

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'E': NEW DELHI)

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
And  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No. 644/DEL/ 2012  
(Assessment Years :2008-09)

ACIT  
Circle-32(1), Room No. 376A,  
C. R. Building, I.P. Estate  
New Delhi

Vs.

Meenakshi Khanna  
16- B, Malcha Marg,  
Chankyapuri  
New Delhi

(APPELLANT)

**PAN: AAAPK3830G**  
(RESPONDENT)

ASSESSEE BY :Shri K. Sampath, Adv  
REVENUE BY : Shri A. S. Awasthi, Sr.DR.

**ORDER**

PER T. S. KAPOOR, AM

This is an appeal filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-XXV, New Delhi dated 17.11.2011 for the assessment year 2008-09. The grounds of appeal taken by Revenue are as under:

“A. Whether Ld. CIT (A) was justified in deleting addition of Rs.39,98,408/- made by the Assessing Officer u/s 56(2) (vi) when the amount received by the assessee was without consideration.

B. Whether Ld. CIT (A) was justified in deleting addition of Rs.39,98,408/- when provisions of section 56 (2) (vi) were clearly applicable in the case of the assessee.

C. Whether Ld. CIT (A) was justified in the deleting addition of Rs.39,98,408/- when the amount received was not from the relative (ex-spouse) of the assessee and hence falls in exceptions to charging of tax.”

2. The brief facts of the case are that the return of income was filed on 23.07.2008 disclosing a total income of Rs.8,15,050/-. The case of the assessee was selected for scrutiny.

3. During the assessment proceedings, the Assessing Officer observed from the bank statement of assessee that there was a credit of Rs.39,98,408.60 equal into Rs.99,093.15US\$. The assessee was asked to submit explanation in respect of aforesaid credit entry to which the assessee replied that the amount was received as alimony due from her husband over a period of time and in support the assessee filed confirmation from Dr. Paul Dax, a national of Germany and ex-husband who has stated as under:

“ MS. Meenakshi Khanna is my ex-wife and that I have sent her US \$ 99,093 during the month of August, 2007.”

4. The Assessing Officer show caused the assessee as to why not the amount received be added to the income of assessee as per provisions of section 56(2) (vi) of the Act. In response, assessee submitted her reply by letter dated 18.10.2010 stating as under:

“This is regarding the amount of 99,093 US \$ received in our saving a/c from US. It is stated that the above said amount received from her ex-husband Dr. Paul Dax for which

confirmation has been given earlier. This amount has been received as alimony from ex-husband as per divorce agreement in August 1990. It is also stated that assessee has never received any amount from her ex-husband earlier.”

5. The Assessing Officer relying upon the provisions of section 56(2) (vi) held that the assessee was not covered under the definition of relative as provided in exceptions to section 56(2) (vi) and, therefore, held the amount received as income taxable under the provisions of section 56(2) (vi).
6. Dissatisfied with the order, the assessee filed appeal before the CIT (A) and submitted various submissions. The CIT (A) after going through the submissions of assessee deleted the addition by holding as under:

“The word consideration has not been defined under the Income Tax Act therefore we need to verify its meaning from the law which govern principles of contract. Consideration has been defined u/s 2(d) of Indian Contract Act which inter-alia reads:-

“That at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.”

In *Currie vs. Misa* (1875) LR 10 EX-153 the consideration was defined as

“A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.”

This definition has been considered by Hon'ble Supreme Court and compared with the definition given in section 2(d) of Contract Act and approved as being practically the same in Chidambara Iyer V. Renga Iyer (1966) 1 SCR 168.

Going by these definitions it cannot be said that the appellant received the money without consideration which is a prerequisite condition for invoking clause (vi) of sub-section (2) of section 56 of the Act because appellant in the facts received the amount against consideration of relinquishing her personal right of claiming monthly maintenance as provided under law. In view of the above of the fact that amount was received against consideration the addition made by Ld. Assessing Officer of the alimony received is deleted.

Proceeding further with the second question "who is spouse" of the individual? The word 'spouse' has not been defined under the Income Tax Act. The word 'spouse' as defined under law lexicon second edition (2001) means a wife or a husband or bride as the case may be. Since the amount was received by the appellant from the husband as condition of separation and the amount was paid by way of alimony only because they were husband and wife and the appellant was spouse person who has paid the amount therefore the payment received amounts to have been received from the spouse of the individual and hence falls within the exception clause of relative. Therefore also clause (vi) of sub-section (2) section 56 is not applicable and amount received will not amount to income u/s 2(24) of Act."

7. Aggrieved, the Revenue is in appeal before us. At the outset, the Ld. Departmental Representative submitted that payments in lieu of divorce were to be made in installments and there was no mention of lump- sum payment in the divorce agreement. He further argued that the divorce was executed in 1990 and the amount was received in the Financial Year 2007-08 in which year the assessee was not a wife of husband as the divorce had

already taken place and, therefore, the amount received by her from him did not fit into the definition of relative as provided in explanation to section 56(2) (vi). Reliance in this respect was placed on the case law of Princes Maheshwari Devi vs. CIT reported in 147 ITR 258 wherein it was held that monthly receipts of alimony were income taxable under the Act.

8. The Ld. AR on the other hand, argued that there was an agreement for custody, separation and divorce on 01.12.1989 and divorce finally took place on 20.04.1990 and till the date of divorce they were husband and wife and money was received pursuant to this agreement and the husband of assessee had agreed to pay this money in installments over a period of time which he did not honour and, therefore, the wife threatened for execution of divorce agreement and her husband, therefore, parted with the amount as full and final settlement in lieu of past monthly non payments and in lieu of future payments. It was further argued that the amount received was not without consideration and rather it contained consideration for extinguishing her right of living with her husband. It was further argued that the amount was a capital receipt and in this respect, the case law of Princes Maheshwari Devi of Pratapgarh vs. CIT (1984) 147 ITR 258 was relied upon.

9. We have heard the rival parties and have gone through the material placed on record. We find that the divorce agreement was though entered in

1989-90 and monthly payments were promised to be paid to the assessee by husband, who did not pay the same and, therefore, the assessee threatened to take legal action against husband who therefore, paid a lump-sum amount for settlement of all her claims against the husband.

10. The Ld. CIT (A) has held that amount was paid by way of alimony only because they were husband and wife and appellant was spouse of the person who has paid the amount and, therefore, payment received from spouse did fall within the definition of relative. The Ld. CIT (A) has also held that the amount was received against consideration of relinquishing her personal right of claiming monthly payments as provided under the divorce agreement. In the case law of Princes Maheshwari Devi relied by both Ld. Departmental Representative and Ld. AR, the Bombay High Court had held monthly payments of alimony as taxable and lump-sum amount of alimony as tax free being capital receipt.

11. In the present case, though the assessee was to receive monthly alimony which was to be taxable in the each year from conclusion of divorce agreement but in this case monthly payments were not received and, therefore, were not offered tax. The receipt by the assessee represents accumulated monthly installments of alimony which has been received by the assessee as a consideration for relinquishing all her past and future

claims. Therefore, we held that there was sufficient consideration in getting this amount and, therefore, section 56(2) (vi) is not applicable. Moreover, if the Revenue's arguments are to be accepted of it being monthly payments liable for tax as per Bombay High Court order, then also the amounts represented by past monthly payments can not be taxed in this year. Therefore, we held that amount was a capital receipt not liable to tax.

In view of the above facts and circumstances, we do not find any infirmity in the orders of CIT (A). Hence, the appeal filed by the Revenue is dismissed.

**Order pronounced in Open Court on      14<sup>th</sup> /06/ 2013**

Sd/-  
(Rajpal Yadav)  
Judicial Member

Sd/-  
(T.S. Kapoor)  
Accountant Member

Dated the      14<sup>th</sup> day of June, 2013  
S.Sinha

Copy forwarded to  
1. APPELLANT  
2. RESPONDENT  
3. CIT  
4. CIT (A)  
5. CIT(ITAT), New Delhi.

AR,ITAT  
NEW DELHI.