

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH , CIRCUIT BENCH, VARANASI**

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No. 212/Vns/2019
Assessment Year: 2005-06

Shri Danvir Shanker, C/o Yogendra Bahadur Sarkari Bilas Bhawan, Maya Bazar, Gorakhpur-273001,U.P.	v.	Income Tax Officer, Ward 1(2), Gorakhpur,U.P.
PAN:AVFPS 5079K		
(Appellant)		(Respondent)

Appellant by:	Shri Ashish Bansal, Advocate
Respondent by:	Shri A.K. Singh, Sr. DR
Date of hearing:	24.08.2022
Date of pronouncement:	30.08.2022

ORDER

This appeal, filed by assessee, being ITA No.212/Vns/2019 for assessment year(ay) 2005-06, is directed against appellate order dated 11.07.2019 passed by learned Commissioner of Income Tax(Appeals), Gorakhpur (hereinafter called "the. CIT(A)"), for assessment year(ay):2005-06 in Appeal No. A.No.CIT(A)/GKP/2014-15, the appellate proceedings have arisen before ld. CIT(A) against assessment order dated 06.03.2013 passed by

ld. Assessing Officer(hereinafter called “ the AO”) u/s 143(3)(ii) read with Section 147 of the Income-tax Act, 1961(herein after called “ the Act”) . This appeal was heard in Open court proceedings through physical hearing mode.

2. The grounds of appeal raised by assessee in memo of appeal filed with Income Tax Appellate Tribunal, Varanasi (hereinafter called “ the tribunal”) , reads as under :

- “1. *Because the learned C.I.T (Appeals) has erred in not deleting the addition of Rs. 4,00,000/- which were investment in mutual funds, made from the S/B A/C of I.C.I.C.I. bank, statement of which was filed before the learned C.LT.(Appeals) along with application U/R 46 A.*
2. *Because the learned C.I.T.(Appeals) has erred in mentioning that the appellant had stated in his reply dt 19.11.2012 that the appellant had only one bank account in S.B.I. Gorakhpur. The learned CIT. (Appeals) has not considered the fact mentioned in the letter dt. 19.11.2012 the word "At present" written in the letter regarding S/B A/C of S.B.I.*
3. *Because when a notice U/S 133(6) dt. 20.03.2012 was issued, the appellant submitted a reply in which he had mentioned regarding I.C.I.C.I Bank account. The letter dt. 10.12.2012 incorporated in the assessment order also shows that in para 3 the I.C.I.C.I. bank has been mentioned. The learned ITO in his remand report has erred in mentioning that only one bank account of S.B.I. has been disclosed at the time of assessment and has erred in mentioning that the desire of disclosing I.C.I.C.I. Bank before Ld. C.I.T.(A) is not a matter of additional evidence. The remand report was not sent to the appellant for his comment.*
4. *Because the learned C.I.T.(A) has erred in considering the same bank account of I.C.I.C.I.for making uncalled for enhancement of those investments made from the same bank account treating unexplained investment. The learned C.I.T.(A) has erred in mentioning that the appellant has not given information regarding the taxability of mutual fund investment which have matured during the year.*
5. *Because the learned C.I.T.(A) has erred in not accepting the contention of the appellant regarding the credit of 1,25,877/- which was closure proceeds of S/B A/C of City Bank, which was running at Delhi when the appellant was posted at Gajraula. He got it closed and got the proceeds transferred in this I.C.I.C.I. Bank A/C. The statement of account of City Bank could not be obtained being very old matter.*

