

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3858/Mum/2023
(Assessment Year :2010-11)**

M/s. Reporter Family Private Trust, Mumbai 7 th Floor, Godrej BKC G Block, Bandra East Mumbai – 400 051	Vs.	Assessing Officer-ITO (IT) 26(1)(1), Kautilya Bhavan BKC, Mumbai
PAN/GIR No.AABTR1506K		
(Appellant)	..	(Respondent)

Assessee by	Shri Tejveer Singh / Ms. Wrutuja Soni
Revenue by	Smt. Mahita Nair
Date of Hearing	06/03/2024
Date of Pronouncement	08/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 18/09/2023, passed by NFAC Delhi for the quantum of assessment passed u/s.147 r.w.s. 144 for the A.Y.2010-11. In various grounds of appeal assessee has challenged the addition of Rs.2,59,21,343/- from the income earned from purchase of mutual funds.

2. The brief facts are that assessee is a Revocable Private Trust settled by Mr. Burjor Hormosji Reporter and Mrs. Aloo Burjor Reporter on 08/03/2007. The trustee of the assessee was DSP Merrill Lynch Trust Services Limited. The trust was a revocable trust during the life time of the settler. During the F.Y.2015-16, the assessee trust was revoked by settler on 13/11/2015 pursuant to the provisions of the trust deed. The assessee trust had not filed its return of income and accordingly, it was identified as non-Filler in Cycle-2 of Non-Filler Management System (NMMS) under Priority P-2 category. As per the AIR information, it was noted that the trust had purchased units of mutual funds of Rs.2,59,21,343/- during the F.Y.2009-10 relevant to A.Y.2010-11. Based on this information, action was taken in the hands of the assessee trust and the matter was selected for scrutiny by reopening the proceedings by issuance of notice u/s.148 on 31/03/2017. As per the assessment order, the notice was returned unserved and further, ld. AO tried to serve the notice through an affixture since assessee did not respond to the notices. Finally, ld. AO issued a show-cause notice to pass the assessment by way of his best judgment assessment. This final show-cause was also not served / responded by the assessee. Accordingly, ld. AO assessed the income at Rs.2,59,21,343/- on account of purchase of mutual funds.

3. Before the ld. CIT(A) it was submitted that the original trustee i.e. DSP Merrill Lynch Trust Services Ltd. had undergone the various changes and during the F.Y.2015-16, the original

trustee was acquired by the Original Trustee was acquired by Julius Baer Wealth Advisors Pvt Ltd, and the name of the Original Trustee post-acquisition was changed to Julius Baer Trustees India Limited. Further, Julius Baer Trustees India Limited was acquired by Warmond Trustees & Executors Private Limited and post-acquisition the name of Julius Baer Trustees India Limited was changed to Warmond Fiduciary Services Limited. Thus, it was submitted that notices could not be served to the assessee because of change in the address of the trustee when the proceedings were initiated. Apart from that, another important fact, it was brought to the notice of the ld. CIT (A) and as per the law, the assessee being a revocable trust, it was not required to offer the income earned for tax purpose because the income was to be shown by the settler of the trust and also the settler of the trust had duly discharged their obligation and offered to tax income earned by the trust as per the provisions of Section 61 of the Act. Following clause of the trustee was also referred and relied upon:-

“1.2. "During the lifetime of the Settlor:

12.1

1.2.2.

1.2.3.

1.2.4. The Settlor may, by instrument in writing, revoke this Trust Deed and the trusts constituted hereunder either in whole or in part. Such revocation shall take effect upon the receipt of such written instrument by the Trustee whereupon the entire Trust Fund or that part of it specified in such written instrument shall be re-vested in the Settlor absolutely.”

4. Thus, it was submitted that income arising from the revocable transfer of assets ought to be taxable only in the hands of the transferor i.e. the settler of the assessee trust and accordingly, this income has already been offered to tax in the return of income filed by the settler i.e. Mr. Burjor Hormosji Reporter. Apart from that various decisions were also cited by the assessee. All these submissions have been incorporated in the impugned appellate order. Some of the relevant extracts of the assessee's submissions as incorporated in the appellate order are reproduced hereunder:-

The Appellant humbly states that being a Revocable Trust, the Appellant was not required to offer income earned from sale of mutual funds during the year under consideration for tax purpose. The Settlor of the Trust had duly discharged his obligation and offered to tax the income earned by the Appellant as capital gains tax separately in his return of income filed for the said assessment year in lieu of the provisions of section 61 of the Act.

The Appellant further submits that the same income cannot be offered twice for the tax purpose. Since it is evident from the return of income of the Settlor of the Trust (Refer Page No. 17 to 39 of the Paper Book) that the Settlor has separately mentioned the income earned by the Appellant in his return of income and the same in duly offered to tax during the year under consideration as per provisions of the Act, there is no requirement of the Trust to offer such income to tax again.

In this regard, the Appellant places reliance on the decision in case of India Advantage Fund-I Vs Income Tax Officer (Refer Page No. 22 to 41 of the Legal Book) wherein the Hon'ble Bangalore Tribunal has held that-

The basic scheme of section 61 read with section 62 and section 63 is as follows: where under a settlement any income arises to

the settlor, it has to be assessed in the hands of settlor, whether the settlement is revocable or irrevocable. If under a settlement any income arises to any other person apart from the settlor such income can still be assessed in the hands of the senior provided the settlement is revocable, liven if a settlement on the face of it is stated to be irrevocable, if the same provides for direct or indirect retransfer of income or assess of the settlement to the settler or gives the settlor a right to resume power directly or indirectly over such income or asset, the settlement should be deemed to be revocable.

Similar view was taken by Hon'ble Mumbai Tribunal in case of DHFL Venture Capital Fund Vs Income Tax Officer (Refer Page No. 42 to 56 of the Legal Book) wherein it was held that if the transferor can unilaterally resume power over the assets, the income is to be taxed in its hands only, an if the transfer never happened.

The Appellant also places reliance on the decision of the Hon'ble Dethi Tribunal in case of M.P. Jalpuria (HUF) Vs Income Tax Officer (Refer Page No. 57 to 61 of the Legal Book) wherein the term "reassumption" is defined as annulling of the trust and the right to act in the original capacity which existed prior to the settlement. Further, the Hon'ble Delhi Tribunal in its decision has emphasised that-

The provisions of section 63 do not contemplate mere possibility of the property or Income going back to the transferor, but the reservation or provisions of a definite right to.re-transfer.or.ne assume to the original transferor In the view of the foregoing, the Appellant most humbly prays to delete the addition of purchases of mutual funds of INR 2,59,21,343.

4.4 The appellant claimed that they were not required to offer income earned from sale of mutual fund as the Settlor of the trust had discharged his obligation and offered to tax the income earned by the appellant as capital gains tax in his return filed for the relevant A.Y. 2010-11 as per Sec 61 of the IT Act. Further, it was stated that as the income earned by the appellant was admitted in the hands of the Settlor, it cannot be once again added in the hands of the trust.

5. Ld. CIT(A) without even bothering to see the provisions of the law and the facts brought on record by the assessee has confirmed the action of the ld. AO in the following manner:-

“4.5 It is pertinent to mention here that it is not the issue dealt in the assessment order. The assessee trust was a non-filer. As per the information available on record they have purchased units of mutual fund to the tune of Rs.2,59,21,343/-. The AO re-opened the assessment to ascertain the sources and not the income earned out of those mutual funds. This was not explained by the appellant in their written submission dated 31.10.2010 and uploaded the same reply on 18.08.2013. The appellant furnished only the particulars of gains offered in the hands of Settlor. They did not give any sources for the investment. Hence, the action of the AO is upheld and the grounds taken are dismissed.”

6. After hearing both the parties and on perusal of the impugned order as well as material placed on record, we find that there is no dispute that assessee is a ‘revocable trust’ settled by Mr. Burjor Hormosji Reporter and Mrs. Aloo Burjor Reporter on 08/03/2007. The assessee had purchased units of mutual funds of Rs.2,59,21,343/- during the A.Y.2010-11 and the same has already been offered to tax in the income tax return of the settler for the A.Y.2010-11 in the return of income filed on 31/07/2010. In the said return of income, the settler Mr. Burjor Hormosji had offered the capital gain on mutual funds of Rs.2,59,21,343/- of the revocable family private trust. The copies of the returns have been filed before us in the paper book which was also filed before the ld. CIT(A). Once, these facts were brought on record, we do not find any reasons as to how the

appellate authority can brush aside all those documents and simply endorse the exparte assessment order that the Id. AO has reopened the assessment to ascertain the sources and not the income earned out of those mutual funds. First of all he has to ascertain as to in whose case such income should be taxable whether in the hands of the revocable trust or in the hands of the transferor / settler. Section 61 of the Act reads as under:-

“61. *All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.”*

7. Further, the meaning of term revocable transfer has been defined in Section 63 which reads as under:-

“63. *For the purposes of sections 60, 61 and 62 and of this section,—*

(a) a transfer shall be deemed to be revocable if—

(i) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or

(ii) it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets;

(b) "transfer" includes any settlement, trust, covenant, agreement or arrangement.”

8. Ergo, from the plain reading of Section 61 r.w.s. 63 of the Act, the income arising from revocable transfer of assets is taxable in the hands of the transferor, i.e., the settler of the revocable trust and it is to be clubbed in the total income of the transferor and not in the total income of the transferee of the assets. We have

already noted that clause 1.2.4 of the trust deed which provides that settler may revoke this trust deed and the entire trust fund shall be reinvested in the settler absolutely. Thus, even as per the terms of the trust deed, the income or any source of investment in the mutual funds was ought to be taxable in the hands of the settler. Thus, even as per law, the income could not have been taxed in the hands of the assessee trust.

9. That apart, if it has been brought on record that already income has been offered in the hands of the settler, then taxing the same amount again in the hands of the trust is wholly arbitrary. If the ld. CIT (A) intended to ask the source, then at least same should have been confronted to the settler before stating that ld. AO reopened the case to ascertain the sources and not the income earned out of those mutual funds. Nowhere in the assessment order, the ld. AO had stated that he is questioning the source of mutual funds. He has simply held that assessee has earned income which has not been offered to tax and since assessee has not furnished the return of income, he has assessed the entire mutual fund of Rs.2,59,21,343/-. It should have been appreciated that assessee has given reason as to why the notices were not served because of the change of the address of the trustees when the proceedings u/s.148 were initiated. National Faceless Appeal Centre should have at least perused the documents which was filed and also have been incorporated in the impugned order and if there was any query or doubt about the taxability of the income in the hands of the

assessee-trust should have been confronted to the assessee. Such a casual way of ignoring of facts and materials placed on record and law vitiates the whole system of justice. It has been further brought on record before us that on similar issue, assessee's case was selected for scrutiny for A.Y.2011-12 to 2013-14 wherein the notices were served on the correct address. Assessee had brought all these facts on record and ld. AO thereafter had accepted the assessee's contention and no addition was made on account of any income / purchase of investment of mutual funds. This fact was also brought to the notice of the ld. CIT(A) which has been completely ignored. Accordingly, the order of the ld. CIT (A) is set aside and the entire addition confirmed by him are deleted.

10. In the result, appeal of the assessee is allowed.

Order pronounced on 8th March, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 08/03/2024
KARUNA, sr.ps

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,

(Asstt. Registrar)
ITAT, Mumbai