

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
" D " BENCH, AHMEDABAD

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
And  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 186/AHD/2021  
निर्धारण वर्ष/Asstt. Year:2011-2012

Naushik Ramanlal Desai, 61-A, Mittal Tower, Nariman Point, Mumbai-4000021.  <b>PAN: AHAPD9621P</b>	Vs.	Income Tax Officer, International Taxation-2, Ahmedabad,
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Kirit Shah, A.R
Revenue by :	Shri Abhimanyu Singh Yadav, Sr. D.R

सुनवाई की तारीख /Date of Hearing : 31/05/2022  
घोषणा की तारीख /Date of Pronouncement: 03/08/2022

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-13, Ahmedabad, dated 21/05/2021 arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The Assessee has raised the following grounds of appeal:

**Ground No.1**

1. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) ['CIT(A)'] has erred in upholding the action of the Assessing Officer (AO) in not accepting the Return of Income ("ROI") of the Appellant at Rs.5,33,660/- and instead, assessing the income at Rs.85,33,660/- ,*

2. *The Appellant craves leave before your Honour's to direct the AO to delete the addition made by AO and accept the ROI filed by the Appellant.*

**Ground No.2**

1. *On facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the AO in invoking the reassessment proceedings.*

2. *The Appellant craves before your Honour's that the said reassessment proceedings as undertaken by the AO, should be set aside, and quashed as the said proceedings were invoked without complying with the pre-requisite as laid down in Section 147 read with Section 151 of the Income-tax Act, 1961 ("the Act"), thereby the said proceedings being void ab initio and bad in law.*

**Ground No.3**

1. *On facts and circumstances of the case and in law, the learned CIT(A) erred in upholding the action of AO in assessing the investments made in Mutual funds by the Appellant aggregating to Rs. 80 lakhs as unexplained investments u/s 69 of the Act.*

2. *The Appellant craves leave before your Honour's to delete the said addition of unexplained investments u/s 69 of the Act aggregating to Rs. 80 lakhs in the hands of the Appellant. ~|*

**Ground No.4**

1. *On facts and circumstances of the case and in law, the learned CIT(A) has erred in not considering the documentary evidence already on record duly substantiating as well as discharging the onus of the Appellant as regard to the HSBC Term deposits in US Dollars being used by the Appellant for remitting the funds to HSBC Mumbai Bank account which is the source of balance in the HDFC bank account of the Appellant, ultimately used by the Appellant for investments in Mutual Funds*

2. *The Appellant craves leave before your Honour's to kindly consider and peruse the said documents on records and thereby delete the addition of unexplained investments u/s 69 of the Act.*

*The Appellant craves leave, to add, alter, amend, or delete any ground of appeal, before or at the time of hearing.*

3. The first ground of appeal raised by the assessee is general in nature and does not require any separate adjudication. Hence, the same is dismissed being infructuous.

4. The next issue raised by the assessee vide ground nos. 3 and 4 of its appeal is that the learned CIT(A) erred in confirming addition of Rs. 80 Lakhs by treating the investment in Mutual Fund as unexplained investment under section 69 of the Act without considering the materials available on record.

5. The AO during the assessment proceedings under section 147 of the Act found that the assessee has made investments in the units of Mutual for Rs. 80 Lakhs. Accordingly a question was raised for an explanation about the sources of the investment. However, the assessee failed to make submission or explanation. Thus, the AO in absence of explanation from the assessee treated the same as unexplained investment under section 69 of the Act and added to the total income of the assessee.

6. Aggrieved assessee preferred an appeal before CIT (A).

7. The assessee before the learned CIT(A) submitted that under the provision of section 69 of the Act, he is required to explain the nature of investment, sources of fund for the investment, identity of the payee and capacity of the payee. All these requirements were duly met by the assessee. The nature of investment is purchase of unit of mutual fund of different banks which is not in doubt. It was duly explained that for impugned investment, the fund was received from the bank account of his wife namely Smt. Meena Desai maintained with HSBC bank. It was submitted that the assessee and his wife are citizens of USA from the year 2000 and 1995. Smt. Meena Desai is partner in the Firm engaged in the business of Travel Agency in USA. Further, the Bank account of Smt. Meena Desai was credited from the NRO account held jointly in the name of the assessee and his wife with HSBC bank and amount was transferred out of proceeds of maturity of fixed deposit held with NRO account. All these details were duly furnished which sufficiently explain the sources of fund for investment but the AO without considering all these details held that

investment in mutual fund was not explained and made addition which needs to be deleted.

8. The learned CIT (A) after considering the facts in totality confirmed the order of the AO by observing as under:

*5.3 The appellant has made investment of Rs.20,00,000/- in Reliance Mutual | Fund on 11.12.2010, of Rs.20,00,000/- in Kotak Mutual Fund on 01.01.2011, | of Rs.20,00,000/- in Birla Sun Life Mutual Fund on 05.01.2011, of Rs.10,00,000/- in Reliance Mutual Fund on 24.03.2011 and Rs.10,00,000/- | 3? Reliance Mutual Fund on 31.03.2011 and it has been stated that the investment of Rs.80,00,000/- was made out of his HDFC Bank account No. 00011010018185. As to the source thereof it has been stated that Rs.50,00,000/- and Rs.35,00,000/- were transferred from his spouse's (Smt. Meena Desai) HSBC Bank account No. 012345062006 on 02.12.2010 and 24.12.2010 respectively. The appellant has furnished the copies of the mutual fund statements and HDFC bank account statements. The bank statement of the account of Smt. Meena Desai with HSBC Bank was provided to the extent showing remittance of Rs.50,00,000/- and Rs.35,00,000/- to the appellant, Shri , Naushik Desai. It is seen that the addresses in the mutual fund statements and bank accounts are of Cupertino California, USA and that the HDFC Bank account at Nariman Point, Mumbai is a regular account and the HDFC bank account at Peddar Road, Mumbai is an INR account. Thus prima facie it was remitted from outside India. Accordingly the Ld. AR was requested to prove that, the said investments in MFs were made out of income / funds outside India and | was required to comply on or before 30.03.2020. Vide submission dated 11.03.2020 the appellant has given the details of trail / sequence sources of funds and brief background of the appellant hence his spouse. It has been mentioned that the appellant moved to USA to pursue Master of Science Degree (in Electronics Engg.) and worked therein Semi Conductor field and marketing and retired in 2005. He became a USA Citizen in 2000. His spouse, Smt. Meena Desai moved to California in 1984 after marriage and has been running a travel agency in US with a partner. She became a US Citizen in 1995. In the various documents of HSBC of terra deposits advices have been furnished but it has not been pin pointed as to which amount in US Dollar was remitted to HSBC Mumbai which is the source of fund in HDFC Bank account of the appellant. Under the circumstances, I am not to satisfied that the appellant has discharged the onus at least to the extent that in the money was remitted by his wife out of her funds in USA.*

*5.4 As to the other grounds of appeal, it is seen that the AO had the information of various investments made by the appellant and no return of income was filed. Thus prima facie the AO had reason to believe the escapement of income. The AO has followed the prescribed procedure for issue of notice u/s.148 and assessment u/s. 147. I do not find any infirmity in the proceedings u/s.148/147. Furthermore, the appellant and/or his A/R has not pointed out to any specific error and any case laws which may be held to have initiated the proceedings being challenged in this appeal. 1 Furthermore section 69 creates a fiction that if an assessee offers no explanation as to the source of investment or if the explanation furnished is not found satisfactory by the AO, such unexplained investment shall be treated as deemed income of the assessee. Thus the related grounds do not stand. As per provisions of Section 5(2) the appellant being NR would not be subject to tax in India if the income has accrued or arisen to him outside India but the appellant has failed to discharge the onus as required u/s. 69/69A of the Act.*

*5.5 Under the facts and circumstances, I find no basis to interfere with the assessment made by the AO. The addition of Rs.80,00,000/- is confirmed.*

9. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

10. The learned AR for the assessee before us filed paper book running from 1 to 199 and inter alia submitted that all the necessary details about the source of investment in the mutual funds were duly furnished before the respective authorities. Therefore, no addition is warranted under the provisions of section 69 of the Act.

11. **The learned DR before** us vehemently supported the stand of the authorities below by reiterating the findings contained in the respective orders which we have already adverted to in the preceding paragraph. Therefore we are not repeating the same for the sake of brevity.

12. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee has purchased units of Mutual fund of different banks amounting to Rs. 80 Lakh which was treated as unexplained investment under section 69 of the Act by the AO and subsequently confirmed by the learned CIT(A). The assessee before the learned CIT (A) has explained that the investment was made out proceeds from NRO account fixed deposit jointly in the name of assessee and his wife made with HSBC Bank Pedder Road Mumbai. The proceeds of FD maturity was transferred to assessee wife bank account and from there an amount of Rs. 85 lakh was transferred to the assessee bank account and accordingly investment was made in the unit of mutual fund of different banks for an amount aggregating to 80 Lakh. The explanation of the assessee was rejected by the learned CIT (A) for the reason that it was not established that investment was made out of foreign remittance. We have perused the paper book submitted by the assessee where FD maturity advice along bank statement of assessee's wife Smt. Meena Nausik Desai were placed on paged 46 to 69 of the paper. Form perusal of the document we find there several deposit were

matured during F.Y. 2009-10 and maturity amount were credited in the bank account of Smt. Meena Nausik Desai. All these deposit were created during F.Y. 2007-08 and 2008-09 in USD. We further find an amount of Rs. 50 Lakh and 35 Lakh were transferred from bank account of Smt. Meena Nausik Desai to the assessee bank as on 02-12-2010 and 24-12-2010 respectively. From the above documentary evidences there remains no doubt with regard to sources of fund in the hand of the assessee which were utilized in making investment in mutual fund. Thus we are of the considered view that the assessee has sufficiently discharged the obligation cast under 69 of the Act by explaining the nature of investment and sources of fund. Therefore, we hereby set aside the order of the learned CIT(A) and direct the assessee to delete the addition of Rs. 80 Lakh made under section 69 of the Act. Hence, the ground of appeal of the assessee is hereby allowed.

12.1 Before parting it is also important to highlight that the assessee has also challenged validity of the assessment framed under section 147 of the Act. However, on merit we have decided the issue in favour of the assessee. Therefore, we are not inclined to adjudicate the issue on technical ground. Hence, we dismiss the same as infructuous.

13. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the Court on 03/08/2022 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**  
03/08/2022  
*Manish*