

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2997/Mum/2019
(A.Y: 2010-11)

ACIT – 28(1) RmNo. 306, 3 rd Floor, Tower No. 6, Vashi Rly Stn Complex, Mumbai – 400703.	Vs.	Shri Dharmesh Gul Vaswani, Plot No. 29A, D-Lane, Sector – 8, Opp CIDCO Water Tank, Vashi, Navi Mumbai – 400703.
PAN/GIR No. : ABQPV1664E		
Appellant	..	Respondent

Appellant by :	Shri Rajesh Mishra. DR
Respondent by :	Shri Rajesh. AR

Date of Hearing	18.05.2021
Date of Pronouncement	02.06.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the Revenue against the order of the Commissioner of Income Tax (Appeals) -26 Mumbai, passed u/s.143(3) r.w.s.147 and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal;

- 1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition u/s 69 of the Act made by the AO, by entertaining the additional evidence under Rule 46A which was not produced*

before the AO during the course of assessment proceedings and thereby and contravening the provisions of Rule 46A(1) of the IT Rules.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not giving a reasonable opportunity to the AO to examine the additional evidence submitted by assessee under Rule 46A, which was not produced before the AO during the course of assessment proceedings, and thereby contravening the provisions of Rule 46A(3) of the IT Rules.

3. The appellant prays that the order of Ld.CIT(A) on the above ground be reversed and that of the Assessing Officer be restored.

4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

2. The Brief facts of the case are that the assessee is a Non Resident Indian (NRI) from the year 1994-99 and has brought FCNR deposits in US dollars and leading a retired life. The revenue has received information from NMS cycle- 1 ITD application of investigation wing, that in the F.Y 2009-10 the assessee has invested Rs. 2,00,00,000/- in mutual funds. Therefore, the A.O after recording the reasons for reopening has issued notice u/s 148 of the Act. Subsequently, notice u/s 142(1) of the Act and show cause notice was also issued but there was no compliance. But whereas earlier in compliance to notice issued u/s 148 of the Act, the assessee has filed the return of income along with letter dated 12.04.2017 and

the A.O found that the assessee has filed the return of income for the A.Y 2010-11 on 12.04.17 with total income of Rs. 88,708/-.The assessee has derived the total income after set off of current loss of Rs. 51,292/- against the income from other sources. In spite of issuing the show cause notice, none appeared on behalf of the assessee or any explanations are filed in respect of investment of Rs. 2 crores in mutual funds. The A.O on perusal of the facts, found that Rs. 1 crore was invested in the units of fidelity mutual fund purchased on 30.03.2010 and similarly Rs. 1 crore was invested in units of HSBC Mutual fund purchased on 13.07.2009. The A.O found that there is no information is received from the assessee. Hence issued notice u/s 133(6) of the Act on 04.10.2017 to Fidelity Mutual fund and HSBC Mutual fund respectively. In response to the notice, HSBC Mutual fund vide letter dated 30.10.2017 has submitted a copy of account statement of the assessee and the A.O on perusal, found that the assessee has purchased units of mutual fund of Rs. 1 crore. Similarly in fidelity mutual fund (now L&T Mutual fund) statement the A.O found that the assessee has purchased units of mutual fund of Rs. 1 crore on 10.10.2010. Since in spite of providing opportunity to the assessee and show cause letter dated 31.10.2017, the assessee could not explain the sources of mutual funds

investment of Rs.2 Crores. Therefore in the absence of the information, the A.O. made addition as unexplained investment u/s 69 of the Act and assessed the total income of Rs. 2,00,88,710/- and passed order u/s 144 r.w.s 147 of the Act dated 22.11.2017.

3 Aggrieved by the order, the assessee has filed an appeal with the CIT(A), the Ld. CIT(A) considered the grounds of appeal, findings of the AO in scrutiny assessment and the written submissions of the assessee referred at para 5 of the CIT(A) order. The CIT(A) found that in respect of investment of Rs.1 Crore in HSBC Mutual fund the assessee was an NRI from the year 1994-99 and brought FCNR from USA in US dollars which are exempted from tax and sold FCNR in the year 2004 and received an amount of Rs. 88,18,588/- and has purchased non taxable (tax free) 6.5% bonds of Rs. 78,58,000/- in March 2004. The said bonds were redeemed in March 2009 and received redemption amount of Rs. 1,08,20,466/-.Further the CIT(A) observed that the Rs.1 crore investment in the HSBC Mutual fund are out of the redemption amount received from non taxable 6.5% Bonds and relied on the documentary evidences and directed the A.O to delete the addition. Similarly, in respect of Rs. 1 crore Fidelity Mutual fund units the assessee has redeemed the mutual funds earlier purchased by and the proceeds are used

for investment in Fidelity Mutual Funds. Therefore, the CIT(A) observed that the investments are out of the earlier sources and old investments and has relied on the evidences filed and granted the relief and allowed the assessee appeal.

Aggrieved by the order of the CIT(A), the revenue has filed an appeal with the Honble Tribunal, challenging the action of the CIT(A) in deleting the addition made by the A.O and accepting the additional evidence under Rule 46A of the IT Rules and the A.O was not provided opportunity to verify the additional evidences.

4. At the time of hearing, the Ld. DR submitted that there is gross violation of Rule 46A of the IT Rules and on perusal of the explanations made by the assessee at para 5 of the CIT(A) order. The assessee has submitted the details in the appellate proceedings and the CIT(A) has observed that these investments are supported by documentary evidence and granted the relief. Whereas, the before the A.O. no information was filed by the assessee or any comments were called for by the appellate authority on additional evidences from the A.O. therefore prayed for allowing the revenue appeal.

5. Contra, the Ld. AR supported the orders of the CIT(A) and relied on the paper book and supported his arguments with the submissions made before the CIT(A) and the documentary evidence of investments made with HSBC Mutual and Fidelity mutual fund and other bank accounts. The assessee earlier was a NRI and now is leading a retired life and the sources are explained and prayed for dismissal of the revenue appeal.

6. We heard the rival contentions and perused the material on record. Prima-facie, the Ld. DR submitted that the A.O has been deprived a reasonable opportunity to examine the additional evidences submitted by the assessee under Rule 46A before the appellate authorities. The Ld. DR further submitted that the assessee has submitted the details for the first time before the CIT(A) whereas in assessment proceedings due to non cooperation and non compliance of notice the A.O has to do the best judgment assessment u/s 144 of the Act. We found that the facts submitted by the Ld. DR are emanating out of the assessment order but the ld.AR mentioned that the details were very clear and the documents were verified. The CIT(A) having considered the submissions and evidence has granted the relief. We on perusal of the assessment order found that the assessee before the A.O has filed the return of income in

response to notice u/s 148 of the Act. When the notice u/s 142(1) of the Act was issued twice and the show cause notice, there was no compliance. The assessee has submitted the details for the first time before the CIT(A) referred at para 5 of the CIT(A) order and the said information was not submitted before the A.O for various reasons. We are of the considered opinion that, the assessee has to comply with Rules and regulations. when the documents were submitted for the first time before the CIT(A) the provisions of Rule 46A shall equally applicable. Accordingly, we find that there is a violation of Rule. 46A as the A.O was not provided an opportunity to verify and examine the evidences filed by the assessee in the appellate proceedings. The CIT(A) could have called for the remand report on the evidences filed by the assessee as referred at para 5 of the CIT(A) order but allowed the assessee appeal. Therefore, for limited purpose we find that the documents which the Ld.CIT(A) has relied are to be examined and verified by the Assessing officer. Hence, we set-aside the order of the CIT(A) and restore this disputed issue to the file of the assessing officer with above directions and the assessee should be provided with adequate opportunity of hearing and shall cooperate in submitting the information.

Accordingly, the grounds of appeal of the revenue are allowed for statistical purposes.

7. In the result, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on 02.06.2021

Sd/-

(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 02.06.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumba