

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 2471/Del/2014  
AY: 2005-06**

**Baldev Singh,  
Prop. M/s Madaan Plastic Industry,  
A-71, Naraina Industrial Area,  
Phase-I, New Delhi.  
(PAN: AARPS7097L)  
(Appellant)**

**vs DCIT,  
Circle 27(1),  
New Delhi.**

**(Respondent)**

**Appellant by : Shri G.S. Kohli, CA  
Respondent by : Shri S.K. Jain, DR**

**Date of hearing: 9.3.2017  
Date of pronouncement: 8.6.2017**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.**

This appeal has been preferred by the assessee against the order of the Ld. CIT (A)-XXVIII, New Delhi vide dated 12.02.2014 and pertains to assessment year 2005-06.

2. The facts of the case are that the assessee is engaged in the business of manufacturing of PVC Footwear in the name and style of M/s Madan Plastic Industry. The return of income was filed declaring the total income of Rs. 8,49,018/-. The total sales during the year amounted to Rs. 8,39,59,189/- yielding GP ratio of 10.5%. During the course of assessment proceedings, the

Assessing Officer observed that the assessee had claimed an amount of Rs. 1,39,297/- towards Mould Repairs & Maintenance. A perusal of the copies of the ledger account showed that moulds had been shaped into a final product and the Assessing Officer was of the opinion that this pertained to capital expenditure. The Assessing Officer observed that the expenditure was incurred on moulds to change them into a permanent affixture is a capital expenditure, having enduring benefits, and is in the nature of capital asset and, accordingly, the expenses incurred by the assessee to the tune of Rs. 1,39,297/- were added to the income of the assessee. Further, during the year, the assessee had shown gifts received to the tune of Rs. 62,91,297/- and the same was credited to the capital account of the assessee. It was submitted by the assessee that the gift related to the realization of SBI's India Millennium Deposits vide documents executed on 21.07.2004 which was received by the assessee from Shri Subhash Chand, an NRI. However, the Assessing Officer was of the opinion that although the India Millennium Deposit was transferable freely between an NRI and the Indian resident, the assessee had failed to substantiate his claim about the creditworthiness, identity of the

owner and the genuineness of the transaction. The Assessing Officer observed that even though the mode of transfer of the gift was through banking channels, the identity of the person who made the gift, his creditworthiness or any direct nexus between the donor and the donee had not been established. The Assessing Officer proceeded to add back this amount of Rs. 62,91,279 to the income of the assessee u/s 68 of the Income Tax Act, 1961 (hereinafter called the "Act").

2.1 Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who dismissed the assessee's appeal and now, the assessee has approached the ITAT and has raised the following grounds of appeal:-

- "1 (i) That the learned CIT (Appeals) is riot justified both on facts and in law in confirming the addition as made by learned Assessing Officer of Rs.62,91,279/- under s.68 of Income Tax Act 1961.*
- (ii) That the learned CIT (Appeals) is not justified on facts and in law in treating the maturity proceeds of India Millennium Deposit amounting to Rs.62,91,279/- as unexplained and confirming the addition of the same.*
- (iii) That the addition of Rs.62,91,279/- being the maturity proceeds of India Millennium Deposit (i.e. amount of deposit and interest thereupon) is not justified both on facts and in law.*
- (iv) That the addition of Rs.62,91,279/- is without any basis and reasoning and therefore not justified both on facts and in law.*

- (v) *That the provisions of Sec. 68 are not applicable on the facts of the case.*
  - (vi) *That the addition is also not justified even in view of the fact that the investment in India Millennium Deposit was not made in the relevant year.*
  - (vii) *That the learned Assessing Officer never asked the Appellant to produce the person from whom the Appellant received the India Millennium Deposit. On this basis also, the addition is not justified.*
  - (viii) *That the learned CIT (Appeals) has not considered the facts of the case and also explanations as submitted by the assessee.*
- 2 (i) *That the learned CIT (Appeals) is not justified both on facts and in law in confirming the disallowance of Mould Repairs and Maintenance Expenses of Rs. 1,39,297/-.*
- (ii) *That the learned CIT (Appeals) is not justified on facts and in law in confirming the treatment of Mould Repairs and Maintenance Expenses as capital expenditure and accordingly confirming the disallowance.*
- 3 *That the Appellant be allowed to add, alter, amend, modify or withdraw any of the ground(s) of appeal before or at the time of hearing of this appeal.”*

3. The Ld. AR submitted that the assessee had received gift of two certificates of India Millennium Deposit of 50,000/- US\$ on 21.7.2004 which were received from a close family friend Shri Subhash Chand who was an NRI. It was further submitted that the India Millennium Deposits were issued in 2000 and that only the non-resident individuals of Indian nationality or origin were eligible to subscribe to the same. It was submitted that Shri Subhash Chand had subscribed to these deposits in the year

2000 and these certificates were issued on 5.01.2001 and the same were gifted to the assessee on 21<sup>st</sup> July, 2004. Ld. AR also submitted that copies of the certificates, bank certificate confirming the transaction of the gift as well as intimation thereof along with other details were duly submitted before the Assessing Officer at the time of assessment proceedings but the Assessing Officer did not consider the explanation of the assessee to be true and observed that the whole story of the alleged gift from the NRI was a cover up and the entire amount of Rs. 6,29,12,79/- was, in fact, the income of the assessee from undisclosed sources. It was further submitted that the explanation of the assessee was rejected by the Assessing Officer without any basis and reasoning. It was submitted that the identity of the donor was proved by providing copy of the passport of the donor along with affidavit. It was submitted that the creditworthiness of the donor was proved from the fact that the donor had acquired the certificates long back and had gifted the certificates only at a later date. It was also submitted that the Assessing Officer had ignored the documentary evidence in form of certificates from Abu Dhabi Bank and the State Bank of India. Ld. AR also drew

the attention of the Bench to the following documents available in the Paper Book-I:-

- i) Copy of passport of the donor (pages 8-38)
- ii) Affidavit of the donor (pages 29-33)
- iii) Direct reply by the donor to the Assessing Officer through fax – (page 34)
- iv) Certificate from bank – (page 45)

3.1 Ld. Authorised Representative submitted that in view of the evidences submitted before the lower authorities, the genuineness of the gift was amply proved.

3.2 On the second ground relating to disallowance of mould repairs and maintenance expenses, it was submitted that the bills pertained to repairs only. It was also submitted that mould repairs were allowed as an expense item in earlier and subsequent years by the department. Our attention was also drawn to page 48 of the paper book which is a copy of the ledger account of mould repairs and maintenance and also to pages 50 to 102 which were copies of bills paid towards welding charges. It was submitted that a perusal of these evidences would show that most of the mould repairs pertained to welding charges paid

which was a deductible expense and not a capital expense as contended by the Department.

4. In response, the Ld. DR placed reliance on the orders of the authorities below and submitted that the creditworthiness of the donor as well as the assessee's relationship with the donor could not be proved and, therefore, the addition was rightly made.

4.1 It was further submitted that as per order of the Ld. CIT(A), it is not apparent from the ledger account whether the welding charges had been paid for repairs or for new moulds and, therefore, the disallowance on this count was also justified.

5. We have heard the rival submissions and have perused the relevant material on record. As far as the issue of gift said to have been received by the assessee is concerned, it is seen that the AO has held that though the gift was transferred through normal banking channels, the assessee had failed to establish the creditworthiness, genuineness and the identity of the donor and the direct nexus between the donor and the donee.

5.1 The AO has further observed that it has not been established that the assessee had met the donor either before or after receiving the gift and also whether the donor and the donee

knew each other from before. The AO also observed that it has not been established that the bonds were received by the assessee in person or through some other source. The AO has also observed that it has not been established as to whether the assessee and the donor had any business connection. Further, the AO noted that there was no evidence to show that all formalities and banking regulations before making the gifts were followed in right spirit or not. These observations, in our considered opinion, have no relevance to the issue involved.

5.2 Further, as per the AO, the assessee had failed to satisfy the conditions laid down in section 68 of the Act. The AO has further noted that the assessee –

- failed to produce documentary evidence regarding the identity of the person making the gift, his creditworthiness and genuineness.
- failed to provide reason for foreclosure and premature encashment of the Bonds
- failed to provide evidence regarding relationship or circumstances in which the gift was made
- was not the blood relative of the donor



- failed to furnish a gift deed
- failed to file confirmatory letter or correspondence confirming the gifts.

5.3 The Ld. CIT (Appeals) has noted that the assessee had filed an affidavit of Sh. Subash Chand and also a copy of his passport. The Ld. CIT (Appeals) in the impugned order accepted that the identity of the donor may be taken as established. However, he further noted that there was nothing on record to suggest the creditworthiness of the donor, the relationship of the donor with the donee, that the gift was out of natural love and affection, that the donor knew the assessee since a long time, that there was an occasion to give the gift, that there was any *quid pro quo* on part of the assessee, that the donor had given any other gifts to the assessee on any other occasion and that the donor was a long-standing friend of the assessee. The Ld. CIT (Appeals) has further noted that the assessee was unable to produce the donor in spite of repeated opportunities provided by the AO. The Ld. CIT (Appeals) has further observed that the assessee was asked to produce the donor during the first appellate proceedings also but the assessee responded by suggesting that the statement could be recorded either through Skype or through videoconferencing

which, as per the CIT (Appeals), did not have any evidentiary value and, therefore, was not resorted to. The Ld. CIT (Appeals) also observed that the donor was not a member of the assessee's family and nor was there any special occasion to give the gift. The Ld. CIT (Appeals) has also observed that though on the face of it, the documentary evidence was complete but it was beyond comprehension and human probability that a person would gift an amount of Rs. 62 lakhs to even a friend. Thus, on one hand the Ld. CIT (Appeals) accepts that the identity of the donor is established and also mentions, by a passing reference, on page 16 of the impugned order that *on the face of it the appellant has produced all the necessary documentary evidence*, but on the other hand observes that it was beyond comprehension and human probability that a person would gift in amount of Rs. 62 lakhs to even a friend. Thus, the Ld. CIT (Appeals) apparently disbelieves the contention of the assessee on suspicion.

5.4 The ITAT Delhi bench in the case of DCIT versus Anil Kumar in ITA No. 4923/Del/1991 reported in 58 TTJ (DEL) 340 while examining the genuineness of a gift, held in paragraph 6 of the order as under –

*“...We have considered the rival submission and have gone through the material available on record. In this case we find that the assessee had shown a gift from Sh. Mohan Lal Aggarwal. The gift was received by account payee cross cheque drawn on his S.B. account number 22107 in Canara Bank, Agra. The assessee had filed copy of gift tax, dated 29<sup>th</sup> of February, 1988 showing payment of gift. He has filed a confirmatory letter and affidavit. On assessee’s instance the donor was examined under section 131. From his statement it is clear that he has confirmed making of gift in favour of assessee. In his statement he has also mentioned that he had regular source of income from preparing account books and from interest. The gifted amount was deposited in the S.B. account. All these evidence on record show that the burden which lay upon the assessee to prove the genuineness of the gift is discharged. Now the burden shifts on the Department to show material that the gift made was bogus and ingenuine. No material had been brought on record to prove this except raising suspicion that the donor had no permanent source of income. The suspicion howsoever strong it may be cannot be the basis of rejection of assessee’s claim unless it is supported by material on record. It is worthy to note that the identity of the donor, the genuineness of the gift and the capacity of the donor is provided by the assessee. Simply because there is suspicion about the source of*

*income, the evidence cannot be discarded. In our view, we are of the opinion that the evidence provided by the assessee prove the genuineness of the gift and the burden which lay upon the assessee has been discharged....”*

5.5 In CIT versus Ms. Mayawati reported in 243 CTR (Del) 9, the Hon’ble High Court of Delhi held that since all the donors who had made gifts to the assessee had appeared before the Department and submitted affidavits on oath confirming the gifts made by them, citing their old relations with the assessee and proved their capacity to make gifts, said gifts could not be treated as non-genuine simply because there was no occasion for making the gifts or there is no blood relation between the donors and the donee or that the gifts were made by donors by taking loans. The Hon’ble Delhi High Court held that no substantial question of law arose from the order of the Tribunal upholding the order of the CIT (Appeals) deleting the additions on account of the said gifts.

5.6 In CIT versus RS Sibal reported in 269 ITR 429, the Hon’ble Delhi High Court dismissed the appeal of the Department by observing that no question of law much less a substantial question of law arose when the only ground on which the genuineness of the gifts had been doubted was the alleged failure

on the part of the assessee to establish relationship between the donor and the donee.

5.7 Similarly in CIT versus Mrs Sunita Vachani reported in 184 ITR 121, the Hon'ble Delhi High Court held that even though it may be surprising as to how large sums of money are received by a family in India by way of gifts from strangers from abroad, unless there is something more tangible than suspicion, it will be difficult to regard the money received in India from abroad as representing the income of the assessee in India.

5.8 The Hon'ble Allahabad High Court in the case of Kanchan Singh versus CIT reported in 221 CTR 456 held that there was no reason to doubt the genuineness of the gift by K to the assessee. The Hon'ble High Court held that in any view of the matter, the assessee was able to establish the nature and source of the money. The nature and source of the money found deposited in the bank account of the assessee was the maturity amount of four bonds which were purchased by K on 01/10/1998. Therefore, so far as year under consideration was concerned, the nature and source were fully established. The Hon'ble High Court held that there was no evidence to show that the deposit in the bank account was the income from other sources of the assessee

for the year under consideration. The Hon'ble Court went on to hold that amount found deposited in the assessee's bank account in assessment year 2004 – 05 having been explained by the assessee as representing maturity amount of four Resurgent India Bonds purchased by one K, an NRI, on 01/10/1998, and gifted to the assessee on 10/07/1999, could not be added in the hands of the assessee under section 69 of the Act.

5.9 It is seen in the present case that the main thrust of the Department is on the fact that the assessee could not produce the donor, the alleged donor was not a family member of the assessee, the assessee had not given any similar gift to the donor, there was no special occasion to give the gift and that it was beyond comprehension and human probability that a person would gift an amount of Rs. 62 lakhs to even a friend. Thus, the entire case of the Department is apparently built on suspicion only. The ITAT Calcutta Bench in Smt. Bhagwati Devi versus ITO reported in 47 ITD 58, while examining the issue of genuineness of a gift held, *".....the AAC did not decide the issue with an open mind and was perhaps biased that the assessee, a lady, residing in India, could receive a gift of Rs. 1 lakh from a foreign resident out of natural love and affection and also without there being any*

*evidence of social interaction between donor and donee namely, the assessee. It could not be understood as to how and why it was necessary for the donor and the assessee to prove the social interaction between them or for that matter to prove natural love and affection by donor towards donee – assessee. A person may have or develop love and affection for another person instantly and some persons may not even develop love and affection for years together but so far as the validity of a gift is concerned, these are not the considerations which are to be weighed. As per section 122 of Transfer of Property Act, 1882, a gift is complete in respect of existing movable and immovable property when there is a transfer of such property by a person called donor and acceptance of such gift of such property by a person called donee. If these essential conditions are prevalent or satisfied, then the gift is complete and it is not open to challenge until the same is proved to the contrary with cogent and strong evidence which, in the instant case, neither the Assistant Commissioner nor the assessing officer possessed. The donor had categorically stated more than once that he had gifted Rs. 1 lakh to the donee – assessee and had also transferred the money. The donee – assessee had also stated that she had accepted the gift and received the money. Such being the case,*

*there was no reason for the Assistant Commissioner to come to the conclusion that the gift was invalid or not genuine. Apart from expressing his surprise and dissatisfaction over the amount gifted to the assessee, the Assistant Commissioner had not led any iota of evidence to prove that the gift was collusive or a dubious device or a subterfuge to evade tax.....*". Although, this order of ITAT Kolkata was rendered in 1993, the observations of the Bench are still relevant. In the instant case the Ld. CIT (Appeals) has himself accepted that the assessee has produced all the necessary documentary evidence and it is only on the premise of incomprehension and im-probability that the addition made has been sustained. It is undisputed that the assessee has placed on record an affidavit dated 28/11/2007 of the donor which has been disbelieved by the Ld. CIT (A) only on the ground that there was an age gap of seven years between the donor and the donee and, thus, the averment of the donor that the donor and donee were almost of the same age was incorrect. This, in our considered opinion, cannot be a valid ground for discarding the affidavit in its entirety. Further, there is another affidavit on record dated 30/03/2010 of the donor reiterating the averments of the earlier affidavit but this affidavit has not even been



considered by the Ld. CIT (A). Further, the donor has responded directly to the Assessing Officer by sending his confirmation of the transaction through Fax on 23/12/2007 which the Department has not disputed. Further, Abu Dhabi Commercial Bank as well as the SBI NRI Branch both have confirmed that the transaction was through its banking channels. It is also undisputed that the India Millenium Deposits Bonds were in the name of the donor. The Ld. CIT (A) has also mentioned that the donor was not produced either before the AO or before him but he has also accepted the fact that the assessee had offered recording of statement through Skype/video conferencing which was refused by the Ld. CIT (A). In our considered opinion, since, the donor is an NRI, it may be practically impossible for him to travel to India for the recording of a statement and the assessee cannot be made to suffer on that account. The donor has referred in his affidavit to the help extended to the donor's family in his childhood by the father of the donee as a reason for the gift but the Ld. CIT (A) has confirmed the addition on the footing that there was neither any occasion for the gift nor was there any quid pro quo on the part of the assessee- donee. This again, in our opinion, is not a cogent reason for disbelieving the assessee.

Further, the department has not demonstrated with any cogent evidences as to how the contentions of the assessee were incorrect. Thus, it is our considered opinion, that on the facts of the case, the assessee had discharged his onus and the onus was on the department to demonstrate with ample evidence as to why the contentions of the assessee were to be disbelieved. Therefore, on an overall view of the circumstances surrounding the case, we are unable to agree with the findings of the lower authorities and respectfully following the ratio of the various judicial precedents as discussed in the preceding paragraphs, we set aside the order of the Ld. CIT (Appeals) on this issue and direct the AO to delete the addition.

5.10 As far as the second issue relating to disallowance of mould repairs and maintenance is concerned, the assessee has produced copies of invoices/bills of the various amounts debited to the head 'mould repair and maintenance' and it is evident that most of the bills pertain to welding charges. The amounts paid towards welding charges range between Rs. 3000/- and Rs. 12,000/-. The assessee has also produced a copy of the 'Moulds' ledger account under fixed assets which shows purchase of Rs. 1,08,000/- against Bill No. 1264 on 15<sup>th</sup> of June 2004 which has

been duly capitalised by the assessee. The assessee has also filed copies of assessment orders for assessment years 2013 – 14 and 2012 – 13 passed under section 143 (3) of the Income Tax Act, 1961 and has submitted that no such disallowance was made in these respective assessment years. The Ld. authorised representative has also demonstrated before the Bench that the expenses on mould repairs and maintenance for the year ending 31/03/2012 was Rs. 1,06,633/- and for the year ending 31/03/2013 it was Rs. 1,31,714/- which has been accepted by the Department. Therefore, on an overall consideration of the facts of the case we are of the considered opinion that this addition also needs to be deleted as the assessee has been able to demonstrate that these expenses were essentially of revenue in nature and pertained to day to day repairs of the mould and not in the nature of capital expenditure as contended by the Department. Therefore, we set aside the order of the Ld. CIT (Appeals) on this issue also and direct the AO to delete this addition.

6. In the final result the appeal of the assessee stands allowed.

Order pronounced in the open court on 08.06.2017.

Sd/-

**(N. K. SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

DATED: 8<sup>th</sup> JUNE 2017  
'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT 5. DR

ASSTT. REGISTRAR  
ITAT NEW DELHI