

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Anubhav Sharma, Judicial Member

ITA No. 395/Del/2023 : Asstt. Year: 2016-17

Swami Rameshwar Anandagir Purna, C/o MM Bhasin & Co. 603, Padma Tower, 15, Rajendra Place, New Delhi-110008 (APPELLANT)	Vs	DCIT, Circle-2(1), International Taxation, Gurugram (RESPONDENT)
PAN No. CUZPP7370M		

**Assessee by : Dr. Rakesh Gupta, Adv. &
Sh. Saksham Agarwal, CA
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 04.04.2024

Date of Pronouncement: 27.06.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 30.01.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1. The Learned Assessing Officer (AO)/ Dispute Resolution Panel (DRP)(as the case may be) erred in Passing the order of assessment dated 30.01.2023 u/s 147 r.w.s. 144C(13) of the Income Tax Act, 1961 (the Act) and making additions and disallowances on the basis of surmises, conjectures, presumptions and assumptions and without properly considering the papers and documents submitted and submission made during the course of assessment proceedings and the proceedings before the Dispute Resolution Panel in the facts and circumstances of the case of appellant and in law. The order passed by AO is illegal and bad in law and consequently, null and void.

2. Proceeding u/s 147 of the Act

On the facts and circumstances of the case and in law, the Learned AO/ DRP erred in Passing the order of assessment dated 30.01.2023 u/s 147 r.w.s. 144C(13) of the Act -

2.1 without appreciating the statutory condition prescribed u/s 147 r.w.s 148 of the Act was not satisfied for assumption of jurisdiction of the case of appellant as well as issuance of notice u/s 148 of the Act.

2.2 without appreciating the reasons recorded was not satisfied the requirement of section 147 of the Act.

2.3 without appreciating that the reasons recorded was too vague and ambiguous as it has no live link/nexus with material in possession of AO to form reasons to believe that income has escaped assessment.

2.4 without appreciating that the reasons recorded was not exhibiting even prima-facie that any income has accrue/arise or deemed to have accrue/arise in India on the basis of material in possession of AO to form reasons to believe that income has escaped assessment.

2.5 without appreciation that the reassessment proceeding was continued just on the basis of reasons to suspect, surmises, conjectures, presumptions and in the facts of appellant, reasons to belief cannot be formed by the AO that income has escaped assessment.

2.6 without appreciating and disposing the objections raised regarding the assessment proceedings u/s 147 of the Act and by passing reasoned order disposing each contentions of appellant.

2.7 without appreciating that approval u/s 151 of the Act for issuance of notice u/s 148 of the Act was given in routine manner without recording proper satisfaction by the approving Authority.

2.8 without appreciating the fact that since notice was bad in law, void-ab-initio, the subsequent proceedings is not sustainable under law.

2.9 without providing proper and reasonable opportunity and adhering with principle of natural justice.

3. Addition u/s 69 r.w.s 115BBE of the Act in respect of loan of Rs. Rs. 7,18,54,167/- received from M/s Adhyatmik Foundation Inc., USA, M/s Visva Adhyatmik Sansthan (VAS), UK, M/s Adhyatmik Foundation, UK and M/s A Felix, UK.

On the facts and circumstances of the case and in law, the Learned AO/ DRP erred in making addition u/s 69 of the Act in respect of loan received during the year while passing the order of assessment 30.01.2023 u/s 147 r.w.s. 144C (13) of the Act -

3.1 without appreciating that the provisions of Section 69 is not applicable in the facts of the appellant.

3.2 without appreciating that receipt of loan by non-resident appellant is neither income received or is deemed to be received in India nor income accrues or arises or is deemed to accrue or arise to him in India in view of Section 5(2) of the Act.

3.3 without appreciating that appellant has provided identity, creditworthiness and genuineness of transaction with sufficient evidence regarding source of loan such as confirmation, bank statement, promissory note etc.

3.4 without appreciating that all the receipt are routed through authorized banking channel of Reserve Bank of India.

3.5 without appreciation that any noncompliance by lender shall not convert loan from income of the appellant.

3.6 without appreciating that contract of the appellant and lender cannot be rewritten by the department without providing any evidence suggesting that contract was different.

3.7 without appreciating the settled legal positions by supreme Court and High Courts.

3.8 without making any independent enquiry to ascertain the creditworthiness of the lender before making addition u/s 69 of the Act

3.9 without appreciating that tax was not leviable u/s 115BBE of the Act.

3.10 without providing proper and reasonable opportunity and adhering with principle of natural justice.

4. Learned Assessing Officer / Dispute Resolution Panel erred in making wrong computation of income and tax payable thereon on the facts and circumstances of the case and in law, the while passing the order of assessment u/s 147 r.w.s. 144C(13) of the Act.

5. On the facts and circumstances of the case and in law, the Learned Assessing Officer/ Dispute Resolution Panel erred in charging interest u/s 234B of the Act while passing the order of assessment u/s 147 r.w.s. 144C(13) of the Income Tax Act.

6. On the facts and circumstances of the case and in law, the Learned Assessing Officer/ Dispute Resolution Panel erred in initiating penalty proceedings u/s 271(1)(c) of the Act while passing the order of assessment u/s 147 r.w.s. 144C(13) of the Income Tax Act without appreciating that the provisions of above Section is not applicable in the facts of the appellant."

3. In the order of assessment, the Assessing Officer has made addition in respect of loan received of Rs. 7,18,54,167/- from foreign foundations.

4. The assessee was born in India and is a German Citizen and non-resident taxpayer in India. The assessee filed its return of income declaring income of Rs 2,28,210/- on 27.11.2017. Notice u/s 148 of the Income Tax Act was issued. In response of Notice u/s 148 of the Income Tax Act again filed return declaring the same income on 12.12.2021. The Assessing officer passed draft order of assessment dated 23.11.2021 u/s 147 r.w.s 144C of the Act assessing income of Rs. 18,77,33,630/, proposing the addition of investment of Rs. 18,75,00,000/- alleging the same as unexplained investment.

5. Aggrieved, the assessee filed objections before the Id. DRP on 21.01.2022 for suitable directions. Ld. DRP has disposed the objections vide order dated 08.02.2022. The Ld. DRP directed to sustain addition of Rs. 7,18,54,167 in respect of funds borrowed from the following parties for the purpose of investment in property.

- M/s Adhyatmik Foundation Inc., USA,
- M/s A Felix,
- M/s Visva AdhyatmikSansthan (VAS) and
- M/s Adhyatmik Foundation, UK

6. Aggrieved, the assessee filed appeal before the Tribunal.

7. During the hearing before the Tribunal, the assessee has submitted substantial evidence in form of confirmation, promissory note, bank statement etc of lenders which are already been submitted before the authorities below. One of the objections of AO/DRP was that documents are not apostilled. Confirmations and promissory note were also submitted before lower authorities. The assessee now submitted application for admission of additional evidences under Rule 29 of the ITAT Rules, 1963 filing along with the apostilled copy of confirmation and transfer invoice. These confirmations go to the root cause of proving the loans.

8. With a view to substantiate the claim of the appellant and to meet the objection of the Assessing Officer/DRP, the assessee is submitting copies of the following documents now:

- (i) Copy of Apostilled copy of confirmation of loan given to appellant by M/s Adhyatmik Foundation Inc.
- (ii) Copy of Apostilled copy of special resolution dated 03.09.2011 regarding loan to appellant by M/s Adhyatmik Foundation Inc.
- (iii) Copy of Apostilled copy of special resolution dated 09.09.2014 regarding loan to appellant by M/s Adhyatmik Foundation Inc.
- (iv) Copy of Apostilled copy of special resolution dated 09.04.2015 regarding loan to appellant by M/s Adhyatmik Foundation Inc.
- (v) Copy of Apostilled copy of Promissory Note regarding loan to appellant by M/s Adhyatmik Foundation Inc.

- (vi) Copy of Apostilled copy of confirmation of loan given to appellant by M/s Visva Adhyatmik Sanstha. Copy of Apostilled copy of special resolution dated 11.03.2014 regarding loan to appellant by M/s Visva Adhyatmik Sansthan.
- (vii) Copy of Apostilled copy of confirmation of loan given to appellant by UK branch of M/s Adhyatmik Foundation Inc.
- (viii) Copy of death certificate of Ms. A. Felix
- (ix) Copy of confirmation of Ms. A. Felix.
- (x) Copy of promissory note given by the appellant to Ms. A. Felix.
- (xi) Copy of promissory note give by assessee to M/s Visva Adhyatmik Sansthan.

9. We find that the Id. DRP did not give cognizance to the documents filed by the assessee as they were not duly apostilled. Now these documents are obtained which were also not available earlier to the assessee are to be considered for determining the taxability of the assessee.

10. Hence, in the interest of justice to both the parties, we remand the matter to the file of the Assessing Officer to consider the documents now obtained and complete Assessment proceedings *de novo*. Since, the assessment proceedings are directed to be initiated afresh, revenue is at liberty to conduct investigations as deem fit and the assessee can file to suitable evidences / documents to support their case.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 27/06/2024.

Sd/-

**(Anubhav Sharma)
Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 27/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR