

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.1438 OF 2013

The Commissioner of Income Tax II, Pune. ..Appellant.
vs.
Shri. Gautam Balasaheb Ladkat. ..Respondent.

WITH
INCOME TAX APPEAL NO.1439 OF 2013

The Commissioner of Income Tax II, Pune. ..Appellant.
vs.
Smt. Asha Balasaheb Ladkat. ..Respondent.

WITH
INCOME TAX APPEAL NO.1934 OF 2013

The Commissioner of Income Tax II, Pune. ..Appellant.
vs.
Shri. Sameer Balasaheb Ladkat. ..Respondent.

WITH
INCOME TAX APPEAL NO. 2122 OF 2013

The Commissioner of Income tax II Pune. ..Appellant.
vs.
Late Shri. Balasaheb M. Ladkat. ..Respondent.

Mr. Tejveer Singh i/by Padma Divakar for the Appellant in all the appeals.

Mr. J.D.Mistri, Sr. Counsel along with Bimal Bhabhada i/by Apte & Co. for the Respondents.

**CORAM : M.S.SANKLECHA AND
G.S.KULKARNI, JJ.
DATE : 24 AUGUST, 2015**

PC:

In these appeals filed by the revenue, the challenge is to the order dated 30 July 2012 of the Income Tax Appellate Tribunal (Tribunal). The impugned order dismisses the revenue's appeal relating to Assessment Year 2004-05 in respect of the addition made by invoking Section 68 of the Income Tax Act, 1961 (Act) with regard to maturity proceeds of Resurgent India Bonds (RIB) received as gift.

2) The common question which has been pressed by the revenue before us in all the appeals is as under:-

Whether on the facts and circumstances of the case the Tribunal has erred in holding that the amount of Rs.2,00,88,783/- credited in the account of the respondent assessee has been received as maturity proceeds of RIB shown as gifts from unrelated Non Resident India was satisfactorily explained with regard to its nature and source?

3) Briefly, the facts leading to the present dispute is that the respondents- assessee in this case had in the subject assessment year credited maturity proceeds of RIB Bonds which had been received as gifts by them from a NRI living in Dubai, UAE. The bonds were issued in 1998 by State Bank of India for subscription carrying interest at 7.75% p.a. with a maturity period of 5 years.

4) During the subject Assessment Year the respondent assessee had credited in its books the amount of maturity proceeds of RIB Bonds which it had received as gifts in an earlier Assessment Year. The Assessing Officer invoked Section 68 of the Act and credited the entire proceeds on maturity of the RIB Bonds to the income of the respondent-assessee. The Assessing Officer held that the financial capacity and identity of the donor as to make such gift as well as its genuineness was not established. This in-spite of the fact that the respondent assessee had submitted fixed deposit receipts of the NRI donor from various banks as well

as Bank Statements concerning the period in which the subscription to RIB Bonds was made by the NRI donor. So far as the identity of the donor is concerned, the Assessing Officer ignored the affidavit in support of the gift and the copy of the passport. This was on the ground that the donor was not produced before him during the assessment proceedings. So far as the genuineness of the gift is concerned, the Assessing Officer held on the basis of the test of human probabilities that the genuineness of the gift was not acceptable.

5) In appeal, the Commissioner of Income Tax (Appeals) (CIT(A)) made a detailed analysis of the facts and *inter alia* rendered a finding that the financial capacity of the donor was established on having produced bank statement and fixed deposit receipt in the name of the donor. It also found that during the assessment proceedings, the respondents assessee had explained the gift by relying on the affidavit of the donor that he had gifted the RIB Bonds to the respondents- assessee and also a letter from State Bank of India, confirming the transfer of RIB Bonds to the

name of respondent assessee-donee. Besides, the notarized letter written by the donor to the respondents assessee and the declaration of the gifts by donor along with the sworn affidavit of the donor before the Consulate General of Dubai confirming the gift to the respondent assessee. On the analysis of the above facts, the CIT (A) concluded that the respondents- assessee had submitted all basic documents which would establish the gift of RIB Bonds. Besides, reliance was placed upon the decision of Allahabad High Court in the case of **Kanchan Singh vs. CIT 221 CTR 456 (All)** wherein in similar circumstances the concerned gifts of RIB Bonds was held to be valid.

6) On further appeal, the Tribunal by common impugned order upheld the finding of fact arrived at by the CIT (A). This by holding that the identity of the donor was established by copy of the passport of the donor, sworn affidavit executed before the Consulate General of India in Dubai as well as declaration of the gift before the Notary and the transfer document jointly addressed by the donor and the respondents assessee to the State Bank of

India. So far as the capacity of the donor to make a gift to the assessee is concerned, the respondent assessee had produced fixed deposit certificates of the donor with various banks and bank statement at the time of the subscription to the RIB Bonds stood established. So far as the genuineness of the gift is concerned, it held the same stood established by the fact that the RIB Bonds were subscribed to by NRI donor in foreign currency, the transfer of the RIB Bonds by the donor to the respondent assessee was recorded in State Bank of India which was also produced. The impugned order holds that mere non production of the donor before the Assessing Officer will not be sufficient to doubt its genuineness. Besides, after the amendment to the Gift Act the requirement of the donor and the donee being related by blood is not required. Besides reliance was placed upon the decision in Kanchan Singh (supra) to state that one has to examine the source and the capacity of the donor keeping in view the year of subscription to the RIB Bonds. The Tribunal also records the fact that it is settled position of law in the context of Section 68 of the Act, that the assessee is not required to prove the source of its

source of income. Moreover, the impugned order records that the Assessing Officer sought information about the donor's capacity not with regard to the time when RIB Bonds were purchased but the capacity of the donor in the previous year relevant to the Assessment Year under consideration. This itself indicates that the Assessing Officer was applying an incorrect test. In any case, in the case of Kanchan Singh (supra) since the Allahabad High Court has held that capacity to make the gift and its genuineness has to be judged having regard to the year in which RIB bonds were purchased and not at the time when the donor credits the proceeds of its maturity to its account. On the aforesaid facts, the Tribunal upheld the finding of the CIT (A).

7) Mr. Tejveer Singh, learned counsel for the revenue submits that the order of the CIT (A) is perverse inasmuch as the documents filed by the respondent assessee do not establish the capacity of the donor. Besides, the documents sought for namely balance sheet, profit and loss account and income tax return for the previous year relevant to the subject assessment year were not

produced by the respondent assessee. Thus, the findings of both the CIT(A) and the Tribunal are perverse. Further, it is his submission that the decision of the Allahabad High Court in Kanchan Singh (supra) would have no application to the facts of the present case. It is pertinent to note that Mr. Singh made no submissions with regard to the identity of the donor and genuineness of the gift. The challenge is limited before us only to the capacity of the donor.

8) We find that the respondents-assessee had led evidence to establish the capacity of the donor. This was evident from the fixed deposit certificates as well as bank statements pertaining to the period when subscription was made to RIB Bonds by the donor. Insistence on the part of the revenue seeking to examine the financial capacity of the donor in the previous year relevant to the subject assessment year is in the present facts uncalled for, This is so as his present capacity will not determine his capacity at the time of purchase of the RIB Bonds. Two authorities have come to a concurrent finding of fact that the

capacity of the donor to make the gift stands established on the basis of the documents which were placed before the Assessing Officer. This finding of fact with regard to capacity of the donor has not been shown to be perverse. It is pointed out by Mr. Mistri, learned Senior Counsel for the respondent that the revenue could not dispute the concurrent finding of the two authorities that the gift was received from an NRI who had originally subscribed to the RIB Bonds. These bonds were transferable and in fact transferred to the respondent assessee by making a necessary declaration in that regard with the State Bank of India.

9) So far as the other objection of the revenue is concerned that the decision of the Allahabad High Court would have no application to the facts of the present case is not acceptable. The decision in Kanchan Singh (supra) also dealt with gift made of RIB Bonds and it was held therein that capacity of the donor has to be examined with reference to the time when the donor subscribed to RIB Bonds and not its capacity at the time of the maturity of the RIB Bonds.

10) In view of the above discussion, we are of the view that the issue arising for our consideration is essentially a question of fact. Two authorities have reached a concurrent finding of fact on the basis of evidence produced before them that the amount of proceeds on the maturity of RIB Bonds was not hit by Section 68 of the Act. This view is reasonable and possible on the basis of the evidence on record.. Accordingly, no substantial question of law arises for our consideration in the above appeals.

11) Accordingly, appeals are dismissed with no order as to costs.

(G.S.KULKARNI, J.)

(M.S. SANKLECHA, J.)