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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Decision delivered on: 06.12.2023*+ **ITA 701/2023 & CM Nos.62876-77/2023****COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2**

..... Appellant

Through: Mr Sanjay Kumar, Sr Standing Counsel.

versus

**SH. HOTCHAND TECHCHAND PUNJABI**

..... Respondent

Through: None.

**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA**

[Physical Hearing/Hybrid Hearing (as per request)]

**RAJIV SHAKDHER, J. (ORAL):****CM Nos.62876-77/2023 [Applications filed on behalf of the appellant seeking condonation of delay of 82 days in filing and 7 days in re-filing the appeal]**

1. These are applications filed on behalf of the appellant/revenue, seeking condonation of delay in filing and re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 82 days in filing the appeal, while the delay in re-filing is 7 days.

2. Having regard to the period involved in filing and re-filing the appeal, we are inclined to condone the same.

2.1 It is ordered accordingly.

3. The applications are, accordingly, disposed of.



### **ITA 701/2023**

4. This appeal concerns Assessment Year (AY) 2012-13.
5. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 17.02.2023, passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
6. The sole issue which arises in the instant case, according to Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/revenue, is whether the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] was right in admitting additional evidence, without following the procedure laid down in Rule 46A(3) of the Income Tax Rules, 1962 [in short, “Rules”].
7. The record shows that the Assessing officer (AO), for the period under consideration, had issued notice under Section 148 read with Section 147 of the Income Tax Act, 1961 [in short, “Act”], having received information with regard to the time deposits made by the respondent/assessee with Canara Bank. The AO incorrectly obtained information that the time deposits made by the respondent/assessee amounted to Rs.19,72,95,564/-. It appears that the AO issued notice to the respondent/assessee under Section 142(1) of the Act, to which he did not receive any response. Because of the response not being received, the AO proceeded to take recourse to Section 144 of the Act.
8. Accordingly, the assessment was completed *qua* the respondent/assessee as per “the best judgment assessment”.
9. The income of the respondent/assessee was assessed at Rs.16,86,47,780/- which was, in fact, the addition made under Section 69B of the Act, based on unexplained investment in time deposits.



9.1 It appears that the addition was scaled down by the AO from Rs.19,72,95,564/- to Rs.16,86,47,782/-, as there were duplicate entries in the statement amounting to Rs.2,86,47,782/-.

10. Being aggrieved, the respondent/assessee carried the matter in appeal to the CIT(A). The CIT(A) carried out an inquiry in the matter by exercising his powers under Section 250(4) of the Act and evidence was sought with regard to remittances made to the NRE Account maintained with the Canara Bank.

11. We may note that the respondent/assessee had taken the stand before the CIT(A) that he had no knowledge about the notices said to have been issued to him under Section 142 of the Act as they were delivered to his old address.

11.1 It was stated that the respondent's/assessee's stand was that he had no information as to who had collected the notices at his old address, *albeit*, on his behalf.

12. According to the respondent/assessee, he had acquired knowledge of the proceedings being carried out by the AO only when he was issued a show-cause notice dated 11.12.2019 *via* e-mail. It was the respondent's/assessee's stand that he had replied to the said show cause notice *via* e-mail dated 12.12.2019, whereby, an explanation was given with regard to the source of time deposits made with Canara Bank.

13. The fact that because of Covid-19 the respondent/assessee could not travel to India from the USA was also put forth by him as a reason for not participating in the proceedings before the AO.

13.1 It was averred that the respondent/assessee was 71 years old and, therefore, a lenient view ought to be taken in the matter.



14. As noted above, the CIT(A) exercised his powers under Section 250(4) of the Act, which is co-equal to that of the AO. The CIT(A) discovered that the actual time deposits made in Financial Year (FY) 2011-12 [AY 2012-13] were Rs.9.50 crores and not Rs.19,72,95,564/-, which was the figure taken into account by the AO. The difference in the two amounts, i.e., Rs.10,72,95,564/-, was wrongly quoted by Canara Bank. Therefore, clearly, that amount had to be deleted.

15. Insofar as Rs.9.50 crores were concerned, the respondent/assessee provided the relevant information which was examined by the CIT(A). The details of the remittances made by the respondent/assessee stand tabulated in paragraph 2.1.1 of the CIT(A)'s order.

15.1 In sum, the respondent/assessee indicated to the CIT(A) that the deposit of Rs.9.50 crores, which was made in several tranches, was secured from NRE Saving Bank Account No.0207103041821, maintained with the Mumbai branch of Canara Bank.

16. The account statement was produced and other relevant documents were also submitted, which were appraised by the CIT(A). Thus, having regard to the material produced before him, the CIT(A) deleted the entire addition, which included Rs.9.50 crores, having regard to the fact that the source of remittances was the income earned by the respondent/assessee in USA.

16.1 The finding returned by the CIT(A) with regard to the source of funds is captured in paragraph 5.9 of the order. For convenience, the said portion of the order is set forth hereafter:

*“5.9 Regarding the source of Rs.9,50,00,000/- Appellant has mentioned that the source of entire funds used in time deposits were the remittances*



*from his overseas bank account out of his earnings overseas. All the credits appearing in the bank account in foreign currency have been submitted in form of Bank statement. The appellant was involved in packaging industry, a retail business in USA. Due to the advanced age he has been living a retired life with his family in USA since January 2014 therefore he has sent remittances from USA which has been earned out of his sheer hard work and business abroad and he has made due declarations in this regard at the time of these remittances. The source of the money invested in time deposits with Canara bank has been duly reflected in the bank statements submitted by the appellant. Thus the source of these bank deposits of Rs.9,50,00,000/- is duly explained in the form of bank statement submitted in the course of appellate proceedings therefore the appellant is entitled to the relief of Rs.9,50,00,000/. Thus the appellant is entitled to a relief of Rs.9,50,00,000/- on account of submission of supporting documents indicating the flow of funds from abroad which have been utilised in the time deposits with Canara bank. Earlier a relief of Rs.10,22,95,564/- has already been given to the appellant because of the wrong reporting by the Canara bank. So cumulatively the appellant gets a relief of Rs.19,72,95,564/-. The AO while finalising the assessment order has suo moto considered an amount of Rs.2,86,47,782/- as duplicate entries and made a net addition of Rs.16,86,47,782/- out of total alleged amount of Rs.19,72,95,564/- reported by Canara Bank in ITS.”*

17. Being aggrieved, the appellant/revenue carried the matter in appeal to the Tribunal. The Tribunal dismissed the appeal preferred by the appellant/revenue on two grounds.

17.1 Firstly, that the CIT(A) had exercised his powers under Section 250(4) of the Act which was co-equal to that of the AO. It also took note of the fact that notice was issued to the concerned branch of Canara Bank under Section 133(6) of the Act and it was only after information was received from Canara Bank and material evidence furnished by the respondent/assessee, that the addition was deleted. The relevant observations made in this behalf by the Tribunal being apposite are set forth hereafter:

*“7. We have considered rival submissions and perused the materials on record. The basic grievance of the Revenue is, learned Commissioner (Appeals) should not have deleted the addition based on additional evidences furnished by the assessee without forwarding them to the Assessing Office for his examination and opinion. It is fairly well settled, powers of the first*



*appellate authority is co-terminus with the Assessing Officer. On a reading of section 250 and 251 of the Act, it is very much clear that learned Commissioner (Appeals) while deciding an appeal can consider and decide any matter arising out of proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised by the appellant. In fact, sub-section (4) of section 250 of the Act empowers the first appellate authority to make further inquiry as he thinks fit for disposing of the appeal. Even, sub-rule (4) of Rule 46A empowers the first appellate authority to call for and examine evidences and make necessary inquiry. Thus, as could be seen, the statutory provisions empower the first appellate authority make necessary inquiry and call for evidences to decide appeal.*

8. *In the facts of the present appeal, undoubtedly, learned Commissioner (Appeals) exercising statutory power vested with him has called for and examined necessary evidences for deciding the issue. Such exercise of power by learned first appellate authority assumes importance in the present case considering the fact that the assessee did not get a fair opportunity to represent his case before the Assessing Officer. On a careful reading of the impugned order of learned Commissioner (Appeals) it is very much clear that considering the fact that the assessee did not get a fair opportunity to represent his case before the Assessing Officer, learned Commissioner (Appeals) took the responsibility upon himself to inquire into the matter and in the process has called for necessary evidences, not only from the assessee, but from the concerned bank through the assessee. After examining the evidences, learned Commissioner (Appeals) has factually found that the actual quantum of time deposits in Canara Bank was to the tune of Rs.9,50,00,000/-. He has further found that even Rs.9,50,00,000/- deposited in Canara Bank was out of overseas remittances from the income earned by the assessee as a resident in USA for past so many years. No contrary material has been brought on record by the Revenue to disturb the aforesaid factual findings of learned Commissioner (Appeals). Therefore, if, upon examining the material on record learned Commissioner (Appeals) has recorded a factual finding, without pointing out any deficiency or discrepancy in such finding, the decision of learned Commissioner (Appeals) cannot be reversed merely on the allegation of violation of Rule 46A.”*

18. According to us, the Tribunal has reached the correct conclusion. Mr Kumar cannot but accept that the CIT(A) has co-equal powers as that of the AO. The enquiry carried out by the CIT(A) revealed a grave factual error committed by the AO, in noting the figure with regard to the time deposits.

19. In our opinion, since the CIT(A) has returned a finding of fact with



regard to the source of funds that were found deposited in the period in issue, i.e., Rs.9.50 crores, no interference is called for as these findings have been affirmed by the Tribunal as well.

20. Thus, according to us, no substantial question of law arises for our consideration.

21. The appeal is, accordingly, closed.

22. The registry will dispatch a copy of the order passed today to the respondent/assessee, *via* all modes including e-mail.

23. Parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER, J**

**GIRISH KATHPALIA, J**

**DECEMBER 6, 2023**

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