

Anil Tibrewala Vs. Ito

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Court : Mumbai

Decided On : Nov-22-2001

Reported in : (2004)89TTJ(Mumbai)24

Appellant : Anil Tibrewala

Respondent : ito

Judgement :

ORDER

D. Manmoham, JM

This appeal filed by the assessee raises several interesting issues.

2. The facts concerning the issues in dispute are briefly stated. During the previous year relevant to the assessment year 1992-93, the assessee claimed to have received gift of Rs. 5,14,000 in foreign exchange from Shri Vinod Goyal, under the Foreign Exchange and Investment in Foreign Exchange Bonds (Immunities and Exemptions) Act, 1991 (hereinafter called 'Immunity Act'). Return of income was filed on 28-10-1992 declaring total income at Rs. 51,939. In the capital account filed alongwith the return of income the assessee has credited amount of gift received under Immunity Act. The income of Rs. 51,939 consists of interest earned from deposits made with the banks, etc. The assessee has enclosed with the return the letter of ANZ Grindlays bank certifying that the assessee received a sum of Rs. 2,56,800 and another sum of Rs. 2,57,200 by

cheque Nos. 734800 and 734797 respectively through Non-resident External Savings bank Account of Mr. Vinod Goel/Ms. Cirila Goel. Copy of declaration (under the Immunity Act, 1991) dated 2-1-1992, given to the Chief Manager, Indian bank was also furnished before the assessing officer.

3. In 1997, the assessing officer received certain information from FERA authorities which highlights that one Shri Sanjeev Goyal, holding Power of Attorney to operate NRE account of Shri Vinod Goyal, was operating the NRE account without following procedure prescribed under FERA. The preliminary investigation conducted by Enforcement Directorate revealed that foreign currency was purchased from local market by Mr. Sanjeev Goyal and exchanged at Thomas Cook and that was credited to NRE account of Mr. Vinod Goel, a Canadian citizen. Mr. Sanjeev Goel arranged for such NRE gifts to about 300 persons involving nearly Rs. 10 crores by collecting the value of NRE cheque amount plus premium at 30 to 35 per cent from the beneficiaries. The assessing officer has received a letter from Dy. DIT (Inv.) Unit-HI, Mumbai and also a letter addressed by Dy. Director, Foreign Exchange Regulation department, alongwith annexures such as statement of Mr. Sanjeev Goel dated 5-10-1994. Based on this information, the assessing officer reopened the assessment under section 148 of the Act. The reasons recorded for re-opening of the assessment are as under :

'13-3-1997'-information has been received from Income Tax Officer (Inv.), (Unit-HI) (c), Mumbai that the assessee has purchased gifts worth Rs. 2,57,200 from Shri Vinod Goel in whose case investigations were conducted by FERA. The assessee's capital account shows a credit of Rs. 5,14,000 being NRE gifts. Since it is alleged that the gifts are purchased ones, there is reason to believe that the assessee has concealed income amounting to Rs. 5, 14,000. Issue notice under section 148 read with section 147 of the Act.' During the course of reassessment proceedings the assessing officer collected details from Indian bank which showed that the assessee had deposited Rs. 2,57,200 on 2-1-1992 and Rs. 2,56,800 on 7-1-1992 and the bank account was opened on 19-12-1991, by depositing cash of Rs. 101. The source of impugned deposits were NRE gifts claimed to have been received by the assessee and that at the end of the period only Rs. 5,927 was left in the account as the balance. 4. In response to the notice issued by the assessing

officer, the assessee stated that the return of income filed on 28-10-1992, may be treated as a return filed under section 148 of the Act. Thereafter notices were issued and the case was heard from time to time and the assessee's statement was recorded under section 131 of the Act on 15-10-1997, wherein the assessee stated that he has never seen Mr. Vinod Goyel and he is not aware of the present address or number of family members of Mr. Vinod Goyel. He further stated that during the relevant point of time his grand father had looked after his financial matters. However, in response to the question as to whether any premium was paid for obtaining the NRE gifts, the assessee stated that no premium was paid to Shri Sanjeev Goel. It was claimed that Mr. Vinod Goel is a friend of his father and thus gifts were received from Mr. Vinod Goel. 5. The assessing officer has taken into consideration the observations of the Hon'ble Bombay High Court in writ petition filed by Mr. Vinod Goel against the Enforcement Directorate wherein the Hon'ble High Court observed that a person having received foreign exchange from NRE account of Mr. Vinod Goel cannot be covered by definition of 'recipient' and cannot thus enjoy any immunity. Applying the ratio of the said decision, the assessing officer observed that the circumstances show that the assessee has not received gift from Mr. Vinod Goel in foreign exchange and hence the assessee is not entitled to immunity under the Immunity Act, 1991. He thus, concluded that the alleged gifts received from Mr. Vinod Goel is not a gift covered by the Immunity Act. He also observed that the assessee had paid for the gift cheque and also paid premium of 30 to 35 per cent to Sanjeev Goel. Thus he added a sum of Rs. 6,93,900 (Rupees 5,14,000 (amount of gift) + Rs. 1,79,900 (premium paid) towards the income from undisclosed source.

6. Aggrieved by the additions made by the assessing officer, the assessee contended that the reassessment is not valid and the additions made by the assessing officer are liable to be deleted. In short, the contention of the assessee was that : .

(a) assessee filed return of income by furnishing all the details with regard to the gifts received from Mr. Vinod Goel and thus the assessee has not concealed particulars of income. Therefore, reopening of assessment is not in accordance with law.

(b) The statement of Mr. Sanjeev Goel was retracted later and in the absence of any further material to prove that the assessee has not received gifts from Mr. Vinod Goel through his NRE account, the assessing officer has no reason to believe that the income has escaped assessment. In other words, reassessment is not permissible on mere reasons to suspect.

(c) The assessee received the gifts under the Immunity Act and hence no inquiry could be commenced with reference to the said remittance under the Income Tax Act, 1961 and thus assessing officer has no jurisdiction to reopen the assessment to make inquiry into such issue. Circular issued by the CBDT also supports the view of the assessee that inquiry regarding the remittance received under the Immunity Act is not permissible under the Income Tax Act.

(d) assessing officer erred in relying upon the statement of a 3rd party, i.e., Mr. Sanjeev Goel, before the Enforcement Director, without appreciating that the said statement was retracted by Mr. Sanjeev Goel.

(e) The assessing officer failed to appreciate that the donor was a close friend of assessee's father and gift was given to the assessee out of true love and affection.

Various case law were cited before the Commissioner (Appeals) in support of the aforementioned contentions.

7. The learned Commissioner (Appeals) considered the issue elaborately. He has extensively considered various judgments relied upon by the assessee and also extracted relevant text of the Immunity Act to highlight that the assessee is not entitled to claim immunity unless he proves that the remittance was in foreign exchange and the same was received from Shri Vinod Goel. In particular, he has quoted the observations of the Honble Bombay High Court in the Review Petition filed by Mr. Vinod Goel, and also observations of the Hon'ble Patna High Court in the case of Kumar Sushil Modi, In re (1999) 104 Taxman 666 (Pat) to hold that immunity is available to a person who has received a gift in foreign exchange by any person resident outside India whereas in the instant case the remittance comprises of Indian rupees converted into foreign exchange and later sent by a non-resident Indian to a person residing in India and thus such gifts are not

protected by the Immunity Act. Consequently, he held that the assessing officer is entitled to probe into the matter and the information available before the assessing officer was held to be sufficient to come to a conclusion that the assessee had concealed particulars of income. Thus, reopening of assessment is valid. He also observed that in the absence of any evidence to show that the transactions were routed through the banking channels of Mr. Vinod Goel/Sanjeev Goel and they had a capacity to give such large scale gifts to more than 300 persons involving nearly a sum of Rs. 10 crores, action of the assessing officer in treating the amount of Rs. 5,14,000 as unexplained income was held to be in accordance with law. Similarly, the addition of Rs. 1,79,900 referable to the premium paid by the assessee to procure gifts was also sustained by the Commissioner (Appeals).

8. Further aggrieved, the assessee is in appeal before us. The assessee filed grounds of appeal running into 9 pages. It was pointed out to the assessee's counsel that the grounds are not in accordance with r. 8 of the Tribunal Rules, 1963. It may be noted that the grounds of, appeal filed before the Tribunal should be concise and it should not include arguments and it should not be narrative. The assessee filed revised grounds of appeal running into 5 pages which are 'without prejudice to the original grounds of appeal'. The learned counsel also filed written submissions captioned as proposition of law running into 11 pages in which detailed submissions were advanced.

9. The learned counsel submitted that the original statement of Mr. Sanjeev Goel was recorded by FERA authority on 5-10-1994 and 6-10-1994 which was retracted by him on 15-10-1994. He also submitted that the details with regard to the amount of gift received under the Immunity Act were attached to the return of income as could be seen from pp. 1 to 21 of the paper book (I). He, therefore, submitted that the assessee has furnished primary material before the assessing officer at the time of filing of original return. Thus, there is no reason to reopen the assessment merely on a statement of Mr. Sanjeev Goel particularly when it was retracted by him later. He also submitted that the assessing officer has no reason to believe that the income has escaped assessment and he also contended that the assessing officer has not furnished the reasons recorded for reopening the assessment and thus it is not known as to whether sufficient reasons were

recorded or not. No doubt FERA authorities blocked the NRE account of Mr. Vinod Goel. The Hon'ble Bombay High Court, in a review petition, remarked that all those who received cheques from the NRE account of Mr. Vinod Goel and were issued show-cause notices by FERA would not be entitled to immunity. Presumably these two factors might have lead the assessing officer to reopen the assessment but the fact remains that the assessee has furnished certain enclosures, issued by ANZ Grindlays Bank, alongwith the original return. He also adverted our attention to p. 53 of the paper book (I) (i.e. letter dated 2-7-1996 addressed by Mr. R.K. Yadav, Assistant Director to the Joint Controller, Exchange Control department, Reserve Bank of India) to submit that after the investigation, Reserve bank of India opined that the balance amount i n the account of assessee is not involved in FERA violations and thus no case was made out against the assessee. He has also taken us through the Immunity Act to submit that no inquiry or investigation is permissible against the recipient under any law, in view of the non-obstante clause in section 3 of the Immunity Act. The assessee is entitled to blanket immunity and no other law can override the immunity provided in the Immunity Act. Consequently, the assessing officer has no right to challenge/investigate the source of the gift received under the Immunity Act. The learned counsel has taken us through the decision of Hon11e Supreme Court in the case of C.S. Rao v. Ashalata S. Guram (1986) 4 SCC 447 (p. 286 of paper book No. 11) and also referred to the case of S.L Corporation (P) Ltd. v. Board of revenue : [1964]4SCR280 (pp. 299, 306, 307 of paper book No. II) to highlight that the expression 'notwithstanding anything contained in any other law' implies that the provision in the Immunity Act will have overriding effect to any other contrary provision that may be found in any other enactment and thus the assessee is entitled to full immunity with regard to the gift received from NRE account. He also relied upon the decision of FERA Board in the case of Ramesh C. M6hta v. Directorate of Enforcement (1999) 104 Taxman 421 (FERAB) (p. 155 of paper book No. I) wherein - the issue regarding the immunity available to the 'recipient' and also Mr. Vinod Goel was considered in detail. The learned counsel. has taken us through the reasons given by the Commissioner (Appeals) to highlight. that certain vital issues were not considered by the Commissioner (Appeals) in coming to the conclusion that the assessee is not entitled to immunity. Adverting our

attention to para 8 of the Commissioner (Appeals)'s order, the learned counsel submitted that the learned Commissioner (Appeals) has laid more stress on the observations of the Hon'ble Patna and Bombay High Courts though the Commissioner (Appeals) admits that the observations therein have no direct application to the facts on hand. The learned Commissioner (Appeals) observed that Mr. Sanjeev Goel had provided details such as the names of the persons from whom he purchased the foreign exchange from the local market, etc., whereas the fact remains that he has not furnished names of any person and thus it is not correct to say that he had provided details. In para 11, the Commissioner (Appeals) referred to a decision of Hon'ble Madras High Court in the case of Augustine v. Directorate of Enforcement, Madras (CMA 658176). The learned counsel submitted that it is for the revenue to show that such case law exists because the citation given by the Commissioner (Appeals) is wrong. Since, the learned Commissioner (Appeals) has relied upon the observations of Madras High Court in the above mentioned case, the learned counsel submitted that in the absence of proof to show that the Hon'ble Madras High Court had made certain observations in that regard, the decision of the learned Commissioner (Appeals) based on such observations cannot be upheld. It may be noted that the learned Commissioner (Appeals) referred to the decision in the case of Augustine v. Directorate of Enforcement (supra) in support of his view that whenever a statement is challenged as having been obtained by unfair and unlawful means, the law cannot presume that it has been so obtained, unless it is shown with evidence that it was not voluntary. The learned counsel also referred to the following observations at p. 29 of the order of the Commissioner (Appeals) to submit that the learned Commissioner (Appeals) erred in holding that, no documents were furnished before the assessing officer relating to gift, the fact remains that all the documents were annexed to the return of income filed in 1992.

'In the appellant's case, however, neither any documents were produced before the assessing officer relating to 'gift' nor were they examined by him. Therefore, Madnani's case is clearly distinguishable.'

The learned counsel referred to p. 140 of paper book (I) to submit that a rectification petition was filed before the Commissioner (Appeals) on 7-2-2000

contending inter alia that the aforementioned observations are factually incorrect because all the documents relating to the gifts were furnished before the assessing officer but no order was passed by the Commissioner (Appeals). He has also referred to the circular of CBDT on this issue (pp. 84 to 86 and 90 of paper book No. I) wherein CBDT assured that no inquiry would be made by the IT authorities with regard to the remittance in foreign exchange received under the Immunity Scheme. The learned counsel submitted that the CBDT having given assurance to the public, in its circular No. 611 dated 30th Sept., 1991, it operates as a promissory estoppel and the departmental authorities are not justified in initiating reassessment proceedings and to make roving inquiries merely on the basis of suspicion and surmises, without having any authentic material on record to show that assessee has not, in fact, received a gift from Mr. Vinod Goel. He also relied upon the decision in the case of UCO bank v. CIT : [1999]237ITR889(SC) in support of his contention that the circulars issued by CBDT are binding on the revenue authorities. With regard to the observations made by the Hon'ble Patna High Court, the learned counsel submitted that the decision in that case was in connection with prosecution matter and there were several distinguishing features and thus it has no application to the case on hand. He further submitted that the observations of the Hon'ble Bombay High Court in Review Petition No. 22/95 (pp. 54 to 75 of the paper book-I) are not applicable to the case on hand. He has taken us through the decision of the Hon'ble Bombay High Court and in particular following observations in para 5 of the judgment

'We are purposely restraining ourselves from expressing any final opinion as it might affect pending adjudication of six show-cause notices. However, prima facie it appears to us that the story put up by the petitioner as to his coming in the country carrying foreign currency, the particulars whereof, the learned counsel Mr. Chinai was hesitant to give, and not approaching the customs counter is not found believable by us. The very idea of not giving particulars of currency which according to the petitioner he had brought in this country is obviously not to jeopardise his possible defence. The petitioner has obviously chosen to suppress all material facts from this court and has sought discretionary reliefs under writ jurisdiction of this Court. Yet we say that the above observation regarding the story of the petitioner being unbelievable is only a prima Facie observation and should

not be taken into consideration at the time of adjudication.'

The learned counsel submitted that the Honble Bombay High Court has not expressed any opinion purposely and hence prima facie observations cannot be taken into consideration for the purpose of adjudication by, the IT Authorities. He has also taken us through para 6 of the said order to highlight the following observations :

'In our opinion, there is no question of either the petitioner or any person claiming to be a recipient from him enjoying any immunity. Thus a person allegedly having received the foreign exchange from him from his NRE account cannot be covered by definition of recipient and cannot thus be held to enjoy any immunity. '

The learned counsel submits that in the wake of the fact that the Hon'ble court refrained to express final opinion on the issue, the aforesaid observations cannot be said to be in relation to the question before them and thus it cannot act as a binding precedent for the IT Authorities. He has also adverted our attention to pp. 116 and 117 of paper book No. I to submit that under section 114 of CPC read with order XLVII of CPC the powers of review are limited and hence the observations in Review Petition unconnected with the matter before them will not carry any binding value. At any rate, the tax authorities are not justified in taking up a single word and to interpret the same out of context. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of CIT v. Sun Engineering (P) Ltd. : [1992]198ITR297(SC) . He also referred to pp. 67 and 118 of the paper book No. I to highlight that the only question before the Hon'ble Bombay High Court was with regard to the justification of FERA authorities in keeping the remaining bank accounts frozen. Thus, the observations of the Hon'ble court were not connected with the matter under review and thus it has no binding value. He has also referred to pp. 82 at 88 Goodyear India Ltd. & Ors. v. State of Haryana & Anr. & State of Maharashtra & Anr. : [1991]188ITR402(SC) and pp. 91 @ 104 (CWT v. Karan Singh & Ors. : [1993]200ITR614(SC) of the paper book-II in support of his contention that a stray sentence of a casual remark cannot be treated as a decision. He also submitted that even the learned Commissioner (Appeals) was not sure as to whether the decisions of the Hon'ble

Bombay High Court or Patna High Court have any direct application, because of the use of the expression 'indirectly', in p. 23 of his order. He also submitted that the learned Commissioner (Appeals) has not given any credence to the fact that the assessee's bank account was de-blocked. He ignored that it is a substantial act which has a bearing on the fact that the assessee is not involved in FERA violation. He has also adverted our attention to p. 53 of paper book No. I (i.e. letter dated 2-7-1996 written by Asstt. Director to Joint Controller, Exchange Control department, RBI) to submit that the FERA has not initiated any proceedings and exonerated the assessee because the assessee was not involved in FERA violations. He thus contended that there is no basis for reopening the assessment. Adverting our attention to pp. 128 and 129 of the paper book-I (written submissions No. 2 filed before the Commissioner (Appeals)) the learned Counsel submitted that though a request was made to furnish the reasons recorded for reopening the assessment, the same were not furnished by the assessing officer. He submitted that under section 148(2) of the Act, it is mandatory to furnish reasons recorded, as otherwise, the assessment order has to be declared null and void. The assessee having not been given a chance to verify the reasons recorded by the assessing officer, it amounts to violation of principles of natural justice. He also contends that the assessment made in absence of any valid notice, is void particularly when the assessee has not violated Foreign Exchange Regulations. Rectification application under section 154 before the Commissioner (Appeals) was preferred and written submissions were filed before the Commissioner (Appeals) to submit that the reasons recorded by the assessing officer before initiating the proceeding were not furnished. The word used in section 148 are reasons to believe and not reasons to suspect and thus mere general averment is not sufficient to reopen the assessment, in the absence of any proof that the assessee received the gift on depositing the cash with Mr. Sanjeev Goel before issuance of cheque. He has also relied upon the following decisions which are given in the written submissions styled as proposition of law :

'(I) Absolute, blanket and total Immunity under Immunities Act, 1991 and no jurisdiction at the entry stage itself:

(1) Sec. 3 of the Remittance of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunities and Exemptions) Act, 1991 originates with a nonobstante clause, which has an overriding and overwhelming effect over all laws for the time being in force.

Reliance placed on (for non-obstante clause)

(a) C.S.R. Rao v. Ashalata S. Guram : [1986]3SCR866 (pp. 286, 288,289 of paper book No. II)

(b) Union of India v. G.M. Kokil & Ors. (1994) Supp SCC 196. (pp. 290, 297 at paper book No. 11)

(c) S.I. Corporation (P) Ltd. v. Board of revenue (supra) (pp. 299, 306, 307 of paper book No. 11) followed in (a) above

(2) Exactly identical facts (only beneficiary different) and it was held that all adjudicating authorities under all Acts are precluded from conducting any investigation/enquiry. Strong, heavy and extensive reliance on this decision (1999) 104 Taxman 421, 431 (supra) (Pg. 155, 165 of paper book No. 1) following its earlier decision in Ramnik H. Karia (Appeal No. 76-77 of 1995) p. 166 of paper book No. I). Other decisions to same effect are

(a) dated 30-6-1987 (pp. 144 to 153 of paper book I)

(b) dated 2-12-1987 (p. 154 of paper book No. I) following (a) above.

(3) In similar vein is the Circular No. 611 dated 30-9-1991 (pp. 84 to 87 of paper book No. I)-Press Release dated 1-10-1991 issued by Min. of Fin. (pp. 87 to 89 of paper book No. 1) in this respect. These are binding on the department. Reliance is placed in this connection on :

(a) Navnitlal C. Javeri v. K.K Sen, Appellate Asstt. Commissioner : [1965]56ITR198(SC) (pp. 250, 255 of paper book No. H).

(b) UCO Bank v. CIT (supra) (pp. 272, 282, 283, 284 of paper book No. II)

(c) Press Release being contemporaneous exposition is also relevant as per KP. Varghese v. Income Tax Officer & An.r. : [1981]131ITR597(SC) .

(4) Object was to attract large inflow of foreign exchange to meet difficult balance of payments situation (Finance Minister's speech (pp. 90-91 of paper book 11 and objects and reasons for introducing this immunities scheme (pp. 76, 77, 80, 162 of paper book No. I).

(5) Immunity is always available to declarant under all circumstances and not others. This is laid down by :

(a) Jamunaprasad V Kanhaiyalal v. CIT : [1981]130ITR244(SC) (pp. 1, 14, 15, 16, 17 of paper book No. H).

(b) Radheshyam Tibrewal v. CIT & Ors. : [1984]145ITR186(SC) (p. 19 of paper book No. 2) following : [1981]130ITR244(SC) (supra) in (a) above.

(c) Mst. Anisa Bano & Ors. v. Income Tax Officer & Ors. : [1989]177ITR368(MP)).

(6) Doctrine of promissory estoppel is also applicable inasmuch as the promisee (the appellant) has already acted finally and irrevocably and status quo ante cannot be restored (Motilal Padinpat Sugar Mills Co. Ltd. v. State of UP & Ors. : [1979]118ITR326(SC)

(II) Even assuming while denying the assessing officer had jurisdiction, the appellant's remittance is in accordance with mode permitted under the Act (pp. 22-27 of paper book No. I). The NRE account has not been declared illegal (Ramesh C. Mehta v. Directorate of Enforcement (supra) (pp. 155 and 164 of paper book No. I). No proceedings have been initiated against Thomas Cook (1999) 104 Taxman 421 (supra) (pp. 155 and 165 of paper book No. I). Consequently, when the foreign exchange tendered by Sanjeev Goel was not declared tainted, the cheques issued from that NRE account will have to be treated in accordance with the Act (1999) 104 Taxman 421 (FERAB) (supra) (pp. 155, 165 of paper book No. I).

Further no action has been taken against Ramesh Parmar who allegedly supplied the foreign exchange to Sanjiv Goel under section 8(1) of FERA (1999) 104 Taxman 421 (FERAB) (supra) (pp. 155, 165 of paper book No. I). FERA proceedings against the appellant have been dropped and accounts refrozen (Asstt. Director's letter dated 2nd July, 1996 p. 53 of paper book No. 1). Similar observations in FERAB's decision dated 30th June, 1987 at pp. 144, 150, 151, 152 of paper book No. I).

(III) Even assuming but not admitting that the remittance is tainted as alleged, the parliament was conscious of this fact, and hence provided the Immunities (Ramesh C. Mehta v. Directorate of Enforcement (supra) (pp. 155, 162 of paper book No. I). Similar observations in Mst. Anisa Bano v. ITO (supra) (pp. 21, 24, 27 of paper book No. II), and the court held that the declarant cannot be called upon to ask the source and taxed on that amount. Please note that FERA proceedings against appellant are dropped (p. 53 of paper book No. I).

Note : The appellant also relies upon the written submission to Commissioner (Appeals) in this connection (pp. 102 to 110 of paper book No. I).

(IV) Sushil Kumar Modi's case (supra) distinguished (p. 384 of paper book No. 2)

(a) Mode of remittance of the appellant is a cheque received from NRE account in India as against and distinguished from direct foreign remittance from abroad in Patria's case

(b) In fact Ramesh Mehta's case has been approved by the Patna High Court wherein Ramnik Karia's decision dated 30-6-1997 which has been followed in 104 TM 421 (supra) has been specifically and categorically held to be correct in law by the Patna High Court (p. 388 of paper book No. 2). It held that in that particular fact situation (FERA Board's decision dated 30-6-1987 which is squarely applicable in the instant case), no other interpretation would have been possible. The appellant heavily and strongly relies on para 3 of the judgment to distinguish Patna's case (p. 388 of paper book No. 2).

(c) In Patria's case facts were yet to be found, whereas in the appellant's case on investigation he has been exonerated (p. 53 of the paper book No. I) :

(d) Huge public money amounting to thousands of crores of rupees have been swindled from Animal Husbandry department and part of the money has been suspected to have gone abroad (p. 391 of paper book No. 2). No such question in appellant's case.

Patria's case concerned itself with prosecution under Indian Penal Code and Prevention of Corruption Act, 1988 which does not enjoy of immunity under section 3 of Immunity Act, 1991 (pp. 390, 391 of paper book No. II).

(f) No FERA proceedings against the instant appellant (p. 53 of paper book No. D.

(V) Mumbai Mgh Court's decision in Reside Petition No. 22 of 1995 distinguished as not applicable.

(a) Limitation of review order set out (pp. 116, 117 of paper book No. I).

(b) When stray observations or sentence cannot be relied upon as ratio decidendi even in a usual binding precedent then these certainly cannot be relied upon in a review order

Reliance is placed on :

(i) CIT v. Sun Engineering (P) Ltd. (supra) word, sentence);

(ii) Goodyear India Ltd. & Ors. v. State of Haryana & Anr. (supra) (pp. 82, 88 of paper book No. II) : What the court actually decides is the ratio not what remotely or even logically follows from it.

(iii) Municipal Committee v. Hazara Singh (1975) SCC 794 (pp. 89, 90 of paper book 11).

IV. CWY v. Karan Singh (supra), (pp. 91, 104 of paper book).

(c) Question before Mumbai High Court concerned itself with blocking/freezing of accounts and not with availability of immunity to declarants (p. 67, of paper book

No. D. The court itself observed that all comments by it are prima facie (p. 72 of paper book No. I) and not a final opinion (purposely restraining ourselves) p. 71 of paper book No. I).

(d) CIT(A)'s himself admits that the said decision only indirectly leads to the conclusion he has reached (p. 23 of Commissioner (Appeals)'s order).

(e) In any event the appellant has been exculpated from FERA violations (p. 53 of paper book No. I).

V. Reasons under section 148(2) nor properly recorded-defects

(i) Process of reasoning not disclosed as how income has escaped assessment WXL India v. Assistant Commissioner : [1995]215ITR295(Guj) at 297 followed in Birla VXL Ltd. v. Assistant Commissioner : [1996]217ITR1(Guj) .

(ii) Vaguely refers to communication from FERA, facts not stated, and only a vague feeling that remittance is allegedly purchased. He wants to investigate truth of allegation and that is not the same thing as recording reasons (Chhugamal Ralpal v. S. P. Chaliha : [1971]79ITR603(SC) (p. 172, 176 of paper book No. 2).

(iii) Mere disclosure of belief without setting out material facts is not sufficient (Income Tax Officer v. Madnani Engg. Works Ltd. (1979) 12 CTR (SC) 144 : (1979) 118 ITR (pp. 211, 216 of paper book No. 2).

(iv) Only general averment, statement of opinion and not a statement of fact, not valid IKCP Ltd. v. ITO : [1984]146ITR284(AP) .

(v) Mere reproduction of the words of the section is not sufficient compliance (Shambhunath Sheo Prasad (1993) 113 CTR (Pat) 1661.

VII In view of proposition VI, no reasons can be said to have been recorded, as mandated by section 148(2), and the assessment in pursuance thereof is null and void:

(a) Morailee Gokuldas Spinning & Weaving Co. Ltd. v. P.N. Bansal & Anr. : [1994]208ITR471(Bom) (pp. 30, 31 of paper book No. II)

(b) N.D. Bhatt v. IBM World Trade Corp. : [1995]216ITR811(Bom) (pp. 47, 53 of paper book No. 11) only recorded reasons can be looked into:

(c) CIT v. Sukhal Ice Cold Storage Co. (1992) 96 ITR 562.

VII. Reopening not valid for following reasons :

(a) Third party's retracted statement under FERA cannot give reason to believe inasmuch as FERA and Income Tax Act operate in different fields. That too a third party's confession which has been retracted (Coca Cola Export Corp. v. ITO & Anr : [1998]231ITR200(SC) (pp. 32, 42, 43, 45, 46 of paper book No. 11).

(b) Does not satisfy conditions precedent regarding reason to believe

(i) Words are 'reason to believe' not 'reason to suspect ITO & Ors. v. Lakhamani Mewal Das : [1976]103ITR437(SC)) (pp. 159, 170 of paper book No. 2), Bhimraj Panna Lal v. CIT (1957) 3 ITR 289 affirmed in Bhimraj Pannalal v. CIT : [1961]41ITR221(SC) (pp. 136, 151 of paper book No. 2).

(ii) Postulates existence of reasons not a purely subjective satisfaction. The form of decision and belief to be formed as not the mind of assessing officer. But there must be distance of reasons to found the belief. Belief must be held in good faith, and not a mere pretence (Calcutta Discount Co. Ltd. v. CIT : [1961]41ITR191(SC) of paper book No. 2). Belief must be of an honest and reasonable person, but not based on gossip, rumour or suspicion (Sheo Nath Singh v. Appellate Assistant Commissioner : [1971]82ITR147(SC) . Vague, indefinite, distant, remote and far fetched information cannot give reason to believe Income Tax Officer v. Lakhmani Mewal Das (supra) (pp. 159, 170 of paper book No. 2).

A retracted admission made by Sanjeev Goel. before FERA cannot satisfy the above sine qua non concerning 'reason to believe' laid down by Courts, and they apply mutatis mutandis to the new amended section 147 (H.E.H. The Nizam's Jewellery Trust v. Asstt. CVVT & Ors. (1998) 145 CTR (AP) 97: (1998) 227 ITR 52) (pp. 217, 224 of paper book No. 11).

(c) Even assuming without admitting that the retracted statement of Sanjeev Goel still holds the field, the admission is too vague and general without specifically naming the appellant in his original statements. The confession, in any view of the matter, cannot be related to the appellant, much less to the amounts allegedly purchased. Consequently, there is no rational connection or live link between the cheques received by the appellant and statement of Sanjiv Goel.

In any event, this general link is too tenuous to provide a sound legal basis for reopening (*ITO v. Lakhmani Mewal Das* (supra)) (pp. 159, 170, 171 of paper book No. II). The Commissioner (Appeals) grossly erred in observing at p. 27 of his order that Sanjiv Goel has provided the names of beneficiaries who have purchased the gifts. In any event he has not named the appellant.

(d) The assessing officer carries only a vague feeling that the appellant has purchased gifts and according to him matter required investigation, and this is not the same as having reason to believe (*Chhugamal Rajpal v. S.P. Chaliha* (supra)) (pp. 172, 176 of paper book No. 11).

(e) The appellant's duty is only to disclose primary facts, and not state the conclusion to be drawn from them. The appellant had attached the declarations and certificate from Indian and ANZ Grindlays Bank with return of income (pp. 17, 18, 19, 20, 21 of the paper book No. I-Return of Income certified by assessing officer). He had disclosed the same in the balance sheet (p. 5 of paper book No. Return of income duly certified by assessing officer). The Commissioner (Appeals) has grossly erred factually in observing at p. No. 29 of his order that the appellant has not produced any documents before assessing officer. (*Calcutta Discount Co. Ltd. v. CIT* (supra) (pp. 113, 118 of paper book No. II)). In fact, immediately after receipt of the Commissioner (Appeals)'s order, the appellant had filed rectification application dated 7-2-2000 (pp. 140 to 143 of the paper book No. I) to the learned Commissioner (Appeals) for rectification of a very fundamental fatal error in assuming that no documents were produced by the appellant inasmuch as such a wrong foundation has led to an erroneous order against the appellant. The learned Commissioner (Appeals) has chosen not to act on it.

(f) Above all, the appellant relies on the written submission set out at pp. 112, 113, 114, 115, 122, 123, 124, 125, 126 and 127 in this connection.

(IX) Phoolchand Balrang Lal v. ITO : [1993]203ITR456(SC) distinguished as inapplicable :

(a) Letter from creditor in that case confessing bogus nature of cash credit was specific, definite and reliable information. No such specific, definite and reliable information is available in appellant's case. The admission of Sanjiv Goel is too general and retracted within 10 days at the earliest opportunity. Information is vague, remote, indefinite and far stretched and therefore decisions in Chhugamal Rajpal v. S.P. Chaliha (supra) (p. 172 of paper book No. 2) and Lakhamani Mewal Das (supra) (p. 159 of paper book No. 2) are more applicable (pp. 468 and 469 of 203 ITR).

(b) No immunity question was involved in : [1993]203ITR456(SC) (supra);

(c) Loan was raised in cash and repaid in cash in : [1993]203ITR456(SC) (supra), whereas in appellant's case these are cheque transactions;

(d) No retraction in : [1993]203ITR456(SC) (supra) as in appellant's case

(e) Loan transaction to be distinguished from remittance;

(f) The court itself construed the circumstances of : [1993]203ITR456(SC) (supra) As 'tell-tale' set out at p. 467 of 203 ITR. The facts were gross, worse and peculiar, unlike the appellant's case (p. 468 of 203 ITR).

(g) The decision in : [1993]203ITR456(SC) (supra) has been effectively distinguished in :

(i) Dhaniral Singh & Co. v. CIT : [1996]218ITR312(Patna) .

(ii) Ranchi Handloom Emporium v. CIT & Ors. : [1999]235ITR604(Patna)

X. Renusagar Power Co. Ltd. v. ITO & Anr. : [1979]117ITR733(All) and (1998) 172 ITR 278 relied upon by Commissioner (Appeals) distinguished as not applicable :

(1) Renusagar Power Co. Ltd. v. ITO & Anr. (supra) relied upon by Commissioner (Appeals) is deemed to be overruled in view of the decision of Supreme Court in Indian and Eastern News Paper Society v. CIT : [1979]119ITR996(SC) , wherein opinion of internal audit party has been held to be not 'information' for reopening and has been followed by Bombay High Court in AIR India vs CIT : [1995]213ITR739(Bom) .

(2) A. China Subbarayudu : [1988]172ITR278(AP) relied upon by the Commissioner (Appeals) is per incuriam in accordance with the principle laid down in YV. Anjaneyulu v. ITO : [1990]182ITR242(AP) , 267, 268 as no decisions laying down well settled propositions have been considered.

(XI) Retracted statement of Sanjeev Goel has no credibility and evidentiary value. Original statement appears at pp. 28 to 47 of paper book No. L Retracted statement at pp. 48 to 52 of paper book No. L

Reliance is placed on decision appearing at Serial Nos. 27 to 36 of paper book No. 2. (pp. 308 to 383 of paper book No. 11). Particularly pp. 314, 318, 323, 325, 333, 335, 339, 340, 346, 347, 349, 350, 360 (statements under FERA retracted; 368, 375, 374, 380, 381).

Further in Nizamuddin v. Directorate of Enforcement (1998) 96 Taxman 408 (FERAB), it has been held that retracted statements under FERA have no value without anything more.

The law has been reaffirmed and reiterated in K.T.M.S. Mohammed v. Union of India (1992) 65 Taxman 130 (SC) also reported in : 1992 CriLJ2781 . At the most retracted statement may be used against Sanjiv Goel, but not the appellant (104 Taxman 421 (FERAB) (pp. 155, 167 of paper book No. I).

XII Barkatali v. Director of Enforcement AIR 1981 Kerala 81 cited by Commissioner (Appeals) at p. 28 of his order concerning retracted statements in fact support's appellant's contentions in XT above, and is not against the appellant and the appellant relies on p. 84 of that report.

XIII. Addition of premium of Rs. 1, 79,900. 00

(i) Without prejudice as per Sanjiv Goel's statement, the alleged premium charges is 10 per cent and not 30 to 35 per cent (p. 43 of paper book No. I).

(iii) Appellant relies upon submission made to Commissioner (Appeals) (pp. 132 to 133 of paper book No. I).

XIV. Additions based on surmise, guess and conjecture, not sustainable

(a) Dhakeshwan Cotton Mills v. CIT (1954) 26 ITR 775 (pp. 225, 232 of paper book No. II).

(b) Lalchand Bhagat Ambicaram v. CIT : [1959]37ITR288(SC) (pp. 235, 246, 247, 248 of paper book No. H).

XIV. All the above contentions are independent and without prejudice to one another.

XV. The appellant craves leave to make further submissions, if necessary.'

10. The learned departmental Representative, on the other hand, submits that the assessing officer had sufficient reasons to believe that the assessee has not received gift from a non-resident Indian. The fact that the assessee claimed to have received a sum of Rs. 5,14,000 as gift from a person whom he never knew or met, proves that the gift is not genuine. He has also submitted that the case law relied upon by the learned Authorised Representative with regard to the scope and ambit of section 147 of the Income Tax Act, in the matter of reopening of assessment proceedings, are distinguishable inasmuch as all those case law pertain to the pre-amended section wherein the onus was on the department to prove that there is information in possession of the assessing officer prior to reopening of assessment. However, the words 'information in possession' are deleted in the amended section because of introduction of section 143(1)(a) of the Act. The revenue has followed a new procedure called as 'file, smile and go' whereby detailed investigation is not carried out while making a regular assessment and thus wider powers are given under the amended section 147 in order to catch habitual/recalcitrant tax evaders. In order to initiate reassessment proceeding the assessing officer should have 'reasons to believe'. The assessing

officer had received information from the Dy. DIT with regard to the foreign exchange violation and investigation carried out with regard to the NRE account of Mr. Vinod Goel and this information is vital to form the opinion that income of the assessee has escaped taxation and the alleged gift was not a genuine gift. The court has no power to look into the adequacy of the information once it is proved that the assessing officer was in possession of vital material to form a prima facie belief that the assessee has not declared true and correct information. In this regard, he relied upon the decision of the Hon'ble Bombay High Court in the case of Raymond Woollen Mills Ltd. v. ITO & Ors. : [1994]207ITR929(Bom) . He also submitted that once the assessing officer has formed a reasonable belief to reopen the assessment, subsequent developments, such as retraction by Mr. Sanjeev Goel, are not relevant. In this regard, he relied upon the following decisions :

(a) Phool Chand Baftang Lal & Anr. v. ITO & Anr. (supra).

(b) Sardar Hamnder Smgh Sehgal & Ors. v. Asstt. CIT & Ors.

(c) ALA Firm v. CIT : [1991]189ITR285(SC)

11. The learned departmental Representative submitted that Mr. Sanjeev Goel. admitted at initial stage that he received cash from the beneficiaries for issuing a check through NRE account and also collected premium for such arrangement. The assessee never said that he never paid it. He only says that he was allowed discount and hence only 10 per cent premium was charged. Thus, it is a clear case of reason to believe. He adverted our attention to p. 132 of the paper book No. I (Written submission No. III) filed before the Commissioner (Appeals) wherein the assessee submitted that the premium cannot exceed 10 per cent.

12. Regarding immunity, the learned departmental Representative contended that in order to enjoy immunity it has to be shown that the assessee received the gift in foreign exchange remitted by an NRI whereas, in the instant case, the facts show that assessee cannot be treated as a 'recipient', within the meaning of the Immunity Act. Adverting our attention to p. 5 of the paper book, the learned departmental Representative submits that the return of income filed by assessee

shows that he has no business income and he has no financial status. It is difficult to believe that he received a gift of Rs. 5 lakhs from an unknown person. The surrounding circumstances and the material gathered by FERA authorities as well as the assessing officer also highlighted that it was not a remittance of foreign exchange but the local cash was converted into foreign exchange and such amount was deposited in the NRE account and given to the assessee and it was a fraudulent transaction. When the assessee's case does not fall within the four corners of immunity scheme, the tax authorities would be justified in making further investigation because the assessee is not entitled to immunity under the Immunity Act. He also submitted that circulars cannot override the provisions of Act and the judicial powers of assessing officer cannot be controlled by any circular, only on administrative matters circular can be issued. In this regard, the learned departmental Representative relied upon the following decisions

(a) State Bank of Travancore v. CIT : [1986]158ITR102(SC)

(b) ALA Firm v. CIT : [1976]102ITR622(Mad)

With regard to the contention of the Authorised Representative that FERA Board exonerated the assessee, the learned departmental Representative contends that under sections 68/69 of the Income Tax Act, IT department is not concerned with the proceedings under FERA because criminal proceedings were not launched against the assessee on that basis. The assessing officer has appreciated the issue as per sections 68/69 of the Act and found that preponderance of probabilities are in favour of the revenue to hold that the gift is not genuine. He also referred to p. 53 of paper book-I to highlight that the amount received in the form of gift was deposited in the bank and transferred to the sister concern and at the end of the period only Rs. 5927 remained in the account and since there is nothing in the bank account the Reserve bank of India de-blocked the account. It may be relevant here to extract the letter dated 2-7-1996 (p. 53 of paper book No. 1) :

'Please refer to this office letter No. T-3/921/B/94(MKA) dated 14th Nov., 1994 requesting you to issue directives under section 73(3) of Foreign Exchange Regulation Act to the Manager Indian Bank, Andheri (W) branch, Borribay, to block

the balance amount in SS A/c No. 23322, 17525 and 24067 of the subject parties with the said bank.

Our investigations have revealed that the balance amount in the account of the parties are not involved in FERA violations.

13. The learned departmental Representative, thus, submits that the above mentioned letter merely shows that the balance amount lying in the bank account was not connected with the remittance through the NRE account

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but there is no finding with regard the amount of Rs. 5,14,000 received by the assessee through NRE account and thus the said letter is not of any help to the assessee. Regarding the observation of the Hon'ble Bombay High Court, the learned departmental Representative adverted our attention to pp. 54, 71 and 73 of the paper book-I to highlight that the court has considered the facts in detail in coming to the conclusion that the parties have chosen to suppress material facts and the material placed before the court indicates that Mr. Vinod Goel has not remitted foreign exchange. In particular, he referred to the observations made in para 6 of the order of the Bombay High Court (pp. 73 and 74 of the paper book-I) which are extracted herein for immediate reference :

'The definition of 'recipient' refers to a person receiving any remittance under Chapter II of the said Immunities Act. However, 'remittance' as defined in section 2(b) means remittance made in foreign exchange by any person resident outside India to a person resident in India, in the form of drafts, traveller's cheques, cheques drawn on banks situated outside India etc. The said definition, in our opinion does not cover a situation which is before us idz. that a foreign citizen entering the country with foreign currency, choosing not to declare the same and depositing the same in a NRE account. As far as the deposit of the said amount supposedly brought by the person is concerned. Dr. Chandrachud, took us through the provisions of the said manual. Rule 7D.5 thereof provides declaration to the customs authority on arrival of any person bringing foreign currency inside the country. Rule 35 of the said Manual provides that where foreign exchange was

brought into country by the tender against declaration Currency Declaration Form (CDF) (as provided in r. 7D.5 of the said Manual), the person thus bringing in the same, is required to be asked to produce CW and the production of CW need not be insisted upon if the tenderer is unable for any reason, to provide it. It would show that in a genuine case where CDF although obtained cannot be produced for a bona fide reason that the said requirement is dispensed with. The case before us cannot by any stretch of imagination be termed as a 'genuine person'. Admittedly CDF was not obtained by the petitioner assuming the story of the petitioner is believed. Therefore, there is no question of the petitioner being unable to produce the CDF as required. In these circumstances, we are unable to agree with Mr. Chinai. In our opinion, there is no question of either the petitioner or any person claiming to be a recipient from him enjoying any immunity. Thus a person allegedly having received the foreign exchange from him from his NRE account cannot be covered by definition of 'recipient' and cannot thus be held to enjoy and immunity.'

The learned departmental Representative submitted that the observations of the Hon'ble Bombay High Court were not out of the context and thus the same are binding on the tax authorities; these observations deserve to be given due weightage by Tribunal. The learned departmental Representative also submitted that the Immunity Scheme was not introduced to allow an assessee to carry on illegal activities and court cannot remain silent spectator to such activities if the facts prima facie show that the parties to the transaction have entered into illegal activities by giving it a colour of gift. The intention of the legislature under the Immunity Act was to earn foreign exchange which was misused by the parties and in such case the Courts have the power to investigate the truth of the matter. In this regard the learned departmental Representative relied upon the following decisions :

(a) Workmen of Associated Rubber Industry Ltd. v. Associated Rubber Industry Ltd. & Anr. : (1986)ILLJ142SC

(b) McDowell & Co. Ltd. vs, CTO : [1985]154ITR148(SC)

He also taken us through the detailed order of the Commissioner (Appeals) and strongly relied upon the same.

14. Joining the issue, the learned Authorised Representative contended that the retraction by Mr. Sanjeev Goel was not a subsequent event. Before reopening of the assessment Mr. Sanjeev Goel. retracted his statement and thus the departmental Representative was not correct in contending that the assessing officer has reasons to believe that the assessee has not disclosed the correct income, based on the original statement of Mr. Sanjeev Goel. He further submitted that the court has power/discretion to go into the weight or sufficiency of reasons. Adverting our attention to p. 123 of the paper book No. 2, the learned counsel submits that the Hon'ble Supreme Court observed that though sufficiency of reasons cannot be gone into, existence of reasons should be verified by the Court. He further submitted that the circulars are binding on the revenue authorities and the earlier decisions of the Hon'ble Supreme Court were overruled by the later decision and in this regard he referred to the case of UCO Bank v. CIT (supra). He also submitted that the decisions cited by the learned departmental Representative are distinguishable on facts.

15. We have carefully considered the rival submissions and perused the record. The main contention of the assessee is that the assessing officer has assumed jurisdiction under section 147 of the Act without having sufficient material on record to come to the conclusion that the assessee has concealed particulars of his income. In other words, the assessing officer has to prove that he has 'reasons to believe' that the income earned by the assessee has escaped assessment which necessitates reopening of assessment. The other important contention urged by the learned Authorised Representative is that the assessee is entitled to immunity under the Immunity Act and IT department having issued a circular assuring such immunity, it has no jurisdiction to probe into the matter, particularly in the reassessment proceedings.

16. In our considered view the assessee's case deserves to be accepted. Admittedly, the assessing officer has received the letter of Dy. DIT (Inv.), Mumbai alongwith annexures such as the first statement of Mr. Sanjeev Goel, the letter

from Foreign Exchange Regulation Authorities etc. Though Mr. Sanjeev Goel. Has made a general statement that the cheques were issued to the beneficiaries by charging the amount equivalent to NRE cheque plus premium, there is no whisper as to whether the cheque issued to the assessee herein was also of such nature or not. It is also worth nothing that Mr. Sanjeev Goel has retracted his statement on 15th Oct., 1994, i.e., ten days after original statement was recorded by FERA. It is also worthwhile noting that the assessee has furnished the basic details with regard to the gift received from Mr. Vinod Goel which prima facie show that the assessee is entitled to immunity under the Act. Unless there is sufficient material to prove that the gift received by the assessee was not a remittance by Mr. Vinod Goel in foreign exchange, it cannot be concluded that the gift given to the assessee also did not satisfy the conditions laid down in the Immunity Act. The amended section 147 no doubt gives wider powers to the assessing officer in the matter of reopening of reassessment. The expression 'reason to believe' cannot however be interpreted to mean reasons to suspect. There should be a reasonable basis to believe that the income chargeable to tax has escaped assessment. The assessee has not earned income from any other source except the interest income. It is not the case of the revenue that he has any income generating activity from which income was earned and the same has escaped assessment. In 1997, when the assessing officer initiated the reassessment proceedings, Mr. Sanjeev Goel having retracted his earlier statement the assessing officer could not have merely based on his first statement without any other supporting material to reopen the assessment. At the stage when the reasons were recorded for reopening the assessment the assessing officer had no material to prima facie show that gift given to the assessee was also not genuine. Neither the first statement of Mr. Sanjeev Goel nor the letter of FERA authorities pinpoint that the gift received by assessee is not genuine. In the case of Coca Cola Export Corpn. v. ITO (supra) the Hon'ble Supreme Court observed that the decision taken by different departments exercising powers under different enactments cannot constitute information to the Income Tax Officer for the purposes of reopening assessment to give him a reason to believe that income chargeable to tax had escaped assessment. In circular No. 611 dated 30th Sept., 1991, the CBDT assured in paras 2, 5 and 7 of its said notification and also in

reply to question No. 1 and 2 as under :

'2. Apprehension has been expressed in some quarters that the IT department would prejudicially view the remittances received under the remittances in Foreign Exchange (Immunities) Scheme, 1991, and the gift of India Development Bonds from an overseas subscribers/holder. Fears have been expressed of hardship to recipient of remittances and donees of the India Development Bonds at the hands of the assessing officer during the course of assessment for the assessment year 1992-93 and subsequent years.

5. Similar immunities and exemptions are provided under section 6 and 7 of the Act in relation to non-resident Indians or overseas corporate bodies owning the foreign exchange bonds and persons resident in India to whom the said bonds have been gifted by non resident Indians or overseas corporate bodies.

7. The relevant provisions of the Act, as briefly explained above, make it very clear that the assessing officer, in any proceedings under the direct tax laws, will not make any enquiry with regard to remittances in foreign exchange received under the Remittances in Foreign Exchange (Immunities)- Scheme, 1991, or gift of any India Development Bond from a non-resident Indian/overseas corporate body. There should, therefore, be no apprehension of any prejudice against the persons in receipt of remittances under the scheme or donees of India Development Bonds. There should also be no fear of any harassment by the tax authorities.

'Question No. 1-Sec. 3(1)(a) of the Act provides that the nature and source of the remittances need not be disclosed by the recipient. However, can the tax authorities at any stage contend that the remittance is in the nature of gift as defined in section 2 of the GT Act, 1958, and liable to tax under that Act

Ans.-Sec. 3(1)(b) of the Act provides that no inquiry or investigation will be commenced under any law against the person in receipt of any remittance in foreign exchange in accordance with the scheme notified for this purpose, viz., the Remittances in Foreign Exchange (Immunities) Scheme, 1991. Accordingly, it is not possible for any tax authority to contend, at any time, that the remittance was a gift and initiate proceeding under the GT Act, 1958.

Question No. 2-Whether the non-resident donor of any India Development Bond will be exempt from gift-tax?

Ans.-Yes, the non-resident donor will be exempt from gift-tax. Sec. 6(1)(a) of the Act provides that the non-resident Indian or the overseas corporate body owning the Bonds as well as the person resident in India to whom a gift of such Bond is made, will not be required to disclose the source of the investment in such Bonds. For the reason, and in view of the specific provision in section 6(1)(b) of the Act barring any inquiry or investigation under the direct tax laws merely on the ground of owning such Bonds, the tax authorities cannot initiate any proceedings for levy of gift-tax on the non-resident owner of such Bonds.'

In the light of the decision of the Hon'ble Supreme Court in the case of UCO bank (supra), the circulars issued by the CBDT are binding on the department and unless there is positive evidence to show that the assessee's case is not covered by the Immunity Act, reopening is not permissible under section 148 of the Act. The order of the Hon'ble Bombay High Court in the review petition and other material which were considered by the tax authorities would only prima facie show that the remittance of gift was not in convertible foreign exchange but the court has made it clear that the views expressed in the said order should not prejudice the proceedings pending in any forum, which implies that the observations of the Hon'ble High Court cannot be made a basis to reopen the assessment. Under these circumstances, we are of the View that the tax authorities are bound by the circulars issued by the CBDT and unless there is sufficient evidence to show that the assessee is not entitled to immunity, reopening is not permissible in the case of a gift covered under the Immunity Scheme. We, therefore, hold that the reopening is bad in law in the instant case. We, therefore, quash the order passed by the assessing officer. The learned Commissioner (Appeals) as well as learned departmental Representative heavily relied upon the decision of the Hon'ble Supreme Court in the case of Phoolchand Balrang Lal v. ITO (supra), wherein it was held that if the assessing officer had sufficient information to show that the conclusion reached earlier is wrong and the assessee has not furnished true and correct particulars at the time of filing the original return, reassessment is permissible. However, in the instant case, the assessing officer had no reasons at

all to come to the conclusion that the assessee has concealed particulars of his income, except mere suspicion based on the statement of Mr. Sanjeev Goel which was retracted within a fortnight and there is no other material to indicate that the assessee has given the money to Mr. Sanjeev Goel alongwith the premium which was converted into traveller's cheques and deposited in NRE account so as to give gift cheques to the assessee. In coming to the conclusion that the reassessment is bad in law, we have taken special note of the intention of the legislature and the circular issued by the CBDT which states that the inquiry is barred with regard to the source of the gift etc., so long as basic material is furnished on record. 17. In the result, we set aside the order of the Commissioner (Appeals) and quash the order passed by the assessing officer. Since we hold that the assessing officer has no jurisdiction to reopen the assessment proceedings, it is not necessary to go into other issues which were argued by both the parties at length, as they are merely academic. 18. In the result, the appeal filed by the assessee is allowed.