



IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 588/MUM/2024		A.Y.2012-13
Moiz Hakimuddin BoriaWALA, United Arab Emirate, Villa 33 Narjis Phase 3, Alzahia Community Muwelah Commercial Sharjah UAE	Vs.	Income Tax Officer, Ward 17(2)(3), Mumbai
(Appellant)		(Respondent)
PAN		AMQPB 2570E
Assessee by		Shri Nikhil Zaveri
Revenue by		Shri Ashok Kumar Ambastha, SR.DR,
Date of hearing		05 th August, 2024
Date of pronouncement		08 th October, 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by Mr Moiz Hakimuddin Boriawala [assessee, appellant] for assessment year 2012 - 13 against the appellate order passed by the CIT (A) - 55, Mumbai [the learned CIT - A] dated 19/1/2024 wherein the appeal filed by the assessee against the reassessment order passed under section 144 read with section 147 of The Income Tax Act, 1961



- [the Act] passed by The Income Tax Officer – 17 (2) (3), Mumbai (the learned AO) on 29/12/2019 was partly allowed.
2. The assessee is aggrieved and has raised grounds against reopening of assessment and on the merits of the addition sustained.
 3. The brief fact of the case shows that assessee claims that he is a non-resident Indian residing at Dubai engaged in family business there. It is stated that he is residing in that country since 1973. During this year the assessee has earned interest from the non-resident ordinary bank account and fixed deposit account and capital gains from shares and mutual funds invested out of foreign income. Tax deduction at source has also been made on the said income under section 195 of the act.
 4. The learned assessing officer observed that assessee has not filed his return of income for the impugned assessment year however the ITS details available in the system shows that assessee has purchased mutual funds of Rs. 1 crore, transacted in shares of Rs. 232,246,079/- and has income as per 26AS. Therefore, after taking approval under section 151 of the act the assessment proceedings under section 147 of the act were initiated by issuance of notice under section 148 of the act on 25/3/2019. The above notice was sent through speed post and therefore the learned AO held that same is served on the assessee correctly relying on the decision of the honourable Supreme Court in case of CIT V I Ven Interactive Ltd. Ld. AO noted that assessee has not filed his return of income in response to the notice under section 148 of the act. Further notices were also sent under section 142 (1) on various dates and therefore the learned AO relying on the decision of the



honourable Supreme Court held that such notices served properly.

5. The AO further issued notice under section 133 (6) to the Bombay stock exchange, National stock exchange and HDFC bank. Only reply from HDFC bank was received. Thereafter the learned assessing officer based on the information available passed an assessment order determining total income of the assessee at Rs. 245,744,360/- by passing an order under section 144 read with section 147 of the act on 29/12/2019 wherein following additions were made to the total income of the assessee: -
 - i. Unexplained investment of rupees one crore on account of investment in mutual fund
 - ii. Sale consideration as per ITS details on account of sale of shares of Rs. 10,171,526 treated as short-term capital gain.
 - iii. Investment in fixed deposits with HDFC bank of Rs. 222,074,533/- under section 69 A of the act
 - iv. Addition of Rs. 3,498,283 as interest income earned on the above fixed deposits.
6. Assessee preferred appeal before the learned CIT – A wherein it was stated that notice under section 148 of the income tax act was not served on the assessee at all and further on merits it was stated that assessee is a non-resident and therefore the income is required to be computed taking the status of the assessee as non-resident. It was further stated that the assessee has filed his return of income for assessment year 2009 – 10 and assessment year 2010 – 11 as non-resident. Even the information called from the HDFC bank also shows that assessee is maintaining non-resident ordinary account.



With respect to the investment of Rs. 1 crore in mutual fund it was submitted that same is out of the maturity proceeds of foreign currency non-resident fixed deposit receipt matured and therefore same cannot be considered as unexplained. With respect to the short-term capital gain on shares sold in stock exchange where the total sale consideration of Rs 101,71,526 is added it was submitted that assessee is having PIS account with HDFC bank through which purchase and sales in India is made and therefore assessee has sold total shares of Rs. 327,08,071 instead of Rs. 10,171,526. The tax is also deducted on long-term capital gain. The assessee also submitted the capital gain statement. With respect to the investment in time deposit of Rs. 222,074,553/- in HDFC Bank it was submitted that this is non-resident external time deposit and foreign currency non-resident external account. Assessee also submitted the details of time deposits as additional evidence and submitted that these are all fixed deposit are very old , therefore same cannot be added..

7. The learned CIT – A after considering the explanation of the assessee dismissed the ground number 1 of the appeal relying on his decision in ground number 1 of the appeals of the assessee for assessment year 2011 – 12 wherein it was held that the notice in that case was sent by speed post, and it was received by Kapadia & co, Cas, authorised representative of the appellant. Therefore, he held that such notice is correctly served. On the issue of the residential status of the assessee, he also relied on the decision for assessment year 2011 – 12 holding that is no return of income was filed for this year and during the appellate proceedings also the assessee has not filed any evidence to support that assessee was non-resident, it was



dismissed. With respect to the addition of investment in mutual fund of Rs. 100 lakhs he allowed the claim of the assessee holding that the amount has been invested on maturity of fixed deposits as per paragraph number 17.1 of the order. Regarding addition of Rs. 10,171,526 of short-term capital gain, the learned CIT - A noted that assessee has submitted the additional evidences in the form of working of capital gain which was forwarded to the AO. Further in the remand report the AO submitted that the majority of the investment was made in earlier years but assessee has not submitted the copies of contract notes debit notes Demat account etc and therefore he upheld the action of the AO. With respect to the addition of Rs. 222,074,553 under section 69 of the income tax act, this ground of appeal was allowed. Thus, appeal of the assessee was partly allowed.

8. Assessee is aggrieved with that and has preferred this appeal. The learned authorised representative has submitted a paper book containing 98 pages. It was submitted that Mrs GP Kapadia & company submitted a letter dated 1 October 2019 to the learned assessing officer in response to notice under section 148 of the income tax act for this assessment year stating that they were engaged by the assessee for only obtaining permanent account number and therefore not authorised to receive any notice on behalf of the assessee. In the PAN application itself the correct address of the assessee is mentioned as flat number B 803, BU Haleba OPPO, Amfrician Hospital, PO Box 3765 OUD Metha Dubai. He referred to the content of the letter addressed to the learned assessing officer by that firm. He therefore submitted that the order passed by



the learned assessing officer is invalid as notice under section 148 of the act was not served.

9. The learned departmental representative vehemently supported the order of the learned assessing officer and the learned CIT – A relying upon the decision of the honourable Supreme Court.
10. We have carefully considered the rival contention and perused the orders of the learned lower authorities. In this case the learned assessing officer issued notice under section 148 of the act on 25/3/2019 at the address 61-A Mittal tower, Nariman point, Mumbai 4000 21. This address was extracted by the assessing officer from the application made by the assessee for permanent account number. In the permanent account number application filed by the assessee his address was mentioned at 61A Mittal tower, Nariman point, Mumbai, Maharashtra – 4000 21 and telephone number mentioned was 22 – 2288 4702. Other addresses were also mentioned where one of the addresses is c/o Crossland financial services, 61 A, Mittal tower, Nariman point, Mumbai, Maharashtra 400021. There is also one more address mentioned as flat number B 803, BU Haleba, Oppo Amfrican Hospital PO Box 3765, OUD METHA DUBAI. Undoubtedly the learned assessing officer issued the notice at the address 61A Mittal towers, Nariman point, Mumbai.
11. With respect to the issue of the notice on 25/3/2019, the first paragraph of the letter from the office of the chartered accountant who responded by letter dated 1 October 2019 categorically accepted that they have received such notice.
12. Further notice dated 30 September 2019 was also issued at the same address which was responded to by the above letter



which requested the assessee to file the return of income. The explanation of the chartered accountant is as under: -

"We would like to inform you that our firm is providing services to non-resident Indian for PAN application since many years. The prescribed procedure/documentation for issue of PAN by the tax Department was under revision before 7 – 8 years for non-resident Indian applicants which resulted into delayed issue and delivery of PAN cards. Further, as the NRI applicants reside outside India, proper coordination is required to facilitate the process of application and delivery of PAN card. In some cases, the NRI may have the local residential address as the delivery of PAN card was not possible as there was no one residing at that place. Therefore, we had provided our office address for delivery of the PAN card of the NRI applicants, but other addresses of the applicants as given in the residential proof also mentioned at the time of filing of PAN application.

Thus, at the time of PAN application of Moiz Hakimuddin Boriawala, we had mentioned his residential address which is as follows (copy of the pen letter issued by the income tax Unit is attached herewith as annexure 2): -

Address: flat number B803 BU haleba

Opp. Amfrican Hospital

P O Box 3765 OUD Mehta Dubai,

We would like to inform you that our office does not deal with Moiz Hakimuddin Boriwala in any way. We



have not provided him any professional services except for obtaining PAN card from the income tax department. The address of our office was given in the PAN application form submitted to income tax department only for the purpose of delivery up and card.

After receipt of the notice from your good self, we have put in all our efforts to trace out details of Mr Moyes came within very well. The current contact details of the assessee are as under: –

Email id moizh@ectratech.ae

Contact number: - 971559900174

We kindly request your good self to update the said contract details of the assessee in your records and send all the future correspondence to the said contact details only.”

13. We categorically find that in the application for allotment of permanent account number the address at 61A Mittal Tower, Nariman Point Mumbai is mentioned twice. Of course, the other addresses were mentioned showing the address at the Dubai. However, it cannot be said that the income tax department has issued the notice to the assessee at incorrect address. That was the information available with the income tax department which was mentioned by the assessee himself. Whatever may be the reasons of mentioning that address, but it cannot be said that notice has not been issued to that address.
14. Even otherwise the first notice was issued to the assessee at the same address on 25/3/2019 and second notice was issued on 30/9/2019. The chartered accountant responded only in response to notice dated 30/9/2019 by writing a letter on 1



October 2019 to the assessing officer. The chartered accountant did not respond to the assessing officer immediately on receipt of the notice issued on 25/3/2019. Therefore, in these facts, we do not find any infirmity in the issue of the notice to the assessee at the address mentioned in the PAN database by the assessee himself. Therefore, the AO as well as the learned CIT – A is not incorrect in saying that the notices are served under section 148 of the income tax act at the correct address, which is provided by the assessee himself, confirmed by the chartered accountant who applied for the permanent account number. Ld. Lower authorities also placed reliance on the decision of the honourable Supreme Court in case of Principal Commissioner of Income-tax, Mumbai V I Ven Interactive Limited [2019] 110 taxmann.com 332 (SC)/ [2019] 267 Taxman 471 (SC). Therefore, we do not find any reason to interfere on the issue of reopening of the assessment. Accordingly, we confirm that the notice is correctly served on the assessee under section 148 of the act and there is no infirmity in the order of the learned CIT – A in deciding this ground against the assessee. Accordingly ground number 1 of the appeal is dismissed.

15. Ground number 2 is with respect to the addition on the merits, we find that the assessee has not been given any opportunity of hearing by the assessing officer despite coming to know that the correct address of the assessee is at UAE. Naturally after information received from the chartered accountant that assessee is residing at UAE, the learned assessing officer did not intimate or issue any notice to the assessee at that address. Therefore, assessee did not get any opportunity of hearing to show his status as non-resident as well as about the



taxability of the income. Therefore, we restore ground number two of the appeal back to the file of the learned assessing officer with a direction to the assessee now submit the details about the residential status as well as about taxability of income . Id AO thereafter may decide the issue afresh. Accordingly ground number 2 of the appeal is allowed with above direction.

16. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 08/10/2024.

Sd/- (RAJ KUMAR CHAUHAN) (JUDICIAL MEMBER)	Sd/- (PRASHANT MAHARISHI) (ACCOUNTANT MEMBER)

Mumbai, Dated: 08.10.2024

Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai