

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

BEFORE SHRI VIKAS AWASTHY, JM AND SHRI PRASHANT MAHARISHI, AM

**ITA No. 7785/Mum/2019**

(Assessment Year 2010-11)

Matthew Graham Stock Diamond Head 46-B Bhulabhai Desai Road Breach Candy, Mumbai-400 026 <b>(Appellant)</b>	Vs.	The Dy. Commissioner of Income Tax, Central Circle- 3(3), R.No. 1923 Air India Bldg Nariman Point, Mumbai-400 021 <b>(Respondent)</b>
<b>PAN No. AEAPS3449D</b>		

<b>Assessee by</b>	:	None
<b>Department by</b>	:	S/Shri Sanjay Deshmukh, CIT & CT Mathews, Sr. AR

<b>Date of hearing:</b>	24.02.2022
<b>Date of pronouncement :</b>	24.2.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the assessee Matthew Graham Stock [Assessee/ Appellant], individual, against the order passed by the Learned Commissioner of income-tax (Appeals)-51, Mumbai [The learned CIT(A)] dated 14.10.2019 for Assessment Year 2010-11.
02. By this order the learned CIT(A) has allowed the appeal filed by the assessee partly, preferred against the assessment order by the Dy. Commissioner of income-tax, Central Circle 3(3), Mumbai (the learned Assessing Officer) passed under section 153C read with section 143(3) of the income-tax Act, 1961 (hereinafter referred to as 'Act') dated 29.12.2017,



wherein the addition of ₹3,43,50,000/- was made in the hands of the assessee as undisclosed receipt. The learned CIT (A), upheld that the USD 5 lacs credited in the Foreign bank account of the assessee on 30<sup>th</sup> January, 2009 has been correctly added to the income of the assessee, however Assessing Officer was directed to apply the correct foreign exchange rate which was existing on 30.06.2009 i.e. the date of credit in bank account. The assessee is aggrieved with the above order and has preferred this appeal raising following 6 grounds of appeal:-

"1. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirming the action of the Assessing Officer in passing the impugned assessment order u/s 143(3) r.w.s 153C despite the fact that the provisions of section 153C are neither attracted nor applicable in view of the proviso to subsection (1) of section 153C of the Income tax Act 1961.*

2. *On the facts and circumstances of the Appellant's case and in law, Ld. CIT(A) erred in confirming the action of the Assessing Officer in invoking the provisions of section 153C which is illegal, bad in law or otherwise void-ab-initio for the want of jurisdiction on the ground that no incriminating document/ evidence was found at the premises of any third party during the year under consideration.*

3. *On the facts and circumstances of the appellant's case and in law the Ld. CIT (A) erred in holding that the appellant has held undisclosed bank account no. 152-282117-270 in HSBC SG Singapore, without providing any documentary evidences for the same.*

4. *On the facts and circumstances of the appellant's case and in law the Ld. CIT (A) erred in confirming the action of A.O in adding an Income amounting to \$5,00,000/ equivalent to Rs. 3,43,50,000/- being amount credited in the alleged Undisclosed bank account.*

5. *On the facts and circumstances of the appellant's case and in law the Ld. CIT (A) erred in not holding that the appellant is a nonresident and therefore, any income earned outside India is not taxable in India.*

6. *On the facts and circumstances of the appellant's case and in law the Ld. CIT (A) erred in not taking cognizance of the documents filed before him to prove the residency of the appellant."*

03. The Brief facts of the case shows that the assessee has filed his return of income on 31.07.2010 declared income of ₹26,40,566/-. A search under section 132 of the Act was conducted on 24.02.2016 in case of Sanjay Bijaykumar Saraf. During the course of search, bank account No.140697 in the name of Rosewood International Group Limited with UBS AG, Singapore was found where the beneficiary account holder is Sanjay Bijaykumar Saraf and from that bank account there is an outgoing payment to the assessee, who was earlier Chief executive officer [CEO] of Stemcor India Private Limited. Above payment was made on 30<sup>th</sup> January 2009 of US \$ 5 lac which was amounting to ₹3.435 crores.

04. A notice under section 153C of the Act was issued on 11.09.2017. In response to that assessee filed return of income on 02.11.2017 declaring total income of ₹38,43,066/-. When assessee was confronted with the above facts, the learned Authorised Representative submitted that assessee is



a non-resident. The Ld Assessing Officer asked assessee to prove with supporting evidences of the stay of assessee in India. No such evidences were produced and therefore, the Assessing Officer treated the assessee as resident. On the question of the receipt of above money, assessee stated that he has not received any such sum and even otherwise any income earned outside India is not taxable in his hands as assessee is a non-resident. The learned Assessing Officer held that in an absence of any evidence with respect to stay in India, he considered assessee as a resident. He further held that above deposit of money in foreign bank account is taxable in India. The Assessing Officer further referred to the statement of Mr. Sanjay Bijaykumar Saraf, wherein on oath he stated that he has business relation with the assessee. Vide question No.15 attention was drawn of Mr. Sanjay Bijaykumar Saraf to statement recorded under section 131 of the Act on 24.02.2016 of this assessee, wherein assessee stated that he knows Mr. Sanjay Bijaykumar Saraf for last 20 years and he is closely associated with him and his business concerns. He further stated that two of the debit entries in the bank account appearing in his name. Mr. Sanjay Bijaykumar Saraf did not offer any comments in reply to that question. The Assessing Officer also recorded the statement on oath of the assessee under section 131 of the Act when the bank account was shown to the assessee; he confirmed that the name appearing in the transaction column is his name. However; he submitted that he did not enter in to any such transaction. The Assessing Officer held that there is clearly a nexus between the company of the assessee, Saraf family and the assessee for past 20 years. Reference for exchange of information was sent with respect to the enquiry of two payments of \$ 5 lacs each on 28<sup>th</sup> October, 2008 and 30<sup>th</sup>

January, 2009 from the above bank account where as recipient name of assessee was mentioned. Information was received that the above sum of \$ 10 lacs is credited in the account No. 152-282117-27 of HSBC SG, Singapore of the assessee stating Mumbai address is of 3, Diamond Head, 46B, Bhulabhai Desai Rd., Mumbai-400 026. An amount of \$ 5 lac USD falls in this year i.e. A.Y. 2010-11, Ld Assessing Officer made an addition of ₹3,43,53,000/- by order dated 29.12.2017 passed under section 153C read with section 143(3) of the Act determining the total income of assessee at ₹3,81,93,070/-.

05. The assessee is aggrieved with the order of the learned Assessing Officer preferred the appeal before CIT (A). Before him, assessee reiterated that he has not received any sum. The bank account received in exchange of information, he also stated that he does not own any such bank account and therefore, no such sum was received. He also stated that he is a non-resident and therefore, the above sum is not chargeable to tax.
06. The learned CIT (A) noted that the assessee has neither filed copy of the passport nor made request for submission of any additional evidence. He held that the learned Assessing Officer has correctly treated the assessee as resident in India. With respect to the bank account, he confirmed the findings of the Assessing Officer. But he directed the Assessing Officer to take the correct exchange rate of the date on which the sum was credited in the bank account.
07. The assessee has preferred this appeal before us against the order of the learned CIT (A). This appeal was first posted for hearing on 12<sup>th</sup> May, 2021 subsequently on 24<sup>th</sup> June, 2021,



31<sup>st</sup> June 2021, 4<sup>th</sup> August, 2021, 8<sup>th</sup> September 2021, 18<sup>th</sup> October, 2021 and lastly on 24<sup>th</sup> February, 2022. On none of these occasions assessee remained present. Various notices served at the addresses mentioned by the assessee in form No.36 returned with remark 'Left'. Therefore, in absence of any address, the registry is left with no other method for issue of notice and therefore, this appeal is decided on the merits of the case on the basis of information available on record.

08. The learned Departmental Representative vehemently supported the order of the lower authorities.
09. We have carefully considered the contention of the learned Departmental Representative and perused the orders of the lower authorities. The facts and the records show that
- i. Assessee is an individual.
  - ii. During the course of search on premises of Mr. Sanjay Bijaykumar Saraf, a bank account was found where in as recipient with respect to two payment of US \$ 5 lac each the assessee's name is mentioned. During A.Y. 2010-11 US \$ 5 lacs was received.
  - iii. On exchange of information, it was confirmed that the payment was made into a bank account which is in the name of the assessee. The bank account owner's address is the address of the assessee. The same address is also mentioned in the assessment order and appellate order. The assessee in form No.36 has also mentioned the same address.
  - iv. Assessee has merely denied having bank account and of receiving the above payment.



- v. A person who is beneficiary owner of the bank account is having business relationship with the assessee for past 20 years. This was confirmed by the person who paid the sum and also the assessee.
- vi. The learned Assessing Officer gave ample opportunity to assessee to show evidences of his residential status, which was not provided by him to the lower authorities. Therefore, assessee has correctly been stated to be a resident of India. The assessee has also not stated that, if he is not resident of India, then in which country he resides.

010. Based on the statement of Mr. Sanjay Bijaykumar Saraf, statement of assessee, information found during the course of search and information received under exchange of information, we do not have any hesitation in confirming the orders of the lower authorities. Thus the ld Lower authorities have correctly made an addition of Us\$ 5, 00,000/- as unexplained income of assessee. Accordingly, all the grounds of appeal are dismissed.

011. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 24 .02.2022.

Sd/-  
(VIKAS AWASTHY)  
(JUDICIAL MEMBER)

Sd/-  
( PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated:24 .02.2022



*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai