

IN THE INCOME TAX APPELLATE TRIBUNAL, DIVISION BENCH, JODHPUR

HEARING THROUGH: VIRTUAL MODE

BEFORE: SHRI. LALIET KUMAR, JM & DR. MITHA LAL MEENA, AM

ITA No. 791/Jodh/ 2024
Assessment Year: 2018-19

Shyam Lal Suthar C-108, Shastri Nagar Jodhpur	Vs.	The ACIT/DCIT Circle-1, Jodhpur
PAN NO: AXIPS9997H		
Appellant		Respondent

Assessee by : Shri Amit Kothari, C.A
Revenue by : Shri Arvind Kumar Gehlot, Addl. CIT DR
Date of Hearing : 09/10/2025
Date of Pronouncement : 30/10/2025

आदेश/Order

PER LALIET KUMAR, J.M:

This appeal by the assessee arises from the order dated 30.08.2024 passed by the Ld. CIT(A)/ NFAC, Delhi under section 250 of the Income-tax Act, 1961 for Assessment Year 2018-19, whereby the addition of Rs.84,14,875/- made by the Assessing Officer on account of unexplained investment was confirmed.

2. Briefly, the facts of the case are that the assessee, an individual resident of Jodhpur, filed his return of income on 30.11.2018 declaring total income of Rs.22,38,530/-. The case was selected for limited scrutiny on the issue of "foreign financial interest", i.e. "new foreign asset in the nature of financial interest in any entity (Business ITR)" as mentioned in para 1 of the assessment order.

2.1 The Assessing Officer issued notices under section 142(1) on 08.11.2020, 28.02.2021, 23.03.2021 and 09.04.2021. In response to the first notice, the assessee furnished on 22.11.2020 a detailed reply enclosing his bank statements, ledger account and capital account in the firm M/s Jodhana Art & Crafts (PAN AAHFJ4691D), and SBI foreign-remittance advices dated 25.04.2017 and 11.05.2017 showing transfers of USD 40,000 and USD 90,000 respectively to Style N Living Inc., USA, with narration "acquisition of capital in foreign company". The

assessee explained that the total remittance of Rs.84,14,875/- represented a capital contribution made abroad, funded out of Rs.83,00,000/- withdrawn from the partnership firm and Rs.1,14,875/- from personal savings.

2.2 Subsequently, the AO required vide notice dated 09.04.2021 (reproduced in para 3 of the assessment order) to furnish certified copies of the foreign partnership deed, capital account, balance sheet, bank statement, tax returns of the foreign entity, and clarification regarding discrepancy in the U.S. address. As per the AO, the assessee failed to comply. A show-cause notice along with draft assessment order was issued on 19/20.04.2021 calling for reply by 23:59 p.m. on 20.04.2021. The assessee had, however, already moved an adjournment request on 12.04.2021 citing Covid-19 lockdown restrictions. The AO completed assessment under section 143(3) r.w.s. 144B on 23.04.2021, treating the amount of Rs.84,14,875/- as unexplained investment/income from other sources (para 4 of AO's order), without specifying any charging section, and initiated penalty under section 270A.

3. Feeling aggrieved by the order of Assessing Officer, the assessee preferred the appeal, before Ld. CIT(A) . The Commissioner (Appeals), NFAC, by order dated 30.08.2024, confirmed the addition holding that the assessee failed to produce requisite evidence from the U.S. entity. Therefore the investment remained unexplained.

4. Against the order of the Ld. CIT(A) the assessee preferred in appeal before the Tribunal.

5. During the course of hearing, the Ld. AR submitted that the addition is legally unsustainable as the assessment order does not mention any charging section; that the source of investment was fully explained and evidenced through books and bank channels; and that the impossibly short time during a Covid lockdown violated natural justice. He submitted that the assessee had made best efforts to obtain documents from the U.S. firm, but the same could

not be procured in time due to pandemic conditions, and that he is now prepared to furnish those records.

6. Per contra, the Ld. DR relied upon the assessment order, emphasising that despite repeated notices (paras 2–3 of AO's order), the assessee failed to submit certified documents of the foreign entity; hence the addition was justified. He further contended that the burden to prove genuineness lies primarily upon the assessee.

7. We have heard the rival contentions and perused the record. The Assessing Officer made the impugned addition of Rs.84,14,875/- by treating the capital investment in Style N Living Inc., USA as unexplained, primarily due to the non-production of documentary evidence from the foreign entity, even though the domestic source of remittance was explained through partnership withdrawals and banking channels. The order of the CIT(A) also proceeds on the same ground.

7.1 We note that the investment was made through authorised banking channels and duly disclosed in Schedule-FA of the return. However, the identity of the foreign recipient entity, its constitution, and the confirmation of receipt of the capital contribution were not independently verified, either because the assessee could not procure the necessary papers (even though the assessee had allegedly invested the money as a capital contribution) or the AO did not invoke statutory powers to obtain information from abroad. In our considered view, both sides share responsibility: the assessee must provide supporting evidence from the foreign recipient, while the Assessing Officer, as an officer of the State, is empowered under the Act to obtain information through competent channels and should not remain a passive recipient of non-compliance.

7.2 The provisions of the Act, including section 131(1), section 133(6), section 90 and section 90A read with Rule 44G of the Income-tax Rules, enable the

Department to issue commissions, make reference through the Foreign Tax & Tax Research Division, and obtain necessary confirmations from foreign authorities. Therefore, when the assessee asserts that the payment was made through legitimate banking channels as capital investment in a foreign concern, it is incumbent upon the AO to verify such claim by utilising those statutory powers instead of rejecting the explanation summarily.

7.3 In the interest of justice and fair play, we therefore set aside the order of the learned CIT(A) as well as that of the Assessing Officer and restore the matter to the file of the Assessing Officer for a fresh adjudication. The assessee is directed to produce before the AO all possible relevant evidence, including—

(a) certified copy of the partnership deed or incorporation documents of Style N Living Inc., USA,

(b) confirmation of receipt of capital contribution,

(c) relevant bank statement and financial extracts of the foreign entity for the relevant period, and

(d) any correspondence or proof showing that the remittance was duly credited as capital.

7.4 The Assessing Officer, in turn, shall, if necessary, invoke the appropriate provisions of the Income-tax Act to call for records or confirmations directly from the foreign recipient or through the competent authority under the exchange-of-information framework, after recording proper reasons in writing. The AO shall afford adequate opportunity of being heard to the assessee, follow due process, and then decide the issue afresh by a speaking order in accordance with law. Needless to add, no coercive penalty proceedings shall continue till such verification is completed.

7.5 We make it clear that we have not expressed any conclusive view on the merits of the addition and all issues are kept open for fresh consideration.

8. In the light of above the appeal is allowed for statistical purposes .

(Order pronounced in the open Court on 30/10/2025)

Sd/-

(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

AG

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, JODHPUR
6. Guard File

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar