

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'T' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Sandeep S Karhail (Judicial Member)]**

ITA No. 1248/Mum/2021
Assessment years: 2016-17

Nurally Mamade Hussene**Applicant**
*Unit No. 135, Laxmi Plaza, 1st Floor, New link Road,
Near Laxmi Inds. Estate, Andheri (W), Mumbai 400 053
[PAN: AFVPH6880D]*

Vs.

Income Tax Officer
International Taxation 2(2)(1), Mumbai**Respondent**

Appearances by

M. Subramanian *for the applicant*
Milind Chavan *for the respondent*

Date of concluding the hearing : 26/08/2022
Date of pronouncement : 31/10/2022

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged the correctness of the order dated 14th February 2020 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act 1961, for the assessment year 2016-17.

2. Grievances raised by the appellant are as follows:-

1. *The Honorable Commissioner of Income Tax (Appeals) - 43, erred in confirming additions of a sum of Rs. 7,63,55,610/- made by the Assessing Officer as Unexplained Credits under the provisions of Section 68 of the Income Tax Act. 1961.*

Your Appellants respectfully submits that the aforesaid additions of a sum of Rs.7,63,55,610/- be ordered to be deleted.

2. *Pursuant to the order passed under section 154/143 (3) of the Income Tax Act, 1961, in the Income Tax Computation Form, Your Appellant has been charged interest under section 234B of the Income Tax Act, 1961.*

Your Appellant has made an application under section 154 of the Income Tax Act, 1961 for deleting the interest charged, in view of Article 24 of the DTAA between India and Portuguese Republic.

If the Assessing Officer passes an order under section 154 of the Income Tax Act, 1961 accepting the contentions of Your Appellant, this ground of appeal would be withdrawn.

3. *Your Appellant craves leave to add, alter or amend any or all grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before hearing of the appeal.*

3. Briefly stated, the relevant material facts are as follows. The assessee before us is an individual, a citizen of Portugal and a person of Indian origin. The assessee had filed his return of income showing 'nil' income, claiming exempt income of Rs. 91,42,045/- representing interest received on NRE bank accounts and capital gains on sale of shares. This income tax return was selected for scrutiny assessment. During the course of the resultant proceedings, the Assessing officer, inter alia, noticed inward Telegraphic transfer of Rs. 7,25,64,624/- in the assessee's NRE account with DCB Bank Limited, Mumbai. No explanation was available in respect of this remittance except that the remittance is from Topline International Inc Mill Mall Suite 6, Wickham Cay 1, Tortola, British Virgin Island and the source of funds, as noted by the Assessing Officer, was explained. When the Assessing Officer examined the matter, he noted that the address of the Topline International Inc is the same as of several dubious companies mentioned in panama papers. It was in this backdrop and in the absence of any suitable explanation that this amount of Rs. 7,25,64,624/- was also added to income of the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success so far as this addition of Rs. 7,25,64,624/- is concerned. The assessee is not satisfied and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

5. Vide application dated 27th July 2022, the assessee has filed certain additional evidences and prayed that these additional evidences be admitted under rule 29 of the Appellate Tribunal Rules 1962. At the stage of the CIT(A) as well, the assessee had filed certain additional evidences, which was duly admitted by the learned CIT(A), but even the assessee could not establish the means of the assessee or genuineness of transactions. There is no explanation whatsoever as to the purpose for which this money was given by Topline International Inc to the assessee. What is filed as additional evidence before us included certain emails between Topline International Inc and its bankers, as also certificates of incumbency of two customers of Topline International Inc. It is indeed true that just because the assessee has received the money from a company based in the BVI, it cannot be taxed as unexplained credit. However, the assessee has to give complete details of the BVI entity and establish bonafides of the said entity as also of the transaction. The burden of the assessee cannot stand discharged just by his giving some incomplete and incoherent details of this entity and copies of some documents in a foreign language. All such reasonable details, in respect of this entity, as the authorities may requisition

will have to be furnished by the assessee. The fact that the assessee has access to these documents and that close relatives of the assessee are major shareholders of the company shows that the assessee has close relationship with Topline International Inc. In these circumstances, we deem it fit and proper to remit the matter to the file of the learned CIT(A) with a direction to adjudicate on the matter *de novo* after giving an assessee one more opportunity of producing documents, including all the bank statements, relating to Topline International Inc and establish the credit worthiness of the said company, explain the nature of transactions that the assessee had with Topline International Inc and respond to such questions as the CIT(A) may have with respect to this transaction. The assessee is further directed to file certified copies of all such documents as he may seek to rely upon translated in English-where necessary, within two weeks of receipt of notice of remanded hearing before the CIT(A), as also with the Assessing Officer. The CIT(A) will thus decide on the matter afresh after giving an opportunity of hearing to the assessee, by way of a speaking order and in accordance with the law. Ordered, accordingly.

6. As regards the levy of interest under section 234B, no specific arguments were advanced before us beyond placing the reliance on the non-discrimination clause in the tax treaty, as set out in Article 24(1) of the Indo-Portugal Double Taxation Avoidance Agreement. In any case, it is only elementary that article 24(1) can come into play only when discrimination is based on nationality; that does not seem to be the case here. If interest is wrongly charged by the Assessing Officer, then just because the assessee is a Portuguese citizen, it does not amount to non-discrimination under the Indo-Portuguese tax treaty. Be that as it may, as the matter is being remitted to the file of the learned CIT(A) for adjudication *de novo*, the assessee is also granted liberty to take up this issue regarding alleged wrong levy of interest under section 234B, if so advised, before CIT(A). Learned CIT(A) may examine the matter, if so raised before him, and adjudicate upon the same in accordance with the law and by way of a speaking order. On both the issues thus matter stands restored to the file of the learned CIT(A).

7. In the result, the appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 31st day of October, 2022

Sd/-
Sandeep S Karhail
(Judicial Member)
Mumbai, dated the 31st day of October, 2022

Sd/-
Pramod Kumar
(Vice President)

Copies to:

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|-----|----------------------|-----|-----------------------|
| (1) | <i>The appellant</i> | (2) | <i>The respondent</i> |
| (3) | <i>CIT</i> | (4) | <i>CIT(A)</i> |
| (5) | <i>DR</i> | (6) | <i>Guard File</i> |

By order etc.

*Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*