

THE INCOME TAX APPELLATE TRIBUNAL  
"I" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 677/Mum/2018 (Assessment Year 2008-09)

DCIT (IT)-4(1)(2) Room No. 1609 16 <sup>th</sup> Floor Air India building Nariman Point Mumbai-400 021.	Vs.	Shri Arun Madhvachari Rangachari C/o. Dar Media Pvt. Ltd. 201, Centre Point, Andheri Kurla Road, Andheri East Mumbai-400 059.  PAN : AMDPR8746F
(Appellant)		(Respondent)

Assessee by	Shri Rishabh Shah
Department by	Smt. N.V. Nadkarni
Date of Hearing	05.12.2019
Date of Pronouncement	19.02.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A) dated 17.11.2017 and pertains to A.Y. 2008-09.

2. Grounds of appeal read as under :-

1. "On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in holding that the source of the bank deposits of the assessee is explained without appreciating the fact that the assessee received his earnings from various consultancy work carried out in India, through his fully owned foreign companies, located outside India and brought the same earnings back in India?

2. "On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in allowing relief to the assessee holding that the money invested by the assessee in the shares of Indian Companies from foreign remittance is exempt in light of the Board Circular No. 5 dated 20-02-1969 without appreciating the fact that the assessee does not fulfill the conditions laid down in this Circular?

3. Brief facts of the case are as under :-

The assessee is an individual and is Non Resident Indian. He has not filed Original return of income since as per him his total income is below amount not chargeable to tax and as per relevant provisions of the Income Tax Act, 1961. The case was reopened u/s.147 of the Income Tax Act, 1961 and notice u/s.148 of the Income Tax Act, 1961 was issued on 24.03.2015. In response to the said notice, the assessee filed return of income on 29.10.2015 declaring Total Income of Rs. Nil and asked for the reasons for reopening. The reason for reopening was provided to the assessee. The reopening of the case was made on the basis of statement recorded u/s.132 (4) dated 11.04.2013 being a director of the M/s. Dar Media Pvt. Ltd. at the time of search action conducted u/s.132 of the Income Tax Act, 1961 on 10.04.2013 in case of Valuable Group. In the statement, assessee stated that he had provided consultancy services to Gulf Finance House (GFH), Bahrain 8: Khaleeji Bank of Commerce (KBHC), Bahrain which was executing certain projects in association with the Valuable Group. During the course of search proceedings an email from GFH addressed to assessee was found where in it was mentioned that GFH over the years made payments of USD 51.5m to Dar Capital Ltd., BVI and USD 41.5m to Thurles International Ltd., Mauritius. These two companies were Owned 100% by assessee. Assessing Officer noted that since service was rendered by Mr. Rangachari in India and invoices was raised to both these entities, in lieu of which the payment was made by GFH. Therefore the Assessing Officer opined that the money received by Mr. Rangachari through his fully owned companies, is taxable in India. Further during the course of search action it was also found that during F.Y. 2007-08, assessee made investment worth of Rs.2, 57,970/- in the following concerns.

Company Name	Date of payment	Amt. Paid	Total (Rs.)
Valuable Technologies Ltd.	29.02.2008	1,21,560 (2,770)	
Arun Rangachari	20.03.2008	1,18,790	
V2 Media Pvt. Ltd. (Merged with VTL)	29.02.2008	46,080	1,64,870
Impect Media	29.02.2008	56,240	56,240
Spadeworx	27.03.2008	25,200	25,200

Dusane	08.03.2008	11,660	11,660
Total			2,57,970

4. Thus Assessing Officer observed that on the basis of large amount of payment made to the entities, which is owned by assessee on account of services rendered in India and the proceed from the same have been used to make the investments, which suggested that the assessee is the beneficiary owner of money. The assessee has not filed the return of income for A. Y. 2008-09 in India showing the proceeds from these operations nor the source of his investment. Hence in view of the same there was reason to believe that income to the tune of Rs.2,57, 970/- has escaped assessment for A. Y. 2008-09.

5. During the course of assessment proceedings the Assessing Officer asked the details of source of investment and party-wise and year wise details of consultancy charges received in Dar Capital Ltd. and Thurles International Ltd. from GFH and KBHC alongwith invoices raised for the services rendered by the assessee to both GFH and KHBC.

6. The Assessing Officer further verified the bank statement of the assessee. The Assessing Officer observed that there were foreign remittances in the assessee NRE account Chennai branch from HSBC Bank Middle East Ltd., Dubai totalling an amount of Rs. 1,56,84,464/-. The Assessing Officer noted that the authorised representative sought one week time for furnishing confirmation from M/s. Gulf Finance House (GFH) to the effect that M/s. Dar Capital Ltd. had not given the said sums during the year under consideration. However, the assessee has not furnished any confirmation from M/s. Gulf Finance House. The Assessing Officer show-cause the assessee that if the source of above credit is not disclosed it will be treated as unexplained credit in the hands of the assessee. The assessee in response submitted that they have submitted the FIRC certificate and it shows that funds have been

transferred on capital account from his own bank account maintained overseas. Holding that learned AR has not furnished any confirmation from GFH and the assessee has failed to disclose source of credit. The Assessing Officer added the amount of Rs. 1,56,84,464/- as unexplained cash credit u/s. 68 of the Act. The conclusion remark of the Assessing Officer reads as under :-

“As already stated there was a search and seizure operation in the case of Valuable Group on 10.04.2013. and in a related action was also covered u/s 132 of the IT Act, 1961 in the case of M/s. Dar Media Pvt. Ltd. on 10.04.2013 and consequent to the search the statement of Shri Arun Rangachari was recorded in the capacity of Director of this entity. In the statement Shri Rangachari claimed to have rendered consultancy services to Gulf Finance House (GFH) & Khaleej Bank of Commerce (KBHC) which were executing certain projects in association with the Valuable Group). From the email found during the search action it is confirmed that Shn Arun Rangachari's 100% owned entities in Mauritius i.e. Dar Capital Ltd. and Thurles International Ltd. had received Rs. 465 crores, equal to USD 93". These two entities are owned 100 percent by Shn Rangachari, by his own admission in his statement recorded on 13.04.2013 Services have been rendered by Mr. Rangachari in India and invoices have been raised to both these entities, as mentioned by him in his statement, in lieu of which payments have been made by GFH, as mentioned in email. Therefore, the money received by Mr. Rangachari through his fully owned companies, is taxable in India in his hands.

During the course of assessment proceedings, it is submitted that Thurles International Limited was not incorporated in F Y. 2007-08 relevant to A Y 2008--09 for which the assessee has furnished copy of certificate of incorporation It is further submitted that during the year under consideration Gulf Finance House had not given any sum to DAR Capital Limited wherein assessee has 100% shareholding. The assessee's representative has not furnished any confirmation from GFH as stated in its letter received in this office on 1 1/2/2016 for its defense. During the course of assessment proceedings, assessee's representative has been requested to give the source of fund credited in HSBC Bank Middle East Ltd. Dubai. UAE. In spite of number of opportunities given, the assessee's representative failed to give the source of amount credited in the the said bank a/c. If the above mentioned money is not received from GFH, then it is assessee's onus to prove the source of the money received and the genuineness of the transaction. The assessee failed to prove/disclose the source of money credited in MSB Bank Middle East Ltd. Dubai, UAF and thus failed to prove the genuineness of remittance in his NRE A/c in its HSBC Chennai Branch. After due consideration of the evidences produced, it believes that the details furnished by the Assessee are incomplete and deserves to be disregarded.

In view of the above facts, amount credited in assessee's NRE A/c amounting to 1,56,84,464/- is assessed to tax as unexplained cash credit u/s 68 of the IT Act. 1961.

Application of provisions of section 69 of the I.T.Act.

Further, the investment made out of these funds amounting to Rs.2,57,970/- is treated as unexplained investment of the assessee u/s. 69 of the I.T. Act, 1961. For making such disallowances I rely upon following section/provisions of the I.T. Act, 1961.”

7. Upon assessee’s appeal learned CIT(A) as regards reopening confirmed the same by holding as under :-

“I have gone through the reasons recorded by the Assessing Officer for reopening the case under section 147.1 find that the Assessing Officer had enough cogent material to have the belief that income has escaped assessment. From the perusal of reasons it is seen that a search action u/s.132 was carried out in the case of Valuable Group on 10.04.2013. In related case, action was also initiated against M/s. Dar Media Pvt. Ltd. and as the appellant Shri Arun Rangachari was the Director of the above company his statement was recorded. From the emails found and statement recorded and details available on record as part of the seized material it was found necessary to reopen the case u/s. 147 of the IT Act, 1961. Hence I find that AO had sufficient material on record and so reopening is neither erroneous nor against the law. The AO had provided the reasons recorded for reopening the assessment to the appellant as requested. So this ground of appellant is rejected and appeal is decided on merit.”

8. As regards issue of merit learned CIT(A) accepted the assessee’s contention that FIRC certificate is sufficient and section 68 in such circumstances will not be applicable. He referred to section 68 and concluded as under :-

“From the plain reading of section it is clear that the appellant's case nowhere comes under the provisions of section 68. The amount so transferred is through banking channel and the above money is very much explained. The appellant has submitted that Board circular No. 5 dated 20.02.1969 which is relevant. The Board has very categorically said that "it is only in case where money is claimed to have been brought from outside otherwise than through banking channels and there is no evidence regarding the transfer of the money that the department has to make enquiries about the source thereof.

The appellant has cited case laws wherein the tribunal has very categorically stated that AO cannot ask the source of the money unless the officer has with him incriminating documents (DCIT Vs Shri Madhusudan Rao Lagadapati (Hyderabad Tribunal ITA No. 1482/2014). In DC1T vs Finlay Corporation Ltd., (86 ITD 626) Delhi. In this case it was very strongly decided that sec. 68 & sec. 69 have limited application in the case of non-resident. The Tribunal was of the opinion that only those amounts whose source

originated in India can come under the ambit of the investigation. In the light of above this discussion addition made u/s. 68 by AO amounting to Rs.15.684464/- is hereby deleted. So it is clear that the money so transferred was through Banking Channels and was explained money.”

9. As regards addition u/s. 69 of Rs. 2,57,970/- learned CIT(A) deleted the same on the basis of his adjudication under the above ground.

10. Against this order the assessee has filed appeal before the Tribunal.

11. We have heard both the counsel and perused the records. Learned Counsel of the assessee relied upon the order of learned CIT(A). The submitted that from the FIRC, it is evident that the amount have been credited in assessee's NRE account was transferred to overseas account in Dubai. He submitted that the assessee being a NRI cannot be asked to prove source of credit in its overseas account. In this regard learned counsel placed reliance upon the following case laws :-

- DCIT Vs. Hemant Mansukhlal Pandya (100 taxmann.com 280) (Mumbai-Tribunal)
- Smt. Susila Ramasamy Vs. ACIT (37 SOT 146)(Chennai)
- DCIT Vs. Finlay Corporation Ltd. (86 ITD 626)(Delhi)

12. Per contra, learned Departmental Representative submitted that the additions are based upon findings in search action carried out in the case of Valuable Group on 10.4.2013. That in a related action M/s. DAR Media Pvt. Ltd. was also covered u/s. 132 of the Act on 10.4.2013 and the statement of Shri Arun Rangachari was recorded. That during the search proceedings, Shri Arun Rangachari has claimed to have rendered consultancy services to Gulf Finance House (GFH) & Khaleej Bank of Commerce (KBHC) which were executing certain projects in association with the Valuable Group. Further, Shri Arun Rangachari in his statement recorded during the course of search proceedings also confirmed that M/s. DAR Capital Limited and M/s. Thurles International Limited are owned 100 percent by him. That the email from Gulf Finance House addressed to Shri Arun Rangachari was found which stated that “please note that GFH over the years, has for certain of its projects made

payments amounting to USD 51.5m to DAR Capital Limited and USD 41.5m to Thurles International Limited". That during the course of search, it was also observed that assessee has made investment in shares in Indian entities, the source of which is not only from his personal account but also from DAR Capital. That from the email found during the course of search action, it was also confirmed that the Shri Arun Rangachari's 100% owned entities in Mauritius i.e. Dar Capital Ltd. and Thurles International Ltd. had received Rs. 465 crores equal to USD 93 on account of service rendered in India and the proceeds from the same have been used to make investments in India.

13. That during the year Rs. 1.568 crores credited in assessee's NRE account Chennai Branch from HSBC Bank Middle East Ltd. Dubai. Narration in the said bank account read as under :-

Foreign remittance credited in Assessee's NRE A/c.		Immediate source for the remittance from HSBC Bank Middle East Ltd, Dubai UAE		
Amount (In Rs.)	Date	Particulars	Amount (In AED)	Paper Book Page No.
23,41,170.21	13.11.2007	Inv. No. GFH/01/2007	1,284,150.00	10
1,59,331.50				
1,31,83,962.33	16.01.2008	DAR INVESTMENTS LTD	1,284,150.00	12
1,56,84,464.04				

14. Referring to the above, learned Departmental Representative pleaded that the amount has been received from GFH and Dar Investment Ltd., which is a hundred percent owned entity of Shri Arun Rangachari. In these circumstances, referring to the investment made by the assessee learned AR pleaded section 68 has rightly invoked regarding deposits in assessee's own NRE account. She pleaded that receipt in absence of any further detail submitted by the assessee can be reasonably attributed to the services rendered by the assessee in India. She submitted that learned CIT(A) has totally ignored the findings of services and the statement of the assessee and he has relied upon the case laws from the ITAT which were not rendered in the

background as operating in the present case. She submitted that it is clearly established the source of assessee's income is originated in India as the substantial amount is received by the assessee from Gulf Finance House and Khaleej Bank of Commerce for the services rendered by the assessee in India. That there is no curtain left to state that the Revenue has no incriminating documents to ask the assessee for the source of money. Further she submitted that learned CIT(A)'s reliance on Board circular No. 5 dated 20.2.1969 is not correct in as much as in the said circular it was mentioned that it was applicable when there is no evidence for transfer of money. It is submitted that by no stretch of imagination it can be submitted that section 68 is not applicable in the case where the persons of India origin residing abroad but intending to return to India and settle here permanently, the money brought in or remitted from abroad by such persons through banking channels, no question at all to be asked by the Department as to the origin of the money. Furthermore, she submitted that in the instant case, the assessee is not a person who intending to return to India and settle here permanently. Hence, she submitted that Circular relied upon by learned CIT(A) is not correct.

15. Upon Careful consideration we find in a search and seizure action assessee has accepted he has rendered services in India to Gulf finance house (GFH) Bahrain which was executing certain projects in association with the Valuable group. During the search itself email from Gulf Finance House addressed to the assessee was found wherein it was mentioned that GFH over the years has made payments to US 51.5 million to DAR Capital ltd and US dollar 41.5 million to Thurles International Ltd Mauritios. These two companies were hundred percent owned by the assessee. In these circumstances the money found credited in assessee's NRE account was enquired by the assessing officer. The narration in the NRE account in particulars referred to GFH and DAR Investment Ltd. In these circumstances upon enquiry the assessee informed the assessing officer that his concern Thurles was not incorporated in that assessment year and assessee was required to submit the necessary certificate from GFH that the amount did

not relate to any services rendered by assessee in India . The assessee did not give any such certificate. The assessee only relied upon the F IRC (foreign inward remittance certificate). In absence of the assessee cogently showing the source of fund in his bank account to be not originating from the entities who had received sums from GFH Bahrain for rendering services in India the assessing officer proceeded to add the said sum as assessee's undisclosed income.

16. Upon assessee's appeal learned CIT(appeals) totally ignored the facts of search and the incriminating material found. He only referred to the FIRC and concluded that assessee need not show the source of its income in its NRE account if it has been received from abroad if he is a NRI. The learned CIT appeals also referred to certain case laws in this regard. In our considered opinion learned CIT(appeals) has totally erred in ignoring the background as referred by the assessing officer. The facts of the case and the search predominantly pointed that assessee has received sums through its entities abroad as consultation fee received from GFH Bahrain for rendering services in India. The entries in the bank account did mention the name of GFH and Dar Capital. In these circumstances it was incumbent upon the assessee to give a confirmation from GFH that no fee was paid to the assessee through its entities during the concerned assessment year for services rendered to GFH in connection with projects in India. Since the assessee has failed to do so in our considered opinion the learned CIT appeals has totally erred in ignoring the detailed finding of the assessing officer .It is settled law from Hon'ble Apex Court in the case of Sumati Dayal Vs. CIT (1995 AIR 2109) and CIT Vs. Durga Prasad More (82 ITR 540) that revenue authority are not to put on blinkers and ignore the overwhelming surrounding circumstances. The learned CIT(A)'s reliance upon the case laws and the circular is totally not applicable on the facts of the present case. The facts of the case prima facie indicate that assessee has received sums abroad from foreign concern on account of services rendered in India. In these circumstances it was incumbent upon the assessee to cogently rebut that assessee has not received any sums abroad for

services rendered in India which could have been transferred from abroad in his Indian account through these concerns. The sole reliance upon the FIRC which is only a certificate of remittance from abroad in absence of the overwhelming surrounding circumstances by the learned CIT appeals not at all sustainable.

17. Accordingly in the background of aforesaid discussion in our considered opinion the order of learned CIT(A) is to set aside the order of the assessing officer is to be restored. Accordingly we set aside order of learned CIT(appeals) and restore that on the assessing officer on the issue of credits in the bank account.

18. As regards the investment in shares out of the said bank account the same cannot be added again as unexplained investment .It is settled law that assessee cannot be subject to double jeopardy. Hence qua the unexplained investment in shares the order of CIT(A) is upheld.

19. In the result revenues appeal stands partly allowed.

Order has been pronounced in the Court on 19.2.2020.

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 19/02/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS