementioned statutory provisions reveals that it is intended to tax a receipt of money without consideration. The impugned amount was received by the assessee for making the investment on behalf of Ustad Zakir Hussain, on the basis of Power of Attorney. Clause -3(Power of Attorney) is reproduced hereunder:

“To make investments in my name or on my behalf of any kind whether of deposits (including fixed deposit in a bank), shares, debentures, bonds, stocks etc., issued by any public/private sector undertakings, corporations, companies etc., and also to apply, buy, sell, transfer or otherwise deal with any kind of securities, shares debentures, fixed deposits, stocks bonds etc, on my behalf.”

In the concluding para of the Power of Attorney, it is stated as under:

“And I do hereby agree that all acts, deeds and things lawfully done by aforesaid Attorney, by virtue of power hereby given shall be constituted as acts, deeds and things done by me and I undertake to ratify and confirm the same.”

2.2. If the provisions of the Act and the content of the Power of Attorney are kept in juxtaposition and analyzed then it can be concluded that the mutual funds, purchase and sold by the assessee were made on behalf of Shri Zakir Hussain and there is no evidence to establish that the investment made by the assessee is from the funds of Shri Zakir Hussain as is evident from return of income, balance sheet filed in the case of Ustad Zakir Hussain and the explanation of the assessee was merely brushed aside by the Assessing Officer. No adverse remark has been made by the Assessing Officer in the case of Ustad Zakir Hussain, thus, the adverse observation made in the assessment order is factually incorrect. Rather, the Assessing Officer did not consider the details and evidence filed by the assessee and still if he was having any apprehension regarding the explanation of the assessee nothing prevented him to call for the details from the assessee as well as from Zakir Hussain before resorting to the provisions of section 56(2)(vi) of the Act. Identically, the Hon'ble Punjab & Haryana High Court in the case of CIT vs Saran Pal Singh (HUF) 237 CTR (P & H) 50 held as under:

“The Assessing Officer made addition to the returned income on account of amount received as loan which was treated to be receipt within the meaning of section 56(2)(v) of the act. On appeal, the CIT(A) set aside such addition which was upheld by the Tribunal. The Tribunal observed in para 9 as under:

“Apart from the aforesaid, insofar as the present case is concerned, there is no dispute regarding the nature and source of the impugned unsecured loans. The nature of the amounts having been received as unsecured loans and the sources thereof, is not in doubt. The assessee had also explained that such unsecured loans have been repaid within a short period and the purpose of raising the loans was also explained before the Assessing Officer. The Assessing Officer has not doubted any of the aforesaid features of the transaction but has merely observed that since the unsecured loans were raised free of interest, it constituted receipt of money ‘without consideration’ and therefore he proceeded to invoke section 56(2)(v) of the Act. In our considered opinion, the factum of the assessee being liable to repay the impugned unsecured loans, imbibes the same with characteristics of a liability. Merely because the amount of loan has been raised without involving payment of interest, cannot be seen to have vested the impugned amount with characteristics of an income, within the meaning of section 56(2)(v) of the I.T. Act. The existence of the expression without consideration in section 56(2)(v) cannot distract from the fact that in the impugned case, the sum of money received in question carried a liability of its repayment and the same was not received by the assessee with an absolute unfettered right of possession. Therefore, in the

totality of circumstances of the present case, we find no justification to uphold the stand of the Assessing Officer and the CIT(A) was justified in deleting the impugned addition. Accordingly, the conclusion of the CIT(A), is affirmed”

We have heard learned counsel for the parties.

Learned counsel for the appellant submits that scope of section 56(2) (v) is very wide which included any amount received by the assessee unless the same was covered by the provisio.

We are unable to accept the submission.

The amount contemplated under section 56(2)(v) of the Act cannot include loan which is shown to have been repaid. In the facts and circumstances of the present case, a concurrent finding of fact has been recorded that the amount received was a short term loan which was duly repaid. The said amount cannot be treated as income of the assessee under section 56(2)(V) of the Act. Thus, no substantial question of law arises.”

2.3. If the provisions of the Act, the decision from Hon'ble High Court Punjab & Haryana in Saran Pal Singh (HUF)(supra) are analyzed, there is no doubt about the genuineness of the transaction. The assessee never became the beneficiary of the impugned amount i.e. Rs.25 lakh, thus there is no question of making the addition u/s 56(2)(vi) of the Act. Even otherwise, the amount after liquidating the mutual fund was returned back

(Rs.15,58,368/- on 19/10/210 and Rs.10,37,263/- on 22/03/2011) meaning thereby, the amount was returned back along with profit, consequently, the provision of section 56(2)(vi) is not applicable. This ground of the assessee is, therefore, allowed.

3. So far as, addition of Rs.45,513/-, being estimated ALV of the vacant property, is concerned, after hearing the rival submissions, we find that the assessee was having two properties one at Baroda and other at Pune in her name. The assessee claimed Baroda property as SOP and has shown the property situated at Pune at Rs.8,45,226/- in her balance sheet 31/03/2003. The stand of the Revenue is that, keeping in view, the inflation and steep rise in the property prices, the fair market value of the said property should be much higher. The Assessing Officer on conservative basis took the rateable value at 8% per annum of the investment and thus computed the property income at Rs.45,513/- and taxed the same as 'income from house property'. The assessee has disputed this valuation. Admitted position is that the assessee did not file any municipal valuation of the said property. The assessee has not explained how the valuation is towards higher side. The formula devised by the Revenue is also based upon personal perception, therefore, to put an end to the litigation, as agreed from both sides, the value is reduced to Rs.30,000/- against valuation of Rs.45,513/- done by the Assessing Officer and confirmed by the Id. Commissioner

of Income tax (Appeals), thus, this ground of the assessee is partly allowed.

Finally, appeal of the assessee is partly allowed.

This order was pronounced in the open court in the presence of ld. Representatives from both sides at the conclusion of the hearing on 17/12/2014.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

MUMBAI, DATED - 17/12/2014

Shekhar, P.S./नि.स.

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
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,