

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 40/Ahd/2021 &
C.O. No. 26/Ahd/2021
Assessment Year 2009-10**

The ACIT, (INT. TAXA), Baroda	Vs	Shri Vijaykumar Vasantbhai Patel, 1-2, Vihar Society, V.K.V Road, Nadiad PAN: ADDPP0710E
Shri Vijaykumar Vasantbhai Patel, 1-2, Vihar Society, V.K.V Road, Nadiad PAN: ADDPP0710E (Appellant)	Vs	The ACIT, (INT. TAXA), Baroda (Respondent)

**Appellant by : Shri Sudhendu Das, CIT/DR
Respondent by : Shri Chetan Shah, A.R.**

Date of hearing : 13-12-2022
Date of pronouncement : 16-12-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the order dated 05.03.2020 passed by the Commissioner of Income Tax (Appeals)-13, Ahmedabad, as against the ex parte Assessment order passed

under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2009-10 and Cross Objection is filed by the Assessee.

2. The registry has noted that there is a delay of 281 days in filing the appeal by the Revenue when the same was filed on 30.03.2021. Similarly, the registry has noted that there is a delay of 19 days in filing the Cross Objection by the Assessee when it was filed on 22.07.2021. Both these dates were under the Covid-19 period wherein Hon'ble Supreme Court in M.A. No. 665 of 2021 in SMW(C) No. 3 of 2020 dated 23.09.2021 passed the following orders:

“.....

8. *Therefore, we dispose of the MA No.665 of 2021 with the following directions: -*

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

.....

2.1. So, there is no delay in filing the above appeal by the Revenue and the Cross Objection filed by the Assessee.

2.2. The brief facts of the case is that the assessee is an individual and Non-Resident Indian. For the Assessment Year 2009-10, the

assessee filed his original Return of Income on 29.09.2009 declaring Nil income. Regular assessment was completed u/s. 143(3) of the Act on 12.12.2011 determining the total income at Rs. 1,32,216/-. Later the Assessing Officer came in possession of the information that the assessee had made investment of Rs. 23,06,83,200/- in Fortis Mutual Fund (later renamed as BNP Paribas Mutual Fund) and this was neither disclosed in the Return of Income filed by the assessee nor disclosed during the assessment proceedings. Therefore a notice u/s. 148 was issued on 03.11.2014. In response, the assessee filed a letter dated 10-12-2014 to treat the original Return of Income in response to the u/s. 148 notice and called for reasons recorded for reopening the assessment.

2.3. The assessing officer called for information from the Principal Manager, BNP Paribas Mutual Fund to confirm the investment made by the assessee. BNP Paribas Mutual fund confirmed the investment of Rs. 23.06 crores by the assessee. The Assessing Officer issued notice u/s. 142(1) calling for explanation from the assessee. The assessee replied vide letter dated 17.10.2015 that he did not get the enclosures of the BNP Paribas Mutual Fund. The A.O. provided the details vide letter dated 19.10.2015 and requested the assessee to submit its reply. However as there was no response from the assessee, the Assessing Officer treated the amount of Rs. 23.06 crores as unexplained investment u/s. 69 of the Act and added as the assessee's income.

3. Aggrieved against this assessment order, the assessee filed an appeal before Id. CIT(A) wherein the assessee submitted that he originally denied the investment in mutual fund vide letter dated 12.10.2011 because of mis-communication with the Authorized Representative. Later the assessee collected the information for investment of BNP Paribas Mutual Fund, whereas details like Tax status (NRI Repatriation), Bank account details of Standard Chartered Bank, Chennai NRE Account and contended that the investments have been made from the NRE Account on repatriation basis by availing a loan from Standard Chartered Bank. However the above transactions were six years old, the bank took time in providing the information beyond the 3rd week of March 2016. Therefore the assessee could not give the explanations, information and details to the Assessing Officer on the above the investments made by the assessee. The assessee further pleaded when the investment made from NRE Account of the Non-Resident assessee, it is not taxable in India and the above funds were sourced from outside India, therefore not taxable in India.

3.1. The Ld. CIT(A) called for a Remand Report from the Assessing Officer and after considering the same passed the following orders:

5.11 While prima facie the submissions by the appellant through the Ld. ARs on the issue of sources of fund for investment in mutual fund appear to be reasonable, the appellant's letter dated 12.10.2011 to the ITO Ward-1, Nadiad denying the said investment remains a chink in the entire proceedings. However in totality of facts and circumstances of the case it appears appropriate that the AO be directed to obtain from the appellant the certified true copies of documents from the bank which the appellant shall be bound to furnish before the AO while giving effect to the appellate order and that AO having satisfied himself that the source of such investment is fund outside India, shall delete the addition made

4. Aggrieved against this order, the Revenue is in appeal before us raising the Grounds of Appeal and the assessee's Grounds of appeal in Cross Objection are as follows:

Revenue Grounds:

1. *Whether on the facts and circumstance of the case and in law, Ld. CIT(A) has erred in remitting the matter to the A.O. for verification of documents which is beyond the scope of section 250 of the Act?*
2. *Whether on the facts and circumstance of the case and in law, Ld. CIT(A) is correct in remitting the matter to the A.O though the assessee vide submission dated 12 10.2011 to ITO-ward-1 Nadiad has categorically confirmed that he has not made any investment in his name or jointly with any member of his family?*
3. *Whether on the facts and circumstances of the case and on facts, Ld. CIT(A) is correct in not appreciating the fact that the assessee failed to disclose true and correct information of his investment in Fortis Mutual Fund amounting to Rs 23,06,83.200/- in his original return of income u/s. 143(3) of the Act as well as during the assessment proceedings Lys 143(3) of the Act and accepting additional evidences u/s rule 46 A though the case of assessee does not fulfill the requirements of rule 46A?*
4. *The Ld CIT(A) erred in accepting the submission of the assessee on the basis of photo copies which didn't bear any seat/stamp of bank authorities and whether, the Ld. CIT(A) is correct in deciding the matter without verifying the original documents.*
5. *Whether on the facts and circumstance of the case and in law, Ld. CIT(A) has erred in directing the AO to obtain from the appellant the certified true copies of documents which the appellant shall be found to furnish before the AO while giving effect to the appellate order and that AO having satisfied himself that the source of such investment is fund outside India shall delete the addition which is clearly in the nature of set aside of the assessment which clearly violates the scope and provisions of Section 250 of the I.T. Act, 1961?*

Assessee Ground:

1. *Appeal filled by the Appellant is bad in law, as it has been filled beyond the time limit permitted in the Law, ie. within 60 days from the date of service or communication of the order.*

As per the provisions of Section 253(3)

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or Commissioner, as the case may be. :

Provided that in respect of any appeal under clause (b) of sub-section (1), this sub-section shall have effect as if for the words "sixty days", the words "thirty days" had been substituted. '

As per the Form 36 filled by the Appellant, the date Order is 05/03/2020 and date of service of Order is 23/04/2020. The Appeal to the Tribunal is filled on 30/03/2021, which is beyond the time limit of 60 days for filling the appeal. Thus, Appeal is filled beyond the time limit and even, in column no 11 of Form No 36 it is mentioned that, there is " No " delay in filling of appeal, which is against the fact. The application seeking condonation of delay is also not requested by the appellant.

2. Ld. CIT (A) has rightly remitted the matter to the A.O. for verification of documents and it is according to the provisions and within the scope of the Section 250 of the I T Act.

3. Ld CIT (A) has rightly accepted the additional evidences which were according to the provisions of rule 46A of the I T Act. Case of the Assessee has fulfilled the requirements of Rule 46A of the I T Act as under:

(l)As per provisions of Rule 46A(1)(d), the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant, as explained here under :

a. As mentioned by the A.O, the letter dated 12.10.2015 is the letter providing the details of investment in the BNP Paribas, but it was without attachment

b. Letter dated 19.10.2015 is with reference to the letter dated 12.10.2015 and sent the attachment.

Except these two letters, neither any correspondence nor notice was issued by the Ld AO.

c. Even Ld AO has not issued any show cause notice for the addition of this huge amount.

From the above fact, it has been established that, Ld AO has not provided sufficient and ample opportunity which is against the natural justice. And hence, as the case of the Assessee has fulfilled the requirements of Rule 46A, Ld. CIT (A) is correct in accepting the

additional evidences which is according to the provisions of Rule 46A.

(2)As per provisions of Rule 46A(l)(c), the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal.

The cause for the non-submission of the material evidences before the AO is as under:

Ld AO has provided us the details of the investment in BNP Paribas Mutual fund vide his letter dated 19.10.2015.

Immediately then after we have approached the Standard Chartered Bank to provide us the details of our loan and investment in the BNP Paribas Mutual Fund. But, the loan documents were at the Standard Chartered Bank, Singapore and they were related to the FY 2008-09, say six years back. So, there was the delay from the Bank in providing us the details and it has been provided to us only in the third week of the March 2016. Till then we had not received any communication from the Ld AO.

Immediately, on receipt the details from the Standard Chartered Bank, we had submitted all the details and evidences to Ld AO on 25/03/2016 and before the receipt of the assessment order.

As the matter is related to F Y 2008-09 and six years old, the Bank had taken a considerable time in providing the necessary details and documents, so there was a delay in submitting it to the Ld AO.

Considering this sufficient cause, we were prevented to produce the evidences before the AO.

As the additional evidences suffice the provisions made in rule 46A, Ld CIT (A) has rightly accepted the additional evidences.

4. Ld CIT(A) has passed the Order according to the power vested as per the provisions of Section 250 of the I T Act and has not violated any provisions of Section 250 of the IT Act.

4.1. Though both the parties have raised various grounds in their respective appeal and Cross Objection. The short point is to be decided is whether the investment made by the assessee of Rs. 23.06 crores in Mutual Fund is assessable to tax in India. The

assessee has proved beyond doubt that he is a Non-Resident Indian who borrowed for loans from Standard Chartered Bank, Chennai NRE Account. This is evident from Ld. CIT(A)'s order at Para 5.7 that from the letter dated 27.08.2008 from Manager Credit Operation addressed to the assessee at his address outside India, it is seen that the assessee was granted term loan of USD 44,80,000/- at the rate of 0.60% and that an amount of Rs. 23,06,83,200/- deposited on 29.08.2008 in the Standard Chartered Bank, Rajaji Salai, Chennai (account No. 427-1-029798-6 savings account in INR) and the amount was transferred on the same day for investment in the mutual fund. Thus it is clear the source of the fund is from outside India and not taxable in India. The assessee could not produce these documents during time barring period of reassessment, when the same were more than six years old documents to be obtained from the bankers. Therefore the Ld. CIT(A) directed the Assessing Officer to obtain from the assessee, the certified True Copies of the above documents from Standard Chartered Bank and the assessee shall bound to furnish the same, before the Assessing Officer while giving effect to the appellate order. The ld. CIT(A) further directed the A.O. having satisfied himself that the source of such investment is from outside India shall delete the addition made by him. We do not find any infirmity in the direction issued by the Ld. CIT(A). The Ld. CIT(A) having satisfied with the copies of the documents submitted by the assessee, has taken a conscious decision to delete the additions, since the funds are NRI Repatriation funds came outside India and is not taxable in India. Further the assessee also produced before

us a copy of giving effect order dated 04.11.2020 passed by the Assessing Officer deleting the addition made by him.

5. For these above reasons, the Grounds raised by the Revenue does not have any merits and the same are hereby rejected.

6. In the result, the appeal filed by the Revenue is hereby dismissed. Consequently, the Cross Objections filed by the Assessee is also dismissed.

Order pronounced in the open court on 16 -12-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 16/12/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद