

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

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
and
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2172/DEL/2024
(Assessment Year : 2015-16)**

**ITA No.2173/DEL/2024
(Assessment Year : 2016-17)**

ACIT,
New Delhi.

vs.

Rajan Sehgal,
J – 23, Jangpura Extension,
New Delhi – 110 014.

(PAN: AASPS0033K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sunil Kapoor, Advocate
REVENUE BY : Ms. Ambika Aggarwal, Sr. DR

Date of Hearing : 09.10.2024
Date of Order : 20.11.2024

ORDER

PER S. RIFAUR RAHMAN, AM :

1. These two appeals are filed by the Revenue against the orders of Id. Commissioner of Income-tax (Appeals)-43, Delhi (hereinafter referred to 'Ld. CIT (A)') both dated 29.02.2024 for Assessment Year 2015-16.
2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order. We are

taking ITA No.2172/Del/2024 for Assessment Year 2015-16 as lead case.

3. Brief facts of the case are, draft assessment order under section 144C read with section 143(3) of the Income-tax Act, 1961 (for short 'the Act') on 15.03.2022 was duly served upon the assessee. As per section 144C(2) of the Act, the assessee was required to file its acceptance of the variation to the returned income or file his objection, if any, to such variation before the Dispute Resolution Panel and the Assessing Officer within 30 days of receipt of draft assessment order. In response to draft assessment order, the assessee filed letter dated 31.03.2022 submitting certain bank account statements and stated that investments in mutual fund may kindly be treated to have come from declared and definite source of income. The Assessing Officer observed that the assessee has neither filed any objection before Id. DRP nor submitted its acceptance to variation made to the returned income before him. Accordingly, he proceeded to dispose off the final assessment order under section 144C of the Act as with the following observations.
4. He observed that the transactions for FY 2014-15 were flagged in Non-filers Monitoring System. He observed that entries in Form 26AS and ITS data for the FY 2014-15 indicated that assessee had received following amounts:-
 - (i) Rs.22,73,333/- from Ravissance Developers Private Ltd.; and
 - (ii) Rs.19,67,497/- as interest income.

5. Further assessee had paid an amount of Rs.2,76,30,628/- for the purchase of units of mutual funds. Despite having the above receipts and investments, assessee had not filed return of income for AY 2015-16. Accordingly, the case was reopened under section 147 of the Act by recording the reasons and served the notices through ITBA System.
6. Considering the time barring nature of the proceedings, a final show-cause notice giving final opportunity to the assessee was issued on 04.03.2022 requiring the assessee to file details/documents by 09.03.2022 before finalization of the assessment order ex-parte. He observed that as no response from the assessee till date of passing the assessment order was received, he proceeded to decide the issue u/s 144 of the Act and sustained the income received by the assessee and investment as unexplained income/ investment u/s 69 of the Act. He further observed that assessee did not file any document to substantiate its Tax Residency Status for the purpose of taxation in India. Accordingly, he proceeded to add Income from House Property, Income from Other Sources and long term capital gain claimed by the assessee as per return of income. Accordingly, he determined the total income of the assessee at Rs.3,15,38,615/- against the declared income in his return of income of Rs.31,16,370/-.
7. Aggrieved, assessee preferred an appeal before the ld. CIT (A), Delhi-43.

Before Id. CIT (A), assessee filed detailed submissions along with additional evidences under Rule 46A of the Income-tax Rules, 1962 (for short ‘the Rules’). The same was remanded to the Assessing Officer. The Assessing Officer submitted remand report which is reproduced by Id. CIT (A) at pages 8 to 11 of the appellate order. Assessee also filed rejoinder to the remand report on 05.02.2024 which is also reproduced by the Id. CIT(A) from pages 11 to 24 of the appellate order. After considering the remand report and rejoinder to the remand report by the assessee, Id. CIT (A) observed in para 5.2 of the order that after considering carefully remand report in which Assessing Officer pointed out that the assessee did not submit any documentary evidences to support his claim, therefore the issues remained unverified in the remand proceedings. However, Id. CIT (A) observed that on perusal of the additional evidences submitted by the assessee, it is evident that assessee has duly submitted supporting documents along with his application under Rule 46A of the IT Rules and same was duly forwarded to the Assessing Officer and Assessing Officer was asked to comment on such documents. Id. CIT(A) observed that in respect of verifying said additional evidences, Assessing Officer has completely denied all such additional evidences being submitted by the assessee. Even otherwise the claim of the Assessing Officer is accepted for the sake of argument and if any

misplacement of additional evidences, Assessing Officer could have asked for another copy of additional evidences from his office or sought resubmission from the assessee. On the contrary, Assessing Officer just took a convenient path and submitted a formal remand report without going into the information/ documents submitted by the assessee. Accordingly, he treated the remand report submitted by the Assessing Officer as deficient and proceeded to adjudicate the grounds on merits. Accordingly, he decided the issue based on information available on record as under :-

“5.3 Ground no. 1: Unexplained Investment u/s 69 (in Mutual Funds): Rs.2,76,30,628/-

5.3.1 On perusal of the bank statement(s) for the FY 2014-15, of the bank account(s) of the appellant maintained with HSBC bank (A/c No. 030866602006) and Citi bank NRI A/c (Ac No. 3100931510), following findings have emerged:

(i) It is noted that investment(s) in Mutual Funds are made from the account held with HSBC bank.

(ii) That during the year under consideration, the total amount invested in mutual funds is Rs.2,78,10,878/-. Details of the same are as under:

<i>S.No.</i>	<i>Date</i>	<i>Mutual Funds</i>	<i>Amount</i>
<i>1.</i>	<i>18-Jun-2014</i>	<i>FRANKLIN TEMPLETON MUTUAL FUND</i>	<i>33,50,000/-</i>
<i>2.</i>	<i>18-Jun-2014</i>	<i>IDFC MUTUAL FUNDS</i>	<i>24,80,878/-</i>
<i>3.</i>	<i>18-Jul-2014</i>	<i>BIRLA SUN LIFE MUTUAL FUNDS</i>	<i>10,90,000/-</i>
<i>4.</i>	<i>08-Aug-2014</i>	<i>ICICI PRUDENTIAL MUTUAL FUNDS</i>	<i>15,00,000/-</i>
<i>5.</i>	<i>14-Aug-2014</i>	<i>IDFC MUTUAL FUNDS</i>	<i>23,00,000/-</i>
<i>6.</i>	<i>05-Nov-2014</i>	<i>HDFC FMP Investment – HDFC FMP 370D</i>	<i>1,00,00,000/-</i>
<i>7.</i>	<i>15-Dec-2014</i>	<i>ICICI PRUDENTIAL MUTUAL FUNDS</i>	<i>11,40,000/-</i>
<i>8.</i>	<i>20-Mar-2015</i>	<i>IDFC MUTUAL FUNDS</i>	<i>50,00,000/-</i>
<i>9.</i>	<i>23-Mar-2015</i>	<i>ICICI PRUDENTIAL MUTUAL</i>	<i>9,50,000/-</i>

		<i>FUNDS</i>	
			<i>TOTAL</i> 2,78,10,878/-

(iii) That the amount invested in mutual funds is sourced from the redemption of existed mutual funds and from the funds remitted through Citi Bank (UAE) from salary income earned abroad (UAE). The same is evident from the bank statement(s) of A/cs held with HSBC bank and Citi bank.

(iv) The Ld. AO has relied only on the information gathered from the Form 26AS and ITS (Individual Transaction Statement). However, the Ld. AO has not looked into the relevant bank statement(s) and has not gathered the material/information fully, before passing the order u/s 144/147 of the Act.

5.3.2 In view of the above discussion, it is inferred that the clarification submitted by the appellant along with documentary evidences are reasonable enough to substantiate the claim of the appellant with regard to the explanation of the source of investment of Rs.2,76,30,628/- in the Mutual Funds in FY 2014-15. Thus, it is pertinent to mention that the amount of Rs.2,76,30,628/- was from the fund received on redemption of various Mutual Funds and from foreign remittances. Accordingly he addition of Rs.2,76,30,628/- made in respect of "Unexplained Investment u/s 69 is hereby deleted and the respective ground of appeal raised by the appellant is hereby allowed.

5.4 Ground no. 2 Income from House Property: Rs.1,25,187/-

On perusal of ITR, Form 26AS and computation of Income for the FY 2014-15, is noted that the appellant has shown annual rental income of Rs.22,73,333/- from property situated in DLF, Gurgaon iro. property at G-117, Himalaya House, New Delhi Further, the appellant had claimed House tax of Rs.96,298/-, against the same. However, on perusal of the copies of House Tax Receipts submitted by the appellant in this regard, it is noted that the said house tax is related a property at G-117, Himalaya House, New Delhi, in respect of which no rental income is offered by the appellant during the year under consideration, Therefore, it is inferred that the clarification submitted by the appellant along with documentary evidences are not reasonable to substantiate the claim of the appellant with regard to the expenses i.e. House Tax paid. Therefore, the same are disallowed as a valid expense against the said property at Gurgaon. Accordingly, the addition of Rs.1,25,187/- made in respect of "Income from House Property" is hereby confirmed and the respective ground of appeal raised by the appellant is hereby dismissed.

Ground no. 3: Income from Capital Gain: Rs.6,66,430/-

On perusal of ITR, computation of Income and DEMAT statement(s) for the FY 2014-15, it is noted that the appellant has shown Long Term Capital Gain

of Rs.6,66,430/- on sale of equity oriented mutual funds, in respect of which STT has already been paid. Details of the same are as under:

<i>EQUITY MUTUAL FUNDS (STT PAID ON SALE)</i>	<i>SALE</i>		<i>PURCHASE</i>		<i>CAPITAL GAIN/LOSS</i>	
	<i>DATE</i>	<i>AMOUNT</i>	<i>DATE</i>	<i>AMOUNT</i>		
<i>HDFC Prudence</i>	<i>23.04.2014</i>	<i>4,73,567</i>	<i>27.06.2011</i>	<i>5,30,000</i>	<i>-56,433</i>	<i>Loss</i>
<i>Fund Dividend Payout</i>						
<i>HDFC Prudence Fund Growth</i>	<i>23.04.2014</i>	<i>32,22,863</i>	<i>22.02.2012</i>	<i>25,00,000</i>	<i>7,22,865</i>	<i>Profit</i>
				<i>TOTAL</i>	<i>6,66,432</i>	<i>Gain</i>

The said fact is verified from the Portfolio statement for the year under consideration. The relevant capital gain arising thereof, is exempt as per the provisions of section 10(38) of the Income Tax Act. Accordingly, the addition of Rs.6,66,430/- made in respect of "Income from Capital Gain" is hereby deleted and the respective ground of appeal raised by the appellant is hereby allowed."

8. Aggrieved with the above order, Revenue is in appeal before us raising following grounds of appeal :-

"(i) Whether on facts and circumstances of the case, ld. CIT (A) has erred in law by not considering the comments submitted by the AO in the remand report and allowing the appeal of the assessee.

(ii) Whether on facts and circumstances of the case, ld. CIT (A) has erred in law by deleting the addition of Rs.6,66,420/- towards capital gain ignoring the fact that the assessee has not submitted any documentary evidence in support of his claim.

(iii) Whether on facts and circumstances of the case, ld. CIT (A) has erred in law by deleting the addition of Rs.2,76,30,628/- made u/s 69 of the Act by the AO ignoring the fact that no documentary evidences were filed by the assessee in support of his claim."

9. At the time of hearing, ld. DR for the Revenue submitted that the assessment under consideration is passed under best judgment assessment u/s 144 of the Act. The Assessing Officer has passed draft assessment order on 15.03.2022 and assessee has filed new evidences after draft assessment passed by the Assessing Officer. Further he brought to our notice page 24 of the appellate order and submitted that additional evidences were submitted by the assessee under rule 46A of the IT Rules and he also brought to our notice remand report submitted by the Assessing Officer which is reproduced at page 10 of the appellate order and brought to our notice observation of the Assessing Officer that evidences submitted by the assessee are not sufficient. Further he brought to our notice page 25 of the appellate order wherein the ld. CIT (A) has accepted that the additional evidences submitted by the assessee are sufficient and already placed on record. He objected to the admission of the additional evidence and submissions made by the assessee by the ld. CIT (A). With regard to merits of the case, he relied on the orders of Assessing Officer.
10. On the other hand, ld. AR for the assessee relied on the findings of ld. CIT(A) at para 5.2 of the order. Further he submitted that assessee is a non-resident and the return of income filed by the assessee in AYs 2013-14 and 2014-15 were accepted by the Revenue. He submitted that the investments

made in earlier assessment year were sold by the assessee during the current assessment year. Therefore, there is no new investment or funds brought in by the assessee during the current assessment year and findings of the Assessing Officer are not justified. He prayed that the findings of Id. CIT(A) be sustained. He submitted that facts in other appeal are exactly similar.

11. Considered the rival submissions and material placed on record. We observed that assessee is a non-resident and maintaining non-residential status for more than 15 years. The assessee is a regular filer of return of income declaring income sourced from India. We observed that Assessing Officer has made the addition with the observation that no response was received from the assessee. Based on that, he proceeded to complete the assessment u/s 144 of the Act based on the information available on his record. We observed that there is no proper opportunity was extended to the assessee during the current assessment proceedings because of that assessee has submitted various information after draft assessment order. However, the Assessing Officer has not considered those informations. Even before Id. CIT (A), assessee has submitted additional informations under Rule 46A of the Rules. Id. CIT (A) as per information available on record remanded the matter back to Assessing Officer. However, the Assessing Officer did

not accept or verify the additional evidences forwarded by the ld. CIT(A). Ld. CIT(A) has brought on record and made his observations at para 5.2 of the order. Ld. CIT(A) also reproduced various submissions made by both the parties and proceeded to adjudicate the issue as per the information available on record. As per the findings of ld. CIT (A), we observed that the investments made in mutual funds are made from bank account maintained with HSBC. Ld. CIT (A) also tabled the details of the investments made by the assessee during the year to the extent of Rs.2,78,10,878/-. He also found that sources for the investment in the mutual funds are from resale of existing mutual funds and other funds remitted through Citi Bank of UAE from the salary income earned by the assessee in UAE. All the above findings of the ld. CIT (A) are evident from the bank statements with HSBC and Citi Bank submitted by the assessee. Further he observed that the Assessing Officer merely relied on the informations gathered from individual transaction statements and Assessing Officer failed to cross verify the same with relevant bank statements. Based on the above findings, ld. CIT(A) deleted the additions made by the Assessing Officer on investment in mutual fund during the current assessment year. After considering the submissions of both the sides, we observed that the findings given by ld. CIT (A) are based on the information very much available on record and it is

also fact on record that assessee is an NRI and all the source of income are from his salary income earned by the assessee outside India. Therefore, we do not see any reason to disturb the findings of the Id. CIT (A) considering the fact that all the informations are traced from the bank statements submitted by the assessee. Therefore, we do not see any reason to disturb the findings of the Id. CIT (A). Accordingly, ground no.(iii) raised by the Revenue is dismissed.

12. Coming to ground no.(ii), we observed that assessee has declared long term capital gain of Rs.6,66,430/- on sale of equity oriented mutual funds. In support of which, assessee has paid relevant STT and details of the same are extracted at page 27 of the first appellate order. Since the transaction falls under section 10(38) of the Act, accordingly Id. CIT (A) deleted the addition. The abovesaid informations are filed by the assessee in its computation as well as Demat statement for the current assessment year. We observed that the issue raised by the Revenue in grounds of appeal that no evidence was submitted by the assessee before the Assessing Officer, however, it is brought to our notice page 248 of the paper book that assessee has filed the information relating to above transaction through IT Portal and through email to Assessing Officer. Therefore, in our considered view, Id. CIT (A) has considered various informations submitted before Assessing

Officer as well as in remand proceedings. Therefore, we are inclined to accept the findings of ld. CIT (A) that these transactions are covered by section 10(38) of the Act. Hence, we do not see any reason to disturb the findings of ld. CIT (A). Accordingly, ground no.(ii) raised by the Revenue is dismissed.

13. Ground No.(i) raised by the Revenue is general in nature and the same is not adjudicated.
14. Since the facts in AY i.e. 2016-17 is exactly similar, our above findings in AY 2015-16 are applicable *mutatis mutandis* in AY 2016-17. Accordingly, the appeal being ITA No.2173/Del/2024 for Assessment Year 2016-17 filed by the Assessee is dismissed.
15. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 20th day of November, 2024.

**Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 20.11.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-43, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI