

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 310/MUM/2019
(Assessment Year: 2006-07)**

Govindbhai Laljibhai Kakadia,

901/902, Raheja Legend,
Dr. Annie Besant Road, Worli Colony,
Mumbai - 400030
[PAN: AFTPK4028A]

..... **Appellant**

**Joint Commissioner of Income-tax
19(2), Mumbai,**

Room No. 207, 2nd Floor,
Matru Mandir, Mumbai - 400007

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Shri Sridhar Govind Menon

Date : 15.05.2023
Conclusion of hearing : 17.05.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 17/12/2018, passed by the Ld. Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2006-07, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 25/03/2015, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The appeal was earlier disposed off vide order, dated 30/12/2020 for the reason that the Appellant had opted for Direct

Tax Vivad se Vishwas Act, 2020. However, since the application preferred by the Appellant was rejected, the order dated 30/12/2020 was recalled by the Tribunal vide order, dated 04/10/2022 passed in MA No. 219/Mum/2021 arising out of ITA No. 310/Mum/2019.

2. When the appeal was taken up for hearing, none was present on behalf of the Appellant. In response to query from the Bench, the Ld. Authorised Representative for the Appellant submitted that none had appeared for the Appellant in the preceding hearings as well. On perusal of record, we find that Appellant has placed on record written submissions. Accordingly, we proceed to decide the issue raised in the present appeal on merits on the basis of material available on record.
3. The relevant facts in brief are that the Appellant filed original return of income for the Assessment Year 2006-07 declaring total income of INR 2,54,678/-. Subsequently, summons were issued to the Appellant under Section 131 of the Act and in response to the same Appellant furnished copies of income tax return and wealth tax return for Assessment Years 2006-07 to Assessment Year 2011-12 along with passport details to the Investigation Wing, Mumbai. In response, vide notice dated 05/09/2011, the Appellant was asked to furnish details of foreign bank accounts held by the Appellant. In response, the Appellant submitted that no foreign bank accounts were held by the Appellant. In view of the aforesaid reply, the Appellant was confronted by the Investigation Wing with the fact that the Appellant was beneficiary in three foreign bank accounts held with HSBC Bank, Geneva. The Appellant, vide letter dated 21/09/2011, sought information about the aforesaid foreign bank

accounts from HSBC Bank, Geneva. Vide letter, dated 03/10/2011, written to Deputy Director of Income Tax (HQ)/Director General of Income Tax (Investigation), Mumbai the Appellant offered INR 1,00,000/- equivalent to the peak balance of USD 2,187/- as income for the Assessment Year 2007-08 and paid tax along with interest of INR 40,210/- vide Challan dated 22/10/2011 (Challan Sr. No. 50441, BSR Code 6910333). Thereafter, notice, dated 14/02/2014, was issued to the Appellant for the Assessment Year 2006-07 under Section 148 of the Act. However, vide order, dated 06/03/2014, the aforesaid notice was withdrawn. Thereafter, on 12/03/2014, another notice, dated 12/03/2014, was issued to the Appellant under Section 148 of the Act for the Assessment Year 2006-07. Vide letter, dated 02/07/2014, the reasons recorded for reopening the assessment for the Assessment Year 2006-07 were furnished to the Appellant wherein it was stated that information was received by the Govt. of India that the Appellant holds bank account in HSBC, Geneva (BUP_SIFIC_PER_ID: 5090175594, balance shown for Assessment Year 2006-07: USD 1081). The Assessing Officer had reasons to believe that the Appellant had an asset located outside in India in relation to which income for the Assessment Year 2006-07 had escaped assessment and therefore, reassessment proceedings were initiated by invoking provisions of Section 147, 148 read with Section 149(c) of the Act. The Appellant filed objections to reopening of assessment vide letter, dated 04/11/2014, which were rejected by the Assessing Officer. Further, Assessing Officer proceeded to frame Assessment Order, dated 25/03/2015, passed under Section 143(3) read with Section 147 of the Act making an addition of INR 1,00,000/- under Section 69A of the Act to the returned income of INR 2,54,678/- to assess total

income of the Appellant at INR 3,54,680/-. It would be pertinent to note that while the Appellant had executed Consent Waiver Form, as required by the tax authorities, for obtaining copy of the account statements from HSBC Bank, Geneva, no details were received till the date of passing of the Assessment Order.

