

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"F" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER**

**ITA NOS. 6720, 6721, 6722 & 6723/MUM/2018
(A.Ys: 2008-09, 2009-10, 2010-11 & 2011-12)**

Shri Vilas Waman Katre Anurag Business Centre 7th Floor, 410, 411 Vaman Tukaram Patil Marg Chembur, Mumbai - 400071 PAN: AAEPK5429L	v.	DCIT – Central Range – 7(1) Room No. 653, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Shri Freshthe Sethna Shri Mrunal Parekh Shri Hasmukh Ravaria
Department by	:	S.N. Kabra
Date of Hearing	:	06.10.2021
Date of Pronouncement	:	03.01.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. The present Four appeals have been filed by the Assessee against the different orders of Learned Commissioner of Income Tax (Appeals)–49, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.09.2018 for A.Ys.2008-09, 2009-10,2010-11 and 2011-12.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal No ITA 6720/MUM/for Assessment Year 2009-10 as a lead case.

3. The Facts in brief are, the Assessee is an Indian Citizen resident in India. He has been filing his returns for the assessments years in question. For all the above assessment years, notices dated 19.2.2016 were issued under section 148 of the Act. The reasons for reopening of assessments have been similar for all the four assessments and are reproduced as under: -

"Return of Income for A Y 2009-10 was e-filed on 24.11.2009 declaring total income of Rs.1755920/-. Subsequently, the information was received from Singapore Tax Authorities that the assessee has a Bank Account in Singapore which was forwarded to the office of Pr.CIT-20 Mumbai by Pr. Pr. Director of Income tax (Investigation)-1, Mumbai vide letter No. Pr.DIT (Investigation)-1, Mu/Vilas Waman Katre/2015-16/861 dated 4.11.2015. The Pr.CIT - 20 Mumbai vide letter No.Pr.CIT.20/Vilas Waman Katre/2015-16 dated 9.11.2015 forwarded to JCIT-20(3), Mumbai. The JCIT.20(3) Mumbai vide letter No.Jt.CIT 20(3)/Vilas W. Katre /2015-16dated 13.11.2015 forwarded the letter along with the enclosure thereat hereto to the undersigned.

The information received by the undersigned was carefully perused. This exercise revealed that the following are the documents to show that the assessee has beneficial interest in an offshore entity M/s Eagle Ridge Services and its bank accounts.

i. Incorporation certificate, Memorandum of Association and Articles of Association of Eagle Ridge Services Limited wherein the incorporation dated shown as 9.9.2005.

ii. Register of Shares of Eagle Ridge Services Limited wherein Sharecorp Limited is being shown to have allotted one share of USD #1.

iii. Letter of Sharecorp Limited dated 8.12.2015 wherein it is stated that Sharecorp Limited is the holder of one ordinary share in Eagle Riedge Services Limited as nominee and for on behalf of Mr. Vila Waman Katre.

iv. Document name Establishment of Beneficial Owners Identity – for private Investment Corporations” of Duetsche Bank relating to account number 8044349. In the said form Shri Vilas Waman katre has declared himself as the beneficial owner of Eagle Ridge Services Limited and its account 804439 and has also signed the same as authorised signatory.

v. Risk Disclosure Statement " sated 9.3.2006 rekated ti Duetsche Bank account No.804439 of Eagle ridge Services limited. The same has name and signature of Shri Vilas Waman Katre as authorised signatory.

vi. Security Agreement – First Party " dated 9.3.2006 related to Duetsche bank account No.804439 of Eagle Ridge Servifes Limited. The same has your name and signature of Shri Vilas Waman Katre as authorised signatory.

vii. Resolution of Eagle Ridge Services Limited dated 10.10.2007 wherein Shri Vilas Waman Katre is made the sole authorised signatory for account no 804439 for unlimited amount. The communication also has his name and specimen signature.

viii. Board Resolution of Eagle Ridge Services Limited, having its registered office Portcullis Trust Net Chambers, P O Box 3444, Road Town , Tortola, BVI dated 9.3.2006 in respect of account number 804439. The resolution shows Shri Vilas Waman Katre authorised signatory and has his signature. Account application of Duetsche bank wherein the name of the account holder is shown as M/s Eagle Riege Services Ltd, having its address as Portcullis Trust net Chambers, PO Box 3444, Road Town, Tortola, BVI. The account number is shown as 804439. In respect of this account Shri Vilas Waman Katre

is shown as "primary contact person" along with his telephone no. As +9198920026237 and his email id is shown as vilaskatre@seahorsegroup.co.in . The form has his specimen signature at 3 places. This form is accompanied with the copy of his passport having no. G 1250829 and also has copy of the passport of his son Shri Vikram Vilas Katre with passport no. F 5237722.

ix. The assessee has opened the bank account in A Y 2006-07. The total of transactions / credits and portfolio investment during the previous year relevant to A Y 2009-10 were in US \$ the value of which in Indian currency is Rs 671488587/-. However, the assessee has not disclosed these investments and credits made in the assets located outside India in the return of Income including source thereof for the purpose of calculating the taxable income in India. The assessee was a resident in India during the previous year relevant to assessment year under consideration and therefore his global income is taxable in India by virtue of section 5 of the Income tax Act.

x. By virtue of the facts narrated in earlier paragraphs I have reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the I T Act."

4. The Assessee thereafter filed objections against the reopening of assessments and after considering various submissions made by the Assessee during the course of assessment proceedings under section 143(3) read with section 147 of the Act, the assessment order was passed on 26.12.2016.

5. The Assessing officer gave the same reasons that were given in re-opening of the assessments for making the additions except that the

amount that was stated in the final assessment order was substantially lower than what was stated in the Notice. The summary is reproduced herein below: -

Assessment Year	Income escaped assessment as per notice issued under section 147	Actual Addition made under section 147	Variation
2008-09	16,838	16,838	0
2009-10	67,14,88,587	7,58,48,581	59,54,0006
2010-11	107,39,57,355	1,86.764	107,37,70591
2011-12	10,96,32,660	34,96,730	10,61,35930
2012-13	2,51,35,800	Nil	2,51,35,800
Total	1,88,02,31,240	7,95,48,913	182,58,18,127

6. During the course of assessment proceedings, the Assessee submitted as under: -

- (a) The evidence brought on record does not support the view that any income has accrued to or has been received by him.
- (b) The bank account belongs to a company registered outside India's tax jurisdiction; and
- (c) there is no evidence that amounts deposited in the bank account have accrued or arisen in India or that such funds have been remitted from India, by the Assessee or anyone else.
- (d) The Assessee has neither infused any funds into the company or its bank account and neither has he received any funds from the account.
- (e) It was further clarified that the Assessee was being shown as a beneficial owner of one share of the company held by Sharecrop Ltd, only in fiduciary capacity, to one Shri Dilip Haji Sarabhai of Singapore, for familial reasons.

- (f) Even this beneficial ownership of the share of M/s Eagle Ridge Services Ltd was terminated on 6.2.2012, and the de facto and de jure ownership of the share was transferred to Haji Dilip Sarabhai from that date onwards.
- (g) The Assessee did not receive any amount from the said account, nor did the money lying in the account belong to him.
- (h) The Assessee hence submitted that such amount cannot be taxed in his hands.

7. The assessee submitted the details of transaction with Mr Dilip Haji as under:

- A. the Assessee was nominated as fiduciary/trustee by a non-resident individual residing in Singapore, in relation to a revocable offshore oral discretionary trust, during December 2005 (Trust);
- B. the non-resident entity Eagle Ridge Services Limited, incorporated in British Virgin Islands, constituted in September 2005 (**Trust Vehicle**), formed part of the trust structure;
- C. the Trust was governed under the laws of BVI, and managed out of Singapore;
- D. the Assessee was neither shareholder, nor director of the Trust Vehicle;
- E. the Assessee accepted office of trustee in December 2005, without consideration or obligation for contribution;
- F. beneficial ownership of assets/corpus of the Trust remained exclusively with the beneficiaries, until revocation;
- G. in consonance with the office of trustee, the Assessee was constituted as one among authorized signatories to the bank account of the non-resident company, which neither conferred exclusive

signatory power nor vested beneficial ownership or management over the Trust Vehicle to the Assessee;

H. by virtue of the Settlor reserving signatory rights in parallel with directors of the non-resident company no occasion arose for the Assessee to exercise signatory powers in relation to the Trust;

I. in exercise of powers of revocation reserved to the Settlor, the corpus of the Trust reverted to the Settlor in 2012 (relevant documents are filed in paper book);

J. the Assessee, in the capacity of Trustee, had no statutory obligation to file a return of income for the Trust Vehicle in India, absent income in India.

8. The Assessing Officer rejected the submissions of the assessee and thereafter passed order under section 143(3) of the Act dated 26.12.2016 making the addition of income of M/s Eagle Ridge Services Limited amounting to ₹.758,48,581 in the hands of the Assessee. The reasons for making the additions is given at Para 5.3 of the Order, the reasons are given below: -

A. The information is received from the Singapore Govt. Authorities and has concrete details of assessee having the beneficiary owner of the foreign account.

B. Letter of Sharecorp Limited dated 8.12.2005 is on record wherein it is stated that sharecrop is the holder one ordinary share in Eagle Ridge Services Limited as nominee and for on behalf of Mr. Vilas Waman Katre.

C. In Establishment of Beneficial Owners Identity for private investment Corporations of Duetsche Bank relating to account number 8044349. In the said form Shri Vilas Waman Katre has declared himself as the beneficial owner of Eagle Ridge Services Limited and its account 8044349 and has also signed the same as authorised signatory.

D. In Risk Disclosure statement dated 9.3.2006 related to Duetsche bank account no 8044349 of Eagle ridge Services limited. The same has your name and signature of Shri Vilas Waman Katre as authorised signatory.

E. Security Agreement – First Party dated 9.3.2006 related to Duetsche bank account No.804439 of Eagle Ridge Services Limited. The same has assessee's name and signature of Shri Vilas Waman Katre as authorised signatory.

F. The assessee has opened the bank account in A Y 2006-07. The total of transactions / credits and portfolio investment during the previous year relevant to A Y 2009-10 were in US \$ the value of which in Indian currency is Rs. 67,14,88,587/-.

G. Board Resolution of Eagle Ridge Services Limited shows the Assessee as authorised signatory.

9. On the basis of above reasoning, the Assessing Officer concludes that the bank account No 8044349 of Eagle Ridge Services Limited belongs to the Assessee and the Assessee is the beneficial owner of the company M/s Eagle Ridge Services Limited. The exact additions made during the four assessment years are as under:-

Asst Year	Addition made (In ₹.)	Dividend/ Interest (IN ₹.)	Interest	Capital gains	Unexplained Investment - 69	Term Deposits u/s 68
2008-19	184784		184784			
2009-10	75848581	131484	897566	1125116	56421361	17273054
2010-11	186764		186764			
2011-12	3496730	3496730				
Total	79716859	3628214	1269114	1125116	56421361	17273054

10. Aggrieved, the Assessee preferred appeal before the Commissioner of Income Tax (Appeals)- 49. Before Ld.CIT(A) assessee submitted the detailed submissions and the relevant summary is given below:

A. On Re-opening of assessments

- i. The notice is issued on the basis of documents belonging to an entity M/s Eagle Ridge Services Limited, a company incorporated outside India and these documents do not belong to the Assessee. The Assessee was only a beneficiary owner of the 1(one)share of face value of \$1(one) of that company. Further he had held this ownership in a fiduciary capacity and that fiduciary role ended in February 2012.
- ii. The Assessing officer has completely ignored the fact that the fiduciary ownership of One share was terminated by the assessee without seeking any compensation whatsoever. Further the assessee had neither received any remuneration, nor received any dividends, nor any bonuses, nor any stock options, nor any interest amounts or for that matter nor any other payment to him by the company which would have constituted an income for him.
- iii. The reason for re-opening of assessment is that there was a failure to disclose the beneficiary interest of asset held outside India. The disclosure of assets was made mandatory only with effect from Assessment year 2012-13 onwards.
- iv. Since the requirement of disclosure was not present for that assessment year, there is no question of failure on the part of the Assessee. Therefore, this reason was not applicable to the Assessee.

v. The A.O. has not followed the judicial principles while reopening the assessments

- (a) Such re-opening has to be based on clear and concrete evidence that income has escaped assessment.
- (b) Re-opening cannot be initiated on mere surmise and suspicion
- (c) Information received shall be credible and authentic information in order to form an opinion that income has escaped assessment before issue of notice under section 148.
- (d) Reopening proceedings cannot be issued based on any report of Investigation wing but same has to be done only after careful and independent enquiry and verification by the Assessing Officer.
- (e) Notice under section 148 cannot be issued mechanically but only after proper application of mind on the documents available.
- (f) The Assessing Officer is required to form prima facie opinion based on tangible material which provides the nexus or the link having reason to believe that income has escaped assessment.

vi. All the documents relied upon by the Assessing Officer pertain to a private limited company viz Eagle Ridge Services Limited which is incorporated outside India. These do not establish that these documents belong to the Assessee and therefore addition on the basis of these documents cannot be made. The income, if any belongs to a limited company incorporated outside India and not to the Assessee.

vii. The assessing officer has at no point of time established that the said company is a fictitious company or a bogus company and the transactions although in the name or bank account of the said company actually belong to the Assessee. Hence the transactions of the said company cannot be taxed in the hands of the Assessee.

viii. The Income tax Acts treats companies and shareholders distinctly. The undisclosed income of share holders cannot be treated as the income of the company. The decision of Delhi High Court (which has been confirmed by the Supreme Court by rejecting the SLP) in the case of CIT Vs Lovely Exports (P) Ltd 216 CTR 195 it has been held that:

It is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee.

The above decision is on the principle that shareholders and company are separate entities. The jurisdictional High Court of Bombay in the case of CIT vs M/s Gagandeep Infrastructure Pvt Ltd (supra) and CIT vs Paradise Inland Shipping Pvt Ltd in ITA No. 66 of 2016 dated 10-04-2017, has reiterated the legal position laid down by the Hon'ble Supreme Court in the case of CIT vs Lovely Exports Pvt Ltd.

It is well settled law and practice that when one person invests in a duly incorporated company under the law, the following are the items that may be taxed in the hands of the person who invested in the said company:

- (a) The amount invested in the company if the person is unable to explain the source of such investment;
- (b) The amount received from the company by the person by way of dividend, remuneration, loan if it is not repaid, etc. and
- (c) The amount received by the person from another person for transferring the investment in the company.

ix. The Assessing Officer made the additions on basis of bank statement of Eagle Ridge Services Limited without following the principles of natural justice. The Assessing officer should have first cross verified the bank statement with the directors of the captioned company or bankers of the captioned company, taken explanation from them, allowed the Assessee to cross examine

them before making the addition. The addition made therefore must be deleted.

- x. The addition is admittedly based on documents belonging to an independent company viz M/s Eagle Ridge Services Limited and not to the Assessee. It is submitted that even though the Assessee had been the beneficial owner of the shares of the said company for a certain period, it cannot be held that the said financial transactions of the company actually belong to the Assessee and that the income belongs to the Assessee.
- xi. The Assessing Officer could not produce any evidence that the Assessee had infused any funds in to M/s Eagle Ridge Services Limited or received any funds from M/s Eagle Ridge Services Limited or received any funds for transferring the alleged interest in M/s Eagle Ridge Services Limited. As submitted earlier, the role of Assessee in M/s Eagle Ridge Services Limited was fiduciary in nature, which also ceased later and the Assessee had neither invested any amount nor received any amount from it or for it. In such scenario, no amount can be taxed in the hands of Assessee under provisions of Income tax law.
- xii. There is no evidence with the Assessing Officer that the moneys deposited in the bank account has any nexus with the Assessee. The Assessee has income mainly from investment and salary from sources in India and has been filing annual income tax returns for more than last thirty years. The Assessing Officer has not established in any manner whatsoever that the Assessee has undertaken business operation of international transactions which will result in income to be earned abroad."

11. After considering the detailed submissions of the assessee, Ld.CIT(A) sustained the addition made by the assessing officer with the following observations:

"8.3 The submissions of the learned counsel have been carefully considered along with the facts discussed by the AO in the assessment order. The undisputed facts are that the assessee opened the bank account of Eagle Ridge Services Ltd in Singapore

and is the only authorised signatory of the Bank account. There are a lot of credit entries and investment entries in the said bank account by assessee's own admission he was holding the shares of the said company in fiduciary capacity for one Mr Haji Patel till February 2012. The learned counsel has all along been stating that the AO had not proved that the account belonged to the assessee and that he had made any investments in the company. on the contrary, the assessee, had not discharged the onus cast on him to explain as to how he is not related to the company or the bank account when he himself is the sole authorised signatory to the bank account, He had also not explained how he is related Mr Haji Patel and why he had to be the beneficiary of Eagle Ridge services Ltd in a fiduciary capacity for Mr Haji Patel. According to the learned counsel the assessee is a resident and receives income from salary, capital gain and other sources. So it is the assessee who has to explain as to why a resident Indian receiving salary in India opened a bank account in Singapore and was also the beneficiary of a company in Singapore. The submissions of the learned counsel are completely silent on this issue. The assessing officer has not made the additions on presumptions. The assessing officer had overwhelming information, in his possession which the assessee could not prove to be wrong. The assessee states that he ceased to be beneficiary from February 2012. But the assessment is in question are pertaining to the prior period when he was a beneficiary of Eagle Ridge Services Ltd and therefore this fact is not relevant. The submissions of the assessee do not even faintly establish that the assessee has got nothing to do with the company Eagle Ridge services Ltd or with the investments, When he's the authorised signatory of the bank account he should be in a position to explain the credits in the bank account and the activities of the company. But surprisingly the assessee is not at all forthcoming on these subjects. As already mentioned the learned counsel for the assessee had appeared for hearing on 12.3.2018 and sought time to file further submissions on 1.7.2018. However, even after a lapse of six months no further submissions were filed by the learned counsel. It is therefore presumed that the learned counsel has got nothing more to submit on these issues. From the material available on record and in view of the above discussion, it can be concluded that the assessing officer was justified in making the aforementioned additions in the hands of the assessee. The same are therefore upheld. These grounds of appeal are DISMISSED"

12. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal:

1.1 **Ground no.1:** *On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in holding that notice under section 148 has been validly issued by the Assessing Officer.*

1.2 **Ground no.2:** *On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer of re-opening of assessment under section 147 of the Act without appreciating the fact that there was no evidence that the income of the Appellant has escaped assessment and that the Assessing Officer therefore had no reason to believe that income of the Appellant has escaped tax.*

1.3 **Ground no.3:** *On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming the following additions made by the Assessing Officer:*

a) *Addition of Rs.168,12,105 as unexplained cash credit under section 68 of the Income-tax Act.*

b) *Addition of Rs.5,64,21,361 as unexplained investments under section 69 of the Income-tax Act.*

c) *Addition of Rs.8,97,566 towards interest and Rs.1,31,484 towards dividend, as income under section 56 of the Income-tax Act.*

d) *Addition of Rs.11,25,116 towards Capital Gains under the Income tax Act.*

1.4 **Ground no.4:** *On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in disallowing a loss of Rs.90,46,609 against capital gains and other income. The Learned Commissioner (Appeals) failed to appreciate that the Assessing Officer erred in treating the bank statement of an independent Non-resident company as that belonging to the Appellant and thereby erroneously computed the income and assessed the same in the hands of the Appellant on the basis of copies of the bank account entries of a company which is an*

independent entity as opposed to the Appellant and treating the said bank account of the said company as that of the Appellant which is prima facie not legally sustainable.

1.5 **Ground no.5:** *On the facts and circumstances of the case and in law, the Lower Authorities erred in treating sums lying in the bank account of a non-resident entity as income of the Appellant, overlooking that the Appellant was neither shareholder nor in management or effective control of such non-resident entity, and in any event the Appellant was a mere trustee of an oral revocable discretionary trust of a non-resident (until 5 February 2012).*

1.6 **Ground no.6:** *On the facts and circumstances of the case and in law, the Lower Authorities erred in ignoring that narrow and circumscribed signatory powers conferred upon the Appellant in the capacity of trustee having not been exercised, did not have the effect of treatment of the Appellant as the beneficial owner of the non-resident entity and/or of the income or investments of such non-resident entity.*

1.7 **Ground no.7:** *On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) has erred in not passing a speaking order in that the main ground raised by the Appellant, namely the income of a foreign company, Eagle Ridge Services in Singapore cannot be assessed in the hands of the Appellant, has been omitted to be judicially considered.*

1.8 **Ground no.8:** *On the facts and circumstances of the case and in law, the Lower Authorities erred in overlooking that escapement (s.147/148) proceedings were not initiated against Appellant in the capacity of a representative appellant or agent of the non-resident entity, and in any event, there was no scope for taxability in the hands of the Appellant in relation to a non-resident entity forming part of an offshore trust structure settled by a non-resident.*

1.9 **Ground no.9:** *On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the additions made by the Assessing Officer on basis of bank statement of Eagle Ridge Services Limited without following the principles of natural justice.*

1.10 **Ground no.10:** *On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in passing order without giving final notice for hearing to the Appellant and giving real and sufficient opportunity to defend.*

1.11 **Ground no.11:** *Without prejudice to the above grounds, the Learned Commissioner of Income Tax (Appeal), has erred in law as well as on facts, in sustaining amounts added u/s 68 and 69, by the assessing officer, to the income of the Appellant on account of opening balance of fixed deposits / bonds / gold and other investments made by M/s Eagle Ridge Services Ltd.*

13. During the hearing before us, Ms Fereshte Sethna counsel for the Assessee argued the matter in detail and filed written submissions on facts and on law. The relevant submissions from Para 5 to 15 are reproduced below for the sake of convenience:

5. *"The impugned reassessment proceedings, initiated vide notice dated 19 February 2016 under section 147/148 of the Act, seek to bring to tax in the hands of a resident individual income of a non-resident Trust Vehicle, in circumstances where: (i) the situs of the non-resident entity is British Virgin Islands, i.e. the place of its incorporation, determinative of tax residency; (ii) no business connection of the non-resident entity exists in India, and the income of the non-resident company has neither accrued nor arisen in India-obliterating scope to invoke s.9 of the Act; (iii) it is not the case of the Revenue that the Assessee is a representative assessee of the non-resident entity – obliterating scope for application of Chapter XV of the Act; (iv) the 'place of effective management' is not in India-obliterating scope to invoke s.6(3) of the Act; (v) the corpus/investments/income of the non-resident entity do not have a 'source' or nexus in any form with India, and as such, no obligation arose in the hands of the Assessee (in the capacity of Trustee) to file a return of income in relation to the offshore Trust. The Trust Vehicle is, thus and otherwise, beyond the territorial ambit of the Act, and in any event, income of the non-resident entity is not amenable to tax in India the hands of the Assessee.*

6. *The Assessee's objections dated 9 September 2016 (disposed of on 20 September 2016) and written explanations, in letters dated 4 November 2015 and 8 December 2015, along with supporting documents, have been overlooked by the Lower Authorities, both the AO and CIT(A). The Assessee has, in writing, specifically explained in detail that:*

*(A) during late 2005 the Assessee was approached by Mr. Haji Dilip Sarabhai, non-resident, residing in Singapore for over 30 (thirty) years (**Settlor**), with a request to act as trustee, maintaining this fiduciary obligation in strict confidence, in the Settlor's best interests;*

(B) owing to the Assessee being well-acquainted with Mr. Haji Dilip Sarabhai, in view of a long-standing familial relationship, and on being explained that health and family concerns had led Mr. Haji Dilip Sarabhai to consider settling assets into a revocable discretionary trust, which would remain in operation for such duration as the Settlor considered appropriate, the Assessee signified consent to act as trustee, taking into consideration the fact that no restrictions exist under Indian law to a resident individual being nominated as trustee of an offshore trust established by a non-resident;

(C) accordingly, in December 2005, steps were adopted by Mr. Haji Dilip Sarabhai, in consonance with the Assessee accepting office of trustee, to constitute the Assessee as authorized signatory of a bank account of the Trust Vehicle established in Deutsche Bank, Singapore, with corollary fiduciary rights in relation to Share Corp Limited, underlying the Trust Vehicle, and it is not axiomatic that the Assessee should by virtue of mere signatory powers be capable of being treated as having beneficial ownership of sums lying to the credit of the bank account or investments made through the bank account;

(D) in fact, rights in relation to operation of the bank account were circumscribed by virtue of the Settlor reserving power, as did the directors of the Trust Vehicle acting through Gurker Limited, to direct investments for the benefit of the beneficiaries;

(E) as Trustee, the Assessee did not consider it necessary to enquire into the source of the Settlor's funds, and was not required to take any investment decisions for the Trust until revocation in February 2012 by the Settlor whereupon steps for the Assessee's signatory powers were terminated, and the Assessee's office of trustee came to an end;

(F) at all material times, the Trust was governed under the laws of BVI, and managed out of Singapore;

(G) the Assessee was neither a shareholder or director, and as such neither received remuneration or compensation or consideration or the benefit of any dividend or other income from the Trust Vehicle, in relation to the office of Trustee or otherwise;

(H) it is not the case of the Revenue that the Assessee made financial contribution to the Trust;

(I) no material is in existence to support Revenue's inference that the Assessee incorporated the Trust Vehicle, and grant of signatory powers in relation to the Trust Vehicle in consonance with office of Trustee held by the Assessee are at best conferment of a power to conduct a ministerial act, analogous to powers exercised by the holder of a power of attorney, which do not confer beneficial ownership to the grantee of the power;

(J) bank records bearing declarations by authorized signatories, including directors, for purposes of anti-money laundering and ancillary compliances, do not confer 'beneficial ownership' or status of 'beneficiary' to sums lying to the credit of bank accounts, within the meaning of s.139(1) Explanations 4 & 5 of the Act;

(K) bank statements and other documents, including purported letters, have at no time been received by the Assessee, and as such are matters beyond the knowledge of the Assessee and not liable to be explained by the Assessee, but in any event, there is adequate material on record in relation to revocation of the Trust settlement, including prompt steps adopted by the Settlor to induct his son Mr.

Nirav Haji Sarabhai, also a non-resident and citizen of Singapore, as beneficial owner of the Trust Vehicle jointly with Mr. Haji Dilip Sarabhai [Paper Book @ page 253]. Among diverse documents constituting record of revocation of the Trust by Mr. Haji Dilip Sarabhai, acting in his capacity as Settlor, are the letter of Share Corp dated 6 February 2012 to Mr. Haji Dilip Sarabhai confirming it holds shares in the Trust Vehicle on behalf of Mr. Haji Dilip Sarabhai [Paper Book @ page 250], a Board Resolution dated 6 February 2012 of the Trust Vehicle recording that Mr. Haji Dilip Sarabhai is authorized signatory of the bank account [Paper Book @ page 251], a subsequent letter dated 13 February 2012 recording joint beneficial ownership of both Mr. Haji Dilip Sarabhai and his son Mr. Nirav Haji [Paper Book @ page 253], followed by a Board Resolution dated 13 April 2012 recording the name of Nirav Dilip Haji Sarabhai to be added as co-signatory, with grant of authority to both Mr. Haji Dilip Sarabhai and Mr. Nirav Dilip Haji Sarabhai to operate the bank account of the Trust Vehicle [Paper Book @ page 252], all of which conclusively establish cessation of the Assessee's limited and circumscribed role of trustee of the revocable discretionary oral trust settlement of Mr. Haji Dilip Sarabhai.

7. *Cohesive reading of the statutory framework of the Act, with sections 3, 77 & 78 of the Indian Trusts Act, 1882 establishes that: (i) trusts, oral and written, are contemplated in Indian law; (ii) statutory lines of distinction existing among settlor, trustee and beneficiary, are incapable of being blurred- each are distinct offices/capacities, with corollary rights and obligations; (iii) power for revocation of trusts are capable of being reserved at the discretion of the settlor; (iv) a trustee can have, at best, legal ownership, but no beneficial ownership in relation to assets of the trust, unless the trustee were among the nominated class of beneficiaries in a specific trust (distinct from the framework of a discretionary trust); and, (v) upon the exercise of power of revocation in relation to a Trust, the trust stands extinguished. The position of law that a trust creates separation of legal ownership from that of beneficial ownership, is enunciated in **Yasmin Properties (P.) Ltd. v. ACIT [1993] 46 ITD 331 (Bombay) [Para 9]** & in **Suleman Isubji Dadabhai v. Naranbhai Dahyabhai Patel 1979 SCC OnLine Guj 43 / AIR 1980 Guj 165 [Para 12]**; a fiduciary with narrow powers is not a*

*beneficial owner, is laid down in **HSBC Bank (Mauritius) Ltd. v. DCIT (Int. Tax) (2017) 78 taxmann.com 174 (Mum Trib.) [Para 9].***

8. *Legal rights, powers, duties and obligations of a Trustee may be determined from the framework of the Indian Trusts Act, 1882, absent evidence of foreign law to the contrary, based on the judgment of the jurisdictional High Court in **Malaysian International Trading Corpn. v. Mega Safe Deposit Vaults (P) Ltd. (2006) 68 SCL 52 (Bom) (Para 23).** While the Act specifically recognizes the existence of oral trusts within the framework of s.160(1)(v) read with s.164A, as indeed does the Indian Trusts Act, 1882 (s.78). In the absence of assets or income of the offshore trust structure in India, the Assessee had no obligation, in the capacity of trustee, to maintain books of accounts of the Trust in India, much less to file a return of income in relation to the Trust under the Act. Offshore trust structures are governed by laws of incorporation, in this case, the laws of British Virgin Islands. In **Yashovardhan Birla v. DCIT, Central Circle-4(1), WTA No.2 to 8/Mum/2020 (AYs 2007-08 to 2013-14, order dated 24.12.2020, Para 32),** it has been held that offshore trusts / entities incorporated in offshore jurisdictions are liable to be taxed in their respective offshore jurisdictions, and as such, it must follow that the Trust Vehicle is liable to tax in the country of its incorporation.*

9. *As to mere signatory powers and/or bank records of the Trust Vehicle maintained within the ambit of their governance frameworks, including in relation to anti-money laundering compliances, the Mumbai Bench of this Hon'ble Tribunal, in the case of **Yashovardhan Birla v. CIT(A)-51, Mumbai (order dated 3 September 2021 in BMA No. 01/Mum/2021, Para 39),** and the Delhi Bench of the Hon'ble Tribunal in **ACIT v. Shri Jatinder Mehra (order dated 7 July 2021 in BMA No. 01/Del/2020, Para 37 to 41),** relying inter alia upon the ruling of the Mumbai Bench of this Hon'ble Tribunal in the matter of **Kamal Galani v. ACIT (order dated 10 September 2020 in ITA Nos.138-142/Mum/2019, Para 13, 14),** have concluded inter alia that bank accounts in foreign jurisdictions pertaining to offshore entities cannot merely because the assessee is declared as 'beneficial owner' for anti-money laundering purposes be treated as bank accounts of*

the assessee. In fact, in the case of a discretionary trust structure, none other than the trustee is liable to be recognized by the bank, merely for anti-money laundering purposes, as both 'legal owner' and 'beneficial owner' since the discretion remains to be exercised by the trustee in favor of one or more persons among a class of beneficiaries, whether until distribution, or sooner revocation. In any event, requirements of 'beneficial owner' and/or 'beneficiary' under the Act requiring the providing of consideration, directly or indirectly, for the asset, for the immediate or future benefit, direct or indirect, of the assessee or any other person, or deriving benefit from the asset where the consideration for such asset has been provided by any person other than such beneficiary, for being regarded as 'beneficiary', are not fulfilled in the case at hand.

10. *The Assessee is a salaried individual, who acting in good faith, accepted the obligation associated with the office of trustee, arising out of an abiding familial relationship with the Settlor, which was revoked at the discretion of the Settlor ~six years later. There is neither record of the Assessee having international transactions relating to the bank account of the Trust Vehicle or having contributed to the corpus/funds in the bank account of the Trust Vehicle nor any allegation or material to the effect that the Assessee has received any funds or any other benefit. It is neither the case of the Revenue that the Trust Vehicle or its underlying entity is a bogus or fictitious entity, nor the case of the Revenue that the Assessee was the directing mind of the Trust Vehicle or its underlying entity or in any manner a contributor to the corpus/assets of the Trust Vehicle from any source in India. In the circumstances, absent tax jurisdiction over the Trust Vehicle, sums lying in its bank account and/or its income from investments, are not amenable to tax in the hands of the Assessee.*

11. *The onus of proof in the matter, to establish the (beneficial) ownership particulars of the non-resident Trust Vehicle, lay strictly upon the Revenue. Attempts by the Revenue to shift the onus upon the Assessee, including through calling upon an assessee to offer negative proof, has been denounced by the Hon'ble Supreme Court and this Hon'ble Tribunal. Reliance is placed on **Parimiseti Seetharamamma v. CIT [1965] 57 ITR 532 (SC) - Pg. No. 4 & 5; Late Shri Bhushan Lal Sawhney, through L.R / Wife Smt. Sneh Lata Sawhney v. DCIT Mumbai ITAT order dated***

01.06.2021 - Para 6.1.12; Kamal Galani v. ACIT-23(3), Mumbai (Mumbai ITAT order dated 10.09.2020 in ITA Nos. 138 to 142/Mum/2019) - Para 12 & 14; DCIT (IT), Mumbai v. Hemant Mansukhlal Pandya [2018] 100 taxmann.com 280 (Mumbai - Trib.) - Para 17; Biren V. Savla v. ACIT [(2006) 155 Taxman 270 (Mum)] - Para 25 & 26.

12. Information received and/or data gathered by the Investigation Wing was bound to have been duly enquired into by the Assessing Officer, who instead failed to analyze the detailed explanation offered supported by documentary material furnished by the Assessee, and instead based the assessment order on mere conjecture and surmise, along with legally untenable conclusions. Persons in charge of the business and affairs of the Trust Vehicle were best equipped to offer explanations, however none appears to have been sought by the Assessing Officer. If any such explanation had been sought, then the Assessee would have been entitled to be confronted with any such statements or material, with corollary right of cross-examination, in accordance with settled requirements of due process. The complete non-application of mind is also apparent from the order of the CIT(A) which records (para 8.3) that the Assessee was acting in fiduciary capacity for Mr. Haji Dilip Sarabhai, but then proceeds on the footing that the Assessee has not explained how he is not related to the Trust Vehicle, despite a detailed written explanation and documentary evidence available on the file of both the Assessing Officer and the CIT(A) conclusively establishing the beneficial ownership of the Trust Vehicle strictly between the Settlor Mr. Haji Dilip Sarabhai and his son Mr. Nirav Haji. In arriving at the ancillary conclusion that the Assessee has not explained how he is related to Mr. Haji Dilip Sarabhai, plainly, the CIT(A) overlooked that the Assessee had on 4 November 2015 explained in writing his long familial relationship, leading him to accept a position of trustee, in confidence (detailed above). In the absence of evidentiary basis, the Revenue has failed to discharge its onus to establish 'beneficial ownership' of the Assessee in relation to the Trust Vehicle. The settled legal position in **CIT-II v. Multiplex Trading & Industrial Co. Ltd. [2015] 63 taxmann.com 170 (Delhi) - Para 30, 31; CIT-II v. Kamdhenu Steel & Alloys Ltd. [2012] 19 taxmann.com 26 (Delhi) - Para 44 & 45 and CIT-Central I v. Indo Arab Air Services [2015] 64 taxmann.com 257 (Delhi)**

– **Para 21 to 24** must, therefore, endure to the benefit of the Assessee.

13. Principles of strict interpretation of a taxing statute are well-settled- **CIT v. Aarham Softronics [2019] 102 taxmann.com 343 (SC) [Para 20]**, and bear application to arbitrary invocation of ss. 56(1), 68 and 69 of the Act in the present. The AO has held income of the Trust Vehicle liable to tax in the hands of the Assessee, under the head of 'income from other sources', under s.56, overlooking inter alia both settled principles of 'real income', and limitations in relation to treatment of income in the hands of a non-resident in the absence of 'source' or 'residence'. Further, under s.68, cash credits warrant explanation where an assessee is the recipient of cash credits, but not to cash credits in the hands of a third person. The framework of s.68 requires: (i) credit of amounts in the books maintained by an assessee; (ii) credit of a sum during the previous year; and (iii) the assessee offers no explanation about the nature and source of such credit found in the books; or where the explanation offered by the assessee in the opinion of the AO is not satisfactory. Explanations about the nature and source of sum so credited can properly only be offered by the non-resident entity in whose books/bank accounts such cash credit occurs. The AO erred in purporting to invoke s.68 qua sums lying to the credit of the bank account of a non-resident entity as cash credit in the hands of the Assessee, (para 5.7 @ pg. 137). In any event, without prejudice, the opening balance of sums lying to the credit of the non-resident entity cannot be taken into account for computing taxable income of the Assessee under s.68. Reliance is placed on rulings in: **ITO v. Meghna A. Modi (order dated 31.07.2015 in ITA No.1611/Ahd/2011) - Para 4 & 5**; and **Chetan Gupta v. DCIT (order dated 07.06.2018 in ITA No.1788/Del/2016) - Para 13(7)**. Under s.69 of the Act, investments not recorded in the books of accounts of the Assessee, but in relation to which the Assessee has 'beneficial ownership', may be brought to tax, in the hands of the Assessee. The remit of s.69 cannot extend, however, to bringing to tax investments of a non-resident entity in the hands of a resident individual, more so where the Assessee is a fiduciary, and in the absence of material to support the inference of 'beneficial ownership'. It is axiomatic that there can be no scope for the Assessee to explain the nature or source of income or investments of the Trust Vehicle, which are not matters within the remit of

knowledge of the Assessee in the capacity of mere trustee, at all material times.

14.

15. *In the fact matrix set forth above, and in light of the legal position, reopening of the Assessee's assessment under section 147 of the Act, is plainly arbitrary and bad in law, and without application of mind, in circumstances where no nexus exists between material on record with the 'reasons to believe' recorded by the Assessing Officer: **CWT-II v. Harakchand Uttamchand Khinvasara (HUF) [2018] 97 taxmann.com 518 (Bom.): [2018] 97 taxmann.com 519 (SC) - Para 12; PCIT v. Shodiman Investments P. Ltd. (2018) 93 taxmann.com 153 (Bom.) - Para 12 & 14.** It is respectfully submitted that the reassessment proceedings are liable to be quashed and additions / adjustments / disallowances carried out by the AO, and upheld by the CIT(A), are liable to deletion."*

14. The Assessee also filed list of case laws which were relied upon in support of his contentions

SR. NO.	Particulars	Reference no.
ESCAPEMENT PROCEEDINGS: NEXUS OF MATERIAL ON RECORD WITH 'REASONS TO BELIEVE' IMPERATIVE		
1.	CWT-II v. Harakchand Uttamchand Khinvasara (HUF) [2018] 97 taxmann.com 518 (Bom.): [2018] 97 taxmann.com 519 (SC)	Para 12
2.	PCIT vs. Shodiman Investments Pvt. Ltd. (2018) 93 taxmann.com 153 (Bom.)	Para 12 & 14
TRUST CREATES SEPARATION OF LEGAL OWNERSHIP FROM BENEFICIAL OWNERSHIP, WITH THE LATTER IN FAVOUR OF BENEFICIARY		
3.	Yasmin Properties (P.) Ltd. v. ACIT [1993] 46 ITD 331 (Bombay)	Para 9
4.	Suleman Isubji Dadabhai v. Naranbhai Dahyabhai Patel 1979 SCC OnLine Guj 43 / AIR 1980 Guj 165	Para 12
5.	Section 78 of the Indian Trusts Act, 1882	-
FIDUCIARY WITH NARROW POWERS IS NOT A BENEFICIAL OWNER		

SR. NO.	Particulars	Reference no.
6.	HSBC Bank (Mauritius) Ltd. v. DCIT (Int. Tax) [2017] 78 taxmann.com 174 (Mumbai - Trib.)	Para 9
CORPORATE DISTINCT JURIDICAL ENTITY FROM SHAREHOLDER		
7.	Calcutta Tramways Co. Ltd. v. CWT [1972] 86 ITR 133 (SC)	Pg. 6
OFFSHORE ENTITY TAXABLE IN JURISDICTION OF SOURCE OR RESIDENCE		
8.	Yashovardhan Birla v. DCIT, Central Circle-4(1), WTA No.2 to 8/Mum/2020 (AYs 2007-08 to 2013-14, order dated 24.12.2020)	Para 32
STRICT INTERPRETATION OF S.68, 69, S.139 - EXPLN 4/5: INCOME-TAX ACT		
9.	PCIT v. Aarham Softronics [2019] 102 taxmann.com 343 (SC)	Para 20
SCOPE OF SECTION 69 OF INCOME-TAX ACT		
10.	Biren V. Savla v. ACIT, Central Circle-11 [2006] 155 TAXMAN 270 (MUM.) (MAG.)	Para 25 & 26
ONUS ON REVENUE UNDER S.68/69 TO ESTABLISH BENEFICIAL OWNERSHIP OF INCOME OR INVESTMENT IS THAT OF ASSESSEE		
11.	Parimiseti Seetharamamma v. CIT [1965] 57 ITR 532 (SC)	Pg. No. 4 & 5
12.	Late Shri Bhushan Lal Sawhney, through his L.R / Wife Smt. Sneha Lata Sawhney v. DCIT Mumbai ITAT order dated 01.06.2021	Para 6.1.12
13.	Kamal Galani v. ACIT-23(3), Mumbai (Mumbai ITAT order dated 10.09.2020 in ITA Nos. 138 to 142/Mum/2019)	Para 12 & 14
14.	DCIT (IT), Mumbai v. Hemant Mansukhlal Pandya [2018] 100 taxmann.com 280 (Mumbai - Trib.)	Para 17
WITHOUT PREJUDICE: OPENING BALANCE TO BE IGNORED IN COMPUTING PEAK CREDIT		
15.	ITO v. Meghna A. Modi (order dated 31.07.2015 in ITA No. 1611/Ahd/2011)	Para 4 & 5
16.	Chetan Gupta v. DCIT (order dated 07.06.2018 in ITA No. 1788/Del/2016)	Para 13(7)
DECLARATIONS OF BENEFICIAL OWNERSHIP FOR LIMITED PURPOSES OF COMPLIANCES WITH ANTI-MONEY LAUNDERING LAWS HAVE NO TAX IMPLICATIONS		
17.	Yashovardhan Birla v. CIT(A)-51, Mumbai (order dated 03.09.2021 in BMA No. 01/Mum/2021)	Para 39
18.	ACIT v. Shri Jatinder Mehra (order dated 7 July 2021 in BMA No. 01/Del/2020)	Para 37 to 41

SR. NO.	Particulars	Reference no.
WHERE NO EVIDENCE IS PRODUCED REGARDING FOREIGN LAW PRESUMPTION IS THAT IT IS SAME AS INDIAN LAW		
19.	Malaysian International Trading Corpn. vs. Mega Safe Deposit Vaults (P.) Ltd. [2006] 68 SCL 52 (BOM.)	Para 23
REASSESSMENT PROCEEDINGS MERELY ON BASIS OF INFORMATION RECEIVED FROM INVESTIGATION WING CANNOT BE SUSTAINED		
20.	CIT-II v. Multiplex Trading & Industrial Co. Ltd. [2015] 63 taxmann.com 170 (Delhi)	Para 30, 31
21.	CIT-II v. Kamdhenu Steel & Alloys Ltd. [2012] 19 taxmann.com 26 (Delhi)	Para 44 & 45
22.	CIT-Central I v. Indo Arab Air Services [2015] 64 taxmann.com 257 (Delhi)	Para 21 to 24

15. On the other hand, the Learned Department Representative Shri S.N.Kabra submitted that he relied on the order of the lower authorities.

16. Considered the rival submissions and material placed on record. During hearing, Ld AR has not made any argument or submissions on the issue of reopening except gave details in written submissions, therefore it is treated as not pressed, accordingly, grounds raised in Ground No.1, 2 and 10 are dismissed as not pressed.

17. With regard to Ground Nos 3 to 9 and 11, we notice that the fundamental issues raised are, whether the assets and credits in the bank account of M/s Eagle Ridge Services Limited, an independent company

incorporated outside India, can be treated or held to belong to the Assessee. In this regard, we observe from the submissions made by both parties and the relevant facts on record are:

- i. the Assessee was nominated as fiduciary/trustee by a non-resident individual Mr Dilip Haji, residing in Singapore, in relation to a revocable offshore oral discretionary trust, during December 2005 (Trust);
- ii. the non-resident entity Eagle Ridge Services Limited, incorporated in British Virgin Islands, constituted in September 2005 (**Trust Vehicle**), formed part of the trust structure; the Trust was governed under the laws of BVI, and managed out of Singapore;
- iii. the Assessee was neither shareholder, nor director of the Trust Vehicle;
- iv. the Assessee accepted office of trustee in December 2005, as claimed by the assessee that it is without consideration or obligation for contribution,

- v. beneficial ownership of assets/corpus of the Trust remained exclusively with the beneficiaries, until revocation;
- vi. in consonance with the office of trustee, the Assessee was constituted as authorized signatories to the bank account of the non-resident company, which neither conferred exclusive signatory power nor vested beneficial ownership or management over the Trust Vehicle to the Assessee;
- vii. by virtue of revocable trust and the Settlor reserving signatory rights in parallel with directors of the non-resident company, Assessee is one among the other authorised signatories.
- viii. in exercise of powers of revocation reserved to the Settlor, the corpus of the Trust reverted to the Settlor in 2012 (relevant documents submitted in the paper book);
- ix. during late 2005, the Assessee was approached by Mr.Haji Dilip Sarabhai, non-resident, residing in Singapore for over 30 (thirty) years (**Settlor**), with a request to act as

trustee, maintaining this fiduciary obligation in strict confidence, in the Settlor's best interests;

- x. The Assessee being well-acquainted with Mr. Haji Dilip Sarabhai and on being explained that health and family concerns had led Mr. Haji Dilip Sarabhai to consider settling assets into a revocable discretionary trust, which would remain in operation for such duration as the Settlor considered appropriate, the Assessee signified consent to act as trustee, taking into consideration the fact that no restrictions exist under Indian law to a resident individual being nominated as trustee of an offshore trust established by a non-resident; accordingly, in December 2005, Mr. Haji Dilip Sarabhai, in consonance with the Assessee accepting office of trustee, to constitute the Assessee as authorized signatory of a bank account of the Trust Vehicle established in Deutsche Bank, Singapore, with corollary fiduciary rights in relation to Share Corp Limited, underlying the Trust Vehicle, and the Assessee should by virtue of mere signatory powers be capable of being treated as having beneficial ownership of sums lying

to the credit of the bank account or investments made through the bank account;

- xi. rights in relation to operation of the bank account were circumscribed by virtue of the Settlor reserving power, as did the directors of the Trust Vehicle acting through Gurker Limited, to direct investments for the benefit of the beneficiaries;
- xii. the arrangement was revoked in February 2012 by the Settlor whereupon the Assessee's signatory powers were terminated, and the Assessee's office of trustee came to an end;
- xiii. the Assessee was neither a shareholder nor director, and as such there is no record brought on record by the revenue authorities that assessee has received remuneration or compensation or consideration or the benefit of any dividend or other income from the Trust Vehicle, in relation to the office of Trustee or otherwise

18. We observe that the law relating to Trust is embodied in Indian Trusts Act, 1882 which considers that:

- A. Trusts can be oral and written;
- B. Different stake holders like settlor, trustee and beneficiary are distinct entities with consequential rights and obligations;
- C. A trustee can have, at best, legal ownership, but no beneficial ownership in relation to assets of the trust, unless the trustee were among the nominated class of beneficiaries in a specific trust
- D. Upon the exercise of power of revocation in relation to a Trust, the trust stands extinguished.

19. At the same time, we observe that the Income Tax Act does acknowledge the existence of oral trusts within the framework of Section 160(1)(v) read with section 164A, as well as the Indian Trusts Act, 1882. Offshore trust structures are governed by laws of incorporation of the respective countries in which they are incorporated, which in this case, are governed by the laws of British Virgin Islands. The coordinate Bench in the case of **Yashovardhan Birla v. DCIT, Central Circle-4(1), WTA No.2 to 8/Mum/2020 (A.Ys 2007-08 to 2013-14, order dated 24.12.2020, Para 32)**, has held that offshore trusts / entities incorporated in offshore jurisdictions are liable to be taxed in their respective offshore jurisdictions. It therefore follows that the Trust Vehicle

is liable to tax in the country of its incorporation. The relevant extract is reproduced below:

"29. In our considered view, a private discretionary trust is created and few trustees were appointed to look after the trusts property. There is an enabling Clause for continuity of the trustees. In case of incapacity or other exigencies, certain trustees have to be appointed or replaced. For that purpose, generally the power to appoint or re-appoint trustees lies with the settlor or vests in the declaration of trust itself. Similarly, in this case, it was given to assessee's father and mother. After their lifetime, it devolved on the assessee. Merely because, it is exercised by the assessee, it does not make the trust to lose its identity. The trust still will continue with the new trustees. The properties attached to the trust will continue to be the properties of the trust. It is wrong to presume that the properties governed by the trustee will be considered as the properties of the individual beneficiary who exercises the appointment of trustees. In the given case, no doubt the assessee is vested with the power to appoint or remove the trustees, does not change the status of the trust and its independent functioning.

30. We also observe that the creation and management of the discretionary trust are questioned by tax authorities by treating the same as a tool for money laundering and to hide the true owners of the assets and investments. First of all, these trusts were created by the non-resident Indian and the assets or investments were also offshore and created outside India. These kind of arrangements are legally accepted mode of investments and accepted tax planning by the International Community. The case of the revenue is not that the investments were moved from India by the settlor or any beneficiaries. Admittedly these trusts and the companies managed by the trustees were not declared by the assessee in the return of wealth. It is pertinent to note that the trusts were created in 1989 and the assessee was nominated as the beneficiary by the Late Shri Pratap Malpani. It is fact on record that there are no investments, which were made by the assessee or the investments were moved from India."

20. With regard to the signatory powers and bank records of the Trust Vehicle, the matter is clearly settled by the coordinate Bench of this Tribunal in the case of **Yashovardhan Birla v. CIT(A)-51, Mumbai (order dated 3 September 2021 in BMA No. 01/Mum/2021, Para 39)**, also in the matter of **Kamal Galani v. ACIT (order dated 10 September 2020 in ITA Nos.138-142/Mum/2019, Para 13, 14)**, and the Delhi Bench of the Tribunal in **ACIT v. Shri Jatinder Mehra (order dated 7 July 2021 in BMA No. 01/Del/2020, Para 37 to 41)**, and where they have concluded *inter alia* that bank accounts in foreign jurisdictions pertaining to offshore entities cannot, merely because the assessee is declared as 'beneficial owner' for anti-money laundering, purposes be treated as belonging to the assessee. The extract of the decision is given below:

"37. We notice from the record that the bank balance are in the name of offshore companies, trusts and joint accounts of the family members. As far as the bank balance in the offshore companies and trusts are concerned, they are separate taxable entities and the companies which are having bank accounts are governed by the trustees of the irrevocable discretionary trusts in which assessee is one of the beneficiaries. As discussed in the earlier para nos. 22 to 35, these bank accounts are running accounts of these entities and can never be the bank accounts belonging to the assessee, eventhough for the purpose of KYC norms and Anti Money Laundering provisions, the assessee was declared as the beneficiary, it does not take away the ownership of the companies and trusts."

21. Therefore, on the basis of declaration of beneficial ownership in the bank account opening form, it cannot be concluded that the bank account belongs to the Assessee and therefore the credits to the bank account cannot be taxable in the hands of the Assessee.

22. It is not disputed that the Assessee, a resident Indian, who accepted the obligation associated with the office of trustee, arising out of an abiding familial relationship with the Settlor, which was revoked at the discretion of the Settlor six years later in 2012. The Assessing Officer has not brought out any evidence of the Assessee having international transactions relating to the bank account of the Trust Vehicle or having contributed to the corpus/funds in the bank account of the Trust Vehicle nor any allegation or material to the effect that the Assessee has received any funds or any other benefit. The Assessing Officer has also not established nor contented the Trust Vehicle or its underlying entity is a bogus or fictitious entity, nor the case of the Assessing Officer that the Assessee was the controlling person of the Trust Vehicle or its underlying entity or in any manner a contributor to the corpus/assets of the Trust Vehicle from any source in India. Therefore, sums lying in its bank account and/or its income from investments, are not subject to tax in the hands of the Assessee.

23. It is a well settled law that in the case of additions of similar nature where the onus of proof to establish the (beneficial) ownership particulars of the non-resident Trust Vehicle, will always rest with the Revenue. The Revenue cannot attempt to shift the onus upon the Assessee, including through calling upon an assessee to offer negative proof. The same has been denounced by the Hon'ble Supreme Court in the case of Parimiseti Seetharamamma v. CIT [1965] 57 ITR 532 (SC):

"By sections 3 and 4 the Act imposes a general liability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision. Where however a receipt is of the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee."

24. Similar views were denounced by the coordinate bench in the case of Late Shri Bhushan Lal Sawhney, through L.R / Wife Smt. Sneha Lata Sawhney v. DCIT dated 01.06.2021; in the case of Kamal Galani v. ACIT-23(3) dated 10.09.2020 in ITA Nos. 138 to 142/Mum/2019); in the case of DCIT (IT), Mumbai v. Hemant Mansukhlal Pandya [2018] 100 taxmann.com 280 (Mumbai - Trib.); Biren V. Savla v. ACIT [(2006) 155 Taxman 270 (Mum)].

25. With regard to the nature of additions that have been made under section 56, 68 and 69 of the Income Tax Act, the Hon'ble Supreme Court has clearly laid out the Principles of strict interpretation of a taxing statute in the case of **PCIT v. Aarham Softronics [2019] 102 taxmann.com 343 (SC) [Para 20]** and therefore arbitrary invocation of ss. 56(1), 68 and 69 of the Act cannot be resorted to.

"28. The decision of this Court in Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court, (1990) 3 SCC 682 :1991 SCC (L&S) 71], made the said distinction, and explained the literal rule: (SCC p. 715, para 67)

"67. The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning, whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."

That strict interpretation does not encompass strict literalism into its fold. It may be relevant to note that simply juxtaposing "strict interpretation" with "literal rule" would result in ignoring an important aspect that is "apparent legislative intent". We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, "strict interpretation" does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then "strict interpretation" can be implied to accept some form of essential inferences which literal rule may not accept.

29. We are not suggesting that literal rule dehors the strict interpretation nor one should ignore to ascertain the interplay between "strict interpretation" and "literal interpretation". We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute."

26. The Assessing Officer has held income of the Eagle Ridge Service Limited, the Trust Vehicle liable to tax in the hands of the Assessee, under the head of 'income from other sources' u/s 56 of the Act, overlooking both settled principles of 'real income', and limitations in relation to treatment of income in the hands of a non-resident in the absence of 'source' or 'residence'.

27. The structure of section 68 requires the following conditions to be fulfilled:

- (i) credit of amounts in the books maintained by an assessee;*
- (ii) credit of a sum during the previous year; and*
- (iii) the assessee offers no explanation about the nature and source of such credit found in the books; or where the explanation offered by the assessee in the opinion of the AO is not satisfactory.*

28. In the case of the Assessee, the explanations about the nature and source of sum so credited can proper only be offered by the non-resident entity in whose books/bank accounts such cash credit recorded. The Assessing Officer has applied Section 68 to sums lying to the credit of the bank account of a non-resident entity as cash credit in the hands of the Assessee. The Assessee has also pointed out that in any event, without prejudice, the opening balance of sums lying to the credit of the non-resident entity cannot be taken into account for computing taxable income of the Assessee under s.68 for assessment years 2009-10. Under Section 69 of the Act, investments not recorded in the books of accounts of the Assessee, but in relation to which the Assessee has 'beneficial ownership', has been brought to tax in the hands of the Assessee. Further, the scope of Section 69 cannot be extended to bringing to tax investments of a non-resident entity in the hands of a resident individual, in the absence of material to support the inference of 'beneficial ownership'.

29. The coordinate bench of ITAT in the case of Kamal Galani v. ACIT (ITA Nos. 138 to 142/Mum/2019) order dated 10.09.2020 held as under:

"12. Therefore, in order to examine, whether money lying in HSBC bank account in the name of the assessee and his brother is a unexplained money, which can be taxed u/s 69A of the I.T.Act, 1961 needs to be examined. As per section 69A, where in any financial year the assessee is found to be the owner of any money,

bullion , jewellery or other valuable articles and such money, bullion, jewellery or valuable articles is not recorded in the books of accounts, if any maintained by him for any source of income and assessee offers no explanation about the nature and source of acquisition of money, bullion, jewellery and other valuable articles or the explanation offered by him is not, in the opinion of the Id. AO, satisfactory, the money and the value of the bullion, jewellery and other valuable articles may be deemed to be the income of the assessee of such financial year. A close look at the provisions of section 69A of the I.T. Act, 1961, it is abundantly clear that in order to bring any money or other valuable articles within the ambit of said section, the Ld. AO has to prove that the money is belong to the assessee. Of course, the initial burden is on the assessee to prove that the money or articles found in his position is not belongs to him. But, once, the assessee filed necessary evidences to prove that said unexplained money is not belongs to him, then, onus shift to the revenue to prove that unexplained money is in fact belongs to the assessee. Unless, the Ld. AO proves that unexplained money is belongs to the person, he cannot make any addition in the hands of the assessee.

30. In our view, the additions made under section 68 / 69 fail the test of taxability under those sections and therefore cannot be upheld.

31. In the light of above discussions and evidences on record, we hold that the credit to the bank account belonging to Eagle Ridge Services Limited, an independent entity registered outside India and income as well as the assets of that company cannot be brought within the purview of income tax in India in the case of the Assessee particularly when the assessee was acting as a trustee holding one share of the company again holding the shares in the capacity of trustee. All the additions made in

the capacity of holding as trustee of offshore trust and nominee shareholder are hereby deleted. Ground Nos 3 to 9 and 11 are hereby allowed.

32. In the result, appeal filed by the assessee is partly allowed.

33. The facts and the grounds raised by the assessee in the other assessment years viz., AY 2008-09, AY 2010-11 and AY 2011-12 are mutatis mutandis similar to the AY 2009-10, accordingly, appeal filed by the assessee are partly allowed similar to the AY 2009-10.

34. In the net result, all the appeals filed by the assessee are partly allowed.

Order pronounced on 03.01.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 03.01.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum