

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 148/JP/2024
निर्धारण वर्ष / Assessment Years : 2018-19

Sunil Kumar Nayak, Ward No. 18 Near old police station, Pilani Chirawa, Jhunjhunu	बनाम Vs.	Circle (International Taxation), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANOPN 0707 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Anoop Bhatia, CA
राजस्व की ओर से / Revenue by : Sh. Rajesh Kumar Meena, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 30/04/2024
उदघोषणा की तारीख / Date of Pronouncement: 25/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal arise because the assessee is feeling dissatisfied and aggrieved by an order passed by the Assessing Officer which is dated 23.12.2023 passed by Circle (I.T), Jaipur. This order has been passed after incorporating the directions of DRP dated 29.11.2023.

2. In this appeal, the assessee has raised following grounds: -

"1 The assessee a Resident but not ordinarily resident for the year under appeal had a Non-resident External account with SBI Pillani and a Saving account with Axis Bank, Pillani. A notice u/s 148 of the Act was issued on 31.03.2022 on the basis of information that assessee had invested Rs. 1,49,81,040/- in cryptocurrency. During the assessment proceedings the assessee filed return u/s 148 of the Act declaring a total income of Rs. 1,94,470/-. Notices were issued u/s 142(1) of the Act, and the assessee filed complete set of bank statements for the relevant year before Id. AO.

2. It was submitted by the assessee that the assessee had traded in Bitcoins thru a broker M/s Coinsecure (P) ltd. Unfortunately in Apr 2018 there was a cyberattack on the database of M/s Coinsecure, wherein M/s Coinsecure had lost all its bitcoins, and therefore the broker company had closed its operations, and no details could be collected by the assessee except for an email that stated that the assessee had done the following transactions in total during the relevant year:-

3.Forwarded message..... From: Mohit Kalra Date: Thu, Mar 16, 2023 at 6:06 PM Subject: Re: Trading/Transaction History (June 2017 to April 2018) To: S.K Nayak Dear User, Coinsecure has close down its exchange operations in 2018. Our website and servers are not operational anymore. As per your user ID and registered email address, we are enclosing the total trade data for the F.Y.- 2017-18 as: userID - sknayak.05@gmail.com INR (Buy) - 14980662.81 INR (Sells) - 14981039.70 BTC (Sells) -45.85300000 BTC (Buys) 46.54600000 Name - SUNIL KUMAR NAYAK pan-ANOPN0707C. We do not have any other information stored with us anymore. Feel free to let us know if we could be of any other help.

4. The assessee submitted before Id. AO an excel sheet extracting all payments made to coinsecure from his bank account. He also submitted copies of all emails received from Coinsecure duly acknowledging the payments received from the assessee. It was explained that the assessee had actually invested a sum of Rs. 10,80,100/- in purchase of Bitcoins during the year out of which Rs. 9,95,000/- was invested through M/s Coinsecure and Rs. 85,100/- was invested through M/s UnicoIn. The total sell value mentioned in the mail received from Coinsecure and alleged by Id. AO as being amount invested in bitcoins, was in fact the total sell value of trades done thru the broker in intra-day trading, without taking any delivery of the bitcoins, by making an initial investment of merely Rs. 9,95,000/- In absence of 'statement of account' from the broker for the reason that it had closed down and had no back up of data except the email stated above, the assessee tried to reconcile its investment through

5. Ld. AO as well Hon'ble DRP did not concur with the assessee and alleged the value of total of sell transactions, appearing in the email as being unexplained investment made by the assessee u/s 69 of the Act in purchase of crypto currency.

The present appeal is against the addition so made by Id. AO as per the direction of Hon'ble DRP.

6. 1. On facts and in circumstance of the case Id. AO has grossly erred in completing the assessment in a gross manner without appreciating the documents and details filed, in the correct manner. Appellant prays that such high pitched additions made without considering the material placed on records being in gross violation of principles of natural justice deserves to be deleted.

7. 2. On facts and circumstances of the case Id. AO has grossly erred in making addition of Rs. 1,49,81,040/- by alleging the same to be amount invested in Cryptocurrency merely on the basis of information received from M/s Coinsecure that the assessee had done a total sell value of Rs. 1,49,81,040/- through them, without considering the said information in entirety that they were not in a position to provide any further detail as their database was hacked. Appellant prays such addition made totally on surmises without considering complete documents like bank statements placed on records deserve to be deleted.

8. 3. On facts and in the circumstances Id. AO has grossly erred in initiating penalty proceedings u/s 271(1)(c) as well as sec 271AAC of the act.

9. 4. On facts and in circumstances Id. AO has grossly erred in initiating penalty u/s 272A(1)(d) of the act.

10. 5. Appellant reserves the right to add/alter/ modify/ delete any or all ground of appeal.”

3. Succinctly, the fact as culled out from the records is that the assessee did not file his ITR for the A.Y. 2018-19. Information in this case was gathered from AIR Information/TAS/26AS details. On the basis of the information gathered a notice u/s 148 was issued to the assessee on 31.03.2022 for filling of ITR for A.Y. 2018-19 after getting prior approval from the Ld. Principal Commissioner of Income Tax, Jodhipur-2. The assessee in response filed his ITR u/s 148 of the Income-tax Act on 19.04.2022 declaring total income of Rs. 1,94,470/-. Then after a notice u/s

143(2) of I.T., Act, 1961 issued to the assessee on 18.08.2022. On perusal of the submission made by the assessee and the information available on record, it is noted that the assessee, during the year under consideration purchased CRYPTOCURRENCY of Rs. 1,49,81,040/-.

3.1 During the assessment proceedings, the assessee was asked about the source of funds used to purchase the said cryptocurrency vide notice u/s 143(2) dated 18.08.2022, notice u/s 142(1) dated 10.02.2023 and show cause notice dated 28.02.2023. The assessee made compliance vide submissions dated 22.08.2022, 02.03.2023, 03.03.2023. However, the assessee has failed to submit and substantiate that with documentary evidence about the investment in cryptocurrency during the year under consideration. But the assessee contended before the Id. AO that “the portfolio details is not available to us as we are unable to reach to company as company is closed now.” Thereafter, a notice u/s. 133(6) of the Act calling for information regarding cryptocurrency investment and trading was issued to M/s. Skysharp IT Solutions Private Limited, B-67, Wagirpur Industrial Area, Ground Floor, Delhi. However, this company did not comply to that notice of the Id. AO. Therefore, the Id. AO noted that in the absence of supporting evidence, the said transactions remained unexplained and

falls under the purview of unexplained investment u/s. 69 of the Act. Considering the fact available with the Id. AO that the assessee made an investment of Rs. 1,49,81,040/- for purchase of cryptocurrency. Based on this observation the draft assessment order was issued on 22.03.2023.

4. Against this draft assessment order, the assessee filed objections before Dispute Resolution Panel (DRP), the direction of the DRP in this case reads as under:-

"4.1.1 Ground numbers 1 to 9 are interrelated and pertain to the proposed variation made by the prop the AO by treating investment/purchase of crypto currency amounting to Rs. 1,49,81,040/- as unexplained investment made by the assessee during the year. In this connection, the AO has observed that the assessee failed to substantiate with documentary evidence regarding the source of fund use to make the aforementioned investment in crypto currency during the year under consideration. In this regard, the AO has observed at page2 of the DAO as under.

"However, the assessee has failed in submitting substantiating documentary evidence regarding source of funds used make the above mentioned investment in cryptocurrency during the year under consideration. The assessee has submitted that

"...the portfolio detail is not available to us as we are unable to reach to company as Company is closed now."

Therefore, 4 notice u/s 133(6) of the Act calling for information regarding cryptocurrency investment and trading was issued to M/s Skysharp IT Solutions Private Limited, B-67, Wagirpur Industrial Area, Ground floor, Delhi. However, this company did not compliance to this notice.

1. Therefore, in absence to supporting documentary evidence, the said transactions remain unexplained and falls under the purview of unexplained

investment u/s 69 of the Income Tax Act, 1961, In view of the foregoing facts and circumstances, there is much evidence available on record which shows that during the year under consideration, the assessee has made Investment of Rs. 1,49,81,040/- for purchase of cryptocurrency. Since, the assessee failed to explain the source of investment even after providing sufficient time, therefore, the source of Investment of Rs. 1,49,81,040/- remained unexplained and thus added to the total income of the assessee on account of unexplained investment under section 69 of the Act.

.....

4.1.2 The assessee has submitted that the said amount of Rs. 1,49,81,040/- was actually the sum of total sold value of total intraday trading done by the assessed with M/s Coinsecure. It is submitted that the actual amount invested in purchase of crypto currency amounted merely to Rs. 10,80,000/-, which is duly evitable from the Axis bank statement for the relevant period. This amount invested in crypto was traded and churned in the market including intraday trading, wherein crypto was sold and sold on the same day or the next day without taking delivery of the same. And therefore, what the assessee really earned was the difference in the buy and sell amount each day, and the total of such sold value during the year amounted to Rs. 1,49,81,040/- which by no stretch of imagination be held as amount invested by assessee in Bitcoin, It is further stated that as against the amount of Rs. 10,80,000/- invested by the assessee from legitimate sources, the assessee actually received merely Rs. 4,60,345/- which was again credited in the Axis bank account and as on 31.03.2018 the assessee actually held merely 1.051488 BTS, which was valued at Rs. 4,68,510 [Highest rate of BTS on 31.03.2018 being Rs. 7207.85 and conversion rate of US\$ being Rs. 65]. That, complete bank statement of the assessee held with various banks were duly submitted before Ld. AO, the statements clearly showed the actual amount invested in crypto currency as also the amount received by the assessee at the end from such Intermediaries in lieu of the trading done on behalf of the assessee. That during the relevant year, the assessee made a total payment of Rs. 10,80,000/- through banking channels for purchase of Bitcoin to Coinsecure Unicoon exchanges. Out of which he realized Rs. 4,60,000/- which again is also reflected in the Axis Bank account. The assessee has further submitted that the credits appearing in the Axis bank account were either transfers from the SBI NRE account which is the salary account of the assessee, or from the withdrawals made from the said NRE account. Thus, the source of actual amount invested in crypto currency, being made only from Axis bank account was fully disclosed and cannot be termed as escaped income. It is also submitted that trading in crypto currency is allowed only through customer wallets provided by

the intermediaries and which are duly linked to the bank account of the customers. Thus, no transaction other than through bank is allowed in the customer wallets, Also the amount received from these intermediaries are credited only in the bank account of the customer. The assessee had duly filed an excel sheet showing complete date-wise payments made to the intermediaries for trading in crypto market. It is stated that the source of such payments made to the intermediaries were clearly evitable from the bank statement, as being from the SBI NRE account of the assessee and/or withdrawals made therefrom. The assessee has submitted that M/s Coinsecure was so more in existence and had tried his best to communicate with them but could not be reached and the assessee could merely obtain a single line statement from them, showing only the total value traded as bought. The assessee has enclosed copy or certain e-mails received from the M/s Coinsecure in support of the receipt of amount by them from the assessee. The assessee has also enclosed his bank statements.

4.1.3 The Panel has considered the submissions. The entire basis of addition made by the AO being total value of purchase in crypto currency amounting to Rs. 1,49,81,040/- is AO's observation that the assessee has failed to provide necessary documentary evidence to substantiate the source of funds used for making investments in the crypto currency during the year. He has also observed that even the notice u/s 133(6) issued to M/s Sky Sharp IT Solutions Pvt. Ltd remained uncomplied with. In the circumstances, the AO concluded that the source of investment of Rs. 1,49,81,040/- in the crypto currency made by the assessee remained unexplained. On the contrary, the assessee submits that the said amount of Rs. 1,49,81,040/- was actually the sum of total sold value of total intraday trading done by the assessed with M/s Coinsecure and that the actual amount invested in purchase of crypto currency amounted merely to Rs. 10,80,000/-, which is duly verifiable from the Axis bank statement for the relevant period. This amount invested in crypto was traded and churned in the market including intraday trading, wherein crypto was sold on the same day or the next day without taking delivery of the same. And therefore, as per the assessee, what he really earned was the difference in the buy and sell amount each day, and the total of such sold value during the year amounted to Rs 1,49,81,040/-, The assessee claims to have submitted an excel sheet showing date-wise payments made to the intermediaries, before the ACO. The essential contention of the assessee is that the total amount of investment towards purchase of Bitcoins by the assessee is only Rs. 10,80,100/- and the overall figure of Rs. 1,49,81,040/- is a sum total of the sold value of total intraday trading done by the assessee in crypto currency. However, the assessee has not filed any detailed

statement/confirmation with documentary evidence in this regard so as to substantiate that no fresh funds have been utilized by the assessee for investment in crypto currencies in addition to Rs. 10,80,100/- flowing from Axis bank account of the assessee as claimed by him. The assessee states that all his transactions stand substantiated from the statement of his bank accounts already submitted before the AO during assessment proceedings. However, the assessee could not furnish any statement of reconciliation with sufficient documentary evidence linking the total purchase in crypto currency amounting to Rs. 1,49,81,040/- to the actual amount of the funds flowing from the Axis bank of the assessee i.e., Rs. 10,80,100/-.

In the absence of a complete statement of reconciliation of the total quantum of purchase of the crypto currency by the assessee and the amounts debited in his bank account towards payment to the Bitcoins brokers, we are unable to appreciate if such a huge difference in the two figures is entirely on account of intraday trading with no fresh outflow of funds from any other sources. In the considered view of the Panel, the assessee has clearly failed to discharge in his onus of providing explanation with sufficient documentary evidence for the source of investment in crypto currency, and in the circumstances, the DRP finds no ground to interfere with the conclusion of the AO. Ground numbers 1 to 9 above are consequently rejected.

5. Directions under section 144C of the Income Tax Act

5.1 The Assessing Officer is directed to complete the assessment as per the above directions of the DRP. The AO shall place a copy of these directions as annexure to the final order, to be read as a part of the order. While passing the final order, the AO shall incorporate the reasons given by the DRP in respect of various objections, at appropriate places. The Grounds of Objections are decided as above."

5. The Id. AO based on the above directions of the DRP hold a view that since the assessee failed to submit complete reconciliation statement of the total quantum of purchase of the crypto currency and the amounts debited in his bank account towards payment to the Bitcoins brokers. The assessee

has not filed any detailed statement/confirmation with documentary evidence in support of his claim that no fresh funds have been utilized by the assessee for investment in crypto currencies except receipt of intraday trading done by him in crypto currency. Apart from the intraday receipts the assessee has shown Rs. 10,80,000/- flowing from Axis Bank as source of investment. But, he could not furnish any statement of reconciliation with sufficient documentary evidence linking the total purchase in crypto currency amounting to Rs. 1,49,81,040/- to the actual amount of the funds flowing from the Axis Bank of the assessee i.e. Rs. 10,80,100/-. Thus, the Id. AO noted that the assessee failed to explain the source of investment made in crypto currency worth Rs. 1,49,81,040/- and therefore the same is treated as unexplained investment in the hands of the assessee u/s 69 of the Act vide order dated 23.12.2023.

6. Aggrieved from the above order of the Assessing Officer, the assessee filed the present appeal on the grounds as reiterated here in above in para 2. Apropos to the grounds so raised the assessee has filed a detailed written submissions and the same is reiterated herein below:-

“The assessee is an individual and a ‘Non-resident Indian’ for the year under consideration. His stay in India in the relevant year was 110 days (PB page 48) Copy of passport enclosed at PB page 49-51. The assessee was serving as a Quality Check (Inspector) Welding in the cross-country pipeline project at

Azerbhaizan, during the year under consideration. The salary received in his NRE account maintained with the State Bank of India being exempt from Indian Income Tax and the Interest received on his NRO account being below threshold limits, no return of income was filed u/s 139 of the Income Tax Act, 1961 ("the Act")

On the basis of AIR Information / TAS / 26AS details etc., a notice u/s 148 of the Act was served upon the assessee on 31.03.2022, requiring him to file return of income. The assessee duly filed a return declaring income from bank interest at Rs. 1,94,470/-. Notices u/s 143(2) were then served, wherein it was intimated that the information available for issuing notice u/s 148 of the Act was that the assessee had traded in CRYPTOCURRENCY amounting to Rs. 1,49,81,040/- The assessee was asked to explain the investment made in cryptocurrency amounting to Rs. 1,49,81,040/- The assessee filed respective replies (copies at PB page 8-13) duly stating that the trading in crypto was made via 3 agents by the assessee :-

1. Unicoïn having A/c no. 064174292872 with (SBIN0040557) SBI Bank
2. Zebpay having A/c no. 10170001750812 with (BDBL0001474) with Bandhan Bank and
3. Secure Bitcoin Traders (P) ltd (coinsecure) having A/c no. 10170000161587 (BDBL0001777) with Bandhan Bank

And for trading in crypto through all the above stated platforms, the assessee had used only one bank account maintained with Axis bank bearing account no. SB 914010045206154 (copy of bank statement at PB pages 32-37), which was the only NRO bank account maintained by him. During the year under appeal out of the above 3 platforms trading was done only through M/s Coinsecure and M/s Unicoïn.

The transactions executed with M/s Coinsecure were doubted by Id. AO and alleged as being unexplained investment. It was submitted before Id. AO that the amount alleged as unexplained investment amounting to ₹ 1,49,81,040/- was in fact sum of total traded value including intra-day trading done in bitcoins through M/s Secure Bitcoin Traders (P) ltd (M/s Coinsecure). Various details were filed in support of the said contention, but were all rejected and a draft order u/s 144 r.w.s.144C of the Act passed on 13.03.2023 treating the said total traded value as unexplained investment in cryptocurrency by invoking provisions of sec 69 and Rs. 1,49,81,040/- was proposed to be added to the total income of the assessee.

The assessee resultantly filed objection against the said draft order before Ld. Dispute Resolution Panel (DRP) on 12.04.2023. Again complete documents and detailed submissions were filed before the Hon'ble Panel. An order u/s 144C(5) of the Act was passed on 29.11.2023 wherein the action of Id.AO was confirmed and consequently Id.AO passed order u/s 147 r.w.s 144C(13) of the Act on 23.12.2023 sustaining the addition of Rs. 1,49,81,040/- without appreciating the correct facts of the assessee's case.

The present appeal lies against the addition so made in order passed u/s 147 r.w.s. 144C(13) of the Act.

Since both Grounds of Appeal no. 1 and 2 are inter-connected, a combined submission is made before Your Honors.

Ground of Appeal nos. 1 and 2 In these grounds the assessee has challenged the addition of Rs. 1,49,81,040/- made by alleging the total traded value with M/s Coinsecure as being unexplained, without considering the documents filed in support of the contentions taken by assessee.

Briefly stating based on AIR information it was alleged upon assessee that he had made an investment in cryptocurrency amounting to Rs. 1,49,81,040/- Upon receiving the notice u/s 148 of the Act the assessee approached the platforms through which trading was done in cryptocurrency. As a matter of fact, in 2018 one of the brokers i.e M/s Coinsecure had suffered a major cyber attack where it lost a large number of its Bitcoins and also all its records. This fact is duly supported by the facts narrated in the 'Settlement and Release Agreement' dated 20.05.2018 through which M/s Coinsecure had agreed to finally pay to the assessee a sum of Rs. 4,59,719.06/- as full and final settlement (PB page 23-25). The only statement that could be recovered (both by the Department as well as the assessee) was the total traded value of the customers based on their email IDs. Thus under the email ID of the assessee, M/s Coinsecure could only generate a statement showing total sell value amounting to Rs. 1,49,81,039.70/- and total buy value amounting to Rs. 1,49,80,662.81/- (PB page 22) for FY 2017-18. Ld. AO chose to treat the total sell value as unexplained investment in cryptocurrency.

The assessee humbly submits that trading in crypto through any broker on any platform can be done only and only through bank accounts. The assessee, during the relevant year had actually invested only an amount of Rs.9,70,000/- through M/s Coinsecure. The bank statement of Axis bank for the relevant period and copies of all emails received from coinsecure confirming the amounts so invested by assessee were filed and are duly appearing at PB page 32-37 and 14-21).

Ld. DRP while rejecting the contention of assessee has alleged that the assessee could not present a reconciliation of the total quantum of purchase of the cryptocurrency and the amount debited in the bank account towards payment to the bitcoin brokers we are unable to appreciate if such a huge difference in the two figures is entirely on account of intraday trading with no fresh outflow of funds from any other sources. Ld. DRP concurred with the addition proposed by Ld. AO (page 6 top para of order of Ld. DRP).

In this regard assessee humbly submits that after the cyber-attack M/s Coinsecure discontinued its operation and though the assessee has been trying consistently to obtain further details regarding trading done through their platform, he could not get the same until recently, when one of the directors of

M/s Coinsecure could manage to get the details from their bank account regarding total amount received from assessee and the amount paid to assessee. (copy of this statement received from M/s Coinsecure is appearing at PB page 52-53, and the same is filed now as additional evidence u/r 46A of I T Rules and the assessee humbly prays that the same may please be admitted and considered in view of natural justice. Perusal of this statement amply proves the fact that the total amount invested by assessee through them amounted merely to Rs. 9,70,000/- and the same when reconciled with the excel sheet already filed by assessee during assessment proceeding (PB page 26) as well as the documents filed before DRP, by extracting details from his bank account, is exactly the same. Accordingly, this further strengthens the contention of the assessee that the amount invested in crypto trading was routed only and only through the savings account maintained with Axis bank, which clearly shows a total amount of Rs. 10,80,100/- invested for crypto trading, out of which only an amount of Rs. 9,70,000/- was invested through M/s Coinsecure. At this juncture it is humbly submitted that during the proceedings before Hon'ble DRP an affidavit was filed by the assessee (PB page 6-7), wherein he has affirmed on oath that the only bank account used for trading in crypto was the saving bank account maintained with Axis bank. This affidavit finds no mention in the order passed by Ld. DRP for the reasons best known to them. This affidavit coupled with the statement of investment received from M/s Coinsecure (PB page 52-53) and the entries found debited in the bank statement leaves no stone unturned in establishing the fact that the amount invested by assessee, in crypto trading was merely Rs. 9,70,000/- which was churned and the total traded value with M/s Coinsecure during the relevant year was Rs.1,49,81,040/- and therefore the addition made by alleging the total traded value as being unexplained investment in crypto being most unjust and unwarranted deserves to be deleted and the assessee prays accordingly.

Now as regards the source of actual investment of Rs. 9,70,000/- made by assessee in cryptocurrency through M/s Coinsecure, it is submitted that the amount credited in the bank account of the assessee is duly covered by the withdrawals made from the NRE account maintained with SBI (PB page 38-47) and certain amount which was received from the brother of the assessee.

At this juncture the provisions of sec 69 are reproduced for Your kind reference as under:-

"Unexplained investments.

69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

Thus, in the case of the assessee the actual investment made in cryptocurrency as depicted from the bank statements of the assessee which is fully concurred by the statement given by M/s Coinsecure after extracting the amounts received under the mail-id of assessee from their bank statements amounting to Rs. 970,000/- stands fully explained as being made by making systematic withdrawals from the NRE account of the assessee and a petty loan received from the brother of the assessee. Hence no addition deserves to be made on this account and the addition made by Id.AO of the entire traded value being absolutely unlawful and unwarranted deserves to be deleted. Prayed accordingly.

In context of the humble submission made above the source of actual investment made in crypto trade through M/s Coinsecure amounting merely to Rs. 9,70,000/- stands fully explained and therefore the addition made by Ld. AO in pursuance to directions issued by Id. DRP being completely unjustified deserves to be deleted and the assessee prays accordingly.”

7. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

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8. The Id. AR of the assessee during the course of hearing of the present appeal, submitted an e-mail print out dated December, 07, 2023 received from the company wherein the assessee has invested in cryptocurrency. Based on that evidence he submitted that the investment details and withdrawal details has already been made available to the assessee. He submitted that the assessee before the lower authority expressed his inability to give the details as the company was closed and even the Id. AO has issued letter u/s. 133(6) of the Act which remained not complied support the view of the assessee. Based on that statement, the Id. AR of the assessee demonstrated that the transaction as allegedly reported in the assessment order with that of the transactions done by the assessee as per

e-mail are having substantially different. Since the investment made by the assessee in that company has suffered a major cyber attack and lost large number Bitcoins and consequently the records were not available when the proceedings before lower authorities wherein operations. He also submitted that the assessee on being taxed huge amount of addition they were continuously following with them and thereby statement finally was e-mailed to the assessee on 07th December, 2023. The Id. AR of the assessee also vehemently submitted that there cannot be any scope of investing out of books in the crypto-currency investment activities and the assessee's bank account being noted in the investment broker that will also support the contention of the assessee. The assessee's accounts are already linked and therefore, the Id. AO should help the assessee, he being NRI in charging the correct income considering the peculiar set of facts on the assessee. Since, details received though email were not before the lower authority and in the interest of justice, the Id. AR of the assessee prayed that the matter be remand back to the Id. AO in the interest of equity and justice so as to charge the correct income in the hands of the assessee.

9. Per contra, the Id. DR relied upon the orders of lower authorities. He contended that the assessee could not bring anything on record and

therefore, the prayer of the assessee has no merit and the appeal of the assessee is required to be dismissed.

10 We have heard the rival contentions and perused the material placed on record. The bench precisely based on the arguments and details placed on record noticed that the assessee in the assessment proceeding submitted that **“the portfolio details is not available to us as we are unable to reach to company as company is closed now”**. Thereafter the Id. AO also exercised an option to get the details as per provision of section 133(6) of the Act calling for information regarding cryptocurrency investment and trading details from M/s. Skysharp IT Solutions Private Limited and the company has not complied with that letter issued by the Id. AO. Thus, in the absence of these details Id. AO added whole amount as appearing as per the information available with him. Even the DRP also confirmed the addition as the assessee failed to provide the details. Before us the Id. AR of the assessee submitted that after continuous followup with that company the assessee got the details of the transaction done and if that be verified with the bank account the correct clear picture of his income will emerge and the assessee submitted that he may be please one more opportunity in the interest of justice to represent the correct facts on record

related to his income. Thus, the Bench noted from the entire episode that the assessee is deprived off to get the justice because of technical latches and on account of the server of that company with home he transacted got hacked and now the assessee is supported the contention with the email dated 07.12.2023 that if that additional evidence is considered his income will be reduced substantially. Therefore, considering over all facts presented before us we deem it fit to set aside the matter to the file of the Id. AO. He who will decide the issue afresh by providing one more opportunity of hearing to the assessee based on evidence and submission of the assessee. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during proceedings before the Id. AO.

11. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. AO independently in accordance with law.

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

Order pronounced in the open court on 25/06/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/06/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Sh. Sunil Kumar Nayak, Jhunjhunu
2. प्रत्यर्था / The Respondent- Circle (International Taxation), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 148/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar