

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

IT(IT)A No.2126/Bang/2024
Assessment year : 2019-20

Eapen George, # 7, 1 st Floor, 17 th Cross, Margosa Road, Malleshwaram, Bengaluru – 560 003. PAN: AGCPG 0839K	Vs.	The Income Tax Officer, Ward International Taxation 1(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishna, CA
Respondent by	:	Ms. Nandini Das, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11.12.2024
Date of Pronouncement	:	27.12.2024

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Eapen George [the Assessee/Appellant) for Assessment year 2019–20 against reassessment order passed by The Income Tax Officer, International Taxation – 1 (1) Bangalore (The Ld. AO) dated 22/10/2024 under section 147 r.w. section 144

of The Income Tax Act, 1961 (The Act) wherein the total income of the assessee is assessed at Rs.1,46,37,018/- where assessee did not file any return of income, either u/s. 139 or u/s 148 of the Act. The assessment order was passed pursuant to the direction of The Dispute Resolution Panel-1, Bengaluru (the Id. DRP) dated 9/9/2024 on the draft assessment order passed u/s. 144C (1) of the Act dated 24/1/2024.

2. Therefore, assessee is aggrieved and has preferred appeal raising following grounds: –

“1. The order of the learned Assessing Officer in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The authorities below are not justified in making addition of INR 1,46,37,018/- to the total income of the appellant while the actual income earned by the appellant during the year under consideration was INR 33,710/- which is below the basic exemption limit chargeable to tax under the facts and in the circumstances of the Appellant's case.

3. The authorities below have erred in concluding that the appellant did not file a return of income for the year under consideration, given that the income reported was below the basic threshold limit chargeable to tax.

4. The authorities below are unjustified in concluding the assessment based on communications sent to an inactive email ID and incorrect residential address under the facts and in the circumstances of the Appellant's case.

5. The authorities below are not justified in adding INR 1,25,608/- as income from Salary while the actual salary income earned during the year under consideration was INR 62,804/- under the facts and in the circumstances of the Appellant's case.

6. The authorities below made duplicate income additions by relying solely on information available from the INSIGHT Portal without recognizing that such data may be sourced from multiple entries under the facts and in the circumstances of the Appellant's case.

7. The authorities below are not justified in adding INR 10,31,124/- as income from Short Term Capital Gain as the entire Sale proceeds was considered as income without considering the cost of acquisition under the facts and in the circumstances of the Appellant's case.

8. The authorities below are not justified in treating INR 1,34,69,453/- as unexplained investments u/s 69 of the Act failing to recognize that the appellant, as a non-resident, made these investments from foreign income sources.

9. The learned DRP erred in dismissing the objections of the petitioner solely on the basis that the petitioner submitted additional evidence along with the paper book rather than as a separate application, as required under Rule 4 of the Income Tax (DRP) Rules, 2009.

10. Without prejudice to the above, the learned DRP has erred in coming to the conclusion That the petitioner furnished additional evidence only 27 days prior to the deadline for the Hon'ble DRP's directions, under the facts and in the circumstances of the Appellant's case.

11. Without prejudice to the above, the Appellant denies to be charged to interest u/s. 234-A and 234-B of the Act, which under the facts and in the circumstances of the Appellant's ease deserves to be cancelled.

12. For the above and other grounds that may be urged at the time of hearing of the appeal, your Appellant humbly prays that the appeal may be allowed and Justice rendered.”

3. Brief facts of the case shows that that assessee is a non-resident individual, case of the assessee was reopened u/s. 147 of the Act by issuing a notice u/s. 148 of the Act on 29/3/2023 on the basis of information received from insight Portal of CBDT. In reassessment proceedings, it was found that assessee has neither filed any return of income or replied to notices under section 142 (1) of the Act or to the show cause notices issued.

4. Thus, the Id. AO proceeded with reassessment proceedings on merits. The information was received through the insight Portal in accordance with the risk management strategy of the Central Board of Direct Taxes that assessee has entered into transactions amounting to Rs.1,46,37,018 which are mentioned at paragraph number 4 of the draft assessment order. As the assessee remained non-cooperative during the course of reassessment proceedings, the Id. assessing officer proceeded to pass the draft assessment order as per information available on record. The AO found that assessee has income from salary of Rs. 125,608/–, Interest income chargeable to tax under the head other sources as per provisions of section 56 of the Act of Rs. 10,833/–, short-term capital gain on sale of mutual funds of Rs.1,031,124/–. The AO further made an addition under section 69 of the Act of Rs. 13,469,453/– as per the assessment order dated 29/12/2023 determining total income of the assessee at Rs.14,637,018/–.

5. Assessee, aggrieved with the draft assessment order, filed an objection before the learned Dispute Resolution Panel and intimated the learned assessing officer on 22 January 2024 of filing such objection.
6. The learned Dispute Resolution Panel passed its directions on 9/9/2024. Before the learned dispute resolution panel assessee filed additional evidence which were not admitted by the learned dispute resolution panel. The learned dispute resolution panel found that objections were filed on 22/1/2024, however the additional evidence were filed only 27 days before the deadline of the DRP to issue directions which is expiring on 30/9/2024. The DRP also noted that at the time of hearing on 3/9/2024 the assessee pointed out that this additional evidence are part of the paper book filed along with form number 35A objections. The learned DRP did not consider those objections for the reason that assessee has not followed the procedure of filing the additional evidence as per the DRP rules and then rejected. Further when the additional evidence were applied for admission, the DRP stated that it is only 27 days left before the deadline of the DRP issuing direction and therefore the DRP does not have adequate time to obtain the factual comments and reports of the learned transfer pricing officer or learned assessing officer and therefore the additional evidence were not taken on record. The DRP further claimed that if additional evidence are taken on record without giving a chance to the learned assessing officer, it would violate the principles of natural justice.

Therefore, the additional evidence were not admitted. On the merits of the case in paragraph number 2.5.2 the learned dispute resolution panel noted that that it is a case where the assessee could not submit any documents before the assessing officer and the assessing officer passed the draft assessment order under section 144C as the best judgement assessment and now before the DRP the assessee has given certain submissions which are in the nature of additional evidence. As the additional evidence are already rejected by the panel as being non-admitted, all the grounds of objection of the assessee were rejected. Accordingly, the objections filed by the assessee was dismissed.

7. Consequent to that, the learned assessing officer passed the final assessment order on 22/10/2024 determining the total income of the assessee at Rs.14,637,018.
8. Aggrieved with that, the assessee is in appeal before us.
9. It was submitted by the learned authorized representative that grievance of the assessee is that the total income of the assessee for the impugned assessment year is only Rs.33,710 which is below the basic exemption limit chargeable to tax and therefore assessee did not file any return of income. Further all communication by the learned assessing officer were sent to an inactive email ID and incorrect residential address. The actual salary income earned by the assessee is only of Rs.62,804/–, whereas the learned assessing officer has assessed it at Rs.125,608. The information obtained

from the Insight Portal is a duplicate income entry reported therein. Even the income of short-term capital gain of Rs.1,031,124/- on sale of mutual fund, entire sale proceeds was considered as income without considering the cost of acquisition. The lower authority did not consider that how the income of Rs.13,469,453/- is an unexplained investment under section 69 of the Act for the reason that assessee is a non-resident Indian and made these investments from foreign income sources and from his bank account. The assessee also submitted that when the additional evidence are placed before the learned dispute resolution panel along with the objections, same were not considered. Further when those were also filed by following the proper procedure, it was rejected on the ground that there were only 27 days remaining for passing of the direction and therefore there was no time for sending the additional evidence to the assessing Officer for remand report. Assessee also submitted that a computation of total income was provided to the learned dispute resolution panel that the salary income of the assessee is only Rs. 62,804/- out of which standard deduction is available of Rs. 40,000/- and therefore the income from salary is only Rs. 22,804. The interest income from the bank and dividend is only Rs. 10,903/- therefore accordingly the total income of the assessee is only Rs. 33,707/-. The assessee also submitted a complete chart of the mutual fund investment along with the bank statement of the assessee and therefore it was submitted that same were not chargeable to tax in India. It was the claim of the assessee

that learned dispute resolution panel should have at least directed the learned assessing officer after verification that the total income is not chargeable to tax, should not have been added. Therefore, it is submitted that the order passed by the learned that lower authorities are not sustainable, and the assessee must be granted an opportunity of hearing. The assessee further stated that assessee has left India and has also given the date chart of his arrival and stay in India and saying that his last working day with his employer in India was 30/9/2018. The reassessment proceedings took place in the year 2023 wherein the assessee was not in India and further the email sent by the assessing officer presumably are on an inactive email ID and incorrect residential address. Thus, the assessee did not get any opportunity of effectively defending his case.

10. The learned departmental representative vehemently submitted that the assessee was given several opportunities by the learned assessing officer, but did not take benefit of any of the opportunities and even did not file the return of income and therefore no fault can be found in the order of the learned assessing officer in passing the draft assessment order. The learned dispute resolution panel has also correctly did not admit the additional evidence as firstly no proper procedure was followed for making an application before the learned dispute resolution panel for admission of additional evidence. When the admission of additional evidence was applied before the learned DRP, there was no sufficient time left with the learned dispute resolution panel to

obtain the remand report of the learned assessing officer and therefore they did not admit. Therefore, it is for the assessee to avail opportunity in time and in accordance with the law. Therefore, the orders of the lower authorities are perfect in accordance with the law.

11. We have carefully considered the rival contention and perused the orders of the learned lower authorities. In this case, admittedly, assessee is a non-resident. The case of the assessee was reopened based on the information available from Insight portal. Based on this, notice u/s. 148 was issued and further notices u/s. 142 (1) of the Act twice and a show cause notice was issued which were not complied with by the assessee. The claim of the assessee is that perhaps the notices were sent to an inactive email address. It is also shown that assessee already left India in 2019 and was not there in 2023 in India to comply with the notices. The assessee has filed objection before the learned dispute resolution panel and placed additional evidence along with the objection. As those objections were not in accordance with the rules of The Dispute Resolution Panel for admission of additional evidence, those were not admitted and adjudicated upon. Further the dispute resolution panel when presented with an application for additional evidence, it was rejected on the ground that only 27 days are left in passing the direction and therefore now the assessing officer could not be given any opportunity of verifying those additional evidence. Therefore,

the draft assessment order was confirmed. Consequently, the final assessment order was also passed.

12. In nutshell, the assessee did not get any effective opportunity of hearing before the learned assessing officer during passing of the draft assessment order and further when the assessee filed an objection before the learned dispute resolution panel. His contentions were not accepted as those were additional evidence and were not in compliance with the law.
13. Undisputedly, the assessee has been assessed without any opportunity of hearing including opportunity of placing the relevant documents before the learned lower authorities.
14. Undisputedly, nobody should be condemned unheard.
15. In view of the above facts, we restore the whole appeal back to the file of the learned assessing officer with a direction to the assessee to substantiate before learned assessing officer that there is no income chargeable to tax in the hands of the assessee in India except, the salary income and income from other sources which is stated to be in the computation of total income filed before the learned dispute resolution panel and further there is no income assessable u/s. 69 of the Act in case of the assessee. The ld. assessing officer may verify the same and decide the issue in accordance with the law, first passing the draft assessment order. The assessee may thereafter file an objection before the learned

dispute resolution panel, if he wishes to object to the draft assessment order.

16. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 27th day of December, 2024.

Sd/-

(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 27th December, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.