

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1311/Mum/2020
(A.Y. 2011-12)**

Income Tax Officer- 22(1)(6),104, 1 ST Floor, Piramal Chambers, Parel, Mumbai- 400012	Vs.	Bhaskar Radheshyam Majumdar, F-2, Harmony Dr. E. Moses Road, Worli Naka, Mumbai - 400018
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AMPMM5466M		
Appellant	..	Respondent

Appellant by :	C.T. Mathews
Respondent by :	Raman Jokhakar & Pramod Prabhudesai

Date of Hearing	17.05.2022
Date of Pronouncement	30.05.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the revenue and directed against the order passed by the Id. CIT(A)-33, Mumbai, which in turn arises from the order passed by the A.O. u/s 143(3) r.w.s 147 of the Income Tax Act, 1961, for A.Y. 2010-11. The revenue has assailed the impugned order on the following grounds before us:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting of Rs. 1,97,60,000/- made u/s. 69A of the Income Tax

Act, 1961 on account of investment made in mutual funds and payment made towards life insurance premium without properly appreciating the facts of the case brought in by the Assessing Officer during the course of assessment proceedings.

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in admitting the additional evidences produced during the course of appellate proceedings leading to deletion of addition of Rs.1,97,60,000/- made u/s. 69A of the Income Tax Act, 1961 on account of investment made in mutual funds and payments made towards life insurance premium without establishing the genuineness of the reasons as to what prevented the assessee from producing the additional evidences before the Assessing Officer during the course of assessment.*
3. *The appellant prays that the Order of the CIT(A) on the above ground be reversed and that of Assessing Officer be restored.*
4. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

2. The fact in brief is that assessee has not filed his return of income u/s 139(1)/139(4). As per information received by the A.O it was found that assessee had purchased units of mutual funds of Rs.1,77,60,000/- and paid life insurance premium of Rs.20 lac during the financial year 2010-11. Therefore, the notice u/s 148 of the Act was served on the assessee on 28.03.2018. Notice u/s 143(2) of the Act was issued on 30.03.2018. During the course of assessment assessee's claimed that he has earned short term capital gain of Rs.12,30,160/- (STT paid) and exempted long term capital gain of Rs.99,711/- (STT paid). In response to the notice issued the assessee had filed submission on the e-filing portal from time to time. The assessee submitted that he had maintained saving bank a/c no. 003075090006 with Hongkong Sanghai Bank Corporation and copy of bank statement for the period 1.04.2010 to 31.03.2010 was also submitted. The A.O has not accepted the submission of the assessee stating that assessee had merely provided copies of bank statement of HSBC Bank account without giving any explanation to the nature and source of funds invested in the mutual funds etc. Therefore, the A.O has

treated the investment amount of Rs.1,97,60,000/- as unexplained investment u/s 69 of the Act and added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of CIT(A) is reproduced as under:

“Decision

8. *I have considered the assessment order of the A.O, the submission of the appellant the remand report of the A.O, and the rejoinder to the remand report. The appellant was an NRI working in UK. The A.O had also mentioned that the assessee filed submission on e-filing portal from time to time. Hence, it seems that there was No personal attendance of the assessee or his representative before the AO. There is no dispute on the fact that the appellant had filed copy of bank account of HSBC, Mumbai which reflects source of the funds as well as the investment made during the year under consideration. The assessment order does not indicate as to what else evidence was asked by the AO. Unless any specific evidence or documents are being asked by the AO, the assessee cannot be blamed fully if the same is not Produced or filed. Moreover, the additional evidences have been filed only to explain and substantiate the entries in the bank statement which was already filed before the AO and the AO did not accept the entries in the said bank account. Considering the entirety of facts, the additional evidences filed by the appellant during the appellate proceedings is hereby admitted.*
9. *In the remand report, the AO had emphasized that the appellant did not file return voluntarily and the same was only filed in response to notice u/s 148 in spite of the fact that he was having taxable income during the year under consideration. This is true but that cannot be a ground to reject additional evidences filed during the appellate proceedings to explain the source of investments if the same is in conformity with Rule 46A.*
10. *The AO in the remand report had also stated that he is not in a position to verify the authenticity of tax return filed by the appellant in the UK. In this regard, it is found that the tax return only supports the claim of the appellant that he was tax resident of UK and his earnings were substantial. The basis and more relevant evidence was the bank statement itself filed before the AO Which shows remittance of Rs.1,10,45,511/- on 22.10.2010 from the appellant himself in USD. Further certificate issued by the HSBC Mumbai dated 04.04.2019 makes the issue clear beyond any doubt that the aforesaid amount was remitted by Bhaskar Majumdar of Flat 1, 1 Redington Gardens London, United Kingdom NW37RY and remitting bank is HSBC Bank USA NA. The bank in the said certificate had also confirmed that the remitter and the beneficiary*

for the above mentioned transactions i.e. Mr. Bhaskar Majumdar is one and the same person. It is also relevant to note that the same UK address of the appellant is also appearing on the tax return 2011. The Chartered Accountants King & King of London had also certified that the appellant is a resident of UK. Therefore, I do not find any justifiable reason to doubt authenticity of any documents filed by the appellant.

11. *Further, the AO in the remand report had not indicated an factual incorrectness in the claim of the appellant regarding source of funds for making investment in mutual funds and life insurance. Even on perusal of the HSBC, Mumbai account of the assessee, it is found that, in addition to remittance mentioned above regular redemption proceeds of mutual funds are being deposited in the said bank account which are being further invested. Therefore, I do not find any material or reasons to sustain the additions and it is held that investment in mutual funds and life insurance policies were made out of disclosed sources. Hence, the addition of Rs.1,97,60,000/- made by the A.O u/s 69 is unjustified and hence the same is deleted. He grounds are allowed.”*

4. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above in this order, it is undisputed fact that assessee was a U.K. tax payer for the year under appeal. He was working as the managing director of D-15 limited in the United Kingdom for the year relevant to the assessment year under consideration. The assessee had transferred from time to time amount from his NRE account from him saving in U.K. account for investment purpose. He was a non resident as per Sec. 6 of the Income Tax Act and had filed the tax return in U.K. on 06.04.2011 and his earning in U.K. return of income which comes to Indian rupee of Rs.232,53,604/-. In this regard, the ld. CIT(A) has also called a remand report from the A.O vide letter dated 23.04.2019 after admitting additional evidence as per Rule 46A of the I.T. Rule 1962. The copy of remand report was also given to the assessee. The assessee also explained that he has submitted complete bank statement of the entire year during the course of assessment proceedings and the A.O had not asked any further explanation regarding the amount of remittance. The ld. CIT(A) has rightly stated that in the remand report

the A.O had not pointed out any factual incorrectness in the claim of the assessee regarding source of funds for making investment in mutual funds and life insurance. Looking to the above facts and circumstances we don't find any infirmity in the decision of Id. CIT(A) holding that assessee has transferred the amount to his NRE a/c from his saving in U.K. a/c for investment purpose and assessee was U.K. tax payer for the year under consideration where he had filed his return of income as discussed above in this order. Therefore, ground nos. 1 to 3 of the appeals of the revenue stand dismissed.

5. In the result, the appeal filed by the revenue stand dismissed.

Order pronounced in the open court on 30.05.2022

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 30.05.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar) ITAT, Mumbai