

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT AND SHRI
SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No. 1868/Del/2022
Assessment Year: 2019-20

Neelashwar Bhatnagar, Mr. Shahid Khan, M/s. Kochar & Co. Advocates & Legal Consultants, 12 th Floor, Tower-1, DLF Towers Jashola, Jashola District Centre, New Delhi	Vs.	ACIT, Circle International Tax 1(1)(2), New Delhi
PAN :ARQPB0007P		
(Appellant)		(Respondent)

Assessee by	S/Shri Ajay Vohra, Sr. Adv. Shahid Khan & Ms. Niharica Khanna, Adv.
Department by	Smt. Rashmita Jha, CIT-DR

Date of hearing	02.01.2022
Date of pronouncement	18.03.2023

ORDER

PER SAKTIJIT DEY: JUDICIAL MEMBER:

Present appeal by the assessee arises out of final assessment order dated 21.07.2022 passed under Section 143(3) read with section

144C(13) of the Income-Tax Act,1961 pertaining to assessment year 2019-20, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. The dispute in the present appeal is confined to addition of an amount of Rs.143.94 crores under Section 69 of the Act.

3. Briefly, the facts are, the assessee is a non-resident individual and is a resident of United Arab Emirates. The assessee is employed with Standard Chartered Bank. For the assessment year under dispute, the assessee filed his return of income on 27.09.2020 declaring income of Rs.62,49,910.

4. In course of assessment proceedings, the Assessing Officer, on verification of Form 26AS, noticed that in the financial year relevant to assessment year under dispute, the assessee had invested an amount of Rs.213,16,49,985 in fixed deposits with Standard Chartered Bank, Mumbai Branch. When called upon to explain the source of such investment, the assessee in his reply, as alleged by the Assessing Officer, submitted that he had not made any fixed deposits. The Assessing Officer issued notice under Section 133(6) of the Act to the Standard Chartered Bank, Mumbai Branch seeking information. In

response to the said notice the concerned Bank informed that the assessee had invested in the following fixed deposits:

i)	20.11.2018	: Rs.143,94,00,000
ii)	22.02.2019	: <u>Rs. 69,70,00,000</u>
	Total:	Rs.213,64,09,000

5. Alleging that the assessee did not furnish any reply to the show cause notice dated 29.09.2021 issued seeking explanation as to why the amount should not be added under Section 69 of the Act, the Assessing Officer treated it as unexplained investment under Section 69 of the Act and added back to the income of the assessee.

6. Further, applying the provisions of section 115BBE of the Act, the Assessing Officer taxed it @60%. The assessee contested the addition by filing objections before learned DRP.

7. In the course of proceedings before learned DRP, the assessee along with his submissions furnished various evidences explaining the source of investment. It was submitted by the assessee that he along with his wife has registered a company in the name and style of M/s. NB Ventures Ltd. in British Virginia Island and also incorporated the company at Dubai. It was submitted N.B. Ventures had availed loan from Standard Chartered Bank, London/Singapore, out of which funds

were transferred to assessee's account held with Standard Chartered Bank, Mumbai, from which, the fixed deposits were made. After verifying submissions of the assessee in the context of evidences furnished, learned DRP accepted the source of fixed deposits made of Rs.69,70,00,000 and accordingly, directed the Assessing Officer to delete the addition. However, learned DRP sustained the addition of Rs.143.94 crores by alleging that the identity, genuineness and creditworthiness of M/s. NB. Ventures Ltd. was not proved.

8. Before us, Shri Ajay Vohra, learned senior counsel appearing for the assessee submitted, the Non-Resident External (NRE) fixed deposits were made through foreign remittances, hence, such deposits and their interests are not taxable under the Income-Tax Act,1961. He submitted, fixed deposits were made out of assessee's contribution and the loan advanced by foreign banks. He submitted, Standard Chartered Bank vide letter dated 13th September 2017 has provided a credit facility (loan) of USD 35,000,000 to NV Ventures Ltd., Dubai. He submitted, out of the loan availed, NV Venture had transferred Rs.143.94 crores to assessee's personal bank account on 16.11.2018.

He submitted, after receiving the amount, the assessee on 19.11.2018 had made the fixed deposit by withdrawing from the bank account.

9. In this context, he drew our attention to loan account statement and bank statement of NB Venture Ltd. and the personal account statement of the assessee and his wife. As regards the creditworthiness of NB Venture Ltd., learned counsel for the assessee submitted, as on 30.11.2018, the company had assets of USD 63,229,102.65 and liability of USD 33,923,247.26. Thus, the company had net assets over liability of USD 29,305,855.39. Thus, he submitted, neither the identity nor creditworthiness of NB Venture Ltd. can be doubted. As regards the genuineness of the loan transaction, learned counsel submitted, since, the entire transaction is carried out through banking channel and one to one co-relation has been established, genuineness cannot be doubted.

10. Further, drawing our attention to letter dated 16.11.2018 issued by Standard Chartered Bank, London to Standard Chartered Bank, India with the instruction that the fixed deposit of Rs.143.94 crores be placed under lien with them as a security, clearly establishes the genuineness of transaction. Thus, he submitted, the source of the fixed

deposit having been clearly established, it cannot be brought to tax in India. In support of such contention, learned counsel relied upon the following decisions:

1. DCIT Vs. Finlay Corporation Ltd.[MANU/ID/0335/2003];
 2. Smt. Sushila Ramasamy vs. ACIT, Central Cir-II(2), Chennai. [MANU/IX/0039/2009];
 3. Russia Technology Centre (P) Ltd. vs. DCIT dated 12.04.2013;
 4. DCIT, Circle 16(1) Hyderabad vs. Madhusudan Rao. [2015 SCC Online ITAT 3912];
 5. DCIT, Ahmedabad vs. Pratibha Pankaj Patel [2018 SCC Online ITAT 18962];
 6. ITO (International Taxation) Vs. Rajeev Suresh Gehi dated 11.10.2022; &
11. He also relied upon Circular No.5 of 1969 issued by Central Board of Direct Taxes. Further, he submitted, since, the assessee does not maintain any books of account, provisions of section 69 of the Act could not have been invoked.
12. Learned CIT(DR) strongly relied upon the observations of the Assessing Officer and learned DRP.

13. Further, she submitted, the addition of Rs.143.94 was sustained by learned DRP, since, the assessee failed to furnish cogent evidence.

14. We have considered rival submissions in the light of decisions relied upon and perused material on record.

15. It is evident, based on information reported in Form 26AS, the Assessing Officer conducted inquiry regarding certain NRE investments made by the assessee in fixed deposits with Standard Chartered Bank, Mumbai Branch. After obtaining information from the concerned bank, the Assessing Officer had added back an amount of Rs.213.64 crores to the income of the assessee by invoking the provisions of section 69 of the Act. Learned DRP, being convinced with the submissions of the assessee and evidences furnished, deleted the addition to the extent of Rs.69.70 crores while sustaining the addition of Rs.143.94 crores. From the material and evidences placed on record, which were also furnished before learned DRP, it is observed that the assessee along with his wife had created a company in the name and style of NB Venture Ltd. which is registered both in British Virgin Island and Dubai. It is evident, Standard Chartered Bank, London extended credit facility (loan) of USD 35 millions to

NB Venture Ltd. in September 2017. Out of such loan availed from Standard Chartered Bank, London, NB Venture on 19.11.2018, transferred an amount of Rs.143.94 crores to the NRE Saving Account of the assessee and his wife in Standard Chartered Bank, Mumbai. These facts are clearly established from the bank statements of NB Venture Ltd. and the assessee as one to one link between the transactions have been established. Therefore, not only the source of funds at the hands of NB Venture Ltd. but at the hands of the assessee is also established. The facts on record clearly establish that the assessee has made the investment of Rs.143.94 crores out of the amount received from NB Venture Ltd., which in turn, received the amount as loan from Standard Chartered Bank, London. The fact that NRE account FD of Rs.143.94 crores is sourced from the loan/credit facility advanced by Standard Chartered Bank, London is further established from letter dated 16.11.2018 issued by Standard Chartered Bank, London to Standard Chartered Bank, India with the instruction to place FD amount of Rs.143.94 crores under lien with them as security against the loan advanced to NV Venture Ltd. The letter contains specific instruction that the lien over the fixed deposits can be

vacated only on written instructions of Standard Chartered Bank, London. Thus, these facts clearly establish the source of fixed deposits to be out of the loan advanced by Standard Chartered Bank, London to NV Venture Ltd.

16. As regards the creditworthiness of NB Venture Ltd., as discussed elsewhere in the order, as per portfolio statement of NB Venture Ltd. issued by the Standard Chartered Bank, London, as against the total liabilities of USD 33,93,247.26, the total assets of the company as on 30.11.2018 stood at USD 63,229,102.65. These facts provide ample proof of creditworthiness of NB Venture Ltd. As regards the genuineness of NB Ventures Ltd., undisputedly, it is registered both in British Virgin Islands and Dubai. The certificate of incorporation furnished in the paper books bears testimony to this fact. Thus, the doubts raised by learned DRP regarding identity and creditworthiness of NB Ventures Ltd. is found to be unsubstantiated.

17. As regards, the genuineness of the transaction between the NB Venture Ltd. and the assessee, our discussion in the foregoing paragraphs based on evidences/material available on record clearly establish the transaction to be genuine. In fact, learned DRP has partly

accepted assessee's claim by deleting addition of Rs.69.70 crores. The addition of Rs.143.94 crores was sustained merely on doubts and suspicion. Thus, on overall analysis of facts and material on record, we are convinced that the assessee has been able to explain the source of fixed deposits of Rs.143.94 crores to have been made out of inward remittances. Therefore, we do not find justification in sustaining the addition of Rs.143.94 crores. Accordingly, Assessing Officer is directed to delete the addition.

18. In the result, the appeal is allowed.

Order pronounced in the open court on 31st March, 2023.

Sd/-
(G.S. PANNU)
PRESIDENT

Dated: 31st March, 2023.
Mohan Lal

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi