

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

IT(IT)A No.1694/Bang/2024
Assessment Year: 2019-20

ITO (International Taxation) Ward-1(2) Bengaluru	<b>Vs.</b>	M/s. Stany Basil Mathias Mathias Paradise, ESI Hospital Road 3 <sup>rd</sup> Cross Lower Bendoor Mangalore Kankanady SO Dakshina Kannada Karnataka 575 002  <b>PAN NO : AQPPM0467N</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	:	Ms. Sunaina Bhatia, A.R.
<b>Revenue by</b>	:	Shri V. Parithivel, D.R.

<b>Date of Hearing</b>	:	28.11.2024
<b>Date of Pronouncement</b>	:	24.02.2025

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the revenue is directed against the Order of the learned CIT(A)/NFAC vide DIN and Order No. ITBA/APL/S/250/2024-25/1066960466(1) dated 24.7.2024 for the Assessment Year (in short “AY”) 2019-20 passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’).

2. The revenue has raised following grounds of appeal:

1. Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in allowing relief to the assessee on the grounds related to additions made towards unexplained investment u/s 69 of IT Act totaling to Rs.3,32,96,002/-.

2. Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in considering the additional evidences filed by the assessee during the appellate proceedings without appreciating the fact that the Assessing Officer had not examined such additional evidences on the basis of which the Learned CIT(A) had granted relief to the assessee.

3. Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in considering the additional evidences filed by the assessee during the appellate proceedings without appreciating the fact that the said additional evidences were not filed by the assessee before the Assessing Officer till the date of passing the Draft Order u/s 144C(1) of IT Act.

4. Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in not allowing any opportunity to the Assessing Officer under Rule 46A of IT Rules without appreciating the fact

that the said additional evidences were not filed by the assessee before the Assessing Officer till the date of passing the Draft Order u/s 144C(1) of IT Act.

5. Whether on the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in not allowing any opportunity to the Assessing Officer under Rule 46A of IT Rules without appreciating the fact that the Assessing Officer had not examined the evidences on the basis of which the Learned CIT(A) had granted relief to the assessee since the assessee had filed only part details that too after passing the Draft Order u/s 144C(1) of IT Act and the Assessing Officer, is not empowered to consider the submission filed after passing the Draft Order u/s 144C(1) of IT Act and is not empowered to make any changes in its own Draft Order u/s 144C(1) of IT Act, thereafter until & unless assessee files objection before the Hon'ble DRP.

6. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.

3. Brief facts of the case are that the assessee is a Senior citizen Non-Resident residing in Dubai for close to 30 years. For the past 8 years, the Assessee has been in employment with M/S Daikin Middle East and free Zone (Jebel Ali PO Box 18674, Dubai UAE). The assessee has not filed any return of income for the period under consideration. The case of the assessee was reopened u/s 147 of the Act after following the due procedure as envisaged u/s 148A of the Act. During the course of reassessment proceedings, the AO issued several notices u/s 142(1) and show cause notices, but the assessee remained non-responsive. The assessee had made investments towards Time Deposits made in accounts with in bank of Rs. 38,20,000 and Rs.76,64,482/- and also credits in Bank accounts with bank where in account value or value at the end of the report in period is at Rs. 1,66,900 with Max Life Insurance Company Limited, Rs.5,28,852/- with Birla Suns Life Mutual Fund, Rs.1,59,330/- with HDFC Mutual Fund, Rs. 81,36,846/- with SBI and Rs.1,28,19,592/- with Standard Chartered Bank. As such, the total investments made by the assessee during the year under reference works out to Rs.3,32,96,002/-. In view of the above facts and there being no explanation from the assessee as regards the sources of investments made amounts totaling to Rs.3,32,96,002/- and hence the same amount is added to the total income of the assessee u/s 69 of the Act.

**3.1** Further, the assessee has received Interest amounts of Rs.4,242/- from bank. The assessee has not filed the ROI, hence the interest earned remained undisclosed. Accordingly, the same interest income is added to the total income of the assessee. Further the assessee had also earned income amounting to Rs.9,750/- on account of Sale of Securities. The income earned is taxed as Short-Term Capital Gains and added to the total income of the assessee. As per the Assessment Order under Section 147 r.w.s Section 144 dated 27<sup>th</sup> May 2024, the Assessing Officer (AO) has made the below

mentioned additions and issued a notice of demand under Section 156 of the Act for Rs.5,42,89,053/-.

Sl No	Details Of Investment	Amount (Rs)
1	Unexplained Investments u/s 69	3,32,96,002/-
2	Income from Other Source	4,242/-
3	Short term Capital Gain on sale of Securities	9,750/-
	TOTAL	3,33,09,994/-

3.2 Aggrieved by the assessment completed u/s 147 r.w.s. 144 of the Act dated 27.5.2024, the Assessee preferred an appeal against all of the additions made above before the ld. CIT(A)/NFAC. The CIT(A) partly allowed the appeal of the assessee by considering the written submission along with the documents/records produced during the appellate proceedings. Aggrieved by the order of ld. CIT(A), the revenue has filed the present appeal before the Tribunal. The assessee had filed paper book comprising 68 pages enclosing therein the documents/records filed before the AO as well as before CIT (A).

3.3 The main contention that is raised by the revenue is whether ld. CIT(A) is justified in partly allowing the appeal of the assessee by considering the additional evidences filed by the assessee during the appellate proceedings that too without allowing any opportunity to the assessing officer.

4. Before us, ld. D.R. vehemently submitted that ld. CIT(A) erred in considering the additional evidence filed by the assessee without appreciating the fact that AO had not examined such additional evidences. Further, ld. D.R. submitted that these evidences were not filed by the assessee before the AO till the date of passing the draft order u/s 144C(1) of the Act. Lastly, ld. D.R. submitted that the assessee had filed only part details that too after passing the draft

order u/s 144C (1) of the Act and the AO is not empowered to consider the submission filed after passing the draft order.

5. Ld. A.R. of the assessee on the other hand submitted that the question of additional evidences filed before the ld. CIT(A) as alleged by ld. D.R. does not arise in the present case as all these documents were also produced before the AO before passing the final assessment order. Therefore, it is not a case the documents are not available before the AO and the assessee has filed for the first time before the ld. CIT(A). Lastly the ld. A.R. of the assessee relied upon the order passed by ld. CIT(A) in support of his claim on merits of the case.

6. We have heard the rival submissions and perused the materials available on record. On going through the order of assessment dated 27/05/2024, we find that the assessment was completed on a total assessed income of Rs.3,33,09,994/- u/s 147 r.w.s. 144 of the Act. Further, on going through the paper book, we find that during the course of assessment proceedings, the assessee has submitted the detailed written submission along with the copy of Axis Bank confirmation, copies of Max Life Policy, copy of Aditya Birla Sunlife statement as well as copy of HDFC Mutual Fund statement on 12.4.2024, apart from assessee's last submission dated 9.4.2024 by providing all the explanations in connection with the variations proposed in the order u/s 144C (1) of the Act. We also take a note of the fact that ld. CIT(A) after considering the documents/records submitted during the appellate proceedings, has partly allowed the appeal of the assessee. We are of the considered opinion that the power of the CIT(A) are co-terminus with that of the AO i.e. he can do all that the AO could do. We found the order of ld. CIT(A) to be reasonable and logical on the given state of facts and the grounds raised by the assessee on merits of the case by considering the documents/records produced by the assessee.

6.1 Hon'ble Madras High Court in the case of Arul Murugan and Co. (1982) 51 STC 381 has observed as follows:'

*“In a tax appeal, the appellate authority is very much committed to the assessment. The appellate authority can itself enter the arena of assessment, either by pursuing further investigation or causing further investigation to be done. It can do so on its own initiative, without being prodded by any of the parties. It can enhance the assessment, taking advantage of the opportunity afforded by the tax payer's appeal, even though appeal itself has been mooted only with a view to a reduction in the assessment. These are special and exceptional attributes of the jurisdiction of a tax appellate authority. These attributes underline the truth that the appellate authority is no different, functionally and substantially, from the assessing authority itself.”*

6.2 Therefore We are of the considered opinion that legislature has conferred very wide powers upon the appellate commissioner once an appeal is preferred to him by the assessee. An appeal is only a rehearing or a retrial. In the absence of any statutory inhibitions or restrictions, the Id. CIT(A) has precisely the same powers, exercisable or in the same manner and to the same extent, as the AO has, in the first instance. Further, u/s 250(4) of the Act, before disposing of any appeal, the Id. CIT(A) is competent to make such further inquiry as he thinks fit or he may direct the AO to make further inquiries and report the result of the same to the Joint Commissioner (A) or the Commissioner (A).

6.3 We are of the opinion that as the assessee had produced all the evidences/documents/records before the AO on or before the completion of assessment, the same evidences/documents/records cannot be treated as an additional evidence filed before the Id. CIT(A) as these are not filed for the first time before the Id. CIT(A). In our view, the Id. CIT(A) has rightly passed an order by stating the points for determination and the reason for decision by taking into consideration the documents/records/evidences produced by the

assessee. We do not find any merits in the grounds raised by the Revenue.

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 24<sup>th</sup> Feb, 2025

**Sd/-**  
**(Waseem Ahmed)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 24<sup>th</sup> Feb, 2025.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**