

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

1. आयकर अपील सं/ ITA No.1357/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2008-09)
&
2. आयकर अपील सं/ ITA No.1358/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2009-10)

ITO International Taxation Ward -1(1) Chennai-6.	बनम/ Vs.	Mr. K. Ansari #6/1, Parameshwari Nagar 4 th Street, Adyar, Chennai-600 020.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AKHPA-5381-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri AR V Sreenivasan (Addl.CIT)-Ld. Sr. DR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri B. Ramakrishnan (FCA)-Ld.AR

सुनवाई की तारीख/Date of Hearing	:	19-06-2024
घोषणा की तारीख /Date of Pronouncement	:	07-08-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years (AY) 2008-09 & 2009-10 arise out of the separate orders of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] both dated 29-09-2023 in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 148 / 143(3) of the Act on 31-12-2010 / 30-12-2011 respectively. It is admitted position

that facts as well as issues are quite identical in both the years and our adjudication in any one year shall equally apply to the other year also.

The grounds raised by the revenue for AY 2008-09 read as under:

1. The Ld. CIT(A) erred in facts and law in deleting the addition made amounting to Rs.1,88,52,068/- on account of unexplained foreign inward remittance u/s 68 of the Act.
2. The Ld.CIT(A) has erred in considering the report of FT&TR in favour of the assessee which lacks in substantiating the contention of the assessee to explain the sources earned outside India for making inward foreign remittances. Further, the assessee himself had admitted in the sworn statement recorded on 23.09.2009, during the course of survey proceedings that the "capital introduced during the FY 2007-08 amounting to Rs.45,96,730/- were his unexplained cash credits" in the books of account of M/s ST Couriers.
3. The Ld.CIT(A) erred in not considering the remand report of the AO to enhance the total income as the assessee did not have credit worthiness to explain the source of entire capital to the extent of Rs.8,01,42,230 spread across A.Y 2008-09 to 2009-10 made in the firm M/s ST Couriers in which he is one of the partners.
4. The Ld.CIT(A) erred in considering the report of the AO about the total quantum of investment made by the assessee in two different forms, which totals to 23.31 crores and leaving a balance of Rs.11.45 crores as unexplained investment after reducing the amounts gifted by the assessee to his brothers.

As is evident, the sole issue that arises for our consideration is addition made by Ld. AO u/s 68.

2. The Ld. Sr. DR advanced arguments supporting the case of Ld. AO. A paper-book has been filed which include remand report, survey report and letter of AO. The Ld. AR also advanced arguments supporting the case of the assessee and likewise filed various documents. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee's case was reopened for this year and notice u/s 148 was issued on 02-12-2008. The assessee filed books of accounts, bank accounts, vouchers etc. The assessment was reopened in connection with huge investment made by the assessee in a partnership firm namely

M/s ST courier as a partner. The assessee claimed non-residential status in the return of income and admitted income from house property. In the capital account filed by the assessee, certain credits were found as foreign remittances. For this year, there was credit of foreign remittance for Rs.188.52 Lacs. Similar credits were received in AYs 2006-07 & 2007-08. Out of these remittances, the assessee made investment in certain properties and business which have been tabulated on Page No.2 of the assessment order. It was also noted that the assessee made gifts of Rs.11.51 Crores to his brother Navaz Kani during AYs 2004-05 to 2009-10. Accordingly, the assessee was directed to substantiate the source of above gifts and remittances. The assessee filed certain documents to substantiate its claim.

3.2 The Ld. AO alleged that though the assessee filed copy of passport, however, it did not file any supporting document substantiating the source of remittances from abroad. The assessee did not file Form A2 declaration which was required for inward remittances. The assessee also did not file any documentary evidences to establish these credits. The Ld. AO held that mere remitting the amount to a NRE account from abroad does not amount to exempted remittance or for which no explanation is required. Therefore, the credit of Rs.188.52 Lacs was added to the income of the assessee as unexplained foreign remittances.

3.3 In AY 2009-10, certain deposits were noted in NRE Bank Account of the assessee. However, the assessee could not produce FICR certificates. Therefore, the deposits of Rs.239.41 Lacs were alleged to the income of the assessee in India. The Ld. AO made another addition of cash deposit of Rs.13.60 Lacs which were stated to be rental advance

and rental deposits. Aggrieved, as aforesaid, the assessee preferred further appeal for both the years.

Appellate Proceedings

4.1 During appellate proceedings, the assessee submitted that foreign remittance constitutes earning from abroad which could not be subject to tax in India as the source of the earnings was not from India. The submissions of the assessee were subjected to remand proceedings. The initial remand report was submitted by Ld. AO on 17-03-2015 and the same was favorable to the assessee. However, the subsequent remand report has certain adverse remarks towards the assessee's claim. Since the source of foreign remittance was doubted, a reference was made to FT&TR division which essentially confirmed that the assessee earned income from outside India i.e., Kuwait and Bahrain. The communications stated that the assessee earned business commission, salary income and dividend income since he was partner in an entity by the name SPC in Bahrain. It was confirmed by both Kuwait Authorities as well as Bahrain authorities that the assessee had business interests outside India and consequently earned income from outside India.

4.2 The Ld.CIT(A) also considered the survey report filed by DDIT (inv.), Unit-1(2), Chennai wherein a finding was given with respect to cash credit in the capital account of Shri Ansari in the books of accounts of M/s ST Couriers. During survey, it was found that M/s ST Couriers had capital of Rs.20.30 Crores out of which the assessee contributed Rs.8.92 Crores as his capital. M/s ST Couriers was started in FY 2007-08 and the assessee made capital contributions during FYs 2007-08 to 2009-10. The capital account of the assessee in the books of the firm

was verified and cash credits in capital account of the assessee were found to be Rs.2.43 Crores in these years. For this year, capital infused in cash was for Rs.45.96 Lacs. The assessee agreed to offer the same as unexplained cash credit u/s 68. The remaining credit of Rs.6.49 Crores was stated to be sourced out of income earned outside India which was deposited in NRE account maintained in India.

4.3 As per the survey report, the assessee agreed that Rs.45.96 Lacs was infused in the form of cash in the capital account of M/ ST couriers. It was further observed by Ld. CIT(A) that the assessment record of 2009-10 contain statement recorded from the assessee on 16-09-2020 and also contained a ledger showing cash credits in the capital account of M/s ST couriers. The assessment records for this year contain details of cash credit which were explained as cash gifts received by the assessee from his wife Mrs. Jerina Bhanu. The same was verified vis-à-vis cash book furnished by the assessee and the return of income of Mrs. Jerina Banu and the same was found to be in order. The Ld. AO did not make any addition on this account and therefore, the same was to be accepted.

4.4 With respect to foreign inward remittances of Rs.188.52 Lacs, Ld. CIT(A) concurred that the assessee had source from outside India which could not be subject matter of chargeability u/s 5(2). The remand report of Ld. AO in the case of assessee's brother Navaz Kani, survey report and the order of Tribunal in the case of Navaz Kani as well as assessment record of the assessee were examined in the context of cash inflow and cash outflow. The affidavit of the assessee regarding business connection and permanent establishment of M/s Supreme Cargo Express in Kuwait and M/s Skyline International cargo Agency in

Saudi Arabia were taken on record. In the light of all these facts, the impugned addition for AY 2008-09 was deleted against which the assessee is in further appeal before us.

4.5 For AY 2009-10, the Ld. CIT(A), relying upon its order for AY 2006-07, deleted addition of Rs.239.41 Lacs. The addition of Rs.13.60 Lacs was sustained. The same was based on the remand reports. A finding was rendered in that order that total foreign inwards remittances made in this year was Rs.410.73 Lacs. Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

5. It is the finding of Ld. CIT(A) that during the course of survey on M/s ST Couriers, the partners' capital as on 31-03-2009 stood at Rs.20.30 Crores out of which the assessee contributed Rs.8.92 Crores as his capital. The assessee submitted that the source of investment on the firm was out of income earned from outside India. The assessee was employed from Middle East from 1993 to 2010 during which he earned 8848020 Saudi Riyals from M/s Skyline International Cargo, Saudi Arabia and also earned 827226 Kuwait Dinars from M/s Supreme Cargo Express, Kuwait. In terms of Sec.5(2), a non-resident individual is liable to pay tax in India on income that is received or deemed to be received in India. In other words, non-resident could not be charged to tax in India on money earned in a foreign country. If the said money is brought in India through banking channels, the same do not become taxable in India since the money so received is earned outside India. In the present case, it is undisputed fact that the assessee's residential status is that of a non-resident. Therefore, the provisions of Sec.68 would not be attracted to the funds transferred to an NRE account in India which has

originated from assessee's account held abroad. The Chennai Tribunal in the case of **Smt. Susila Ramasawamy (37 SOT 146)** held that where the assessee brought money into India through banking channels, then it could be said that the onus as required u/s 69 was discharged by the assessee and therefore, the receipts were not taxable u/s 5(2)(b). Similar is the decision of Hyderabad Tribunal in **Mr. Madhusudan Rao (57 Taxmann.com 262)** wherein it has been held that provision of Sec.5 do not permit taxation of amounts remitted in India from sources outside India. Similar view has been expressed in other decisions of Tribunal as placed on record. In the present case, the source of funds stood explained and therefore, impugned addition could not be made in the hands of the assessee. The CBDT Circular No.5 in F.No.73A/2(69)-IT(A-II) dated 20-02-1969 supports the case of the assessee which state that money brought into India by non-resident for investment or other purposes is not liable to Income Tax.

6. Pertinently, Chennai Tribunal in the case of assessee's brother Mr. K. Sirajudeen and Mr. K. Navaskani (ITA No.788 to 794/Mds/2013 dated 16-07-2013 rendered its findings as under: -

The next additional objection raised by the commission of income tax (appeals) is that Shri K. Ansari is only an ordinary employee and he could not have had that much funds to remit a huge sum of more than Rs.11 Crores to his brother in India. As page 80 of the paper-book, a copy of the certificate issued by the Chairman of M/s Skyline International Cargo Agency, KSA is provided. The said certificate speaks about the total remuneration paid to Shri K. Ansari for a period of 18 years from 1993 to 2010. The remuneration paid to Shri Kader Meeran Ghani Ansari comprised of basic pay per month plus sale commission per month. The total remuneration paid to Shri Ansari by M/s Skyline International Cargo Agency in 1993 was 12,383 Saudi Riyals. In 2010, the total remuneration was 62,378 Saudi Riyals. As page 81 of the paper-book there is another certificate issue by the managing director of M/s Supreme Cargo Express. This certificate shows that within a period of seven years i.e. from 2004 to 2010, Shri Ansari was paid total remuneration of 8,27,226 Kuwait Dinars as remuneration. This is equivalent to sum of 12,92,21,170/- Indian Rupees. Therefore, there is no factual support to the finding of the Commissioner of Income Tax (Appeals) that Shri K. Ansari had no resources to

remit large sums to the extent of more than Rs.11 Crores to his brothers in India. Taking the remunerations from M/s Supreme Cargo Express together, the income of Shri K. Ansari during the relevant period was more than Rs.13 Crores.

The above findings show that the assessee had sufficient sources to remit large funds to his brothers in India. The assessee was in possession of letters from the bankers along with bank statements to the effect that inward remittances made into these NRE accounts during the period from 2006 to 2010 were not made in Indian currency. The same makes it clear that the sources of remittances were out of income earned by the assessee from Kuwait and Saudi Arabia. The copies of confirmation letters issued by ICICI Bank, CITI Bank and HDFC Bank along with respective bank statements for the period 01-04-2007 to 31-03-2009 have also been placed before us in the paper-book on page nos. 106 to 141. The assessee has filed an affidavit before CIT(A) confirming that the remuneration from M/s Supreme Cargo Express as well as from M/s Skyline International Cargo Agency were directly received in NRE Account held in India through proper banking channels. The aforesaid decision has attained finality since the revenue's further appeal against the same has been dismissed on low tax effect by Hon'ble High Court of Madras in TCA Nos. 667 to 672 of 2014 dated 23-08-2022.

7. The Ld. Sr. DR has pointed to the report of FT & TR. The paper-book filed by the assessee contains first remand report dated 17-03-2015 as well as second remand report dated 18-08-2022. In remand report dated 17-03-2015 which is for AYs 2005-06 to 2009-10, the Ld. AO, in para-16 confirmed that in order to verify the claim of foreign remittances, letters were issued to the bankers which confirmed that the remittances were received from abroad in the account of the assessee. It

was also clarified by the bank that no limit was prescribed by RBI for inward remittances. The Ld. AO also referred to the documents submitted during appeal proceedings before Tribunal in the case of Shri K. Navaskani and Shri K.Sirajudeen, two brothers of the assessee. It was noticed that two letters were produced from M/s Skyline International Cargo Agency and M/s Supreme Cargo Express supporting the fact that the assessee was employed in UAE. This remand report is thus quite favorable to the assessee. The fate of FT & TR report has already been considered by Ld. CIT(A) in first appeal order for AY 2006-07 as well as appeal order for impugned years. Upon perusal of information supplied by M/s Supreme Cargo, it could be seen that it has been confirmed by that entity that the assessee was associated with them during the period from 2004 to 2010 and he was sharing business leads to them for export business. They have also confirmed sending business promotion expenses. They have merely expressed inability to furnish old records but admitted to have remitted commission to the assessee. The other party has also confirmed connection with the assessee. Therefore, the remittances so made by the assessee could not be doubted.

8. Further, Ld. AR has placed on record complete details of cash flows on page no.147 as under: -

No.	Year	Amount earned outside India							Income earned outside India credited to assessee's NRE bank account and gifted to brothers			
		In Saudi Riyals	Applicable conversion rate from Saudi Riyal to INR	Income in INR approx	In Kuwaiti Dinar	Applicable conversion rate from Kuwaiti Dinar to INR	Income in INR approx	Total income earned abroad	A.Y	Income earned outside India credited to assessee's NRE bank account IN India	Amt.Gifted to Navas Kani (brother)	Amt.Gifted to K.Sirajudeen (brother)
1	1993	1,48,596	NIL	-	-	-	-	-				
2	1994	1,74,540	8.36311	14,59,697				14,59,697				
3	1995	2,08,104	9.37571	19,51,123				19,51,123				
4	1996	2,62,704	9.57662	25,15,816				25,15,816				
5	1997	3,25,008	10.4655	34,01,371				34,01,371				
6	1998	3,85,740	11.3248	43,68,428				43,68,428				
7	1999	4,27,848	11.6011	49,63,507				49,63,507				
8	2000	4,67,736	12.442	58,19,571				58,19,571				
9	2001	5,14,800	12.8413	66,10,701				66,10,701				
10	2002	5,54,568	12.7627	70,77,785				70,77,785				
11	2003	5,84,244	12.1184	70,80,102				70,80,102				
12	2004	6,09,072	11.6464	70,93,496	15,985	147.44	23,56,806	94,50,302	2004-05		1997655	
13	2005	6,33,432	12.0112	76,08,278	17,181	150.07	25,78,278	1,01,86,556	2005-06		1661399	
14	2006	6,57,504	11.7571	77,30,340	1,24,531	153.1	1,90,65,711	2,67,96,052	2006-07	1,22,87,428	14764954	
15	2007	6,84,360	10.4798	71,71,956	3,04,617	143.93	4,38,43,453	5,10,15,409	2007-08	1,32,37,889	40150168	
16	2008	7,14,360	13.0991	93,57,473	2,51,828	175.38	4,41,65,507	5,35,22,980	2008-09	1,88,52,068	26325000	
17	2009	7,45,788	12.4635	92,95,129	3,45,024	161.36	5,56,73,089	6,49,68,218	2009-10	2,39,41,050	30253246	35,14,579
18	2010	7,48,536	12.0836	90,45,070	2,23,292	159.03	3,55,10,055	4,45,55,065				
Total		88,46,940		10,25,49,786	12,82,456		20,31,92,899	30,57,42,685		6,83,18,435	11,51,52,323	35,14,579

It could be seen that the assessee has earned sufficient income from outside India which has been brought in India by way of credit to NRE account and part of earnings have been used to make gifts to two brothers. In such a case, it could be concluded that the assessee duly explained the source of credit in the bank accounts. Under these circumstances, we would hold that the impugned order, for both the years, do not require any interference on our part. We therefore confirm the same.

9. In the result, both the appeals stand dismissed.

Order pronounced on 7th August, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 07-08-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF