

आयकर अपीलीय अधिकरण
मुंबई पीठ "आई", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं. 1501/मुं/ 2022 (नि.व. 2006-07)
ITA NO. 1501/MUM/2022(A.Y.2006-07)
आअसं. 1502/मुं/ 2022 (नि.व. 2007-08)
ITA NO. 1502/MUM/2022(A.Y.2007-08)

Jt. Commissioner of Income Tax (OSD)(Int. Tax)2(3)(1),
Room No.1614, 16th Floor, Air India Building,
Nariman Point, Mumbai – 400 021.

..... अपीलार्थी /Appellant

बनाम Vs.

Bharati Jaiprakash Gajaria,
Vallabhdas Bunglow, 58-B, Shankar Lane,
Kandivali (West), Mumbai – 400 067.

PAN:AACPJ-2783-P.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Soumendu Kumar Dash

प्रतिवादी द्वारा/Respondent by : S/Shri Madhur Agrawal/ Fenil Bhatt

सुनवाई की तिथि/ Date of hearing : 17/01/2023

घोषणा की तिथि/ Date of pronouncement : 31/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the Department are directed against the order of Commissioner of Income Tax (Appeals)-55, Mumbai [in short 'the CIT(A)'] for the Assessment Year 2006-07 and 2007-08, respectively. Both the impugned orders are of even date i.e. 23/03/2022.

2. Since, the grounds of appeal and the facts germane to the issue in both appeals are identical, these appeals are taken up together for adjudication and are decided by this common order.

ITA No.1501/Mum/2022- A.Y. 2006-07:

3. Shri Soumendu Kumar Dash representing the Department submits that information was received by the Government of India from French Government under Double Taxation Avoidance Agreement (DTAA) that some Indian nationals have foreign bank account in HSBC Private Bank (Suisse) SA Geneva. This information was received in the form of “base note” , wherein various details of the account holders including the date of opening of the bank account and balance in certain years in HSBC Private Bank were shared. On the basis of information received from the DIT(Inv)-II, Mumbai notice u/s. 148 of the Income Tax Act, 1961 [in short ‘the Act’] dated 08/12/2014 was issued and served on the assessee. During the course of assessment proceedings the assessee tried to explain the deposits in HSBC Bank Account but failed to furnish documents to substantiate her contentions. The assessee failed to reconcile the information available in ‘base note’ with the bank statement. The assessee failed to explain the source of investment in HSBC account. In the absence of any documentary evidence to explain deposits in HSBC Account Dubai, the assessee did not execute “Consent Waiver Form”. Thus, the assessee failed to discharge her onus in explaining the amount deposited with HSBC account. Further, no information was provided by the assessee regarding payment of tax on the said amount in the country of residence.

3.1 In First Appellate proceedings, the assessee filed additional evidences before the CIT(A). The CIT(A) sought remand report from the Assessing Officer on the documents furnished. The Assessing Officer objected to admission of additional evidences. The CIT(A) despite objection from the Assessing Officer, admitted additional evidences and on the basis of said evidences deleted the addition. The Id. Departmental Representative contended that the CIT(A) has failed to take into consideration the fact that the assessee has not approached First Appellate Authority with clean hands. The assessee did not execute 'Consent Waiver Form' thereby not allowing the Assessing Officer to have access to information in the bank account of assessee. The Id. Departmental Representative further submitted that CIT(A) has granted relief to the assessee without considering the fact that the assessee has failed to furnish information with respect to source of investment in HSBC Private Bank account. The Id. Departmental Representative in support of his submissions placed reliance on the decision of Hon'ble Bombay High Court in the case Soignee R. Kothari Vs. DCIT in W.P(L) 3172 of 2015 decided on 05/04/2016 to contend that the assessee should have filed 'consent waiver form'. The Id. Departmental Representative prayed for reversing the findings of CIT(A) and upholding addition made in the assessment order.

4. Shri Madhur Agrawal appearing on behalf of the assessee vehemently defended the impugned order. The Id.Counsel for the assessee narrating facts of the case submitted, that the assessee is a Non-Resident since 1992. The father-in-law of the assessee, Shri Vallabhai Kesavdas had opened bank account with British Bank of Middle East in 1987. Later on British Bank of Middle East was taken over by HSBC Bank. The father-in-law of the assessee died in 1992. After his demise the bank account was transferred in the name

of her mother-in-law and her husband.. Subsequently, the name of assessee was also included. The father-in-law of assessee was doing business on trade licence in Dubai and had made investments from his said business income. After the demise of her father-in-law in September,1992, no further deposits were made in the said bank account. The only credit entries in the account are interest, dividend, coupons, etc. Whenever fixed deposits / bonds had matured the amount was credited to the said bank account for which corresponding debit entries are reflected in the statement. The bank account was closed in December 2006.

4.1 During the course of assessment proceedings, the assessee had furnished bank statements for the relevant single year i.e. Financial Year 2005-06. In so far as non-reconciliation of amounts in bank statements viz - a - viz 'base note', the Id. Counsel for the assessee submits that in the 'base note' the transactions of debit and credit are not reflected. The 'base note' only gives the position of liquid assets structure products i.e. the total value of investments on a particular date of a month. Whereas, the bank statement gives details of debit and credit entries carried out in the financial year. Hence, the amounts given in 'base note' and bank statements would never match. During the First Appellate proceedings the assessee furnished additional evidence viz:

- a. Copy of bank accounts of the British Bank of the Middle East, in the name of Mrs. Devkibai Valabdas & Mr. Jaiprakash Valabdas.
- b. Account opening form dtd 19.02.1993 addressed to the Bank by the above two account holders.
- c. Copy of the letter addressed to the Bank dated 30th August, 1993 requesting to renew the deposit in the name of the two depositors and the third one being Bharati Jaiprakash Gajaria.
- d. Account opening form dtd. 15.09.1993 requesting the Bank to open account in the name of three persons i.e. Devkibai, Jaiprakash and Bharati.

- e. Copy of Bank account of the HSBC Bank disclosing the account in the name of three account holders.*
- f. Copy of the passport.*
- g. Chart disclosing the stay in India from 1997 to 2014."*

The CIT(A) sought remand report on the additional documents filed by the assessee. The assessee could not furnish these documents before the Assessing Officer as the said documents were not available with the assessee at the time of assessment. The assessee could obtain aforesaid documents only in the year 2020. Hence, the same were furnished to the CIT(A). In remand proceedings the Assessing Officer chose not to comment on the additional evidence filed by the assessee. The CIT(A) admitted the documents and after examining the same, deleted the addition.

4.2 On non execution of "consent waiver form" the Id.Counsel for the assessee submits, that there was no question of filing "consent waiver form" as the assessee had voluntarily given information and bank statements. During assessment proceedings, the assessee had furnished bank statement only for the period relevant to the Assessment Year under appeal. Subsequently, proceedings before the CIT(A), the assessee furnished bank statements for the preceding Assessment Years as well to show that no fresh deposits were made in the bank account. The Assessing Officer during assessment proceedings had never asked the assessee to furnish "consent waiver form". This fact is evident from the assessment order. The Id.Counsel for the assessee submits that findings in the case of *Soignee R. Kothari (supra)* would not apply to the facts of the present case. In the case of *Soignee R. Kothari (supra)* The assessee had not voluntarily furnished the information and the assessee had challenged the proceedings u/s. 148 of the Act directly in Writ jurisdiction before the Hon'ble High Court. The Hon'ble High Court rejected the Writ Petition without

commenting on the merits and allowed petitioner to raise contentions before the authority under the Act. Hence, the said decision being distinguishable on facts would have no application on the facts of the case of assessee .

5. We have heard the submissions made by rival sides and have examined orders of authorities below. It is an undisputed fact that the assessee is a non-resident and is based in Dubai. On the basis of information received in the 'base note' notice u/s. 148 of the Act was served on the assessee. The details of the bank account with HSBC Bank Geneva as per the information received from French Authorities in base note are as under:

“Devakibai/Jaiprakash Valabhdas A/o Gajaria Bharti Jaiprakash

| | |
|---------------------|----------------------------|
| Code profile client | 5094222454 |
| IBAN | CH70 0868 9050 9109 8270 7 |
| BUP_SIFIC_PER-ID | 5090466384 |
| PER_ID | 109374 |
| PER_NO | 166384” |