5. *Because the whole appellate order is prejudiced."*

3. The brief facts of the case are that as per AIR information available with department, the assessee has made investment of Rs.4.00 lacs during the year under consideration in Mutual Funds, but on the perusal of the computation chart and the capital account filed along with return, the AO observed that it does not reveal the said investments in Mutual Funds, as on 31.03.2005. Notice u/s. 148 of the 1961 Act was issued on 29.03.2012 by AO for concealment of investment of Rs.4.00 lacs made by assessee, which as per Revenue has escaped assessment for ay:2005-06. During assessment proceedings, the assessee was issued statutory notices by the Assessing Officer. The assessee submitted before AO that the assessee is an Engineer and was posted as Junior Engineer in 1968 at Durgapur Fertilizer Factory. The assessee explained that later, he came to Gorakhpur as Additional Chief Engineer. The assessee further explained that later he joined company namely Vam Organics Limited as General Manager(Engineering) in 1994, at Gajraula. Thereafter, he claimed that he retired in 2002, and thereafter joined Aurbindo Pharma Limited, at Hyderabad as Professional Engineer. The assessee explained before AO that since 1998, he was filing return of income and for the ay:2000-01 to 2004-05, he filed return of income of Rs. 26 lacs. The assessee explained that even after considering personal expenses, he must be having Rs. 6 lacs in bank accounts and in cash, as on 01.04.2004. The assessee explained before AO that he filed return of income for impugned assessment year declaring income of Rs. 1,66,388/-, and he invested Rs. 4 lacs during the relevant period in Mutual Fund, and no

dividend and interest was received. The assessee also submitted before AO that he is not able to get his ICICI Bank statements for relevant period (for which it was claimed by assessee that application is already filed with ICICI Bank for seeking bank statement for relevant period), and prayers were made by assessee before AO to grant some more time. Thus, the assessee could not produce complete details before the Assessing Officer . The AO observed that the assessee has presumed that it has Rs. 6 lacs in bank account and cash in hand , as on 01.04.2004, but no evidence to that effect is produced. The AO also observed that capital account submitted by assessee is also not reliable as the IDBI Flexibonds, House Loans, PPF Balance were not disclosed by the assessee in the said capital account. The AO also observed that opening balance of capital is also not verifiable , as there is no evidence produced by assessee to that effect. The AO observed that the assessee has not substantiated opening balance with evidence and hence AO observed that there are no reasons to believe that the assessee has purchased Mutual Funds with known sources of income. The Assessing Officer treated the aforesaid investment of Rs.4.00 lacs in Mutual Funds during financial year 204-05 , as unexplained money u/s. 69A of the Act , which stood added by AO to the income of the assessee, vide assessment order dated 06.03.2013 passed by AO u/s 143(3) read with Section 147 of the 1961 Act.

4. Aggrieved by aforesaid assessment framed by AO, the assessee filed first appeal before ld. CIT(A). The ld. CIT(A) not only confirmed the addition as were made by AO, but also enhanced the income of the assessee. The ld. CIT(A) also observed that there are certain investments

which has not been disclosed by assessee in the course of assessment proceedings. The assessee claimed before Id. CIT(A) that it has Rs.1,25,877/- in Citi bank which is old saving bank account which stood closed during the year , and balance amount lying in Citi Bank was transferred in the ICICI bank account. It was also submitted that maturity of various Mutual Funds were received during the year for which investments were made in the earlier years . The Id. CIT(A) rejected the contention of the assessee and upheld the additions of Rs. 4 lacs made by AO u/s 69A of the 1961 Act. Further, Id. CIT(A) observed that the assessee has not disclosed investment of Rs. 1,00,000/- in HDFC Premium Multi Cap Fund, Rs. 10,310/- invested in ICICI Pru Fund, Rs. 46,800 invested in PNB FPO and Rs. 47250 in Jet FPO, which stood added by Id. CIT(A) , by enhancing the assessment. Further, Id. CIT(A) added Rs. 15000/- to income of the assessee towards undisclosed income from interest and income from Mutual Fund, which was not disclosed by assessee in return of income filed with Revenue. The Id. CIT(A) further enhanced income of the assessee to the tune of Rs. 1,25,877/- which the assessee claimed to have been credited in ICICI Bank as closure proceed of his SB A/c with Citi Bank , as Citi Bank statement was not produced by assessee nor the same was disclosed by assessee in its return of income, by treating the said sum of Rs. 1,25,877/- as unexplained money . The Id. CIT(A) , while enhancing the aforesaid income, also observed that assessee has claimed that maturity amount of investments in Mutual Fund of Rs.6.20 lacs was received in this year, but since the assessee could not produce any details as to the same nor capital gains were declared by the assessee in the return of income filed with Revenue, Id.

CIT(A) did not accept the contentions of the assessee. The ld. CIT(A) dismissed the appeal filed by the assessee , by holding as under vide appellate order dated 11.07.2019:

“The submissions of the appellant were considered and it is seen that he had disclosed investment in mutual fund for Rs. 4,00,000/- only. Whereas as per the bank statement submitted by him, during the course of appellant proceedings , he has made investment of Rs. 5,10,310/- in the mutual funds during the year. Thus it is clear that the statement of capital submitted by the appellant was not based on correct facts but was made to justify only the point of query raised during the assessment proceedings. The appellant had deliberately concealed the investment made by him . Even the investment made in the Government of India bond was not disclosed by the appellant. The appellant had submitted that he did not received any interest or dividend during the year under consideration vide his reply dated 10/12/2012 made before the AO during the course of assessment proceeding. A perusal of the bank statement shows that the appellant had received Rs. 6.20 lacs as maturity amounts from various mutual funds. The appellant had failed to submit details regarding the period of holding of such mutual funds and the amount of capital gains payable on such investment.

A perusal of computation of income shows that the appellant had not disclosed the interest received during the year. Whereas a perusal of the bank statement shows that interest income was received on the sweep FDR's made through the bank account.

The appellant has not submitted the bank statement pertaining to the bank account held by him with the State Bank of India and all the above transactions are independent to the transaction made in that account. In view of the above I find that the appellant has failed to disclose the investment made by him. The source of these investments was also not disclosed by the appellant. The appellant has claimed that the investment made in the mutual funds were made out of a savings of earlier year which according to his estimate is around Rs. 6,00,000/-. However, the statement of the

capital submitted by the appellant shows total assets of Rs. 493147/- only, which consist of cash of Rs. 93417/-and mutual funds of Rs. 4,00,000/-. The total of Rs. 493147/- includes the net Income received by him during the year under consideration also. Thus the contention of the appellant that he had saving of Rs. 6,00,000/- is contradicted itself by the statement of the capital submitted by the appellant, Furthermore the appellant had received interest of government India bonds at Rs. 21,822/ during the year under consideration. if the prevailing rate of interest of government of India bond for the year 2004-05 is taken it @7%, the appellant must have invested Rs. 3,00,000/- to earn the interest. The appellant has failed to substantiate the source of the investment made by him and the contention of made by the appellant regarding the past savings have also remain unsubstantiated. The appellant has made investments which are more than his known/ disclosed source of income. Accordingly the addition made by the AO as unexplained money u/s 69 of the Act is upheld. Further, addition is made u/s 69A of the Act is made for unexplained money invested in the following

- 1. Rs. 1,00,000/- invested in HDFC Premium Multi Cap Fund:*
- 2. Rs. 10,310/- Invested in ICICI Pru fund*
- 3. Rs. 46,800/-Invested in PNB FPO*
- 4. Rs. 47,250/-Invested in Jet FPO*

The appellant has not disclosed the interest income received by him nor has given any information regarding the taxability of mutual fund investment which have matured during the year. Considering the facts and circumstances of the case a sum of Rs. 15,000/- is added to the income of the appellant on this ground. The appellant has stated that he had received Rs 125877/- from the closure of bank account in City Bank during the year but no evidence regarding the nature and period of holding of the account was submitted in support of the contention. Since, the bank account with the City Bank has not been disclosed by the appellant, accordingly the funds received by the appellant are treated as unexplained money and added to the income of the appellant.”

5. Aggrieved by aforesaid appellate order passed by Id. CIT(A), the assessee has come in appeal before the tribunal. The Id. Counsel for the assessee opened arguments before the tribunal, and submitted that the case of the assessee was reopened by Revenue u/s 148 of the 1961 Act, on the basis of information that the assessee has purchased Mutual Funds. The Id. Counsel for the assessee submitted that additions were made by Assessing Officer on the basis of allegation of undisclosed investments of Rs.4.00 lacs. The Id. Counsel for the assessee submitted that these investments were made out of redemption of the old investments made by assessee in earlier years. The Ld. Counsel for assessee submitted that Id. CIT(A) has enhanced the additions. It was submitted that assessee filed application dated 21.09.2005 under Rule 46A of the Income-tax Rules, 1962 before Id. CIT(A) , wherein bank statement of ICICI Bank was submitted before Id. CIT(A), which earlier could not be produced before the AO. It was submitted that bank statement of SBI account was duly submitted before the Assessing Officer. It was further submitted that Citi bank account was an old account of the assessee which was closed during the year under consideration and its bank statement was not available but the same will be submitted along with other details if the matter is restored to AO for denovo assessment. It was submitted by Id. Counsel for the assessee that ICICI Bank statement was not available during the course of assessment proceedings , for which an application was filed before the bank to grant the bank statement . But, since the matter was getting barred, the Assessing Officer framed the assessment . It was submitted that ICICI Bank statement was duly filed before Id. CIT(A) . The copy of application

filed by assessee u/r 46A of the 1962 Rules before ld. CIT(A), is now filed by assessee before tribunal, which is placed on record in file . Prayers were made by ld. Counsel for the assessee that complete details will be submitted before the Assessing Officer , if was one more opportunity is granted by setting aside the matter back to the file of AO for denovo assessment . The Ld. Sr. DR submitted that the assessee did not disclosed the ICICI bank account before the Assessing Officer and investments were made out of this bank account. The ld. Sr. DR submitted that ICICI bank statement was filed by assessee before ld. CIT(A). It was submitted that capital account was submitted in which only Rs.4.00 lacs investment was shown out of the opening capital. The assessee could not explain sources of the investment made by the assessee. The Ld. Sr. DR submitted that he has no objection if the matter is restored back to the file of Assessing Officer for denovo assessment .

6. I have considered rival parties and have perused the material available on record. I have observed that the assessee case was re-opened u/s 148 of the 1961 Act by Revenue based upon AIR information that assessee has made investment of Rs. 4 lacs during the year under consideration in Mutual Funds. The AO issued statutory notices, which is not disputed by the assessee. The assessee has claimed that the assessee is an Engineer and was posted as Junior Engineer in 1968 at Durgapur Fertilizer Factory . The assessee also claimed that he came to Gorakhpur as Additional Chief Engineer. The assessee also claimed that he joined Private company namely Vam Organics Limited as General Manager(Engineering) in 1994, at Gajraula. Thereafter, he claimed that

he retired in 2002 and joined Aurbindo Pharma Limited at Hyderabad as Professional Engineer . The assessee also claimed that since 1998, he was filing return of income and for the ay:2000-01 to 2004-05 , he filed return of income of Rs. 26 lacs. The assessee claimed that even after considering personal expenses, he must be having Rs. 6 lacs in bank accounts and in cash, as on 01.04.2004. The assessee claimed that he filed return of income for impugned assessment year declaring income of Rs. 1,66,388/- and he invested Rs. 4 lacs during the relevant period in Mutual Fund out of past savings and current year income . The explanation did not found favour with AO, who made additions to the tune of Rs. 4 lacs with respect to investments made in Mutual Funds as unexplained money u/s 69A , as sources of these investment could not be explained by the assessee, before the AO. The matter reached ld. CIT(A) at the behest of the assessee.The assessee had three bank accounts namely with SBI, ICICI and Citi Bank. The assessee did not produce ICICI Bank and Citi Bank account , before the AO. But the assessee produced ICICI Bank statement before ld. CIT(A) . The assessee could not produce Citi Bank statement even before ld. CIT(A). The ld. CIT(A) not only dismissed the appeal of the assessee but enhanced the income of the assessee. The ld. CIT(A) rejected the contentions of the assessee and upheld the additions of Rs. 4 lacs made by AO u/s 69A of the 1961 Act. Further, ld. CIT(A) observed that the assessee has not disclosed investment of Rs. 1,00,000/- in HDFC Premium Multi Cap Fund, Rs. 10,310/- invested in ICICI Pru Fund, Rs. 46,800 invested in PNB FPO and Rs. 47250 in Jet FPO, which stood added by ld. CIT(A) , by enhancing the assessment. Further, ld. CIT(A) added Rs. 15000/- to income of the assessee towards undisclosed income from

interest and income from Mutual Fund, which was not disclosed by assessee in return of income filed with Revenue. The Id. CIT(A) further enhanced income of the assessee to the tune of Rs. 1,25,877/- which stood credited in assessee's bank account with ICICI Bank as closure proceed of his SB A/c , as Citi Bank statement was not produced by assessee nor the same was disclosed by assessee in its return of income, by treating Rs. 1,25,877/- as unexplained money . The Id. CIT(A) , while enhancing the aforesaid income, also observed that assessee has claimed that maturity amount of investments in Mutual Fund of Rs.6.20 lacs of earlier years was received in this year, but since the assessee could not produce any details as to the same nor capital gains were declared in the return of income, the Id. CIT(A) did not accept the contentions of the assessee. The matter reached tribunal, and it is explained by Id. Counsel for the assessee that there were old investments made by assessee in earlier years which got matured during the year , and fresh investments were made by assessee out of the maturities of old investments . It is claimed that the old investments cannot be brought to tax in the year under consideration, more so the assessee is regular tax payer having regular income , wherein savings over a period of time were utilized to invest in these Mutual Funds. My attention was drawn to ICICI Bank statement , which is now placed on record in file. It was submitted that dividend income was received and credited in ICICI Bank , which could not be taxed as the same is tax free. Thus, it was prayed that one more opportunity be provided to assessee to explain all the transactions in the bank statements and other details required by the AO, so that correct income which is chargeable to tax under the provisions of 1961 Act can

be brought to income-tax . The ld. Counsel has stated before me that the assessee will provide complete details with AO , so that correct income chargeable to income-tax as per provisions of the 1961 Act, can be brought to tax. The ld. Sr.DR has also submitted that Revenue has no objection if the matter is restored to the file of AO for denovo assessment. Keeping in view entire facts and circumstances of the case, I am of the considered view that primary onus is on the assessee to bring cogent evidences to substantiate its contentions whether the amount was invested during the year out of redemption of old Mutual funds or as to exemption of dividend/interest income received by the assessee. The primary onus is on the assessee to bring on record cogent evidences , so that correct income chargeable to income-tax within the provisions of the 1961 Act, is brought to income-tax. It is equally true that if the assessee has made investments in preceding years out of his tax paid known sources, merely redemption of the said old investments cannot be brought to tax , except income earned on it or is specifically provided to be chargeable to tax by the statute i.e. 1961 Act , but the onus is squarely on the assessee to substantiate its taxability or otherwise , by bringing on record cogent material . I have also observed that the assessee has deposited cash in its ICICI Bank account on various occasions, and onus is very heavy on assessee to explain these cash deposits. It is for the assessee to substantiate its state of affairs and income which is chargeable to tax. If the assessee fails to discharge its primary onus, then Revenue has all the right to bring to tax unexplained credits, money as well investments . It is equally true that the correct income which is chargeable to tax under the provisions of the 1961 Act, is to be brought

to tax for the correct assessment year in the hands of correct assessee. The authorities also must assist assessee in all reasonable ways , so that correct income chargeable to tax under the provision of the 1961 Act is brought to tax for correct assessment year in the hands of correct assessee. Reference is drawn to circular number 14 of 1955, dated 11.4.1955 issued by CBDT. Thus, after considering the entire material on record, I restore the matter back to the file of Assessing Officer for denovo assessment on merit, in accordance with law. I clarify that I have not commented on the merits of the issues and all contentions are kept open. Needless to say that the AO will give proper and adequate opportunity of being heard to the assessee in set aside remand proceedings. The evidences/explanation submitted by assessee in denovo assessment proceedings shall be admitted by AO and adjudicated on merits in accordance with law. If the assessee do not co-operate in set aside denovo assessment proceedings, the AO shall be free to proceed in accordance with law. Thus, the appeal of the assessee is allowed for statistical purposes. I order accordingly.

7. In the result, appeal filed by the assessee in ITA no. 212/Vns/2019 for ay: 2005-06 is allowed for statistical purposes.

Order pronounced on 30/08/2022 at Allahabad , U.P. in accordance with Rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 30/08/2022

Aks/-

Copy forwarded to:

1. Appellant – Mr. Danvir Shanker, C/o Yogendra Bahadur, Sarkari Bilas Bhawan, Maya Bazar, Gorakhpur- 273001,U.P.
2. Respondent –Income Tax Officer-Ward 1(2), Gorakhpur,U.P.
3. The CIT, Gorakhpur,U.P.
5. The CIT(A), Gorakhpur,U.P.
6. The Sr. DR , ITAT, Varanasi, U.P.

Sr. P.S.