4. Being aggrieved, the Appellant preferred appeal before CIT(A) challenging the validity of the reassessment proceedings as well as addition of INR 1,00,000/- under Section 69A of the Act on merits. The CIT(A) vide order, dated 17/12/2018, dismissed the appeal.
5. Being aggrieved, the Appellant has preferred the present appeal.
6. **Ground No. 1 to 4** raised by the Appellant challenge the validity of re-assessment proceedings. It is settled legal position that while examining the validity of initiation of re-assessment proceedings the Assessing Officer must have 'reason to believe'. At this stage, whether the materials available can prove decisively that there was escapement of income, is not a relevant as the belief formed by the Assessing Officer is based upon subjective satisfaction drawn from the information/materials available with the Assessing Officer. The sufficiency or correctness of the aforesaid information/material is not to be considered at this stage of reopening of the assessment. On perusal of the reasons recorded in writing, we find that the Assessing Officer had fresh tangible material to form a belief that the Appellant held a bank account located outside India with credit of USD 2,187/- for the Assessment Year 2006-07 which was not disclosed to the income tax authorities. Therefore, the deeming provisions contained in Explanation 2 to Section 147 of the Act were attracted in the case of the Appellant. Accordingly, in the case of the

Appellant it would be deemed that income chargeable to tax had escaped assessment. Further, as per Section 149(1)(c) of the Act the Assessing Officer had time till the lapse of 16 years from the end of the Assessment Year 2006-07 to issue notice under Section 148 of the Act. Explanation to Section 149 of the Act clarified that the provisions of Section 149(1) and 149(3) of the Act, as amended by Finance Act, 2012 shall also be applicable to any Assessment Year beginning on or before 01/04/2012. In view of the aforesaid, we hold that the Assessing Officer was entitled to reopen an assessment for the Assessment Year 2006-07 as the jurisdictional requirements specified under Section 147 of the Act were satisfied and the notice, dated 12/03/2014 - pursuant to which Assessment Order dated 25/03/2015 was passed, has been issued under Section 148 of the Act within the limitation period specified under Section 149(1) of the Act. Accordingly, we dismiss Appellant's challenged to the validity of the re-assessment proceedings. Ground No. 1 to 4 raised by the Appellant are, therefore, dismissed.

7. **Ground No. 5 to 7** are directed against the addition of INR 1,00,000/- made under Section 69A of the Act for the Assessment Year 2006-07. On perusal of record, we find that though the Appellant had denied having any foreign bank account or being beneficiary of a bank account held outside India, the Appellant had offered the aforesaid amount of INR 1,00,000/- in the return of income for the Assessment Year 2007-08. We find that in paragraph 9 of the Assessment Order, the Assessing Officer admitted that the Appellant had paid tax of INR 40,210/- on 22/10/2011 on the aforesaid income of INR 1,00,000/- voluntarily offered to tax during the Assessment Year 2007-08. However, the Assessing Officer was

of the view that the correct Assessment Year in which the aforesaid amount of INR 1,00,000/- should be brought to tax is the Assessment Year 2006-07 and not Assessment Year 2007-08 as the credits aggregating to USD 2,187/- (USD 577/- + USD 674/- + USD 935/-) equivalent to INR 1,00,000/- (taking conversion rate of 1 USD = INR 45.74) pertain to Financial Year 2005-06 relevant to Assessment Year 2006-07. Therefore, the Assessing Officer made the addition of INR 1,00,000/- under Section 69A of the Act for the Assessment Year 2006-07. The CIT(A) confirmed the order passed by the Assessing Officer. There is nothing on record to support the contention of the Appellant that income of INR 1,00,000/- should not be brought to tax in the hands of the Appellant, whereas the stand of the Revenue draws strength from the information/material received from the French authorities. Given the aforesaid facts, we also concur with the authorities below that income of INR 1,00,000/- should be brought to tax in the Assessment Year 2006-07. Accordingly, we reject the contention of the Appellant that INR 1,00,000/- is not liable to tax in the Assessment Year 2006-07. However, same income cannot be brought to tax twice in the hands of the Appellant. Since, INR 1,00,000/- has been brought to tax during the Assessment Year 2006-07, the same cannot be taxed again in Assessment Year 2007-08. Further, it is also settled legal position that no tax can be levied/collected without authority of law. Therefore, the Appellant would be at liberty to take such steps as available under law to seek recovery of the refund of tax/interest deposited by the Appellant in respect of INR 1,00,000/- offered to tax during the Assessment Year 2007-08 after the adjustment, made by the Revenue as per law, of demand for the Assessment Year 2006-07, if any. In view of the aforesaid, Ground No. 5 to 7

raised by the Appellant are dismissed.

8. In result, the present appeal by the Assessee is dismissed.

Order pronounced on 17.05.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 17.05.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai