

**IN THE INCOME TAX APPELLATE TRIBUNAL ‘I’ BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 828/Mum/2022  
(Assessment Year: 2013-14)

Income Tax Officer (International Taxation)-2(1)(1) Room No. 1724, 17 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 021	Vs.	Estate of Shri Edulji Framrize Dinshaw C-1, Wadia International Center, Pandurag Budhkar Marg, Worli, Mumbai-400 025
PAN/GIR No. AAEPD 8394 A		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Jishaan Jain/Ms. Mahek Salva
<b>Revenue by</b>	:	Shri Soumendu Kumar Dash
<b>Date of Hearing</b>	:	19.10.2022
<b>Date of Pronouncement</b>	:	10.01.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals)-56, Mumbai passed u/s.250 of the Income Tax Act, 1961 ('the Act'), in quashing the consequential order passed by the Assessing Officer (A.O. for short) u/s.143(3) r.w.s. 263 of the Act, pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. It is observed that Shri Edulji Framrize Dinshaw was a Parsi-American who left behind estate for the benefit of his sister Bachoobai who was the executrix of the will, in which it is specified that if Bachoobai predeceased the assessee or fail to act for any reason, the nominated successor would be the 'partner of Coudert Brothers'. It is also

observed that as per the will, the assessee's property would go to two US-based charities viz. Salvation Army and the American Society for Prevention of Cruelty to Animals on the event of Bachoobai's death. In 1972, Bachoobai issued power of attorney to manage her properties in India, appointing Mr. Nusli Wadia as the administrator of the estate. Bachoobai expired as 'non-resident' in 2003. The assessee has submitted that by order dated 21.12.1972 in Miscellaneous Petition No. 29 of 1972, the Hon'ble High Court of Judicature at Bombay appointed Mr. Nusli N. Wadia as Administrator of Estate of Edulji Framroze Dinshaw in India as a replacement to Mr. J. B. Dubash. As late Mr. Edulji Framroze Dinshaw being an American Citizen whose estate in India is being administered by Mr. Nusli N. Wadia as the Administrator of Estate of Edulji Framroze Dinshaw, the status of the assessee is 'Non-Resident'. The return of income for the impugned year was filed by the assessee dated 29.09.2013, declaring total income of Rs.1,13,12,010/- as 'income from capital gains' and 'income from other sources'.

3. The assessee's case was selected for scrutiny and the assessment order dated 30.03.2016 was passed by the A.O. u/s. 143(3) of the Act, determining the total income at Rs.24,44,52,740/-. Subsequently, the order u/s. 154 dated 05.07.2016 was passed determining the total income at Rs.18,91,52,420/-.

4. It is observed that the Id. CIT(IT)-2, Mumbai vide order dated 08.02.2016 passed an order u/s. 263(1) of the Act for the reason that the assessment order u/s. 143(3) of the Act omitted the interest received from the Indian Bank in respect of the lease agreement entered into with Ivory Properties and Hotels Pvt. Ltd. and Ferani Hotels Ltd, which was not added to the total income by the A.O. The Id. CIT(IT)-2, Mumbai held that the A.O.

has failed to apply her mind by not considering the interest income received by the assessee from the Indian Bank, thereby making the assessment order erroneous insofar as it is prejudicial to the interest of the Revenue. The Id. CIT(IT)-2, Mumbai set aside the assessment order dated 30.03.2016 with the direction to the A.O. to include an amount of Rs.4,06,41,567/- to the total income of the assessee and subsequently assessment order dated 10.12.2018 was passed by the A.O. u/s. 143(3) r.w.s. 263 of the I. T. Act.

5. The assessee was in appeal before the Tribunal, challenging the order of the Id. CIT(IT)-2, Mumbai u/s. 263 of the Act.

6. The Hon'ble Tribunal quashed the order of the Id. CIT(IT) passed u/s. 263 of the Act on the ground that the A.O. has conducted sufficient enquiry by issuing notice u/s. 133(6) of the Act to Ferani Hotels Pvt. Ltd. as well as Indian bank, Bandra Branch, Mumbai and had obtained the necessary information. The Tribunal has also held that the judgment of Hon'ble Bombay High Court dated 19.07.2012 was interpreted by the A.O. and had come to a conclusion that the impugned amount collected by Ferani Hotels Pvt. Ltd. from flat purchasers constituted as assessee's income which was liable to be taxed in A.Y. 2013-14. The Tribunal also held that the A.O. had applied her mind to the contents of the decision of the Hon'ble Bombay High Court and had passed the assessment order by considering that the interest on FD was not attributable to the assessee's income and the A.O. has also not allowed the credit for taxes paid by way of TDS from interest on the said FD's. The Hon'ble Tribunal held that there was no failure on the part of the A.O. by conducting proper enquiry. The Tribunal held that the Id. CIT(IT) had not brought on record any cogent or conclusive material to prove that the assessment order was

unsustainable in law. It is observed that the A.O. has taken one of the plausible view available in law, for which it is said that the assessment order is not erroneous insofar as it is prejudicial to the interest of the Revenue and the invocation of section 263 was not justified by the Tribunal by relying on the decision of *Malabar Industries Co. vs. CIT* [2000] 243 ITR 83 (SC), thereby quashed the revision order passed by the Id. CIT(IT). The present appeal filed by the Revenue challenging the order of the Id. CIT(A) is an order giving effect passed by the Id. CIT(A), wherein the Hon'ble Tribunal has quashed section 263 order and consequential assessment order passed u/s. 143(3) r.w.s. 263 of the Act was held to be nonest by the Id. CIT(A).

7. Having heard the rival submissions and perused the material available on record. We find no merit in the appeal filed by the Revenue, challenging the order of the Id. CIT(A) in allowing the appeal of the assessee, as section 263 order is itself has been quashed by the Tribunal, the consequential assessment order passed u/s. 143 r.w.s. 263 of the Act would not stand on its own. Therefore, we hold that the Id. CIT(A) was justified in allowing the appeal filed by the assessee, pursuant to the decision of the Tribunal quashing section 263 order passed by the Id. CIT(IT).

8. In the result, the appeal filed by the Revenue is dismissed.

*Order pronounced in the open court on 10.01.2023*

Sd/-

(S. Rifaur Rahman)  
Accountant Member

Mumbai; Dated : 10.01.2023  
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai