

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

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

**ITA NOS. 1266, 1241, 1239,1269, 1237, 1272, 1236, 1235, 1238/MUM/2020
(A.Ys: 2005-06 TO 2013-14)**

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**ITA.Nos. 1265, 1267, 1268, 1270, 1271, 1273, 1274, 1275, 1276/MUM/2020
(A.Ys: 2005-06 TO 2013-14)**

ACIT – 26(1) Room No. 623, 6 th Floor Kautilya Bhavan Bandra Kurla Complex Bandra(E), Mumbai - 400051	v.	Smt Manisha Manish Jaitha 2B, Brighton No. 2, 68-D Rungta Lane, Nepansea Road Mumbai – 400002 PAN: AACPJ8155F
(Appellant)		(Respondent)

Assessee by	:	Shri Rajesh Shah
Department by	:	Shri C.T. Mathews
Date of Hearing	:	24.01.2022
Date of Pronouncement	:	28.01.2022

ORDER

PER BENCH

1. All these appeals are filed by revenue against different order of Learned Commissioner of Income Tax (Appeals)-38, [hereinafter in short "Ld.CIT(A)"] dated 31.10.2019 for the A.Ys. 2005-06 to 2013-14.

2. Coming to the appeal in ITA Nos. 1266, 1241, 1239, 1269, 1237, 1272, 1236, 1235 and 1238/MUM/2020 for the A.Ys. 2005-06 to 2013-14 respectively, are filed against deletion of addition made by the Assessing Officer in respect of not disclosing the foreign bank accounts and foreign travelling expenses.

3. At the time of hearing, it is brought to our notice that revenue is in appeal before us in A.Y. 2005-06 to 2013-14. From A.Y. 2006-07 to 2013-14 tax disputed in these appeals are below the tax effect, for the sake of clarity the table is given below: -

Manisha Jaitha - Form 36 Details - Section 143(3) r.w.s. 147: Dept Appeal								
Grounds	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
ITA No.	1241/M/2020	1239/M/2020	1269/M/2020	1237/M/2020	1272/M/2020	1236/M/2020	1235/M/2020	1238/M/2020
Amount disputed as per Form 36 by Dept	97,01,566	1,21,04,624	12,19,134	61,14,849	77,42,971	17,07,234	5,10,119	8,66,748
Below the limits CBDT Circular No. 17/2019 dated 08.08.2019	32,75,002	40,74,416	4,14,385	20,78,437	23,92,580	5,27,530	2,26,465	2,74,004

4. We have heard the submissions of both the counsels and perused the grounds of appeal in these appeals. We find that the tax effect in all these appeals is less than ₹.50 Lakhs and therefore the appeals of the Revenue are not maintainable on account of low tax effect in view of the CBDT Circular No.17/2019 dated 08.08.2019. Accordingly, these appeals are dismissed.

5. With regard to appeal in A.Y. 2005-06, brief facts of the case are, assessee filed her return of income on 28.10.2005 declaring total income at ₹.2,76,558/-. Notice issued u/s. 148 of the Income-tax Act, 1961 (in short "Act") on 13.02.2015 after recording reasons for reopening. The assessment was reopened for the reason that assessee had not disclosed the deposits and interest income derived from the transactions in the HSBC Private Bank, Zurich for the purpose of taxation. The Assessing Officer observed that assessee has deposits in the above said bank account which was unexplained to his satisfaction and income accrued/received thereon on account of interest and profits from transactions carried through this bank are liable to be assessed in the hands of the assessee. Accordingly, he made the addition to the extent of ₹.3,19,30,169/- and interest income of ₹.1,87,056/- credited in that account to the total income as unexplained cash credits and also made addition towards expenditure on foreign travel incurred by the assessee to the extent of ₹.6 Lakhs. When the assessee was asked to explain the sources for these expenditures, since assessee could not furnish the details during the assessment proceedings, accordingly, Assessing Officer made the above additions.

6. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) by relying on the decision of the ITAT in the case of assessee's

mother Ms. Bhatia Pushpa Narendra Khimji in ITA.No. 1323/Mum/2017 and 5947/Mum/2016 dated 30.04.2019 in which the Coordinate Bench has decided that the deposits found in the Bank account of the assessee are belongs to Ms. Bhatia Pushpa Narendra Khimji (mother of the assessee). Accordingly, by relying on the same decision the Ld.CIT(A) deleted the addition made by the Assessing Officer. Further, we observe that in assessee's own case in A.Y. 2005-06 the interest credited in the above said accounts was added by the Assessing Officer and Ld.CIT(A) sustained the addition to the extent of 50% of the interest income in the hands of the assessee. In the appeal before ITAT preferred by the assessee, the Coordinate Bench decided the issue in favour of the assessee in ITA.No. 342 to 345/Mum/2020 dated 02.08.2021. In the above decision the Coordinate Bench by relying in the decision of the Mrs. Bhatia Pushpa Narendra Khimji held that all the deposits are belongs to the mother of the assessee. Accordingly, they deleted the interest income in the hands of the assessee. Now, aggrieved with the order of the Ld.CIT(A) the revenue is in appeal before us, raising following grounds in its appeal: -

"a. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) has erred in deleting the addition made by the AO by not considering the fact that the assessee being the joint account holder of the foreign bank account and has not disclosed the details of foreign assets in her Return of income for AY. 2005-06.

b. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition without appreciating the fact that the assessee is a joint holder of the foreign bank account and had made various transactions by her own signature?

c. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in law in deleting the addition without appreciating the fact that the assessee fails to explain and established foreign travelling expenditure?"

d. "The appellant craves, leave to amend or to alter any ground or add a new ground, winch may be necessary."

7. The revenue has raised basically two grounds for deletion of the deposit made in the foreign bank account and unexplained foreign travelling expenses.

8. Considered the rival submissions and material placed on record, we observe from the record that the Assessing Officer made the addition based on the information received that assessee has foreign bank account in which assessee has made several deposits in that bank account and earned interest income. We observe from the record that this issue was already adjudicated by the Coordinate Bench of this Tribunal and it was held that the deposits found in the bank account maintained by the assessee in foreign bank is belongs to her mother, for the sake of clarity we reproduce the same.

"6. Thereafter, the Ld. CIT(A), after taking into account the above submissions and contentions of the assessee, allowed the appeal of the assessee by observing and holding as under:

"As regards Ground Nos. 4 &5, the crux of the matter emerging from the above details is that the AO relied on the information in the Base Note and reopened the assessment on the belief that the assessee did not show the balance of USD 528880 which was in the bank account of HSBC and did not file the Return of Income for the A.Y.2006-07. The Assessing Officer further believed that the accumulated balances were earned from India as the assessee was not permitted to undertake any employment abroad and this fact got strength from the perusal of passport which revealed that during the F.Y.2005-06 relevant to A.Y.2006-07 the assessee had made frequent visits to India and completed the re-assessment by holding that the source of the funds for the deposit of US Dollars 704220.28 on 30/11/2004 were relatable to a source in India and a discretionary trust was made by the assessee from sources in India and also had a source in India and assessed the total income at Rs.2,33,92,362/-only on the basis of a copy of Base-Note received from the Government sources. First notice under section 148 of I.T.Act, 1961 was issued on 18/3/2015 and 142(1) notice requisitioning details and documents on 27/3/2015(Friday) calling for details on 30/3/2015 [Monday) and assessee and its CAs tried to comply with the notices despite the assessee being a non-resident and yet compliance was made by the CA to the best level. And the assessment order was finalised on 31/3/2015 on total income of Rs.2(33,92,362/-). Thus assessee did not have sufficient opportunities to explain her case to the AO. Therefore, sufficient opportunities were given to the assessee's CA to submit details and documents and explain the case and therefore facts of the case were examined vis-a-vis these details and documents.

2.5: Prima facie it emerges from the details available on record that the assessee was a non-resident and was living in Muscat during previous year relevant to A.Y. 2006-07, and the source of the deposits of US Dollars 528880 in the HSBC Private Bank during previous year relevant to A.Y.2006-07 was the inheritance of the moveable and immoveable assets of Mr.Narendra Khimji Bhatia who expired on 15/7/1988 at Houston, USA and he was carrying on the construction business and held assets in Muscat and other countries. And the funds of US Dollars are the result of multiplying of various deposits with interest earned from time to time from 1988 onwards in Grindlays Bank and ANZ Bank Muscat

which was quantified to US Dollars 704220 standing in bank account number 10388171 and this amount was deposited with IISHC Private Bank Suisse Geneva which is the bone of contention.

2.6: There are two pertinent issues of the case, whether the assessee is a non resident or not for the relevant assessment year and second is whether funds deposited in the HSBC Switzerland of US Dollars 528880 or US Dollars 704220 (87167 Plus 168297 Plus 448974) were attributable to a source of income and/or assets in India or not First of all it appears from records that the AO was in a hurry to pass assessment order since time barring date of 31.03.2015 was coming near and did not have the time to peruse the CD furnished by the assessee and/or access records from the Investigation Wing and/or ACIT 26(1), Mumbai, where the case records were there earlier before the transfer of case records. This is further evident from the observations of the AO who re-opened the assessment and recorded reasons and the AO who passed the assessment order as follows:

"The accumulated balances in the HSBC account appear to be from income sourced in India as she is not permitted to undertake employment abroad. This fact gets strength from the perusal of passport which reveals that during the F.Y.2005-06 relevant to A.Y.2006-07, the assessee has made frequent visits India and abroad.

The above facts and circumstances of the case when read with the jurisprudence as mentioned above points only to one thing with regard to the source of deposits in the HSBC, Geneva accounts, that the initial contribution to the HSBC, Geneva account while settling the discretionary trust was made by the assessee from sources in India which has not been disclosed in her return of income. Further, by applying the same principle, it can be concluded that the subsequent deposits in the account were also from sources in India which has not been disclosed in the assessee's return of income."

2.7 Prima facie it appears that the following initial deposits made by the assessee in December 1989 and January 1990 multiplied over a period of time every month with the credit of interest to it

as per bank rules which ultimately resulted in the deposits of US Dollars 704220 with HSBC Bank Switzerland in 2004.

A. 15th September 2004 USD 87,167.50 transferred to HSBC Private Bank (Suisse) SA

B. 30th September 2004 USD 168,297.23 transferred to HSBC Private Bank (Suisse) SA

C. 29th November 2004 USD 448,974.55 transferred to HSBC Private Bank (Suisse) Stay Application

Prima facie the deposit of funds of US Dollars 528880 and/or even US Dollars 704220 as per the affidavit and records is not at all relatable to any source of business and/or assets in India and hence these deposits and any income thereon did not accrue and/or arise in India. As such these deposits were relatable to a source of deposits in Muscat and elsewhere. The details of the bank deposits are as under:

Fixed deposit No.	Date of deposit	Last Date of maturity	Maturity Amount
1229187-102	18.1.1990	15.9.2004	USD87,094.50
1229187-101	3.1.1990	30.9,2004	USD 1,68,224.23
1229187-103	29.12.1989	29.11.2004	USD 4,48,901.55
<i>Total</i>			<i>USD 7,04,220.28</i>

2.8 There is another aspect of the matter from which the AO has drawn adverse conclusions. Assessee is an Indian Passport Holder and has given her address on the passport as 16 Dev Darshan, 50, Ridge Road, Walkeshwar, Mumbai, M.S. Here also the AO has drawn adverse conclusions because he was in a hurry to pass assessment order. Just because the assessee owns or has given a Mumbai address on passport does not automatically prove that the source of these deposits and income accruing and/or arising thereon on deposits with a bank either in Muscat and/or Geneva are assessable to tax in India under Section 9 of the i.T.Act,1961 since the assessee is a non-resident In nutshell, the deposits of US Dollars of 528880 and/or US Dollars 704220 with Grindlays Bank /ANZ Grindlays Bank and later on with HSBC Private Bank Suisse Geneva and interest earned thereon during previous year relevant to A.Y.2006-07 did not accrue and arise in

