

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 707/Mum/2019 (Assessment Year 2007-08)

DCIT(IT)-4(2)(1) Room No.1708, 17 th Floor Air India Building Nariman Point Mumbai-400 021	Vs.	Ganpat Singhvi C/o Kanavat & Co. 24 Kitab Mahal, 1 st Floor 192, Dr.D.Naoroji Road Mumbai-400 001 PAN : BHMPS6673H
(Appellant)		(Respondent)

Assessee by	Shri Ritu Kamal kishore
Department by	Shri Hoshang B.Irani
Date of Hearing	24.02.2022
Date of Pronouncement	10.03.2022

ORDER

Per Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income-tax(Appeals)-58 dated 13.11.2018 and pertains to Assessment Year 2007-08.

2. Grounds of appeal read as under:-

1. "On facts and in circumstances of the case, the Id. CIT(A) has erred in deleting the deposits amounting to Rs. 1,32,72,864/- in HSBC, Geneva standing in the name of Blueridge Investment Corporation, where the assessee is a joint signatory to the bank account."
2. "On facts and in circumstances of the case, the Ld. CIT(A) has erred in not appreciating the submission made by the assessee on 24.10.2017 in page 3, that he had not provided any specific service or made any specific contribution to Blueridge Investment Corporation and still was made a joint signatory to the HSBC, Geneva account, thereby indicating nexus and control over the funds by the assessee."
3. "On facts and in circumstances of the case, the Ld. CIT(A) has erred in not calling for the "Contractual Documentation", under Rule 46A(4), that has been referred to by HSBC, Geneva, whereby, one Iraqi national has been stated as the Sole Beneficiary of Blueridge Investment Corporation."

3. Brief facts of the case are that in this case in assessment order, AO observed regarding information received by Government of India from the French Government under DTAA in exercise of its sovereign powers that some Indian nationals and residents have Foreign Bank Accounts in HSBC Private Bank (Suisse) SA, Geneva which were undisclosed to the Indian Taxation Department. That this information was received in the form of a document (herein after referred to as "Base Note") wherein various details of account holders such as Name, Date of Birth, Place of Birth, Sex, Residential Address, Profession, Nationality along with the date of opening of the bank account in HSBC Private Bank (Suisse) SA, Geneva and balance in certain years etc are mentioned.

That in the case of the assessee also, a Base Note was received from the office of the DIT(Inv)-II, Mumbai, according to this, the assessee, Ganpat Singhvi is holding an account in HSBC Pvt.Bank Geneva bearing BUP code: 5090154065. That as per the base note, the date of creation of the account was 24.7.1998. That the peak amount mentioned in the base note is USD 300494.55 in AY 207-08. That from the base note, it is seen that there are two accounts in HSBC, Geneva with which the assessee is associated with - the first account is in the name of Blueridge Investment Corporation in which the peak balance is USD 300494.55 in AY 2007-08, the second account is an account in which he is an Account Holder - 1 (Account Holder -2 being his brother Devendra Singhvi) in which no amount is reflected for AY 2007-08.

4. Notice was issued to the assessee in this regard as under:-

1. Provide a copy of the passport from the date of opening the account in HSBC, Geneva till date including all the pages thereof.
2. The base note of your HSBC, Geneva Account shows that you have an address in India. Kindly provide an explanation to this.
3. Mention the source of deposits made in the HSBC, Geneva. Also state whether the amounts reflected in the base note have any source in India.

4. Mention the address given by you to HSBC, Geneva when you opened the account and thereafter in case there is a change in your address.

5. In case your answer to the above questions are in the negative, provide your statement in an affidavit duly signed and notarized and sent it to the office of the undersigned.

5. The AO noted the response of the assessee as under:-

(a) He is residing in the UAE for the last 35 years. (Copy of passport have been submitted)

(b) The base note of HSBC, Geneva account shows his address in India for the reason that a copy of his passport was given by HSBC, Abu Dhabi to HSBC, Geneva for opening of the bank account. The account opening documentation requires a permanent address in India, which was taken from the passport.

(c) The source of deposit made in HSBC, Geneva was out of the funds transferred from HSBC, Abu Dhabi. He further confirms that the same do not have any source in India.

(d) The HSBC, Geneva account was opened through HSBC, Abu Dhabi in which his address is stated as P.O. Box 46611, Abu Dhabi, UAE which is the same as that of the Abu Dhabi account.

Also, the assessee submitted that the address as mentioned in the base note as Singh Pole, Jodhpur is a house where his mother and brother are staying.

6. However, AO was not satisfied, he summarized the assessee's response as under:-

“In reply to this, the assessee in his submission dt. 4.3.15 received on 9.3.15 stated that he is a non-resident u/s 6 of the Act. He contends that as per Section 5 of the Act the income that accrues or arises outside India does not form part of his total income as per the Act and that the transactions with HSBC, Geneva are not covered by the provisions of Sec. 9 of the Act as they are made out of the funds transferred from HSBC, Abu Dhabi.

With regard to the account in the name of Blue Ridge Investment Corporation, the assessee submitted that the Corporation being a foreign company has no obligation to provide any information about the company to Indian tax authorities. Also, it is stated that he is just a joint - signatory to the bank account and he cannot operate it on his own. He submitted that he is under no obligation to provide the information about the company.

Further, no evidence was produced to show the source of deposit made in the other account in HSBC, Geneva jointly held by him and his brother. He confirmed the

statement made by his brother that the money transferred from HSBC, Abu Dhabi to HSBC, Geneva was his (the assessee's) money.”

7. AO rejected the assessee's submissions by observing as under:-

“(a) The assessee is a joint-signatory to the account held in the name of Blueridge Investment Corporation. He is also the Treasurer and Director of the entity. He was asked to produce the source of deposits made in the account but no submission was made on this regard and nothing is mentioned by him with regard to whether any amount is sourced from India; the letter dt 4.12.14 of the entity as well as the affidavit of the assessee dt.2.2.14 is silent on this. On the other hand, considering the position he occupies in the said entity, he must be aware of both the credits and debits made in the account. The assessee chose not to produce the bank account or the source of deposits made in the account.

(b) To substantiate the letter dt. 4.12.14 of Blueridge Investment Corporation, no material evidence in the form of certificate of registration of the company, its financials etc are brought on record to prove the statements made in the said letter. Also, the source of deposits made in the account held in the name of this entity is not-given. Also/ no details of the Iraqi national, Mr. Nazar Khan is given. It is a mere self-serving letter without any documentary evidence wherein the onus of the ownership of the account is being shifted to another person without any evidence to support it,

(c) With regard to the account in the name of the assessee and his brother, the assessee stated in his affidavit that the amount in HSBC, Geneva was transferred from HSBC, Abu Dhabi and that it is his money that was transferred. The assessee chose not to produce any bank account details in order to support the claim that he made.

(d) With regard to the both the accounts held in the name of Blueridge Investment Corporation and that of the assessee and his brother, it must be noted that the assessee is an Indian citizen; he has immovable and movable properties in India and the base note of the HSBC, Geneva account also clearly mentions an address in India, fact, he has used his Indian passport to open the accounts in HSBC, Geneva. He has been filing his return of income in India. During the assessment proceedings, notice u/s 133(6) of the Act was issued to both NSDL and CDSL in order to find out the demat accounts held by the assessee as well as the shares held by him. In response, NSDL vide their letter dt. 18.3.15 has reported the following demat accounts in the name of the assessee:

S.No	Client ID	No scripts held	Total number of shares held various scripts
i	10112794	68	6,26,459
2	10009144	9	20,501
3	10009185	4	15,061
4	10009194	3	47,792
5	10011044	1	300
	TOTAL	85	7,10,113

This means that the assessee does have his interests in India. Considering this, there is a strong presumption that the deposits made in the HSBC, Geneva account have their sources in India. The assessee cannot hide behind his status as a nonresident to free himself from producing the relevant material evidences that are in his possession or in his capacity to produce to prove that the deposits made in the HSBC, Geneva as contained in the base note is not hit by the provisions of Section 5(2) and Section 9 of the Act.

