

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.208/PUN/2023
निर्धारण वर्ष / Assessment Year : 2014-15

Mr. Abrar Fakirmohammad Shaikh, At Manakeshwar, North Solapur, Tal. Bhoom, Barshi, Solapur- 413213. PAN : CHFPS0191E	Vs.	ITO (International Taxation), Nashik.
Appellant		Respondent

Assessee by : Shri Rajiv Khandelwal
Revenue by : Shri Prashant Gadekar

Date of hearing : 10.10.2023
Date of pronouncement : 18.10.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the final assessment order dated 20.12.2022 passed u/s 147 r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act') for the assessment year 2014-15.

2. Briefly, the facts of the case are that the appellant is an individual and Non-Resident Indian in terms of Income-tax purpose. The Return of Income for the assessment year 2014-15 was filed on 05.07.2014 disclosing total income of Rs.1,85,740/-. Against the said return of income, no scrutiny assessment was made.

Subsequently, on receipt of the information that the appellant made cash deposit of Rs.1,20,40,000/- with Solapur District Co-operative Central Bank, the Assessing Officer formed an opinion that the income had escaped assessment to tax. Accordingly, the Assessing Officer had issued a notice u/s 148 on 31.03.2021. In response to said notice u/s 148, the appellant filed the return of income on 03.04.2021 disclosing same income as declared in the original return of income. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 20.12.2022 passed u/s 144C(13) r.w.s. 147 of the Act at a total income of Rs.1,23,98,740/-.

While doing so, the Assessing Officer brought to tax a sum of Rs.1,21,80,000/- being the amount of cash deposits in the bank i.e. cash deposits of Rs.1,20,40,000/- made with Solapur District Co-

operative Central Bank bearing Account No.8658 and Rs.1,40,000/- being the cash deposits in Axis Bank bearing Account No.21429.

During the course of assessment proceedings, the Assessing Officer found that the appellant made a cash deposit of Rs.1,20,40,000/- on 06.04.2013 with Solapur District Co-operative Central Bank. Similarly, the Assessing Officer also found that the appellant made cash deposits with Axis Bank of Rs.1,40,000/- on 05.04.2013 and 08.04.2023. Then, the Assessing Officer had called upon the appellant to explain the sources of the said cash deposits in bank. The appellant had filed explanation before the Assessing Officer stating that the said cash deposits were made out of the earlier withdrawals made from the State Bank of India bearing Account No.6992518 of Rs.66,00,000/- and the withdrawals from Axis Bank of Rs.36,40,000/-. It is further submitted that the withdrawals were made out of the money credited to the appellant respective bank accounts by FDs maturity proceeds. As regards, the deposits of Rs.20,00,000/-, it was submitted that it was made out of the cash borrowed from his brother, namely, Saber Fakir Shaikh. It is further submitted that the said cash was withdrawn by his brother

in Axis Bank bearing Account No.15677. The affidavit from his brother, namely, Saber Fakir Shaikh was also furnished before the Assessing Officer. Further, it is submitted that the cash deposits of Rs.1,00,000/- on 08.04.2013 in Axis Bank was made out of the earlier withdrawal of Rs.2,00,000/- from the State Bank of India on 08.04.2013. The said explanation of the assessee was rejected by the Assessing Officer by holding that the assessee had failed to explain the reasons why the money was withdrawn from the savings bank account of State Bank of India and why the said cash withdrawn was deposited in the Solapur District Co-operative Central Bank. He also disbelieved the explanation of the assessee that the amount of Rs.20,00,000/- was given by his brother placing reliance on the statement recorded from his brother, namely, Saber Fakir Shaikh, who appears to have been pleaded the ignorance about the bank transaction. The Assessing Officer finally held that the appellant had failed to prove the nexus between the amounts withdrawn and deposited in the bank. In the circumstances, he brought to tax the said cash deposits under the provisions of section

69A of the Act and passed a draft assessment order u/s 144C of the Act vide order dated 30.03.2022.

On receipt of the draft assessment order, the appellant filed the objections before the DRP contending that the validity of the initiation of reassessment proceedings is illegal and challenging the additions on account of cash deposits of Rs.1,21,80,000/-. The DRP upholding the validity of the reassessment proceedings, confirmed the addition made on account of unexplained cash deposits by holding that the appellant was not able to prove the sources of money in the bank from which the cash was withdrawn and the reasons for withdrawal of substantial cash from one account and deposit in another account. The appellant had also failed to provide the evidence to prove the sources of the FDs in State Bank of India and Axis Bank as well as the maturity proceeds of which were withdrawn and deposited in the Solapur District Co-operative Central Bank.

On receipt of the direction of the DRP, the final assessment order passed by the Assessing Officer vide order dated 20.12.2022 passed u/s 147 r.w.s. 144C(13) of the Act after making addition on

account of unexplained cash deposits of Rs.1,21,40,000/- and Rs.83.002/-.

3. Being aggrieved, the appellant is in appeal before us in the present appeal.

4. Ground of appeal no.1 was not pressed during the course of hearing of appeal, hence dismissed as withdrawn.

5. Ground of appeal no.2 challenges the action of the Assessing Officer in resorting to the provisions of section 144C of the Act. It is contended that the Assessing Officer ought not to have exercised the jurisdiction u/s 144C of the Act raising the following contentions :-

- (i) Having regard to the plain provisions of section 144C(15) of the Act in the case of eligible assessee being Non-Resident in the absence of an order u/s 92CA(3) of the Act, the Assessing Officer ought not have resorted to the provisions of section 144C of the Act.
- (ii) The Non-Resident was made eligible assessee by the Finance Act, 2020, which came into effect from 1.4.2020. Therefore, Non-Resident cannot be treated as

eligible assessee within the meaning of sub-section (15) of section 144C of the Act, as the said provisions are made only with effect from the assessment year 2020-21.

6. For better appreciation of the contention of the appellant, the provisions of sub-section (15) of section 144C are extracted below :-

“Reference to dispute resolution panel.

144C.(1) xxxxx

xxxxx

(15) For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose;

(b) "eligible assessee" means,—

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; ***and***

(ii) any non-resident not being a company, or any foreign company.”

7. On mere perusal of the above provisions, it would be clear that the Assessing Officer is required to issue a draft assessment order in respect of an eligible assessee. There are two categories of eligible assessee : (a) In a case where there has been a variation on account

of order passed by the TPO u/s 92CA(3) and (b) Any Non-Resident not being a company or any foreign company.

8. In the former case, the Assessing Officer is required to adhere to the special procedure prescribed u/s 144C, only in case, where there is variation to the returned income on account of arm's length price for international transaction or specific domestic transaction has been proposed by the TPO. In the later case, the Assessing Officer is required to adhere to the special procedure prescribed under the provisions of section 144C even if there is no order passed by the TPO. The word "and" used by the Parliament in sub-clause (i) of sub-section (15) of section 144C shown in italics is to be read as "or", as the two part of sub-section (15) of section 144C are disjunctive as it prescribes two separate and distinct categories of assessee as "eligible assessee". Even otherwise such reading of words "AND" produces an unintelligible or absurd results, as the Parliament never intended that even in a case of Non-Resident, an order u/s 92CA(3) is prerequisite condition. Thus, we do not find any merit in the contention raised on behalf of the appellant.

9. Secondly, we shall deal with the next contention of the appellant that it is only from the assessment year 2020-21 that a Non-Resident is made as “eligible assessee”, therefore, the Assessing Officer ought not to have exercised the jurisdiction u/s 144C of the Act. Undisputedly a Non-Resident is made eligible assessee by Finance Act, 2020 w.e.f. 1.4.2020. Even the CBDT Explanatory Memorandum of Finance Bill, 2020 clarifies the amendment took place w.e.f. 1.4.2020, the Explanatory Memorandum of Finance Bill, 2020 is extracted below :-

“Amendment in Dispute Resolution Panel (DRP).

Section 144C of the Act provides that in case of certain eligible assesseees, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act, the Assessing Officer (AO) is required to forward a draft assessment order to the eligible assessee, if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee. Such eligible assessee with respect to such variation may file his objection to the DRP, a collegium of three Principal Commissioners or Commissioners of Income-tax. DRP has nine months to pass directions which are binding on the AO.

It is proposed that the provisions of section 144C of the Act may be suitably amended to:-

(A) include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of section 144C;

(B) expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.

This amendment will take effect from 1st April, 2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.

[Clause 70]”

10. It is settled position of law that the assessment procedure which provides a machinery procedure for quantification of charge and levying as well as collection of tax in respect of charge, thereof, it falls under realm of the procedural law. A procedural law is generally applicable to all the pending cases. The procedural law always has the retrospective application. The rule against retrospective operation of statute or a provision is not applicable to a statute or provisions if the same operates in the domain of procedural aspects of the statute. The Apex Court in several cases held that no person has a vested right in any course of procedure. He has only the right of prosecution or defense in the manner prescribed for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. [Anant Gopal Sheorey vs. State of Bombay, AIR 1958 SC 915; Sukumar Pyne, AIR 1966 SC 1206; Tikaram & Sons vs. CST, UP AIR 1286; State of Madras vs. Lateef Hamid & Co., AIR 1972 SC 1781, Bamumal Jamnadas Batra vs. State of Maharashtra, AIR 1975 SC 2083.

11. Therefore, since in this case, admittedly, the reassessment proceedings were conducted after the amended provisions came into effect i.e. w.e.f. 1.4.2020, the Assessing Officer was justified in adhering to the provisions prescribed u/s 144C of the Act. Therefore, the contentions of the appellant are being devoid of any merit and dismissed. Thus, we do not find any merits in the contention raised by the assessee. Accordingly, this ground of appeal no.2 stands dismissed.

12. Ground of appeal no.3 challenges the addition of Rs.1,21,40,000/- being cash deposits in bank account u/s 69A of the Act. During the previous year relevant to the assessment year under consideration, the appellant made the following cash deposits :-

- (i) *Rs.1,20,40,000/- with Solapur District Co-operative Central Bank.*
- (ii) *Rs.1,40,000/- with Axis Bank.*

When the appellant was called upon to explain the sources for the said cash deposits, it was explained that the cash deposits were made out of the cash withdrawals from the State Bank of India and Axis Bank in the last preceding two days. It was further submitted that the withdrawals were made out of the money standing credit to

his account the said bank out of the maturity proceeds of the FDs. The fact that the appellant had withdrawn the cash from the said bank account is not under dispute. It was further explained that the amount of Rs.20,00,000/- was deposited in the said account out of the money taken from his brother, namely, Saber Fakir Shaikh, who had stated to have withdrawn the said money from his bank account on 05.04.2023. An affidavit in this regard from his brother was also filed before the Assessing Officer. The Assessing Officer as well as the DRP had disbelieved the explanation filed in support of the sources for cash deposits by holding that the appellant had failed to adduce the reasons for withdrawal of the cash from one bank account i.e. State Bank of India and Axis Bank and deposits made in other bank account i.e. Solapur District Co-operative Central Bank and the assessee failed to establish the live link between the withdrawals of the cash and deposit of same cash in bank. The DRP further observed that the assessee had failed to furnish the sources of FDs made in the bank, the maturity proceeds which were withdrawn from the bank. It is settled position of law that the cash withdrawn from the bank is treated as available for subsequent

deposit into the bank, in the absence of any material on record to indicate that the cash withdrawn was utilised for some other purposes. Specially, in the present case, the interval between the withdrawal and deposit of the cash is hardly two days. There can be hundred and reasons as to why the assessee had withdrawn the money from one bank account and deposited in other bank account. Merely because the assessee had failed to explain the reasons for withdrawal from one bank account and deposited to another bank account, cannot lead to the conclusion that the cash withdrawn earlier was not available for subsequent deposit in the bank account. The reasoning of the DRP that the assessee had not furnished the sources of the cash deposits made cannot be a reason to make the addition on account of cash deposits, inasmuch as, the FDs in the bank were not made during the previous year relevant to the assessment year under consideration. When no addition can be made on account of unexplained sources for FDs for the year under consideration, the question of furnishing of explanation in support of such FDs does not arise. We find that the approach and reasoning of the DRP is unreasonable and illegal. It is most

unfortunate that the DRP, a collegium consisting of three Commissioners of Income Tax had adopted such unreasonably illegal approach to confirm the addition. The approach adopted by DRP militates against the very object behind enactment of DRP prediction for speedy resolution of disputes and avoid unnecessary litigation. Further, an authority created under statute conferred with process, it has obligation to act as a body living upto expectations which law mandates. As regards to the cash deposit of Rs.20,00,000/- made out of money received from brother, namely, Saber Fakir Shaikh. The material on record clearly indicates that money was withdrawn from his bank account. The affidavit from his brother also affirms this fact. Even during the course of statement recorded from him, he had not denied that the money was given to the appellant. There is nothing on the record to disbelieve the explanation filed in support of cash deposit of Rs.20,00,000/-. Therefore, we reverse the order of the lower authorities and direct the Assessing Officer to delete the addition of Rs.1,21,40,000/- made u/s 69A of the Act. Thus, this ground of appeal no.3 stands allowed.

13. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 18th day of October, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 18th October, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (DRP-3), Mumbai-1.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "C" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.