The said bank account had deposits amounting to \$ 4,77,872 in December 2005. The contention of the assessee is that the aforesaid account was opened by father-in-law of the assessee Valabhdas Kesavdas in 1987. He was doing business on trade licence from 1989- 1990, onwards in Dubai. The investment in fixed deposits in HSBC Bank Geneva were out of his earnings in Dubai. After his demise on 14/09/1992 the said account was initially transferred in the name of assessee's mother-in-law and her husband. Later on, name of the assessee was also included. After death of father-in-law of the assessee, purportedly no further amount was deposited in the said bank account. To substantiate this contention the assessee had furnished bank

account statement of the preceding financial years, including the bank statement for the financial year relevant to the assessment year under appeal.

6. The assessee had filed additional evidences before the CIT(A). It is an unrebutted fact that documents filed by the assessee as additional evidences were not available with the assessee at the time of assessment proceedings. Though, the CIT(A) had sought remand report from the Assessing Officer on the additional evidences filed, the Assessing Officer only opposed the admission of additional evidences, however, no comments on the veracity / relevance of the documents filed as additional evidences were offered by the AO. The Assessing Officer was given opportunity to examine the documents on which heavy reliance was placed by the assessee to substantiate her contentions. The documents filed as additional evidences remained unrebutted by the AO. The CIT(A) after examining the documents took cognizance of the same and came to the conclusion that amount of \$4,77,872 is not a fresh investment but is a renewed investment in HSBC Bank Geneva bank account. The CIT(A) further observed that in assessment year 1996-97 the assessment was reopened on the basis of information about the deposits in HSBC Bank Geneva for identical reasons. However, while passing the assessment order date 24.03.2014 no addition was made in A.Y. 1996-97.

7. In so far as Department's reliance on the case of Soignee R. Kothari (supra), we find that in the said case the petitioner invoking writ jurisdiction of Hon'ble High Court assailed notice issued u/s. 148 of the Act. The Hon'ble High Court after examining the issue dismissed the Writ Petition without expressing any opinion on merit. In the said case the Revenue had asked the petitioner to sign a Consent Waiver Form. Though, the said request was made by the

Department after filing of the writ petition, the petitioner agreed to sign the form. Thus, there was no question/dispute regarding signing of Consent Waiver Form in the said writ petition. The 'consent waiver form' is executed to enable the Department to seek information about the account from the bank. In the instant case, the assessee had voluntarily furnished HSBC bank account statements, name of account holders, etc. This fact has not been disputed by the Department. Further, we observe that at no point of time during assessment proceedings or thereafter, the Revenue had ever asked the assessee to furnish 'consent waiver form'. Hence, the decision rendered in the case of *Soignee R. Kothari (supra)* would not apply to the facts of the present case.

8. In so far as the contentions of the Revenue that the assessee has not been able to reconcile the amounts mentioned in base note with the bank statement, in base note it appears to be the position of liquid asset held by assessee on a particular date of a month, whereas, the bank statement gives the details of all debits and credits and the total bank balance on the date of these transactions. Thus, the two documents reflect different information. Be that as it may, the assessee has given plausible source of deposits in HSBC Bank account. The Revenue has not been able to rebut the same on one hand and on other hand failed to substantiate that the credits in the account are from fresh infusion of funds by assessee.

9. We do not find infirmity in the impugned order, hence, the same is upheld and the appeal of Revenue is dismissed.

ITA NO.1502/MUM/2022- A.Y.2007-08:

10. Both sides are unanimous in stating that the facts in this appeal are identical to the facts(except for the amount) in assessment year 2006-07. We find that the grounds raised by the Revenue in assessment year 2007-08 are identical to the grounds raised in 2006-07. Therefore, the findings given by us while adjudicating appeal of Revenue for assessment year 2006-07 would *mutatis mutandis* apply to the appeal for assessment year 2007-08. For parity of reasons appeal of the Revenue is dismissed.

12. To sum up, appeal by the Revenue for assessment year 2006-07 and 2007-08 are dismissed being devoid of any merit.

Order pronounced in the open court on Tuesday the 31st day of January, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 31/01/2023
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar),
ITAT, Mumbai