(e) The assessee chose not to disclose with material evidence the sources of deposits in the HSBC, Geneva. It is in the public domain that HSBC, Geneva has been inquired regarding its role in facilitating its clients to evade taxes. Also, the names of various individuals including the assessee himself have been mentioned in the list of account holders in HSBC, Geneva who have been suspected of tax evasion. Hence there is a prima-facie presumption of amounts in the said account being undisclosed and sourced from India. The assessment proceedings offered an opportunity to the assessee to rebut these presumptions but he has chosen not to disclose details of his HSBC bank accounts and the sources of deposit despite various opportunities given.

The provision of Section 5(2) of the Act is reproduced as under:

"Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which —

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year".

During the assessment proceedings and as can be seen from the facts of the case that the assessee has not made out a case that the deposits in the above mentioned accounts in HSBC, Geneva do not fall within the ambit of this provision of law."

8. Thereafter, AO referred to case laws from Hon'ble Delhi High Court decision in the case of Nova Promoters and Finlease P.Ltd. 342 ITR 169 and Hon'ble Supreme Court decision in case of Sumati Dayal vs CIT (1995) 214 ITR 801(SC) and CIT vs Durga Prasad More [1971] 82 ITR 540 and concluded as under:-

In view of the above, the peak amount as appearing in the Base Note of the assessee's HSBC account in AY 2007-08 being USD 3,00,495 in Jan, 2007 which translates to Rs. 1,32,72,864/- (@ Rs. 44.17 per USD being the exchange rate in Jan, 2007 as per RBI) is hereby added to the total income of the assessee as income which is received or is deemed to be received in India in this year by the assessee or on his behalf or accrues or arises or is deemed to accrue or arise to him in India during this year.

9. Against the above order, assessee appealed before the Id.CIT(A). Ld.CIT(A) held that facts are similar to the issue decided by him in his order dated 12.11.2018 in assessee's own case for AY 2006-07. For the same reason, he decided the issue in favour of the assessee. The order of Id.CIT(A) reads as under:-

The addition made by Assessing Officer is peak balance in account of M/s Blueridge investment Corporation. The other account was not in operation in this A.Y.

The matters concerning deposit and balance in bank account in HSBC, Geneva in name of Blueridge Investment Corporation (Relationship no. 4029263) and joint account of appellant with Shri Devendra Singhvi (Relationship no. 4495795) was considered and decided in appellate order dated 12.11.2018 for AY 2006-07 in favour of assessee. Facts and circumstances remaining same, on account of same reasons, same decision applies.

10. Against the above order, assessee is in appeal before us.

11. At the outset, Id. Counsel of the assessee submitted that facts are identical to the one for AY 2006-07 in assessee's own case, wherein Id.CIT(A) decided the issue in favour of the assessee and ITAT has confirmed the same. Hence, she submitted that the issue is covered in favour of the assessee.

12. Per contra, Ld. DR relied upon orders of the AO. However, we did not dispute the proposition that ITAT in assessee's own case on same facts and decided the issue in favour of the assessee in the previous assessment year.

13. We have carefully heard both the parties and perused the records. We find that identical issue was decided on same facts in favour of the assessee by this ITAT for AY 2006-07 vide order dated 01.10.2021. We may gainfully referred to the same as under:

2. The only issue raised in the grounds of appeal is against the deletion of addition of Rs.5,30,92,953/- by Ld. CIT(A) as made by the AO on account of peak balance during the year in two bank accounts with HSBC Private Bank(Suisse) SA, Geneva.

3. The facts in brief are that the Respondent is an individual residing in Abu Dhabi, UAE since 1976. The Respondent is a Chartered Accountant, working with Al Nasser Holdings as Group Advisor & Director (formerly as Managing Director). During FY 2005-06 (AY 2006-07), the respondent resided in India for a period of 45 days which does not exceed the maximum threshold limit specified in Section 6 of the Income Tax Act, 1961 ('the Act') and accordingly, the respondent was non-resident for AY 2006-07. Details of stay in India prior to FY 2005-06 and subsequent to FY 2005-06 as per the passport are as under:-

Financial Year	No. of days of Stay
2001-02	40
2002-03	44
2003-04	29
2004-05	42
2006-07	22
2007-08	47
2008-09	32
2009-10	38
2010-11	47
2011-12	50

During the year, the respondent assessee filed his return of income on 30.3.2007 declaring an income of Rs 178/-. Since the respondent assessee was a non-resident, as per Section 5(2) of the Act, incomes earned by him outside India were not required to be disclosed or offered to tax in India. In view of this, the respondent assessee had not shown his foreign income in his return of income. The return of income was processed vide intimation under Section 143(1) of the Act. According to the information received by the Govt. of India from French Govt. under DTTA in exercise of sovereign powers that some Indian residents and national have foreign bank accounts in HSBC Private Bank(Suisse) SA, Geneva. In the case of assessee also, a base note was received from the office of DIT(Inv)-II, Mumbai mentioning that assessee has bank accounts in HSBC Geneva. The respondent assessee had opened a joint account along with his brother in HSBC Geneva in 1998 and had transferred funds since 1998 to this account from his other account in HSBC Abu Dhabi, UAE. The source of the funds transferred from HSBC Abu Dhabi, UAE were stated to be out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. The funds transferred from HSBC Abu Dhabi according to the respondent assessee to HSBC, Geneva had no source or income accruing or arising from India. The DDIT (Inv.) Unit-III, Mumbai investigated the account with HSBC, Geneva by issuing summons u/s.131 of the Act dated 9.12.2011 and the detailed submissions in reply were made vide letters dated 16.12.2011, 21.12.2011 and 29.12.2011 before the DDIT (Inv.). Thereafter, the assessment was reopened u/s 147 of the Act vide notice u/s 148 of the Act dated 31.10.2014 after recording reasons to believe u/s 148(2) of the Act which were duly supplied to the assessee with notice u/s 148 of the Act. The AO noted in the reasons to believe that information had been received pertaining to respondent assessee having a bank account in HSBC Bank, Geneva bearing number BUP_SIFIC_PER_ID-5090154065 and the peak balance in such account was USD 1,194,388. The AO also supplied a copy of base note received from French Authorities under Indo-French Fiscal Treaty to the respondent assessee. As per base note copy of which is filed at Pg. 185 to 189 of the paper book, there are two accounts with HSBC Geneva. The first account bearing number 5094029263 is in the name of Blueridge Investment Corporation which was incorporated in Liberia having a peak balance of USD 1,184,851 in February 2006 and the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005. The respondent assessee filed objections vide letter dated 7.11.2014 to the reopening of the assessment and also submitted copies of letters filed with DDIT (Inv.) Unit-III in response to the summons u/s 131 of the Act. The objections were disposed-off by the Ld. AO vide order dated 12.11.2014. Thereafter the AO issued statutory notices which were duly served upon the assessee calling upon to furnish the bank account statements of HSBC, Geneva and in case the respondent assessee is not in position to submit the same, he was directed to fill up the Consent Waiver Form enclosed with the notice. The AO also supplied the respondent assessee this information as to two accounts namely one in the name of a Company viz. Blueridge Investment Corporation wherein the respondent assessee was merely a joint signatory being a director of the Company and second was the respondent assessee's personal account jointly held along with his brother. The assessee replied the AO queries by filing before the AO detailed submissions dated 19.12. 2014 wherein it was stated that one bank account belonged to a company registered in Liberia. Blueridge Investment Corporation ('the Company') and he was neither a shareholder nor has any beneficial interest, directly or indirectly, in the Company and only a treasurer and a Director in this Company. He also stated that he was a joint signatory of the bank account of the Company

along with other Director and all the transactions in the aforesaid bank account of the Company solely belonged to the Company and not to the respondent assessee. The respondent assessee also filed before AO an affidavit duly sworn in before the Assistant Consular Officer Embassy of India Abu Dhabi a copy of which is filed at Pg. no. 201-202 of the paper book , letter dated 04/12/2014 of Blueridge Investment Corporation at Pg. no. 197 certifying that the company is a Tax resident of Liberia with sole beneficial owner is Mr. Nazar Khan who is an Iraqi National and that the respondent is a treasurer and director of the company and he is neither a shareholder nor having any beneficial interest in the company and he is only a joint signatory of the bank account of the company along with other director. The respondent assessee also filed before the AO the credit advices received from HSBC Geneva in respect of Funds transferred to his account from HSBC Abu Dhabi. Finally, the assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 25.03.2015 by making an addition of Rs. 5,30,92,953/- to the income of the assessee equal to peak balance in both the bank accounts.

4. The aggrieved assessee filed an appeal before the Id. CIT(A) and some additional evidences were also filed before Id CIT(A) which are placed at page nos. 257-335 of the paper book. The Id CIT(A) forwarded the additional evidences to the AO and directed to file a remand report . The AO submitted remand report to the Ld. CIT(A). The Ld. CIT(A) after considering the facts and the remand report admitted the additional evidence under Rule 46A held that in order to assess the asset/bank account held by a third party in the hands of the respondent assessee the department has to prove that the assessee has direct beneficial interest in the asset/bank account held by third party (i.e. Blueridge Investment Corporation). The Id CIT(A) observed that the department has failed to bring any evidences on record to show that the respondent is having any beneficial interest in the company i.e. Blueridge Investment Corporation or the bank account held by the company with HSBC Geneva. On the contrary the respondent filed three independent/third party evidences to show that he has no beneficial interest either direct or indirect in the company namely Blueridge Investment Corporation or the bank account held by the company held with HSBC Geneva. These evidences are as follows:

- i. Letter dated 04/12/2014 of Blueridge Investment Corporation addressed to the Income Tax Department (Pg 205)
 - ii. Letters dated 22/04/2015 and 10/02/2016 of HSBC Geneva addressed to the Company
Secretary of Blueridge Investment Corporation (Pg 257-258)
 - iii. Letter dated 22/04/2015 of Blueridge Investment Corporation addressed to the Income Tax Department enclosing the certificate of election and incumbency of directors and officers by the LISCR Trust Company, the appointed registered agent of Blueridge Investment Corporation duly apostilled/notorized by Special Agents of Liberia Maritime Authority (Pg 259-268).
5. The Ld. CIT (A) after appreciating the facts including the additional evidences held that the respondent has no beneficial interest in the company Blueridge Investment Corporation and the sources of credit in his bank account with HSBC Geneva are from his bank account with HSBC Abu Dhabi and thus deleted the additions made by the AO in respect of assets lying in the name of Blueridge Investment Corporation and the respondent assessee with HSBC Geneva and thus allowed the appeal.

6. The Ld. D.R., on the other hand, heavily relied on the orders of authorities below and submitted that the assessee in both the bank accounts maintained with HSBC Bank (Suisse) SA Geneva was parking huge money. The first account bearing number 5094029263 is in the name of Blueridge Investment Corporation which was incorporated in Liberia having a peak balance of USD 1,184,851 in February 2006 and the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005. The m ld DR submitted that is a secret and clandestine process of quietly parking the money in the foreign countries thereby circumventing the lawfully due taxes. The Ld. D.R. submitted that in first account bearing number 5094029263 in the name of Blueridge Investment Corporation which was incorporated in Liberia having a peak balance of USD 1,184,851 in February 2006, the assessee was one of the signatory with director of the corporation though the assessee is not added a beneficiary. The ld DR stressed the importance that if the assessee is not having any interest in the corporation why he is one of the two signatory in the bank account. The ld Dr further argued that in the other account bearing no 5094495795, he was joint holder with his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005. The Ld. D.R. submits that had the assessee signed the consent waiver form, the Revenue Authority could have found out the truth behind the curtain. The Ld. D.R. finally submitted that the whole modus operandi which is adopted by the assessee to park the black money is so complex and intricate and also the fact that the assets are in foreign country, it is very difficult for the Revenue Authority to conduct the enquiry and dig out the truth. The ld DR finally argued that the taking into account the circumstantial evidences , it is quite clear that the money belonged to the assessee and therefore prayed that the order of ld. CIT(A) may be set aside and that of AO may be restored.

7. The ld AR while controverting the arguments of the ld DR submitted that the respondent is an individual residing in Abu Dhabi, UAE since 1976 and is working with Al Nasser Holdings as Group Advisor & Director (formerly as Managing Director). The ld AR also stated that during FY 2005-06 (AY 2006-07), the respondent resided in India for a period of 45 days which did not exceed the maximum threshold limit specified in Section 6 of the Income-tax Act, 1961 ('the Act') and accordingly, the respondent was non-resident for AY 2006-07. The ld AR submitted that ld. CIT(A) after admitting the additional evidences were are placed at page nos. 257-335 of the paper book forwarded the same to the AO for examining the same and sending a remand report. The ld AR submitted that the respondent could not place the necessary evidences before the AO because of the fact that the respondent was residing in Abu Dhabi, the bank account was located in Geneva, Switzerland and the company Blueridge Investment Corporation was incorporated in Liberia. However all these evidences were filed before the ld CIT(A) by following due procedure as prescribed under the Income Tax Rules. The ld AR argued that Ld. CIT(A) after considering the facts on records, the remand report and the additional evidences as filed under Rule 46A held that in order to assess the asset/bank account held by a third party in the hands of the respondent assessee the department has to prove that the assessee has direct beneficial interest in the asset/bank account held by third party (i.e. Blueridge Investment Corporation). The ld. AR while referring to findings of The ld CIT(A) that the department has failed to bring any evidences on record to show that the respondent is having any beneficial interest in the company i.e. Blueridge Investment Corporation or the bank account held by the company with HSBC

Geneva. On the contrary the respondent filed three independent/third party evidences to show that he has no beneficial interest either direct or indirect in the company namely Blueridge Investment Corporation or the bank account held by the company held with HSBC Geneva. The Id AR strongly submitted that the respondent has no beneficial interest in the company Blueridge Investment Corporation and the sources of credit in his bank account with HSBC Geneva are from his bank account with HSBC Abu Dhabi. As regards the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005, the Id AR submitted that the respondent assessee had opened a joint account along with his brother in HSBC Geneva in 1998 and had transferred funds since 1998 to this account from his other account in HSBC Abu Dhabi, UAE. The source of the funds transferred from HSBC Abu Dhabi, UAE were stated to be out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. The Id AR argued that the revenue has failed to bring any independent evidences on records to controvert the facts and evidences as placed by the assessee before the authorities below. Besides the assessee is non resident during the year the Id CIT(A) has rightly deleted the addition which may kindly be upheld. In defense of his arguments the Id AR relied on the decision of ACIT Vs Suresh Nanda ITA No 4802 to 4806/Del/2015 & CO 266 to 269/Del/2015 AY 2006-07 to 2009-10. The decision of the tribunal was upheld by the Hon'ble Delhi High Court in CIT Vs Suresh Kumar in ITA No. 85/2013,100/2013 & 87/2013 order dated 25.02.2013. The Id AR also relied on the recent decision of the Hon'ble ITAT Delhi Bench in the case of Jatinder Mehra vs Addl.CIT in BMA No. 1/Del/2020 and Co. No 26(Del/2021). The Id AR In ground no 3 the revenue has relied on the decision of Hon'ble SC in the case of GVK Industries Ltd. (supra) which is distinguishable as the said case is related to FTS. In ground no 4 the revenue has relied on the decision of Hon'ble Bombay HC in the case of Soignee R Kothari vs DCIT (supra), which is also distinguishable as this is related to Writ petition against reopening of assessment wherein their Lordships have not expressed any opinion on merits.

8. We have heard the rival contentions and perused the material placed before us. The undisputed facts are that Respondent is an individual residing in Abu Dhabi, UAE since 1976. The Respondent is a Chartered Accountant, working with Al Nasser Holdings as Group Advisor & Director (formerly as Managing Director). During FY 2005-06 (AY 2006-07), the respondent resided in India for a period of 45 days which does not exceed the maximum threshold limit specified in Section 6 of the Income-tax Act, 1961 ('the Act') and accordingly, the respondent was non-resident for AY 2006-07. Details of stay in India prior to FY 2005-06 and subsequent to FY 2005-06 has been tabled in the facts above. Since the respondent assessee was a non-resident, as per Section 5(2) of the Act, incomes earned by him outside India were not required to be disclosed or offered to tax in India though he filed the return of income declaring an income of Rs. 178/-. In view of this, the respondent assessee had not shown his foreign income in his return of income. According to the information received by the Gov of India from French Govt under DTTA in exercise of sovereign powers that some Indian residents and national have foreign bank accounts in HSBC Private Bank(Suisse) SA , Geneva. In the case of assessee also, a base note was received from the office of DIT(Inv)-II, Mumbai mentioning that assessee has bank accounts in HSBC Geneva. The respondent assessee had opened a joint account along with his brother in HSBC Geneva in 1998 and had

transferred funds since 1998 to this account from his other account in HSBC Abu Dhabi, UAE. The source of the funds transferred from HSBC Abu Dhabi, UAE were stated to be out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. The funds transferred from HSBC Abu Dhabi according to the respondent assessee to HSBC, Geneva had no source or income accruing or arising from India. The DDIT (Inv.) Unit-III, Mumbai investigated the account with HSBC, Geneva by issuing summons u/s.131 of the Act dated 9.12.2011 and the detailed submissions in reply were made vide letters dated 16.12.2011, 21.12.2011 and 29.12.2011 before the DDIT (Inv.). Thereafter, the assessment was reopened u/s 147 of the Act vide notice u/s 148 of the Act dated 31.10.2014 after recording reasons to believe u/s 148(2) of the Act which were duly supplied to the assessee with notice u/s 148 of the Act. The AO noted in the reasons to believe that information had been received pertaining to respondent assessee having a bank account in HSBC Bank, Geneva bearing number BUP_SIFIC_PER_ID-5090154065 and the peak balance in such account was USD 1,194,388. The AO also supplied a copy of base note received from French Authorities under Indo-French Fiscal Treaty to the respondent assessee. As per base note copy of which is filed at Pg. 185 to 189 of the paper book, there are two accounts with HSBC Geneva. The first account bearing number 5094029263 is in the name of Blueridge Investment Corporation which was incorporated in Liberia having a peak balance of USD 1,184,851 in February 2006 and the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005. The respondent assessee filed objections vide letter dated 7.11.2014 to the reopening of the assessment and also submitted copies of letters filed with DDIT (Inv.) Unit-III in response to the summons u/s 131 of the Act. The objections were disposed-off by the Ld. AO vide order dated 12.11.2014. Thereafter the AO issued statutory notices which were duly served upon the assessee calling upon to furnish the bank account statements of HSBC, Geneva and in case the respondent assessee is not in position to submit the same, he was directed to fill up the Consent Waiver Form enclosed with the notice. The AO also supplied the respondent assessee this information as to two accounts namely; one in the name of a Company viz. Blueridge Investment Corporation wherein the respondent assessee was merely a joint signatory being a director of the Company and second was the respondent assessee's personal account jointly held along with his brother. The assessee replied the AO queries by filing before the AO detailed submissions dated 19.12.2014 wherein it was stated that one bank account belonged to a company registered in Liberia. Blueridge Investment Corporation ('the Company') and he was neither a shareholder nor has any beneficial interest, directly or indirectly, in the Company and only a treasurer and a Director in this Company. He also stated that he was a joint signatory of the bank account of the Company along with other Director and all the transactions in the aforesaid bank account of the Company solely belonged to the Company and not to the respondent assessee. The respondent assessee also filed before AO an affidavit duly sworn in before the Assistant Consular Officer Embassy of India Abu Dhabi a copy of which is filed at Pg. no. 201-202 of the paper book, letter dated 04/12/2014 of Blueridge Investment Corporation at Pg. no. 197 certifying that the company is a Tax resident of Liberia with sole beneficial owner is Mr. Nazar Khan who is an Iraqi National and that the respondent is a treasurer and director of the company and he is neither a shareholder nor having any beneficial interest in the company and he is only a joint signatory of the bank account of the company along with other director.

The respondent assessee also filed before the AO the credit advices received from HSBC Geneva in respect of Funds transferred to his account from HSBC Abu Dhabi. Finally, the assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 25.03.2015 by making an addition of Rs. 5,30,92,953/- to the income of the assessee equal to peak balance in both the bank accounts. Ld CIT(A) after admitting the additional evidences and after considering remand report of the AOI on the additional evidences held that in order to assess the asset/bank account held by a third party in the hands of the respondent assessee the department has to prove that the assessee has direct beneficial interest in the asset/bank account held by third party (i.e. Blueridge Investment Corporation). The Id CIT(A) observed that the department has failed to bring any evidences on record to show that the respondent is having any beneficial interest in the company i.e. Blueridge Investment Corporation or the bank account held by the company with HSBC Geneva. On the contrary the respondent filed three independent/third party evidences to show that he has no beneficial interest either direct or indirect in the company namely Blueridge Investment Corporation with HSBC Geneva. The assessee filed the following evidences:

- iv. Letter dated 04/12/2014 of Blueridge Investment Corporation addressed to the Income Tax Department (Pg 205)
- v. Letters dated 22/04/2015 and 10/02/2016 of HSBC Geneva addressed to the Company Secretary of Blueridge Investment Corporation (Pg 257-258)
- vi. Letter dated 22/04/2015 of Blueridge Investment Corporation addressed to the Income Tax Department enclosing the certificate of election and incumbency of directors and officers by the LISCR Trust Company, the appointed registered agent of Blueridge Investment Corporation duly apostilled/notorized by Special Agents of Liberia Maritime Authority (Pg 259-268).

9. As regards the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005, the Id AR submitted that the respondent assessee had opened a joint account along with his brother in HSBC Geneva in 1998 and had transferred funds since 1998 to this account from his other account in HSBC Abu Dhabi, UAE. The source of the funds transferred from HSBC Abu Dhabi, UAE were stated to be out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. After considering the facts of the case are in full agreement with the conclusion drawn by the Id CIT(A) that the assessee is not beneficial owner of the bank account held by Blueridge Investment Corporation with HSBC Geneva. Similarly, as regards the joint account for the assessee with his brother in HSBC Geneva, the Id CIT(A) recorded a finding on the basis of evidences that money was transferred in the bank account out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. Considering all these facts, we are inclined to uphold the order of Id CIT(A) by dismissing the appeal of the revenue.

10. In the result the appeal of the Revenue is dismissed.

14. From the above, it is evident that the same issue has been decided in favour of the assessee. It is not the case that Hon'ble jurisdictional High Court has reversed the

decision of ITAT. Hence, respectfully following the precedence from the ITAT in assessee's own case on same facts, we do not find any infirmity in the order of Id.CIT(A). Hence, we uphold the same.

15. In the result, the appeal by the revenue stands dismissed.

Pronounced in the open court on 10.03.2022.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 10.03.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

The Appellant

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai