

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

**BEFORE SHRI PAVAN KUMAR GADALE, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 3926/Mum/2023  
(Assessment Year: 2011-12)**

<b>Manish Kumar Kishore Bhatia</b> Union Co-op. Insurance Building, P.M. Road, Fort, Mumbai- 400001. <b>PAN : ALAPB8862C</b>	Vs.	<b>ITO- 17(2)(3)</b> Mumbai-400020.
<b>Appellant)</b> : <b>Respondent)</b>		

**Appellant/Assessee by** : Shri Manish Bhatia  
**Revenue/Respondent by** : Shri R.R. Makwana, JCIT

**Date of Hearing** : 15.04.2024  
**Date of Pronouncement** : 16.04.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal is against the order of the Commissioner of Income Tax (Appeals)-57, Mumbai [for short 'the CIT(A)] dated 08.09.2023 for the AY 2011-12. The assessee raised the following grounds:

*“1. The Ld. CIT(A)57 for the reasons best known to him has passed his order arbitrarily, capriciously and bad in law and on facts of the case to the extent of making addition without appreciating that the assessee had not made any investments in the Mutual Fund of Rs. 28,00,000/- and saving Bank Interest of Rs. 5011/- as unexplained investments made in Mutual Fund during the Financial years 2010-11.*

*2. In view of the above facts of the case and in the law the interest of justice the Ld. CIT(A)57 failed to appreciate that the Assessment order dated 06/12/2018 is illegal and invalid being passed.*

***3. Addition u/s 69 of the Income Tax Act, 1961 for Investment in Mutual Fund of Rs. 28,00,000/-***

*On the facts and in the circumstances of the case and in law and in the interest of natural justice the Ld. CIT(A)57 has erred in addition by way of Investment in Mutual Fund which is not made by the assessee. The assessee parents have made investments in Mutual Funds to the extent of Rs. 28,00,000/- and he is second Joint holder of the Mutual Fund Investments of his parents.*

***4. No Opportunity given by CIT(A)57***

*The Honourable CIT(A)57 did not give opportunity, to the assessee through virtual hearing or physical hearing opportunity through video conference as requested by the assessee in appeal submission due intimation well in advance, for the aforesaid A.Y 2011-12.*

***4. PRAYERS***

*i. On the facts and circumstances of the case the appellant submits that the order passed by the Learned CIT(A)57 is bad in law as the said order is passed by the Learned CIT(A)57 is bad in law as the said order is passed against the principles of natural justice.*

*ii. The assessment as made on assumption basis is not based on facts & is bad in law. The impugned additions and disallowances may pleased be deleted.*

*iii. the appellant further craves leave to add, alter or amend his Grounds of Appeal during the course of Appeal.”*

2. The assessee is an individual. The Assessing Officer (AO) noticed from the Individual Transaction Statement (ITS) available in ITD for AY 2011-12 that the assessee has entered into the transaction of purchase of mutual fund to the tune of Rs. 28,00,000/-. Since the assessee has not filed the return of income for AY 2011-12 the AO issued a notice under section 148 of the Income Tax Act, 1961 (the Act). The assessee did not file any reply in response to the notice. Subsequently, the AO issued various notices including notice under section 133(6) of the Act to

the Bank in which the assessee is holding account. The AO did not receive any reply and therefore, proceeded to complete the assessment under section 144 r.w.s. 147 of the Act wherein he has treated the entire amount invested in mutual fund amounting to Rs. 28,00,000/- as unexplained investment under section 69 of the Act. The AO also made an addition of Rs. 5,011/- as unexplained income based on Form 26AS. Aggrieved, the assessee filed further appeal before the CIT(A). Before the CIT(A) the assessee submitted that he has been a non-resident living in Dubai for many years and that the impugned investment in mutual funds are not made by him. The assessee further submitted that the investments are made by assessee's father Mr. Kishore Bhatia and his mother Mrs. Jyoti Bhatia using their own funds through banking channel. The assessee also submitted that the assessee is mentioned as joint owner only for name purposes and that no funds have moved out of assessee's bank account towards the investments. The assessee submitted the details of the bank accounts of his parents from where the investments are made in the mutual fund. The assessee also submitted his bank statement with Dena Bank to substantiate that no funds moved out of his bank account towards purchase of mutual funds. Accordingly, the assessee submitted before the CIT(A) that the addition made under section 69 towards purchase of mutual funds is not correct. The CIT(A) upheld the addition for the reason that though the assessee has submitted his bank statement in support of the claim that investments are not made out of his bank account, the assessee failed to produce the bank statements of his parents who the assessee claims to have made the investments. The relevant observations of the CIT(A) is extracted below:

*“During the appellate proceedings, the appellant has explained that the investment in Reliance Duai Advantage Fixed Tenure Fund, Reliance Small Cap Fund Growth Plan, Sundaram Capital Protection Oriented Fund and Reliance Index Fund amounting to Rs.20.50,000/- was made by Shri Kishor*

*Bhatia, father of the appellant. Further. investment in Aditya Birla Sun Life Digital India Fund and Reliance Small Cap Fund Growth Plan amounting to Rs.7,50,000/- was made by his mother, Smt. Jyoti Bhatia The appellant has also explained that the investment in mutual funds made by his father, Shri Kishor Bhatia was made from Citi Bank account no. 6005 and Citi Bank account no. 9004. Similarly, the investment in mutual funds by his mother, Smt. Jyoti Bhatia was made from her bank account with Bank of Baroda account no. 9162 and Cit Bank having account no. 7001 and 4006. The investment in mutual fund was stated to be made by Shri Kishor Bhatia as primary holder alongwith Shri Manish Kumar Bhalla, appellant and Smt. Jyoti Bhatia as joint holders. Similarly, investment in mutual fund was stated to be made by Smt. Jyoti Bhatia as primary holder and Shri Kishor Bhatia and Shri Manish Bhatia, appellant, as joint holders. The details of the bank have been taken from the details available in the statement of mutual funds issued by Reliance Mutual Funds, Sundaram Mutual Funds and Aditya Birta Capital Mutual Funds.*

*The Appellant has provided copy of his bank statement maintained with Dena Bank, Borivali (West), Mumbai, having account no. 006210001833. From perusal of the bank statement, it is seen that it does not reflect a withdrawal for making investment in mutual funds. Even though the appellant has stated that the investment in mutual fund was made by his father, Shri Kishor Bhatia and mother, Smt. Jyoti Bhatia as joint holders, the appellant has not provided copies of the bank accounts of Shri Kishor Bhatia and Smt. Jyoti Bhatia maintained with Citi Bank and Bank of Baroda. In absence of the bank statement of Shri Kishor Bhatia and Smt. Jyoti Bhatia, it is not possible to verify the source of investment made by them in mutual funds. It is a fact that the appellant is a joint holder of various mutual funds. The appellant was required to provide complete details of investment made in the mutual funds and on which the source thereof. However, the appellant has failed to provide such details before the AO during the assessment proceedings as well as during the appellate proceedings. The appellant has offered explanation regarding source of investment in mutual funds made by his father and mother, however, such explanation is not found satisfactory in the absence of supporting evidences such as bank statements of his father and mother.”*

3. The assessee is in appeal before the Tribunal against the order of the CIT(A). The Id. AR submitted that the assessee has furnished all the relevant details before the CIT(A) and that the CIT(A) has not considered properly the

evidences submitted by the assessee. The ld. AR also submitted that the assessee prayed for a virtual hearing through video conferencing or a personal hearing before the CIT(A) which was also denied. The ld. AR further submitted that the assessee being a non-resident could not appear before the AO to submit the relevant details and accordingly, prayed that one more opportunity be given to submit the details before the AO.

4. The ld. DR relied on the order of the lower authorities.

5. We heard the parties and perused the material on record. The AO based on ITS information noticed that the assessee has invested Rs. 28,00,000/- in mutual fund during the year under consideration and since the assessee had not filed the return of income reopened the assessment under section 148 of the Act. The assessee before the AO neither filed the return of income nor furnished any documentary evidences. The AO accordingly, completed the assessment under section 144 r.w.s. 147 of the Act adding the entire amount as unexplained investment under section 69 of the Act. On the perusal of the details furnished by the assessee before the CIT(A) it is noticed that the assessee has furnished the details of the bank account of his parents with Citi Bank and Bank of Baroda along with Accounts number details etc. from where the investments are made by the parents. It is also noticed that the assessee also furnished the breakup of the investments with dates of investment etc., before the CIT(A). Though the CIT(A) has given a finding that no funds moved out of assessee's bank account with Dena Bank towards investment in mutual funds, the CIT(A) upheld the addition for the reason that the bank statements of parents of the assessee in support of the claim that it is the parents who have invested the money was not furnished. It is also noticed that the CIT(A) has not called for any remand report from the AO with

regard to the details furnished by the assessee before the CIT(A). In view of the facts and circumstances of the case, we are of the considered view that the assessee should be given one more opportunity to furnish all the relevant details and evidences before the AO. Therefore, in the interest of natural justice and fair play, we restore the issue back to the AO for fresh consideration based on various details furnished by the assessee. The AO is directed to call for the necessary evidences and supporting documents and decide in accordance with law. Further the assessee is directed to furnish all the relevant details to substantiate the claim that the investments are not made by the assessee and that the funds for such investment are sourced from the bank account of assessee's parents. It is ordered accordingly.

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

Order pronounced in the open court on 16.04.2024

*Sd/-*  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**  
*\*SK, Sr. PS*

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**