India and hence not taxable under the Income-tax Act,1961. Hence it is held that the amount of Rs.2,33,92,362/- equivalent to US Dollars 528880 and even US Dollars 704220 and interest earned thereon is not taxable and hence the addition of Rs.2,33,92,362/- made by the AO is hereby deleted. It is also submitted by the assessee's CA that most of the information/details required for making a fair and just assessment viz., the original CD of the HSBC Bank Account Statement right from the date of creation till date or date of closure, whichever was later and the assessee replied during the assessment proceedings stating that the assessee has submitted the original CD of the account from HSBC Bank, Geneva to the ACIT-26(1). Similarly, the assessee's CA has also submitted that copy of the passport/details of foreign travel was also made available to ACIT-26(1) vide letter dated 16.02.2015 and was verified by the AO, ACIT.26(1), Mumbai. However, it is seen from the assessment order that the Assessing Officer mentioned that the assessee did not provide any information. The assessee's CA, however, during the appellate proceedings filed the details again. The undersigned verified these details and based on which the decisions have been taken. Nevertheless, the assessee's CA is requested to provide the entire set of 13 page affidavit, 265 page documents and letter dated 27.05.2016 along with three annexures to the AO and AO will verify the authenticity of these documents, correlate figures of deposits made from December 1989/ January 1990 leading to the deposit/transfer of US Dollars 704220 (87167 Plus 168297 Plus 448974) with HSBC Bank Switzerland in 2004 and give effect to this order after verifying the details. It may be mentioned here that the name of ANZ Grindlays Bank was changed to Standard Chartered Bank from ^000 onwards as per the information available on internet.

2.9 In nutshell, assessee's ground of appeals Nos,4 & 5 are allowed and the entire addition of Rs.2,33,92,363/- is deleted subject to verification of details as mentioned above"

7. The Ld. D.R. vehemently submitted before us that assessee has deposited money into foreign bank account in A.Y. 2006-07 source of which was not explained by the assessee, neither any disclosure was made to the Indian Income Tax Authorities. It came to be known only when the Government of India received information from French

Government under DTAA in exercise of its sovereign powers that assessee was having account with foreign bank with HSBC Private Bank, (Suisse) SA, Geneva which was not disclosed to the Income Tax Department, Govt. of India. Thus, the Ld. D.R. relied heavily on the order of AO by submitting that the assessee was having deposits in the HSBC Private Bank, (Suisse) SA, Geneva which would not have been revealed if the Government of India have not received information under DTAA from the French Government and therefore the same was rightly treated as undisclosed income by the AO as the source was not explained at all. Therefore, the order of Ld. CIT(A) may kindly be reversed and that of the AO be restored.

8. The Ld. A.R., on the other hand, submitted before the Bench the details of how the assessee has received the money by heritance were filed before the authorities below. The Ld. A.R. submitted that assessee was a non resident and was living in Muscat in previous year relevant to AY. 2006-07. The Ld. AR stated that source of deposit of USD 52880 in HSBC Private Bank, (Suisse) SA, Geneva during the previous year relevant to A.Y. 2006-07 was by way of inheritance of movable and immovable assets of Mr. Narendra Khimji Bhatia husband of the assessee who expired on 15.07.1988 at Houston, USA. The Ld. A.R. submitted that assessee was carrying on the construction business and has held assets in Muscat and other countries. The Ld. A.R. submitted that the source of these deposits were the deposits of the husband along with interest earned from time to time right from 1988 onwards in Grindlays Bank and ANZ Bank, Muscat which were quantified at USD 704220 standing in the bank account No.10388171 and this is the amount which was deposited with the HSBC Private Bank, (Suisse) SA, Geneva which is the bone of contention in the present case. The Ld. A.R. submitted before the Bench that the assessee is undisputedly a non resident Indian and even the Ld. CIT(A) has observed that AO was in a hurry to pass the assessment order since the time barring date was 31.03.2015 and probably did not have the time to examine the CD furnished by the assessee and the records from investigation wing, Mumbai. The Ld. A.R. submitted that the Ld. CIT(A) has given a finding of facts that the source of deposits as appearing in the HSBC Private Bank, (Suisse) SA, Geneva were out of the credit balance with the banks as stated above as increased by interest from time to time which were deposited in HSBC Private Bank, (Suisse) SA, Geneva in 2004 as per detail given hereinabove. The Ld. A.R. submitted that Ld.

CIT(A) has even noted that assessee is a non resident and is not having any assets in India and the said income/deposits abroad is not relatable to any asset in India and hence the said income did not accrue or arise in India. The Ld. CIT(A) also observed that these deposits were relatable to source of deposit in Muscat and elsewhere as given hereinabove and finally Ld. CIT(A) allowed the appeal of the assessee subject to verification of these documents by the AO. The Ld. A.R. therefore submitted that since the AO has been provided opportunity to verify these documents and if anything wrong is found AO would have taken decision accordingly but in the present case nothing of the sort has happened. The Ld. A.R. therefore submitted that the order of Ld. CIT(A) may kindly be affirmed as being reasoned and as per law.

9. After hearing both the parties and perusing the material on record, we observe that in this case the bone of contention was the source of deposits in HSBC Private Bank, (Suisse) SA, Geneva to the tune of 2,33,92,363/- the peak balance in financial year relevant to A.Y. 2006-07. We find merit in the contentions of the Ld. A.R. that the source of deposit was out of the funds held by the assessee's husband in Muscat and other countries as assessee's husband was engaged in the business of construction and builders abroad. The assessee received this money by way of inheritance on the death of her husband in 1988 who expired on 15.07.1988. We further find that the Ld. CIT(A) has allowed the appeal of the assessee after considering all these facts and information record subject to verification of these informations by the AO as AO has passed the assessment order in a hurried manner without examining all these facts. Under these circumstances, we do not find any reason to interfere in the order of Ld. CIT(A) and accordingly we uphold the same by dismissing the appeal of the Revenue."

9. Since the issue is already settled in favour of the assessee that the deposits made in her bank account are belongs to her mother, accordingly, we do not find any reason to interfere with the finding of the Ld.CIT(A). Accordingly, ground raised by the revenue is dismissed.

10. Coming to the next issue of unexplained foreign travelling expenses the Assessing Officer observed that assessee travelled to foreign countries in this assessment year and assessee could not file the relevant documentary evidences before him. Therefore, Assessing Officer estimated the foreign travelling expenses at ₹.1 Lakh for each travel and accordingly, he made addition for the six foreign visits to the extent of ₹.6 Lakhs U/s. 69C of the Act. Assessee preferred an appeal before the Ld.CIT(A) and before the Ld.CIT(A) assessee filed additional evidences. The Ld.CIT(A) remanded the matter back to the file of the Assessing Officer. After considering the remand report from the Assessing Officer, Ld.CIT(A) observed that it is an undisputed fact that assessee has not incurred the foreign travelling expenses which is also admitted by the Assessing Officer in the remand report. It is the contention of the assessee that assessee's spouse Mr. Manish Rajinikanth Jaitha had incurred foreign travelling expenses. Ld.CIT(A) observed that the income declared by Mr. Manish Rajinikanth Jaitha as under: -

MANISH RAJNIKANT JAITHA PAN NO. ACSPJ8230F	
PRESENTLY ASSESSED WITH: DCIT CIR.4(3)(1).	
ASSESSMENT YEAR	INCOME DECLARED
<i>2005-2006</i>	<i>30,25,650</i>
<i>2006-2007</i>	<i>50,18,380</i>
<i>2007-2008</i>	<i>69,04,090</i>
<i>2008-2009</i>	<i>1,11,54,350</i>
<i>2009-2010</i>	<i>1,56,68,260</i>
<i>2010-2011</i>	<i>1,49,21,740</i>

MANISH RAJNIKANT JAITHA PAN NO. ACSPJ8230F	
PRESENTLY ASSESSED WITH: DCIT CIR.4(3)(1).	
ASSESSMENT YEAR	INCOME DECLARED
<i>2011-2012</i>	<i>2,35,42,510</i>
<i>2012-2013</i>	<i>2,51,68,910</i>
<i>2013-2014</i>	<i>2,81,46,370</i>

11. Ld.CIT(A) by referring to the above assessed income, he came to the conclusion that Mr. Manish Rajnikanth Jaitha had sufficient income which was subjected to tax to incur the expenses of foreign travelling undertaken by the assessee. Therefore, the sources of foreign travel expenses stand explained. Accordingly, he deleted the addition made by the Assessing Officer. Aggrieved revenue is in appeal before us.

12. Considered the rival submissions and material placed on record, we observed that Ld.CIT(A) has given a clear finding in his order that the foreign travelling expenses incurred by the assessee was actually incurred by her husband and her husband has proper sources of income to incur the above said expenses. Therefore, we do not find any reason to interfere with the finding of the Ld.CIT(A). Accordingly, ground raised by the revenue is dismissed.

13. In the result, appeals filed by the revenue are dismissed.

14. Coming to the appeal is ITA.Nos. 1265, 1267, 1268, 1270, 1271, 1273, 1274, 1275, 1276/MUM/2020 for the A.Ys: 2005-06 to 2013-14 respectively, are filed against deletion of penalty levied u/s. 271(1)(c) of the Act.

15. Brief facts of the case are, in the assessment proceedings the Assessing Officer reopened the assessment based on the information received that assessee is holding foreign bank account and made several deposits and earned interest income which assessee failed to disclose for taxation purpose. Accordingly, Assessing Officer made the additions of above said deposits in the bank account, interest income and also other foreign travelling expenses in the hands of the assessee. subsequently in the appellate proceedings the Ld.CIT(A) found that all the deposits and the income credited in the bank account of the assessee are belongs to her mother by relying on the finding of the ITAT in the case of her mother. Based on the additions made by the Assessing Officer in the quantum appeal the penalty proceedings were initiated and penalties were levied in the hands of the assessee from the A.Ys. 2005-06 to 2013-14. Ld.CIT(A) relying on the facts on record held that these deposits are belongs to her mother, accordingly, he deleted the quantum addition and

also he deleted the penalty levied in the hands of the assessee. Aggrieved revenue is in appeal before us.

16. Considered the rival submissions and material placed on record, we observe that all the quantum additions in the hands of the assessee are deleted by the Ld.CIT(A) by relying on the finding of the Coordinate Bench in assessee's mother case. It is fact on record that all the additions made in the hands of the assessee are actually belongs to her mother since all the quantum appeals are decided in favour of the assessee and the penalty levied deserved to be deleted. Accordingly, the Ld.CIT(A) deleted the penalty with the following observation.

"6.2.1 I have considered the penalty order and the corresponding assessment order. I have perused the submission of the appellant and all the relevant documentary evidences filed before the AO and before me in the appellate proceedings. Penalty proceedings u/s.271(1)(c) of the I.T. Act, 1961 were initiated for concealment of income and furnishing inaccurate particulars of income in respect of the following addition which were made in the assessment order:

- | | | |
|-----------|----------------------------------------------------|------------------------|
| <i>a.</i> | <i>Unexplained credits in foreign bank account</i> | <i>Rs.3,19,30,169/</i> |
| <i>b.</i> | <i>Interest from foreign bank account</i> | <i>Rs. 1,87,056/-</i> |
| <i>c.</i> | <i>Unexplained expense on foreign travel</i> | <i>Rs. 6,00,000/</i> |

6.2.2 With regard to addition made on account of unexplained credits in HSBC Bank, Zurich, Switzerland account, amounting to Rs.3,19,30,169/-, I have dealt with the issue on hand at length in adjudicating the quantum appeal. I found that the credits in the alleged HSBC Bank accounts were deposited, by Ms. Pushpa Bhatia Narendra Khimji, the appellant's mother from her bank account held with ANZ Grindlays Bank which later on got merged with Standard

Chartered Bank wherein the funds inherited by Ms. Pushpa Bhatia Narendra Khimji from her Late husband Narendra Khimji, through the "Will" were deposited. The Hon'ble ITAT, "B" Bench Mumbai in the case of Ms. Pushpa Bhatia Narendra Khimji, the appellant's mother in its order dated 30.04.2019 in adjudicating the appeal for A.Y.2006-07 & 2007-08 has held that, the credits in the alleged HSBC Bank are funds transferred from ANZ Grindlays Bank and these funds deposited in the said alleged bank account belonged to Ms. Pushpa Bhatia Narendra Khimji, the appellant's mother. I have considered the remand report of the AO. The above facts of the case are not disputed and no discrepancy is noticed in the relevant documents, which were remanded to the AO in the appellate proceedings. There is no cogent material on record to negate the above submission of the appellant. Taking all these, into account and drawing strength from the decision held by the Hon'ble ITAT in the case of the Ms. Pushpa Bhatia Narendra Khimji referred to above, I have concluded that the source and nature of the said credits in the alleged bank account did not belong to the appellant but to Ms. Pushpa Bhatia Narendra Khimji. The operative portion of my decision in the quantum appeal No.CIT(A)-38/ ACIT-26(2)/IT362/2016-17, order dated 31.10.2019 is reproduced below for better understanding and ready reference as follows:

"6.3.5 Based on the documents brought on record attached to the paver book in particular, Annexure I to VI read with bank account statements, in my considered opinion, appellant has sufficiently discharged the onus to prove that the funds invested in the aforesaid bank accounts belonged to her mother. In view of the aforesaid facts and respectfully following the decision held by the Hon'ble ITAT in the case of Smt. Bhatia Pushpa Khimji (mother of the appellant), confirming the findings of the Ld.CIT(A) that the source of funds deposited in the alleged HSBC bank account is from the bank account of the appellant's mother held in ANZ Grindlays Bank, Muscat and that the said funds have been transferred to the alleged HSBC bank account but Smt. Bhatia Pushvakhimii the source and ownership of the deposits in the aforesaid bank accounts in HSBC bank at Zurich, stand satisfactorily explained as belonging to Smt. Bhatia Pushpa Khimji, the mother of the appellant."

6.2.3 It is observed from the perusal of the penalty order, that the AO has no cogent material to negate the submissions and contention of the appellant that the funds deposited in the alleged HSBC Bank account do not belong to the appellant. In the light of the above facts, and respectfully following the decision held by the Hon'ble jurisdictional ITAT, Mumbai (supra) in the case of Ms. Pushpa Bhatia Narendra Khimji, appellant's mother, the addition is deleted in adjudicating the quantum appeal of the appellant, the penalty levied u/s. 271(1)(c) is not sustainable factually and legally. Hence, since the entire deposits made in the said Bank Account added as source being unexplained was deleted in my appellate order dated 31.10.2019 in the quantum appeal for the A.Y. 2005-2006, the AO is directed to delete the penalty levied at 300% of tax sought to be evaded on the addition of Rs.3,21,17,225/-. The appellants ground of appeal stands allowed."

17. Considered the detailed finding of the Ld.CIT(A) we do not find any reason to interfere with the finding of the Ld.CIT(A) in deleting the penalty levied u/s. 271(1)(c) of the Act. Accordingly, all the appeals filed by the revenue for the A.Y. 2005-06 to 2013-14 in terms of penalty are dismissed.

18. In the net result, all the appeals filed by the Revenue are dismissed.

Order pronounced on 28.01.2022 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 28.01.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR 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