

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
 (समक्ष)Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)  
 [Before Shri A. T. Varkey, JM & Shri M.Balaganesh, AM]

**I.T.A. No. 914/Kol/2016**  
**Assessment Year: 2005-06**

Assistant Commissioner of Income-tax, Circle-37, Kolkata.	Vs.	Shri J. K. Modi (PAN: AEXPM8911M)
Appellant		Respondent

Date of Hearing	27.02.2018
Date of Pronouncement	11.05.2018
For the Appellant	Shri S. Dasgupta, Addl. CIT, DR
For the Respondent	Shri Miraj D. Shah, AR

**ORDER**

**Per Shri A.T.Varkey, JM**

The appeal filed by the revenue is against the order of Ld. CIT(A)-6, Kolkata dated 23.02.2016 for AY 2005-06.

2. The main grievance of the revenue is against the action of the Ld. CIT (A) in annulling the order passed by the ITO, Ward-22(4) New Delhi on 11.12.2007 of an order passed u/s. 144 against the assessee.

3. Brief facts of the case are that the assessee for the AY 2005-06 had filed the return of income at Calcutta on 29.10.2005 disclosing total income of Rs.1,20,000/-. Later the case was taken up for scrutiny by the ACIT, CCXXVIII, Kolkata wherein certain additions were made by the AO on 29.12.2006 which was challenged by the assessee before the Ld. CIT (A), Central-1, Kolkata who was pleased to give partial relief to the assessee by order dated 30.04.2007.

4. Thereafter, the ITO, Wd-22(4) and DAO 42, New Delhi issued notice u/s. 142(1) dated 20.09.2007 asking the assessee to file return of income and another notice u/s. 142(1) along with letter dated 22.10.2017 was issued to the assessee calling for the explanation of source of investment made for the purchase of property of Rs. 54 lacs and in mutual fund of Rs.31,25,959/- during the period 01.04.2004 to 31.03.2005. According to ITO, Wd-22(4), New Delhi since there was no compliance from the part of assessee, the AO assessed the said amount of Rs.85,25,959/- as the income from undisclosed source u/s. 69 of the Act vide order dated 11.12.2007.

5. Aggrieved by the aforesaid action of ITO, Wd-22(4), New Delhi, the assessee preferred an appeal on 13.01.2008 before the Ld. CIT(A)-XXIII, New Delhi which was transferred to Ld. CIT (A)-2, Kolkata, which was again transferred to Ld. CIT-6. In the impugned order of Ld. CIT(A)-6, Kolkata, the Ld. CIT (A) notes that in pursuance of the order no. 6 dated 15.12.2015 of 2015 under sub sections (1), (2) and (3) of sec. 120 of the Act the Ld. Principal CCIT, WB & Sikkim transferred this appeal from the office of the Ld. CIT (A)-II, Kolkata to Ld. CIT (A)-6. The Ld. CIT (A) notes that ITNS 51 was issued to the AO on 18.09.2008. The Ld. CIT (A)-6 in the impugned order dated 23.02.2016 takes note that Ld. CIT (A)-IV who had jurisdiction over the case when the assessee furnished written submission dated 27.10.2013 had remanded the matter for verification to the ACIT, Central Circle-XXVIII specifically with reference to the investment aggregating to Rs.85,25,959/- (for land and mutual fund) vide letter no. CIT (A)-VI/Kolkata/Remand/2013-14/592 dated 16.01.2014.

6. The Ld. CIT (A) notes that the AO had furnished the remand report vide letter no. ITO, Ward-39(2) remand report/14-15/14-15/33 dated 29.04.2014 stating in respect of the investment in the units of Tata Mutual Fund that the AIR information showed that investment worth Rs.31,25,959/- was made on 29.07.2004 and that the Ld. A.R of the assessee furnished documents dated 29.07.2004 regarding switch-into (purchase of) units of Tata Floating Rate Fund Short Term Growth of amount of Rs.31,25,959/-. Thus, the Ld. CIT (A) notes that in respect to the investment for mutual funds, the AO did not report any adverse finding. As regards the purchase of land worth Rs. 54 lacs the AO in the remand

report stated that though the AR submitted before him many bank transactions regarding loans given to M/s. Dalmia & Sons and M/s. Avis Tie-up Pvt. Ltd. and the loans taken from the same company, however, according to AO, source could not be ascertained. The Ld. CIT (A) after going through the evidence furnished by the assessee in respect to the source of Rs. 54 lacs for purchase of land from Shri Joginder Singh noted that the assessee vide cheque No. 004776 dated 17.01.2005 drawn on HDFC Bank, Kalkaji, New Delhi had paid out of the loans the assessee had taken of Rs. 40 lacs which he had taken from M/s. Dalmia & Sons and Rs. 30 lacs loan from M/s. Avis Tie-up Pvt. Ltd. Thus the assessee had been able to show the source of his investment of Rs. 54 lakhs in land. Moreover, the Ld. CIT (A) has taken note of the fact that assessee in his balance sheet had duly reflected about the investment of Rs. 54 lacs in land, which was filed before the ACIT, Central Circle-XXVIII. Before the Ld. CIT (A) the assessee in fact had filed copies of ITR and intimation u/s. 143(1) of the Act dated 28.03.2007 for AY 2005-06 in the case of M/s. Dalmia & Sons as well as the assessment order dated 28.12.2007 u/s. 143(3) of the Act of M/s. Avis tie-up Pvt. Ltd. for AY 2005-06, which goes on to show the identity, creditworthiness of the lenders. After taking note of these evidences, the Ld. CIT (A) has made a factual finding that the assessee was able to satisfactorily explain the total investment of Rs.85,25,959/- which was added by ITO, Ward-22(4) New Delhi and then decided to annul the order of the ITO, Wd-22(4) dated 11.12.2007 by observing as under:

*“5. I have considered the facts of the case and the appellant's submissions. It is not disputed by the AO in the remand report that the appellant had already been assessed u/s. 143(3) of the Act on 29.12.2006 by the ACIT, Central Circle-XXVIII, Kolkata. Yet, the order u/s. 144 of the Act was passed on 11.12.2007 by the ITO, ward 22(4), Kolkata on the basis of information available from the "System" regarding total investment worth Rs. 85,25,959/- - Rs. 31,25,959/- in Tata Mutual Fund and Rs. 54,00,000/- in purchase of land, probably because he was not aware of the order already passed on 29.12.2006. The AO stated that the notices dated 20.09.2007 and 22.10.2007 had gone un-replied and therefore, the entire amount of Rs. 85,25,959/- was assessed as total income of the appellant. In the first ground read with the second, third and fourth grounds, the appellant has challenged the validity of the assessment order dated 11.12.2007 as one assessment order u/s. 143(3) of the Act had already been passed on 29.12.2006 and the AO was duly informed by the assessee in his letters dated 05.10.2007 and 07.11.2007 that he was regularly filing his returns at 'Calcutta' and the assessment for the A.Y. 2005-06 had been finalized. In view of the order dated 29.12.2006 passed in his case, the assessment order dated 11.12.2007 under appeal is invalid and bad in law. Be that as it may, the merits of the additions challenged in the fifth ground have already been directed to be examined by the then CIT(A)-IV, Kolkata. I have gone through the evidence furnished by the appellant, the remand report and the rejoinder to the remand report.*

*As regards the investment of Rs. 31,25,959/- in short Term Growth Plan of Tata Floating Rate Fund, it is clear from the evidence furnished and the AO's remand report that the investment was only a switch in to the said plan from the original investment made in units of TIBG Tata Income Plus Fund (option B) Growth in F. Y. 2003-04. Thus, the source has been satisfactorily explained by the appellant. As regards the investment in land worth Rs. 54 lacs, it is shown in the balance sheet of the appellant furnished before the ACIT, Central Circle-XXVIII, Kolkata. In the remand report, it has been reported that the source of the purchase of land could not be ascertained due to the high frequency of transactions of acceptance and giving of loans. In the rejoinder, the appellant has clarified that the investment of Rs. 54 lacs had been made by a cheque drawn on his bank account with HDFC Bank. The source of the deposits of Rs. 40,00,000/- Rs. 30,00,000/- in the same bank account made immediately before the withdrawal of Rs. 54 lacs have been explained as loans with satisfactory supporting evidence to prove the identity, capacity and the genuineness of the creditors. Thus, the total investment of Rs. 85,25,959/- treated as income by the ITO, Ward 22(4), New Delhi has been satisfactorily explained. An assessment order had already been passed on 29.12.2006 in the appellant's case by the ACIT, Central Circle XXVIII, Kolkata and the sources of investments have been satisfactorily explained. Therefore, the first five grounds are allowed and the order u/s. 144 dated 11.12.2007 of ITO, Ward-22(4), New Delhi is annulled. As the order has already been annulled, the other grounds of appeal do not need any adjudication."*

7. In the aforesaid facts and circumstances discussed, we completely agree with the finding of fact as noted by Ld. CIT (A) and the Ld. DR was not able to bring to our notice any error in the facts or law which would call for our interference. The only issue which remains is as to whether the Ld. CIT (A)-6 had jurisdiction which the Revenue has raised as per the grounds of appeal no. 5 is concerned, wherein according to revenue, restructuring of the department took place from 15.11.2014 and the jurisdiction lies with the Ld. CIT(A)-11, Kolkata and, therefore, on the date of hearing of the instant appeal on 16.02.2016, the Ld. CIT(A)-6, Kolkata has no jurisdiction. On this issue we note that the Ld. CIT (A)-6 has clearly noted in para 1 of his order that the Pr. CCIT, WB and Sikkim, Kolkata vide order no. 6 dated 15.12.2015 of 2015 passed under section 120 (1), (2) and (3) of the Act has transferred the appeal from CIT (A)-2 to his jurisdiction and thus, he took cognizance of the appeal. The revenue's contention we note is about restructuring after 15.11.2014 has no merits in the light of the fact that the Pr. CCIT has exercised his powers vide order no. 6 dated 15.12.2015 which is after the restructuring of the department as contended by Revenue from 15.11.2014 as raised in the ground of appeal no. 5 of the revenue. No other material has been placed on record before us to justify ground no. 5 raised by the revenue, therefore, we do not find any merits on this score. In such a scenario, we do not find any

reason to interfere with the impugned order of the Ld. CIT (A) and, therefore, we dismiss this appeal of the revenue.

8. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 11.05.2018

Sd/-  
(M. Balaganesh)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 11th May, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circle-37, Kolkata.
2. Respondent – Shri J. K. Modi, Room No. 64, 4<sup>th</sup> floor, 2B, Grant Lane, Kolkata-700 012.
3. The CIT(A)                      Kolkata.
4. CIT                      Kolkata.
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Sr. Pvt. Secretary