

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH“C”, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 386/Mum/2023  
(Assessment Year: 2014-15)**

Chetan Lachmandas Bhatia, C-309, 3 <sup>rd</sup> Floor, Atul Nagar Tower, Mathwadras, Ext. Road, Irani Wadi No.3, Kandivali West, Mumbai-400067.	<b>बनाम/ Vs.</b>	ITO, (International Tax)-1(2)(1), Mumbai.
<b>स्थायीलेखासं. /जीआइआरसं. /PAN/GIR No. : AOTPB9588F</b>		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Ms. Chaitee Londhe, CA
प्रत्यर्थी की ओर से/Respondentby:	Shri Ram Prakash Rastogi, Sr.AR

सुनवाई की तारीख/ Date of Hearing	17/05/2023
घोषणा की तारीख /Date of Pronouncement	29/05/2023

आदेश / ORDER

**PER OM PRAKASH KANT- AM:**

This appeal filed by the assessee is directed against the final assessment order dated 13.12.2022 passed by ITO, International Tax-1(2)(1), Mumbai ( In short ‘ the Assessing officer) for Assessment Year (“AY”) 2014-15, pursuant to the direction of Ld. Dispute Resolution panel (“DRP”) dated 28.11.2022. The grounds raised by the assessee alongwith Form No.36 were revised by the assessee. The revised grounds are reproduced as under:-

1. *“The learned AO and hon'ble DRP erred in facts and in law in making an addition of Rs. 1,55,00,000/- to the returned income of the appellant, as unexplained investment, despite Rs.1,05,00,000 out of the same being fully explained by maturity proceeds of two fixed deposits.*
2. *The learned AO and hon'ble DRP consequently erred in not restricting the addition on account of investment in immovable property to Rs. 50,00,000/- only.*
3. *The learned AO and hon'ble DRP erred in facts and in law in making addition of Rs. 74,57,158/-by treating the credits in bank account of the appellant as unexplained cash credits, despite Rs. 25,00,000/- out of the same being proceeds of mutual funds and therefore stood fully explained.*
4. *The learned AO and hon'ble DRP consequently erred in not restricting the addition on account of unexplained cash credits to Rs. 49,57,158/-.*
5. *The appellant craves leave to add alter or amend any of the grounds of appeal at any time before or at the time of hearing.”*

2. Briefly stated facts of the case are that during the relevant year, the assessee was a non-resident. The assessee did not file its return of income for the year under consideration. Subsequently, the AO re-opened

the assessment invoking section 147 of the Income Tax Act, 1961 ("the Act") and issued notice u/s 148 of the Act, directing the assessee to file return of income for the year under consideration. In the return of income filed in response to the notice issued u/s 148 of the Act, the assessee offered total income of Rs.7,430/- under the head "income from other sources". In the draft assessment order issued on 28.02.2022, the Assessing Officer ("AO") proposed three additions; firstly, unexplained investment in purchase of immovable property amounting to Rs.3,05,00,000/-; secondly, addition for unexplained cash credit in respect of deposit in Indusind Bank NRE Account (Account No.601013999174); and thirdly, addition of unexplained cash credit for deposit in Indusind Bank NRE Account (Account No.601013999004) amounting to Rs.25,26,000/-. Being aggrieved, the assessee filed objection before Ld.DRP. Ld.DRP restricted the addition in respect of unexplained investment in immovable property to Rs.1,55,00,000/-. The addition in respect of unexplained cash credit was also restricted to Rs.74,57,158/-. Pursuant to the direction of Ld.DRP, the

AO in the impugned final assessment order made total addition of Rs.2,29,64,588/- (Rs.1,55,00,000/- + Rs.74,57,158/-).

3. Aggrieved, the assessee filed appeal before this Tribunal by way of raising grounds as reproduced above.

4. Before us, Ld. Counsel for the assessee submitted that revised **Ground Nos.2 & 4** of the assessee's appeal were not pressed by the assessee and therefore, same are dismissed as infructuous.

5. With respect to **Ground Nos. 1 & 3**, the assessee has filed additional evidences along with application for admitting the same.

6. The brief facts qua Ground No.1 of the appeal of the assessee are that the AO observed purchase of an immovable property by the assessee in year under consideration for a total consideration of Rs.3,05,00,000/-, which was shown to have been paid as (i) Rs.1,05,00,000/- from the NRE Account No.100004596117 maintained with Indusind Bank and (ii) Rs.2,00,00,000/- paid from NRE Account maintained with State Bank of India.

Before Ld. DRP, the assessee filed additional evidences. Ld.DRP after considering the comments of the AO on additional evidences and rejoinder of the assessee, concluded that source of payment of Rs.1,05,00,000/-, was not explained and therefore, unexplained investment in respect of the said payments was confirmed. Further, out of another payment of Rs.2,00,00,000/-, Ld. DRP admitted the source of Rs.1,55,00,000/-, but upheld the balance investment of Rs.50,00,000/- as unexplained investment. The relevant findings of Ld.DRP is reproduced as under: -

*5.2.13. "We find that the source of funds to this transaction to the extent of Rs.1,05,00,000/- is explained to be the amount transferred from SBI NRE Account 10119751154 (Annexure-A10). The above transaction on 22.02.2014 in SBI NRE Account is preceded by deposits of Rs. 49,22,814/- and Rs. 60,03,432/- on 20.02.2014 on account of NRE FDs, however the assessee has neither offered any explanation as regards the source of investment in these FDs nor any other detail which can show that the outflow of funds in these FDs are from the known sources pertaining to the year under consideration or any earlier year. We may observe here that the assessee is not only the joint holder of the account*

*wherein the proceeds of the FDs have been deposited, he is also a legal heir of his father, since deceased, hence he cannot absolve himself from the responsibility of explaining the transaction merely stating that the joint account was operated by his father wherein the primary account holder was his father and the assessee and his mother were mere joint holders and by attributing the deposits in the bank account to his father. We have also noted that in support of the above claim, the assessee has though relied on his father's will which he has written on 02.03.2021, a will executed and witnessed at Dubai on 02.03.2021, still not probated at Dubai and submitted for probate before the Hon'ble High Court of Bombay on 28.03.2022, that too after the AO has passed the Draft order u/s 144C of the Act in the instant case on 28.02.2022, still this will does not throw any light on these transactions under consideration which have taken place prior to execution of the will. Therefore, in our view this will has no evidentiary value for deciding the issue before us.*

*5.2.14. The Hon'ble jurisdictional High Court of Bombay in the case of Naresh K. Pahuja vs. Income Tax Appellate Tribunal: (2015) 375 ITR 0526 (Bom) has held that "mere routing of a gift through a banking channel would not by itself establish that the gift is genuine and the genuineness or non-*

*genuineness of the gift would have to be established by other evidence.*

*5.2.15. The Hon'ble Supreme Court of India in the case of CIT vs. P. Mohanakala&Ors. (2007) 291 ITR 0278 has held that "The transactions though apparent were held to be not real one. May be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence."*

*5.2.16. In view of the aforesaid we are of the view that the AO was justified in treating the amount to the extent of Rs. 1,05,00,000/- as Unexplained Investment.*

*5.2.17. As regards the source of the balance amount of Rs. 2,00,00,000/- paid to the seller Mr Kishore Mohandas in two instalments of Rs.1,00,00,000/- each on 19.08.2013 and 20.08.2013, for the purchase of the property, from the SBI NRE Account 10119751154 (Annexure-A10) itself, and explained to be sourced from Bank of Baroda Account (Annexure-A11) to the extent of Rs. 53,00,000/-, we find that no credence can be given to the explanation given by the assessee as in assessee's own admission this transaction is a reversal of the entry and the perusal of the bank statement itself shows the entry was reversed by Transferor Bank on account of insufficient fund on 29.03.2013 itself and after the reversal of the entry by the Transferee bank i.e. SBI,*

*Kandivali (West), Mumbai, the balance outstanding in the SBI NRE Account 10119751154 was Rs. 15,71,031.51.*

*5.2.18. As regards of transaction of Rs. 50,00,000/- reported in Bank of Baroda Account (Annexure-A11) on 01.08.2013, we have noted that the payment was towards SBI Card and the corresponding transaction reflected in the SBI NRE Account 10119751154 is 'By Clearing BOB'.*

*5.2.19. We have noted that the amount of Rs.50,00,000/- is stated to be the amount transferred from Bank of Baroda Account-03970100021202 (Annexure- A11) on 01-08-2014 wherein the balance outstanding as on 05-11-2012 was at Rs. 92,745.67 prior to credit of interest amount of Rs. 1838.00 on 06-05-2013 during the F.Y. 2013-14 corresponding to A.Y. 2014-15. Consequently, the source of aforesaid deposit of Rs. 50,00,000/- can be considered to be the amount credited in Bank of Baroda Account as under:-*

*.....*

*5.2.20. The assessee has not submitted any explanation to the amount credited Rs. 36,23,188/- and Rs. 16,10,305/- in the Bank of Baroda Account - 03970100021202 on 12-06-2013 and 12-06-2013 respectively.*

*5.2.21. In view of the aforesaid, and in the light of discussion held in earlier para as regards assessee's*

*responsibility vis-à-vis joint account, we find that the explanation given by the assessee as regards the source of payments for Rs. 50,00,000/- is not a bona-fide, and hence, the AO was justified in treating the amount to the extent of Rs. 50,00,000/- as Unexplained Investment.*

*5.2.22. However, as regards the source of the balance amount Rs. 1,50,00,000/- paid for the purchase of the property, we have noted that this is the amount transferred from HSBC Mumbai Main Branch Account No. 019-340645-006 (Annexure-A12) out of the opening balance outstanding at Rs. 1,09,96,977.56 as on 31.03.2013 and the maturity amount of Direct Credit Redemption Birla MF deposited in the account, purchased in an earlier year on 10.06.2011.*

*5.2.23. In view of the aforesaid, we find that the explanation given by the assessee as regards the source of payments for 1,50,00,000/- is bona-fide and direct the AO to delete the proposed addition.”*

7. Regarding the unexplained investment of Rs.50,00,000/- confirmed by the Ld.DRP out of Rs.2,00,00,000/-, the assessee has not pressed the addition. However, regarding the addition of Rs.1,05,00,000/-, the assessee has explained that said payment was made out of the deposits of Rs.49,22,814/- and Rs.60,03,432/- in bank account. The Ld Counsel

submitted that those concerned deposits were made in earlier year. In the additional evidence, the assessee has submitted that copy of the relevant fixed deposits accounts to demonstrate these fixed deposits were made in earlier years. The additional evidence being vital document for determining the source of Rs. 1,05,00,000/- as to whether it is explained or not, therefore we admit the additional evidence on this issue. In view of the additional evidences, Ld. Counsel for the assessee requested for sending the matters back to the AO.

8. Ld.Sr.DR though relied on the order of AO but did not object for admission of additional evidences.

10. We have heard rival submission on the issue-in-dispute and perused the relevant material on record. The dispute is regarding source of payment of Rs. 1,05,00,000/-for purchase of immovable property. The contention of the assessee is that prior to issue of cheque of Rs. 1,05,00,000/- , in relevant bank account there are two deposits amounting to Rs. 49,22,814 and Rs. 60,03,432/-, which have been remitted from two fixed

deposit account. The assessee has submitted account statements of fixed deposits as additional evidence. In the facts and circumstances of the case, we are of the opinion that examining the additional evidences goes to the root of the matter and therefore, we feel appropriate to restore the issue in dispute to the file of the AO for taking into consideration the additional evidence and adjudicate in accordance with law. The ground No.1 raised by the assessee is accordingly allowed for statistical purposes.

11. In **Ground No.3**, the assessee has challenged the addition of Rs.25,00,000/-, which is sustained by Ld. DRP, out of the unexplained cash credit addition proposed by the AO in the draft assessment order. The relevant findings of Ld.DRP in relation to addition of Rs.25,00,000/- is reproduced as under: -

*5.4.1. "We have considered the submission of the assessee and find that the amount of Rs.25,26,000/- reported to be deposited in the bank account Chetan Bhatia Indusind Bank NRO Account -601013999004 (Annexure-A7), is sourced from Chetan Bhatia IndusInd Bank NRE Account -100004596117 (Annexure- A9), which is verifiable from the statement*

*placed on record by the assessee before the AO. However, the assessee has not offered any explanation for the source of funds of Rs. 25,00,000/- deposited immediately prior to this transaction and reported in Chetan Bhatia - IndusInd Bank NRE Account -100004596117 on 08-Jan-14 as "TRF FROM....FAMILY MAI HABIB EXCHANGS....".*

12. Before us, Ld. Counsel for the assessee submitted that source of deposit of the said fund was out of proceeds of Mutual Funds ("MFs"). The assessee has filed an account statement of the MFs during the relevant period and submitted that the sum of Rs.23,77,860/- was received on 15.12.2013 out of redemption of MFs. In view of the additional evidences filed, Ld. Counsel for the assessee submitted that matter may be restored back to the file of AO for deciding afresh. As the additional evidence goes to the root of the matter , therefore same are admitted. In identical circumstances, we have restored Ground No.1 of the assessee's appeal to the AO and therefore, to have consistency in our approach, the Ground No.3 raised by the assessee is also restored to the file of AO for deciding afresh after taking into consideration the additional evidence filed by the

assessee. Thus, Ground No.3 raised by the assessee is allowed for statistical purposes.

13. In the result, the appeal filed by assessee is allowed partly for statistical purposes.

Order pronounced in the open court on 29.05.2023.

Sd/-  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

Sd/-  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 29/05/2023  
*\*Amit Kumar, Sr. PS\**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/BY ORDER,

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