

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA Nos.3164 & 1439/M/2019
Assessment Years: 2008-09 & 2009-10**

Mr. Waize Ali Kennedy House, 4 th Floor, Goregaonkar Road, Mumbai – 400 007 PAN: AIQPA6270A	Vs.	ACIT 2(1)(2), Central Circle-43 6 th Floor, Aayakar Bhavan, Mumbai – 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Agarwal, A.R.
Revenue by : Ms. Smita Verma, D.R.

Date of Hearing : 02.03.2021
Date of Pronouncement : 25.05.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against different orders dated 26.04.2019 & 30.01.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2008-09 & 2009-10 respectively.

2. First we take up ITA No.3164/M/2019 A.Y. 2008-09.

ITA No.3164/M/2019 A.Y. 2008-09

3. The grounds raised by the assessee are as under:

“Ground No. 1

Ld CIT (A) erred in confirming the addition of Rs. 1,00,000/- u/s 69B for receipt of of loan from Mr. Asif Mulla.

The payment is by account payee cheque by Mr. Asif Mulla, who is Regularly assessed with department, has shown the loan on asset side of his Balance Sheet.

Assessee filed confirmation from Mr. Asif Mulla, His bank pass book, His balance sheet, Ledger account of assessee in Mr. Asif Mulla's books etc.

Ground No. 2

The learned CIT (Appeals) erred in confirming the addition of Rs.15,43,429/- being redemption of two mutual funds invested in earlier years as under.

a). Redemption of Reliance fund Rs. 10,09,862/-

Purchased on 22/3/2006 (AY 2007/08) for Rs.10,00,000/- by cheque & redemption on 7/9/2007 (AY 2008/09) Rs. 10,09,862/-

b). Redemption of HDFC Rs. 5,33,567/-

Purchased on 7/2/2007 (AY 2007/08) Rs. 5 lacs by cheque & redemption on 3/10/2007 (AY 2008/09) Rs. 5,33,567/-

c) In AY 2003/04, Waize AH had received Rs.38,50,000/- being education aid from M/s Mumbai Mazdoor Sabha, Along with his relative Ms Ravish Zaidi who also received Rs. 33,50,000/-As a education aid from M/s Mumbai Mazdoor Sabha

These both the above amounts totalling Rs. 72,00,000/- has been disclosed by Ms. Chandbibi as her income & paid full income tax with interest.

The same fund is regularly invested in different instruments every year & department is taxing every time as & when such instrument is encashed every year thus resulting in double/multiple taxation of same amount".

4. The issue raised in ground No.1 is against the confirmation of addition of Rs.1,00,000/- by Ld. CIT(A) as made by the AO on account of loan received from Mr. Asif Mulla under section 69B of the Act and the issue raised in ground no. 2 is against the confirmation of Rs. 15,43,429/- by ld CIT(A) as added by the AO on the basis of credits in the bank account of the assessee jointly held with Ms. Chand Bibi Zaidi with Nova Scotia Bank, Nariman Point Branch, Mumbai.

5. The facts in brief are that a search action under section 132 of the Act was carried out in Chand Bibi Zaidi Group of cases on 20.08.09. During the course of search a bank account in the joint name of Mr. Waige Ali, the assessee, and Ms. Chand Bibi Zaidi with Nova Scotia Bank, Nariman Point Branch,

Mumbai in which the deposits including interest of Rs.18,96,103/- were found in F.Y. 2007-08. Accordingly, the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act on 19.03.2013. The AO during the course of scrutiny proceedings found that there were some credits in the said bank of the assessee which comprised of Rs.1,00,000/- received from Mr. Asif Mulla by account payee cheque, Rs.10,09,862/- as redemption proceeds from Reliance Vision fund and Rs.5,33,567/- as redemption proceeds from HDFC top 200. The AO, after rejecting the explanation /reply of the assessee, added under section 69B of the Act in the assessment framed under section 143(3) read with section 147 of the Act.

6. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee after considering the reply of the assessee and upheld the order of AO. Pertinent to state that assessee has filed before the Ld. CIT(A) the confirmation letter from Shri SA Mulla, copy of acknowledgment of IT Return, PAN card and balance sheet of the lender along with the bank statement showing the repayment on 23.11.2011. However, Ld. CIT(A) rejected all these evidences and affirmed the addition. Similarly, assessee filed the evidences as regards the redemption proceeds of Reliance Vision Fund and HDFC top 200 to explain the other credits in the bank account which were made out of maturity proceeds of the investments made in the earlier years and duly shown in the balance sheets of the assessee in the relevant assessment years .

7. The Ld. A.R. at the outset submitted that the issue of deposit in the joint bank accounts is a recurring issue as the same addition is being made year after year on the basis of credits in the bank account by the Revenue by ignoring the fact that the said proceeds were out of the earlier maturity proceeds. The Ld. A.R. submitted that the issue has been decided in assessee's own case in earlier three assessment years in ITA No.1343 & 1344/M/2014 A.Y. 2005-06 & 2006-07 and ITA No.1345/M/2014 A.Y. 2007-08 wherein very same issue involving the same funds were decided by the co-ordinate bench of the Tribunal in favour of the assessee. The Ld. A.R. therefore prayed that following the said decision of the co-ordinate bench of the Tribunal the addition as made by the AO and as affirmed by Ld. CIT(A) may kindly be deleted to the tune of Rs.15,43,429/- as the same were credited in the bank upon maturity of Reliance Mutual Fund and HDFC Mutual Fund. The ld AR submitted that Rs.10,09,862/- were the maturity proceeds of Reliance Mutual Fund which were purchased on 22.03.2006 A.Y. 2007-08 for Rs.10 lakh by cheque and the redemption proceeds were credited on 07.09.2007. Similarly, the majority proceeds of mutual fund with HDFC for Rs.5,63,567/- matured on 03.10.2007 was purchased on 07.02.2007 for Rs.5 lakhs by cheque. So far as the addition of Rs.1 lakh on account of loan raised from Mr. Asif Mulla is concerned, the Ld. A.R. submitted that the assessee has filed all the necessary evidences comprising confirmation letter, PAN card, balance sheet, ITR and bank statement along with evidences of redemption of the said loan and therefore has discharged its onus of proving identity and creditworthiness of

the lender and genuineness of the transactions and therefore the Ld. CIT(A) has grossly erred in sustaining the addition. Finally, the Ld. A.R. prayed that the same may kindly be deleted.

8. The Ld. D.R., on the other hand, relied heavily on the order of authorities below. However, candidly, accepted that the issue in ground no 2 has been adjudicated in A.Y. 2005-06, 2006-07 & 2007-08 as stated by the Ld. A.R.

9. We have heard the rival submissions of both the parties and perused the material on record. The issue raised in grounds No.2 is about the credits made in the bank account of the assessee which was jointly held by the assessee with Chand Bibi to the tune of Rs.15,43,429/- . The deposits were on account of maturity proceeds of two mutual funds namely Reliance Vision Fund of Rs.10,09,862/- which was purchased on 22.03.2006 for Rs.10 lakhs whereas 2nd HDFC Mutual Fund of Rs.5,33,567/- was purchased on 07.02.2007 for Rs.5 lakhs. We note that these were the investments made by the assessee from year to year and were being regularly shown in the balance sheets of the respective years. Besides, we note that the issue is squarely covered by the decision of the co-ordinate bench of the Tribunal in assessee's own case. We note that this issue has been decided in favour of the assessee in the earlier three years in ITA No. ITA No.1343 & 1344/M/2014 A.Y. 2005-06 & 2006-07 and ITA No.1345/M/2014 A.Y. 2007-08. In view of these facts, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition of Rs.15,43,429/-.The ground no. 2 is allowed.

10. So far as the confirmation of addition of Rs.1 lakh is concerned being loan raised from Mr. Asif Mulla, we note that assessee has discharged onus by furnishing all the evidences as stated hereinabove such as confirmation letter, PAN, proof of payment through banking channel . IT and annual accounts of the assessee and the none of the authorities have done any further verification on the evidences filed by the assessee. Therefore, the order of Ld. CIT(A) is can not be sustained. Accordingly, we set aside the order of Ld. CIT(A) on this point also and direct the AO to delete the addition of Rs.1 lakh. The ground no. 1 is also allowed.

11. Resultantly, the appeal of the assessee is allowed.

ITA No.1439/M/2019 A.Y. 2009-10

12. The issue involved in the present appeal is identical to the one as decided by us in ground no. 1 in ITA No.3164/M/2019 for A.Y. 2008-09. Therefore, our finding on ground no. 1 in ITA No.3164/M/2019 for A.Y. 2008-09 would, mutatis mutandis, apply to this appeal as well. Accordingly the appeal of the assessee is allowed.

13. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 25.05.2021.

**Sd/-
(Ravish Sood)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 25.05.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.