

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 985/MUM/2023
Assessment Year: 2015-16

Vinay Parmanand Hariani,
Kempinski Private Residences
Unit 40F DKI Jakarta, 10310
Indonesia.

PAN No. AABPH 4179 A
Appellant

Vs.

ITO, Int. Taxation Ward 2(2)(1),
Room No. 1725, 17th floor, Air
India Building, Nariman Point,
Mumbai-400021.

Respondent

Assessee by : Mr. Piyush Chaturvedi
Revenue by : Mr. Anil Sant, Sr. DR

Date of Hearing : 12/10/2023
Date of pronouncement : 19/10/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against final assessment order dated 30.01.2023 passed by the Ld. Income-tax Officer, International Taxation Ward-2(2)(1), Mumbai (in short 'the Ld. Assessing Officer') for assessment year 2015-16, pursuant to the direction of the Ld. Dispute Resolution Panel (Ld. DRP) dated 29.12.2022. The grounds raised by the assessee are reproduced as under:

On the facts and circumstances of the case and in law: -



1. The Ld. AO/DRP erred in adding Rs. 98,204/- as interest from bank without appreciating that a sum of Rs. 1,04,468/- credited in bank during the year relates to earlier year i.e., A. Y 2014-15 interest and Rs. 6,265/- being credited in subsequent year but relates to the year under consideration.

2. The Ld. AO/DRP grossly erred in not appreciating the 26AS statements available before them which shows the date of credit and TDS deducted by the deductor.

3. The Ld. AO/DRP failed to appreciate the corrected computation submitted before them during the course of remand report proceedings and erred in adding Rs. 3,35,023/- as Short-Term Capital Gain.

4. The Ld. AO erred in adding Rs. 7,54,209/- as Long-Term Capital Gain without providing the information collected directly by the AO to the assessee, when it is specifically requested by the assessee and instructed by the DRP also that all the information collected by the AO should be provided to the assessee.

5. The Ld. AO erred in adding Rs. 61,58,276/- u/s 69A: -

i. Investment in Franklin Templeton MF for Rs. 30,00,000/-il.

ii. Investment in Birla Sunlife MF for Rs. 19,79,194/-

iii. In respect of Insurance premium paid for Rs. 7,20,965/-

iv. In respect of Payment made for purchase of property for Rs. 4,58,117/-.

6. Without prejudice to the above grounds, the Ld. AO/DRP failed to appreciate that the assessee is a non-resident and when his income was subject to TDS, he was not required to file any return of income in India following the provisions of section 115G.

7. The Ld. AO/DRP failed to appreciate that the assessee is a NRI and he is not getting any help from his investment bankers in providing information of investments, earning, etc. So, the AO ought to have collected the information from MFs, Insurance Companies, etc and provided them to the assessee. To determine the correct income which could have been offered to tax in India. In spite of the fact, when these issues have been elaborately submitted and discussed before the AO as well as the DRP.”

2. Briefly stated, facts of the case are that the assessee is a non-resident individual and did not file his return of income for the year under consideration. In the case of the assessee information was



received leading to escapement of the income and therefore after recording reasons to believe that income escaped assessment, case of the assessee was reopened invoking section 147 of the Income-tax Act, 1961 (in short 'the Act') and notices u/s 148 of the Act was issued. Subsequently, the assessee filed return of income on 29.03.2022 and further responded to the various notices issued u/s 142(1) of the Act. The Assessing Officer passed draft assessment order on 30.03.2022 proposing various additions. On further objections by the assessee, the Ld. DRP issued direction to the Assessing Officer on 29.12.2022. In compliance to the direction of the Ld. DRP, the Assessing Officer passed impugned final assessment order, wherein the Assessing Officer has made additions, *interalia*,

- (1) Addition of Rs.1,04,468/- for the interest income appearing in the bank account but not included in the computation,
- (2) Short term capital gain of Rs.2,35,023/-,
- (3) Long term capital gain of Rs.7,54,209/-,
- (4) Unexplained investment in mutual fund namely Franklin Tempton of Rs.14,00,000/-,
- (5) Investment in Aditya Birla Sun Life of Rs.19,79,194/-,
- (6) Insurance premium paid for Rs.7,20,965/-,



(7) Payment of purchase of properties amounting to Rs.4,58,117/-.

3. Before us, the Ld. Counsel of the assessee filed a paper book containing pages 1 to 45 including documents at serial No. 6 to 9 (page No. 37 and 44) as additional evidence.

4. The ground No. 1 and 2 of the appeal of the assessee relate to interest of Rs.98,204/- which was credited in the bank account for the year under consideration. The brief facts qua the issue in dispute are that in the return of income filed in response to the notice u/s 148 of the Act, the assessee has shown income from other sources at Rs.4,72,445/- which included interest income from DBS Saving NRO account at Rs.70,200/-. However, during the remand proceedings by the Ld. DRP, the Assessing Officer observed that interest amounting to Rs.1,68,404/- was credited in said bank account and therefore, the Ld. DRP directed the Assessing Officer to tax the interest income from DBS Bank at Rs.1,68,404/- as against Rs.70,200/- declared by the assessee. Accordingly in the final assessment order, the Assessing Officer made addition for the difference amount of Rs.98,204/-.

4.1 Before us, the Ld. Counsel for the assessee submitted that assessee is following mercantile system of accounting and declared interest income from DBS account as and when it was due to the assessee. He submitted that interest of Rs.1,04,468.13 was credited by the assessee in the assessment year 2014-15 but said amount



was received in the year under consideration. Further, he submitted that similarly as per the statement of the 26AS statement the interest which was due to the assessee of Rs.70,200/- for the year under consideration and accordingly, the assessee has shown the same as interest income for the year under consideration whereas same was received in subsequent assessment years. The submissions of the assessee in brief are reproduced as under:

“1. The Ld. AO in page no. 11 para 6 of his final order added Rs. 1,04,468/- as interest credited into Assessee's bank account on 01.04.2014 and DRP confirmed the same assuming that the assessee has failed to take into consideration this interest income in the computation of income. We would like to invite your kind attention on page no. 2 of the paper book, there is an interest Credit for Rs. 1,04,468.13, and below to that entry, it has been mentioned by the bank that the value date is 31.03.2014.

2. So, this interest relates to the last quarter of F.Y 2013-14 i.e., the A.Y 2014-15 and accordingly does not relate to the year under consideration i.e., A.Y 2015-16. It is further evident from the 26AS statement of the A.Y 2015-16, (page no. 15 of the paper book), where the interest from DBS bank appears for Rs. 70,200.58/-, this is the amount which assessee has offered in the computation of income (page no. 19 of the paper book...

3. Kindly appreciate that at the time of hearing the undersigned AR has also submitted 26AS statement of A.Y 2014-15, where under the DBS bank head this interest amount of Rs.1,04,000/- has been shown as credited on 31.03.2014. Kindly note that the assessee is following mercantile system of accounting so interest has to be assessed in the year in which it is due and not in the year of receipt. Kindly also appreciate that interest for the last quarter of this year i.e., 2015-16 has been credited by the banker on Assessee's account on 01.04.2015 for Rs. 6,265.03 (page no. 12 of paper book). However, following the mercantile system of accounting the assessee has offered this income in A. Y 2015-16 itself, which proves the assessee is bona-fide. We pray accordingly.

4. Kindly also appreciate as per provision of sec. 115G a nonresident Indian need not to file the return of income in India, if income consist of interest income and investment income and due tax has been deducted by the payer. Please note the bankers have deducted proper tax under sect 195 on the income of the assessee. So, AO as well the DRP both were erred in adding interest income of Rs. 1,04,468/ in the



year under consideration i.e. 2015-16, which belongs to the earlier year i.e. A. Y 2014-15 and on which due tax has been deducted by the banker in earlier year also.”

4.2 The Ld. DR on the other hand relied on the order of the lower authorities.

4.3 We have heard rival submission of the parties on the issue in dispute and perused relevant material on record. The dispute is in respect of interest amount which is appearing in the bank statement as credited on 01.04.2014 but not included by the assessee under the head ‘income from other sources’. The contention of the assessee are that said interest amount was already included by the assessee in the return of income filed for immediately proceedings assessment year i.e. assessment year 2014-15 following the mercantile system of accounting as the said interest was credited by the bank in relevant assessment year and accordingly deducted the TDS and said amount was appearing in the 26AS statement for the assessment year 2014-15. In view of the above submission, we feel it appropriate to restore this matter back to the file for the Assessing Officer for verification of the claim of the assessee and if same is found to be correct, then no addition is required to be made in the hands of the assessee for the assessment year under consideration. The ground Nos. 1 & 2 of the appeal are accordingly allowed for statistical purpose.

5. In ground No. 3, the assessee is aggrieved with considering capital gain of redemption of mutual funds of BNP Paribas Mutual



Fund Rs.56,586/-, Kotak Mahindra Mutual Fund Rs.1,73,662/- and Nippon India Mutual Fund of Rs.30,304.72/-, totaling to Rs.3,35,023/- as short term capital gain.

5.1 Before us, the Ld. Counsel of the assessee submitted that as per second proviso of sub-section 42(a) of section 2 of the Act , the units of the mutual fund which are sold between the period of 01.04.2014 to 10.07.2014, then, period of above 12 months shall be considered for holding the assets as long term capital gain. Whereas the Assessing Officer and Ld. DRP both have treated the mutual fund units held for less than 36 months as liable to be taxed as short term capital gain.

5.2 Per contra, the Ld. DR relied on the order of the lower authorities.

5.3 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute is whether the investment of Rs.3,35,023/- in mutual funds by the assessee should be subjected to short term capital gain or long term capital gain. The claim of the assessee that said mutual funds were sold by the assessee between the period of 01.04.2014 to 10.07.2014 and therefore, same should be subjected to long term capital gain being held for more than 12 months as provided u/s 2(42a) of the Act. For ready reference said section is reproduced as under:



“(42A) [“short-term capital asset” means a capital asset held by an assessee for not more than [thirty-six] months immediately preceding the date of its transfers :]

[Provided that in the case of Ta security (other than a unit) listed in a recognized stock exchange in India] [or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or [a unit of an equity oriented fund]] “[or a zero coupon bond], the provisions of this clause shall have effect as if for the words “thirty-six months”, the words “twelve months” had been substituted:]

“[Provided further that in case of a share of a company (not being a share listed in a recognised stock exchange) or a unit of a Mutual Fund specified under clause (23D) of section 10, which is transferred during the period beginning on the 1st day of April, 2014 and ending on the 10th day of July, 2014, the provisions of this clause shall have effect as if for the words “thirty-six months”, the words “twelve months” had been substituted:]

6 Provided also that in the case of a share of a company (not being a share listed in a recognised stock exchange in India), [or an immovable property, being land or building or both,] the provisions of this clause shall have effect as if for the words “thirty-six months”, the words “twenty-four months” had been substituted.]

“[Explanation I].—(1) In determining the period for which any capital asset is held by the assessee-

(a) in the case of a share held in a company in liquidation, there shall be excluded the period subsequent to the date on which the company goes into liquidation;”

5.4 In view of the highlighted portion of provision prescribing holding period of 12 months for treating sale of shares/mutual fund for Long Term Capital during the period of 1/04/2014 to 10/07/2014 , we feel it appropriate to restore this issue back to the file of the Ld. Assessing Officer for verification of the date of the sale and then decide in accordance with law. The ground No. 3 of appeal of the assessee is accordingly allowed for statistical purposes.



6. In ground No. 4 of the appeal , the assessee is aggrieved with the long term capital gain amounting to Rs.7,54,209/-. The relevant part of the assessment order is reproduced as under:

“3.9. Long Term Capital Gain :

As per reply received from Deutsche Mutual Fund, it is found that the assessee has earned Long term capital gain from PGIM India Global Equity Opportunities fund and PGIM India Hybrid Fixed Term Fund. The assessee has earned Rs.3,22,299/-from redemption of PGIM India Global Equity Opportunities fund and Rs.4,31,910/-PGIM India Hybrid Fixed Term Fund. Hence, the total gain on redemption of aforesaid mutual funds is worked out at Rs.7,54,209/-. Hence, amount of Rs.7,54,209/- is hereby added the income of the assessee as Income from short term capital gain. The gain on equity fund is being taxed @10% and gain on Hybrid Fixed Term Fund is taxed at 20% being debt fund. Penalty proceedings u/s 271(1)(c) is also initiated separately for concealment of income.”

6.1 Before us, the Ld. Counsel of the assessee has submitted that this addition was not part of the draft assessment order and no direction has been given by the Ld. DRP and therefore, while giving effect to the direction of the Ld. DRP the Assessing Officer is not justified in making addition, which being ultra vires , liable to be deleted.

6.2 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. On verification of the draft assessment order, we do not find any addition proposed on this account. Also, we do not find any direction issued by the Ld. DRP on this issue and therefore, at the stage of the final assessment order, the Assessing Officer is only required to comply with the direction of the Ld. DRP. The addition being without any



direction of the Ld. DRP, same is beyond scope of the final assessment order. The addition being not in accordance with law same is deleted. The ground No. 4 of the appeal of the assessee is allowed.

7. In ground No. 5, before us, the assessee has submitted that as under:

“a. The Ld. AO on page no. 9 of the final order added Rs. 30,00,000 as unexplained investment in Franklin Templeton MF. Kindly note there were two investments made of Rs. 30,00,000/- each in BNP Paribas MF on 30.04.2014 and Franklin Templeton M.F on 05.05.2014. At the time of making submission before the AO only one source of Rs. 30,00,000/- could be found and it was unclear whether it was for Franklin Templeton investment or BNP Paribas investment. So, the AO assume that the source was explained for BP Paribas and not for the Franklin Templeton so he has added as unexplained investments for Franklin Templeton MF.

b. Now the assessee could find MF statement of Franklin Templeton MF which is appearing on page 37 of paper book where you will find that investment was made on 05.05.2014 and on the detail appearing above statement the advisor code and name of DBS bank is appearing.

c. We invite your kind attention to page no. 39 of the paper book where on 29.04.2014 a DD was issued for Rs. 30,00,000/- that is the source of investment in Franklin Templeton MF. We have also attached on page no. 45 of the paper book the details of source of funds in DBS account which is transferred from the other bank account of the assessee. So, the AO was on error that payment made from DBS account of Rs. 30,00,000/- was for investment in BNP Paribas but it was actually for Franklin Templeton MF.

d. For BNP Paribas we are submitting here with the statement of Standard Chartered Bank appearing on page 43 of the paper book that on 13.04.2014 a sum of Rs. 30,00,000/- was debited for BNP Paribas Money Plus Growth Fund which conclusively prove that the investment in BNP Paribas was made out of Standard Chartered Bank and not from DBS Bank as assumed by the AO.”

7.1 Before us, the assessee has filed additional evidence in support of investment in Franklin Templeton MF of Rs.30,00,000/-



as well as statement of investment in Aditya Birla Sun Life MF. In view of the additional evidence filed by the assessee, we restore the issue back to the file of the Assessing Officer for deciding afresh after verification of the source of investment in those mutual funds. Regarding the insurance premium paid for Rs.7,20,965/-, the assessee has expressed inability in getting copy the detail of the insurance premium allegedly paid by the assessee to ICICI Prudential Fund. In the facts and circumstances, we direct the Assessing Officer to gather the said details of the insurance premium paid by the assessee from ICICI Prudential Fund invoking authority u/s 133(6) or 131 of the Act and thereafter provide said information to the assessee to explain the source of investment therein. Similarly, regarding the payment of purchases of property Rs.4,58,117/-, we note that the assessee has already explained amount of Rs.28,47,493/- out of Rs. 33,39,100/- but could not explain source of Rs.4,58,117/-. The Assessing Officer is directed to collect the detail of the payments made by the assessee from builder M/s PAX Homes LLP invoking authority u/s 133(6) or 131 of the Act and provide copy of the said payment details of Rs.33,39,100/- to the assessee. Accordingly, the Assessing Officer shall provide the details which will be collected from the builders and thereafter may examine the source of investment and decide the issue in accordance with law. The ground No. 5 of the appeal of the assessee is accordingly allowed for statistical purposes.



8. Since we have already allowed the grounds of appeal of the assessee from 1 to 5 for statistical purposes and ground nos. 6 to 7 of the appeal of the assessee are rendered only academic and therefore, not adjudicated upon and dismissed as infructuous.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 19/10/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 19/10/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai