

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" D " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.489/Ahd/2024  
निर्धारण वर्ष /Assessment Year : 2018-19

Pallav Rajnikant Pancholi 903, Anurag Flats Nr.Vidhyanagar School Usmanpura Ahmedabad - 380 014 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The ITO Ward-2, International Taxation Ahmedabad
स्थायी लेखा सं./PAN: CEEPP 9266 D		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Rajesh C. Shah, AR
Revenue by :	Shri Prithviraj Meena, CIT-DR

सुनवाई की तारीख/Date of Hearing : 01/10/2024  
घोषणा की तारीख /Date of Pronouncement: 08/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee arises from the assessment order passed by the Assessing Officer (hereinafter referred to as "AO") under Section 143(3) read with Section 147 read with 144C(13) of the Income Tax Act, 1961(hereinafter referred to as "the Act"), for the Assessment Year (A.Y.) 2018-19.

Facts of the Case:

2. The assessee along with his wife, Mrs. Aashita P. Pancholi, had been residing and working in the UAE for over 10 years. During the financial year

2017-18 relevant to the A.Y. 2018-19, the assessee was employed with C1 General Trading FZE, earning a salary of AED 507,144, while Mrs. Aashita was employed with Water Systems Speciality Chemicals DMCC, UAE, with an annual salary of AED 765,200, including a performance incentive of AED 145,000. The couple maintained joint NRE (Non-Resident External) and NRO (Non-Resident Ordinary) bank accounts in India.

2.1. The assessee did not file his Income Tax Return (ITR) for A.Y. 2018-19, as his only taxable income in India was Rs.42,000/-, which was below the threshold for mandatory filing. Based on Specific Financial Transaction (SFT) information, the Assessing Officer (AO) initiated proceedings under Section 148A/147 of the Act. The proceedings were initiated after identifying the following transactions:

1. Purchase of immovable property for Rs.1,23,76,000/-.
2. Investment in shares of Rs.67,00,000/-.
3. Credit card payments amounting to Rs.10,12,294/-.

2.2. During the assessment proceedings, the assessee furnished all requisite documents and explanations concerning the SFT transactions. After verifying the documentary evidence, the AO did not make any additions with respect to the immovable property purchase, share investment, or credit card payments. However, the AO identified certain credits in the assessee's NRO account (SBI Account No. 10295568709) as follows:

- Rs. 89,00,000/- credited on 23/03/2018.
- Rs. 89,00,000/- credited on 22/03/2018.
- Rs. 25,00,000/- credited on 21/03/2018.

2.3. The assessee explained the source of these credits as follows:

- **Rs.89 lakhs (23/03/2018):** Received as a loan from Radhe Overseas, which was accepted by the AO as explained.
- **Rs.89 lakhs (22/03/2018):** Withdrawal by the assessee's wife from her deposit account with Design Omex Infotech Pvt. Ltd. and used to repay the loan from Radhe Overseas on 26/03/2018. The AO accepted this explanation.
- **Rs.25 lakhs (21/03/2018):** Transferred from the joint NRE account to the NRO account. The assessee explained that the credit of Rs.25,60,654/- in the NRE account represented the performance incentive received by Mrs. Aashita P. Pancholi from Water Systems Speciality Chemicals DMCC, UAE, remitted through Economic Exchange Centre, Dubai.

2.4. The AO, in his draft assessment order, questioned the source of the Rs.25,00,000/- transferred from the NRE account to the NRO account. Despite the assessee submitting the remittance receipt, which clearly identified the payee as Mrs. Aashita P. Pancholi, the AO insisted that the assessee prove the source of the source of the remittance. Subsequently, the AO proposed to treat the amount as unexplained money under Section 69A of the Act and made the corresponding addition of Rs.25,00,000/-.

2.5. The assessee filed objections before the Dispute Resolution Panel (DRP), submitting detailed explanations along with supporting documents, including the certificate from the employer and the remittance receipt from Economic Exchange Centre, Dubai, confirming the transfer of the performance incentive into the joint NRE account. The DRP took the alternate view that the amount deposited in the NRE account should be treated as a gift under Section 56(2)(x) of the Act. The DRP suggested that since the amount was withdrawn by Mr. Shreekanth Shenoi, an employee of Water

Systems Speciality Chemicals DMCC, and deposited into the joint NRE account, it should be viewed as income from other sources.

2.6. In the remand report dated 09/11/2023, the AO accepted the assessee's explanation, stating that the performance incentive of AED 145,000 had been withdrawn by Mr.Shreekanth Shenoi on behalf of the company and deposited into the joint NRE account of the assessee and his wife. The AO acknowledged that this was the usual practice of the employer and that the source of the funds was fully explained. Despite the AO's acceptance in the remand report, the DRP ignored these findings and directed to the AO to proceed with the alternate treatment as income to be taxed under Section 56(2)(x) of the Act. The AO passed the order u/s 143(3) of the Act r.w.s. 144C (13) of the Act adding Rs.25,00,000/- under section 69A of the Act as unexplained credit.

3. Aggrieved by the order of the AO, the assessee is in appeal before us with following grounds of appeal:

*"That, the A.O. erred in making an addition of Rs.25,00,000/- in respect of the credit in NRO Bank Account ( and not NRE account) of the assessee (jointly held with his wife) which, in turn, was transferred from his NRE Bank Account (jointly held with his wife), on the ground of remaining unexplained pursuant to the directions of the Dispute Resolution Panel, although the A.O. had expressed his complete satisfaction with the evidences including additional evidences filed before the DRP in his Remand Report dt.9-11-2023 and the DRP has simply made assumptions and presumptions to suit its own convenience without affording any opportunity of hearing and without adducing any evidence contrary to the finding of the A.O. in the remand report. It is submitted that on the basis of the evidences produced, the amount of Rs.2500000 credited in the NRO account stands fully explained and there is, in fact, no provision u/s 69A of the Act to prove source of source of money found in a bank account. It is, therefore, submitted that the said addition be deleted.*

*It is also submitted that the alternative stand taken by the D.R.P. to tax Rs. 25,00,000 under section 56(2)(x) of the Act as a gift to the appellant from Mr.*

*Sreekanth Sheno. being the employee of Water Systems Speciality Chemicals DMCC, is also absolutely unjustified, without any basis and without giving any opportunity of hearing in this regard since the performance incentive money was withdrawn by him from the bank account of the employer company for being transferred to N.R.E. account of Mrs. Aashita P. Pancholi. From which Rs. 25,00,000 was transferred to the N.R.O. account It is, therefore, submitted that the same be held to be untenable and consequential addition be held to be bad in-law and on the facts of the case.*

WITHOUT PREJUDICE TO THE ABOVE,

*2. That the A.O. erred in making an addition of Rs. 25,00,000/- in respect of amount credited in bank account of the appellant although the appellant and his wife Mrs. Aashita P. Pancholi have been employed at Dubai, U.A.E. for the last so many years and the said moneys were remitted from Dubai and, therefore, does not fall within the purview of charging section 5 of the 1. T. Act. It is, therefore, submitted that the said addition be deleted."*

4. During the course of the hearing before us, the Authorised Representative (AR) of the assessee, submitted that the assessee and his wife, Mrs. Aashita P. Pancholi, have been non-residents for more than 10 years, working in the UAE. During the relevant financial year (2017-18). The AR explained the details of employment of assessee and his wife as detailed in the facts above. The further placed on records the remittance receipt from the Economic Exchange Centre, showing the transfer of AED 145,000 equivalent to Rs.25,60,654/- to the joint NRE account as a performance incentive for Mrs. Aashita and employer's certificate, confirming the incentive payment along with salary transactions. The AR also submitted the copy of bank statement of the company - Water Systems Speciality Chemicals DMCC, UAE to explain the payment of 1,45,000 AED to Mr. Sreekanth Sheno on 19-03-2018. We noted that the payment was not by cheque but by instruction no.128. We also observed that there are many such withdrawal by the said Mr. Sheno during the period covered by the statement.

5. On the other hand, the Departmental Representative (DR) argued that the Rs.25,00,000/- credited to the assessee's NRO account on 21/03/2018 was not properly explained. The DR emphasized that the remittance of AED 145,000 (Rs.25,60,654/-) to the NRE account was made through Mr. Shreekanth Shenoi, an employee of the company Water Systems Speciality Chemicals DMCC, where the assessee's wife, Mrs. Aashita P. Pancholi, worked. The DR contended that Mr. Shenoi withdrew the amount from the company's bank account and deposited it into the NRE account of the assessee and his wife. The DR argued that this transfer, facilitated by Mr. Shenoi, raises questions about the nature of the transaction. The DR submitted that the employee (Mr. Shenoi) does not have the authority to withdraw money from the company's account and deposit it into the NRE account. The DR argued that this fact indicated that the amount could be considered unexplained or not directly related to salary. The DR contended that even if the amount was shown as received in the NRE account, it could be treated as a gift under Section 56(2)(x) of the Income Tax Act. Since Mr. Shreekanth Shenoi was involved in the withdrawal and remittance of the amount, the DR proposed that the Rs. 25,60,654/- could be considered as an unexplained gift, as directed by the DRP, from Mr. Shenoi to the assessee's wife.

6. After thoroughly examining the facts of the case, the submissions made by the assessee, and the arguments put forth by the Departmental Representative (DR), we have arrived at the conclusion that the assessee has provided adequate and credible documentary evidence to explain the source of the Rs.25,00,000/- credited to his NRO account on 21/03/2018. The amount was transferred from the joint NRE account, where Rs.25,60,654/-

had been credited as a performance incentive earned by Mrs. Aashita P. Pancholi in the UAE. This performance incentive was remitted by her employer, Water Systems Speciality Chemicals DMCC, through the Economic Exchange Centre, Dubai, as evidenced by the remittance receipt and the employer's certificate. The remittance receipt clearly states the name of Mrs. Aashita P. Pancholi as the payee, and the employer's certificate corroborates that the amount was part of her legitimate salary. This evidence was not disputed by the Assessing Officer (AO) during the course of assessment, and the remand report dated 09/11/2023 clearly accepted the authenticity of the remittance and confirmed that such transfers were the usual practice of the employer. Therefore, we hold that the source of the funds has been satisfactorily explained, and there is no basis for treating the amount as unexplained under Section 69A.

6.1. The AO's decision to invoke Section 69A of the Act is unfounded in this case. Section 69A applies to unexplained money for which no satisfactory explanation is provided. However, the assessee has provided all necessary documentation, including a valid remittance receipt, bank statements, and a certificate from the employer. These documents conclusively demonstrate that the amount of Rs.25,60,654/- was earned outside India as part of Mrs. Aashita P. Pancholi's employment in the UAE, and the same was transferred to the NRO account from the NRE account.

6.2. It is important to note that section 69A of the Act does not require the assessee to prove the source of the source of the funds, particularly when the immediate source – the remittance from the employer – is well-documented

and legitimate. Therefore, we find that the AO's addition of Rs.25,00,000/- under Section 69A is unsustainable and should be deleted.

6.3. The Dispute Resolution Panel (DRP) took an alternative view that the amount of Rs.25,00,000/- should be treated as a gift under Section 56(2)(x) of the Act. This conclusion is based on the involvement of Mr. Shreekanth Shenoi, an employee of the company who facilitated the remittance. The DRP suggested that the amount might have been a gift from Mr. Shenoi rather than a salary remittance. We find this contention to be without merit. The evidence on record clearly shows that Mr. Shenoi was merely facilitating the withdrawal and transfer of the performance incentive from the company's account to the NRE account of Mrs. Aashita P. Pancholi. The remittance receipt and the certificate from the employer both confirm that the amount was a part of Mrs. Aashita's performance bonus, and there is no evidence to suggest that it was a gratuitous gift from Mr. Shenoi. The employer's statement that this was part of the company's usual practice for handling such remittances further supports the assessee's explanation. Section 56(2)(x) applies to gifts or transfers without consideration, but in this case, the remittance was part of the salary earned by Mrs. Aashita P. Pancholi for services rendered in the UAE. There is no element of a gift or gratuitous receipt involved, and hence, the DRP's alternative finding under Section 56(2)(x) of the Act is incorrect and is accordingly rejected.

6.4. Both the assessee and his wife were non-residents during the relevant assessment year. The couple had been residing and working in the UAE for over 10 years, and during the financial year 2017-18, they were in India for only 77 days, well below the threshold for being considered residents under

the provisions of the Act. As per Section 5(2) of the Act, the global income of a non-resident is taxable in India only if it is received or deemed to be received in India, or if it accrues or arises in India. In this case, the performance incentive of AED 145,000 (Rs.25,60,654/-) was earned and accrued outside India and remitted to India through legitimate banking channels. This income does not fall within the purview of Section 5 and is not taxable in India. Therefore, the addition made by the AO is contrary to the provisions of the law and cannot be upheld.

6.5. In view of the foregoing, it is clear that the addition of Rs.25,00,000/- made under Section 69A is unwarranted as the source of the funds has been satisfactorily explained by the assessee. Furthermore, the alternative finding by the DRP, treating the amount as a gift under Section 56(2)(x) of the Act, is legally unsustainable and not supported by any evidence. The income in question was legitimately earned outside India by a non-resident and is not taxable under Indian law. Accordingly, the addition of Rs.25,00,000/- made by the AO is deleted, and the appeal filed by the assessee is allowed in full.

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

**Order pronounced in the Open Court on 8<sup>th</sup> October, 2024 at Ahmedabad.**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 08/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
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