

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.706/M/2019
Assessment Year: 2006-07**

DCIT – 4(2)(1), Room No.1708, 17 th Floor, Air India Building, Nariman Point, Mumbai-400021	Vs.	Mr. Ganpat Singhvi, C/o Karnavat & Co., 24 Kitab Mahal, 1 st Floor, 192, Dr. D Naoroji Road, Mumbai – 400 001 PAN: BHMP56673K
(Appellant)		(Respondent)

Present for:

Assessee by : Shri A.K. Gosh, A.R.
Revenue by : Shri Vijay Kumar Subramaniyan, D.R.

Date of Hearing : 14.07.2021
Date of Pronouncement : 01.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 12.11.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07.

2. The only issue raised in the grounds of appeal is against the deletion of addition of Rs.5,30,92,953/- by Ld. CIT(A) as made by the AO on account of peak balance during the year in two bank accounts with HSBC Private Bank(Suisse) SA, Geneva.

3. The facts in brief are that the Respondent is an individual residing in Abu Dhabi, UAE since 1976. The Respondent is a Chartered Accountant, working with Al Nasser Holdings as

Group Advisor & Director (formerly as Managing Director). During FY 2005-06 (AY 2006-07), the respondent resided in India for a period of 45 days which does not exceed the maximum threshold limit specified in Section 6 of the Income-tax Act, 1961 ('the Act') and accordingly, the respondent was non-resident for AY 2006-07. Details of stay in India prior to FY 2005-06 and subsequent to FY 2005-06 as per the passport are as under:-

Financial Year	No. of days of Stay
2001-02	40
2002-03	44
2003-04	29
2004-05	42
2006-07	22
2007-08	47
2008-09	32
2009-10	38
2010-11	47
2011-12	50

During the year, the respondent assessee filed his return of income on 30.3.2007 declaring an income of Rs 178/-. Since the respondent assessee was a non-resident, as per Section 5(2) of the Act, incomes earned by him outside India were not required to be disclosed or offered to tax in India. In view of this, the respondent assessee had not shown his foreign income in his return of income. The return of income was processed vide intimation under Section 143(1) of the Act. According to the

information received by the Govt. of India from French Govt. under DTTA in exercise of sovereign powers that some Indian residents and national have foreign bank accounts in HSBC Private Bank(Suisse) SA, Geneva. In the case of assessee also, a base note was received from the office of DIT(Inv)-II, Mumbai mentioning that assessee has bank accounts in HSBC Geneva. The respondent assessee had opened a joint account along with his brother in HSBC Geneva in 1998 and had transferred funds since 1998 to this account from his other account in HSBC Abu Dhabi, UAE. The source of the funds transferred from HSBC Abu Dhabi, UAE were stated to be out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. The funds transferred from HSBC Abu Dhabi according to the respondent assessee to HSBC, Geneva had no source or income accruing or arising from India. The DDIT (Inv.) Unit-III, Mumbai investigated the account with HSBC, Geneva by issuing summons u/s.131 of the Act dated 9.12.2011 and the detailed submissions in reply were made vide letters dated 16.12.2011, 21.12.2011 and 29.12.2011 before the DDIT (Inv.).Thereafter, the assessment was reopened u/s 147 of the Act vide notice u/s 148 of the Act dated 31.10.2014 after recording reasons to believe u/s 148(2) of the Act which were duly supplied to the assessee with notice u/s 148 of the Act. The AO noted in the reasons to believe that information had been received pertaining to respondent assessee having a bank account in HSBC Bank, Geneva bearing number BUP_SIFIC_PER_ID-5090154065 and the peak balance in such account was USD 1,194,388. The AO also supplied a copy of base note received from French

Authorities under Indo-French Fiscal Treaty to the respondent assessee. As per base note copy of which is filed at Pg. 185 to 189 of the paper book, there are two accounts with HSBC Geneva. The first account bearing number 5094029263 is in the name of Blueridge Investment Corporation which was incorporated in Liberia having a peak balance of USD 1,184,851 in February 2006 and the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005. The respondent assessee filed objections vide letter dated 7.11.2014 to the reopening of the assessment and also submitted copies of letters filed with DDIT (Inv.) Unit-III in response to the summons u/s 131 of the Act. The objections were disposed-off by the Ld. AO vide order dated 12.11.2014. Thereafter the AO issued statutory notices which were duly served upon the assessee calling upon to furnish the bank account statements of HSBC, Geneva and in case the respondent assessee is not in position to submit the same, he was directed to fill up the Consent Waiver Form enclosed with the notice. The AO also supplied the respondent assessee this information as to two accounts namely one in the name of a Company viz. Blueridge Investment Corporation wherein the respondent assessee was merely a joint signatory being a director of the Company and second was the respondent assessee's personal account jointly held along with his brother. The assessee replied the AO queries by filing before the AO detailed submissions dated 19.12. 2014 wherein it was stated that one bank account belonged to a company registered in Liberia. Blueridge Investment Corporation ('the Company') and

he was neither a shareholder nor has any beneficial interest, directly or indirectly, in the Company and only a treasurer and a Director in this Company. He also stated that he was a joint signatory of the bank account of the Company along with other Director and all the transactions in the aforesaid bank account of the Company solely belonged to the Company and not to the respondent assessee. The respondent assessee also filed before AO an affidavit duly sworn in before the Assistant Consular Officer Embassy of India Abu Dhabi a copy of which is filed at Pg. no. 201-202 of the paper book, letter dated 04/12/2014 of Blueridge Investment Corporation at Pg. no. 197 certifying that the company is a Tax resident of Liberia with sole beneficial owner is Mr. Nazar Khan who is an Iraqi National and that the respondent is a treasurer and director of the company and he is neither a shareholder nor having any beneficial interest in the company and he is only a joint signatory of the bank account of the company along with other director. The respondent assessee also filed before the AO the credit advices received from HSBC Geneva in respect of Funds transferred to his account from HSBC Abu Dhabi. Finally, the assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 25.03.2015 by making an addition of Rs. 5,30,92,953/- to the income of the assessee equal to peak balance in both the bank accounts.

4. The aggrieved assessee filed an appeal before the ld. CIT(A) and some additional evidences were also filed before ld CIT(A) which are placed at page nos. 257-335 of the paper book. The ld CIT(A) forwarded the additional evidences to the AO and directed to file a remand report. The AO submitted remand report to the Ld. CIT(A). The Ld. CIT(A) after considering the

facts and the remand report admitted the additional evidence under Rule 46A held that in order to assess the asset/bank account held by a third party in the hands of the respondent assessee the department has to prove that the assessee has direct beneficial interest in the asset/bank account held by third party (i.e. Blueridge Investment Corporation). The ld CIT(A) observed that the department has failed to bring any evidences on record to show that the respondent is having any beneficial interest in the company i.e. Blueridge Investment Corporation or the bank account held by the company with HSBC Geneva. On the contrary the respondent filed three independent/third party evidences to show that he has no beneficial interest either direct or indirect in the company namely Blueridge Investment Corporation or the bank account held by the company held with HSBC Geneva. These evidences are as follows:

- i. Letter dated 04/12/2014 of Blueridge Investment Corporation addressed to the Income Tax Department (Pg 205)
- ii. Letters dated 22/04/2015 and 10/02/2016 of HSBC Geneva addressed to the Company Secretary of Blueridge Investment Corporation (Pg 257-258)
- iii. Letter dated 22/04/2015 of Blueridge Investment Corporation addressed to the Income Tax Department enclosing the certificate of election and incumbency of directors and officers by the LISCR Trust Company, the appointed registered agent of Blueridge Investment Corporation duly apostilled/notorized by Special Agents of Liberia Maritime Authority (Pg 259-268).

5. The Ld. CIT (A) after appreciating the facts including the additional evidences held that the respondent has no beneficial interest in the company Blueridge Investment Corporation and the sources of credit in his bank account with HSBC Geneva are from his bank account with HSBC Abu Dhabi and thus deleted the additions made by the AO in respect of assets lying in the name of Blueridge Investment Corporation and the respondent assessee with HSBC Geneva and thus allowed the appeal.

6. The Ld. D.R., on the other hand, heavily relied on the orders of authorities below and submitted that the assessee in both the bank accounts maintained with HSBC Bank (Suisse) SA Geneva was parking huge money. The first account bearing number 5094029263 is in the name of Blueridge Investment Corporation which was incorporated in Liberia having a peak balance of USD 1,184,851 in February 2006 and the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005. The ld DR submitted that this is a secret and clandestine process of quietly parking the money in the foreign countries thereby circumventing the lawfully due taxes. The Ld. D.R. submitted that in first account bearing number 5094029263 in the name of Blueridge Investment Corporation which was incorporated in Liberia having a peak balance of USD 1,184,851 in February 2006, the assessee was one of the signatory with director of the corporation though the assessee is not added a beneficiary. The ld DR stressed the importance that if the assessee is not having any interest in the corporation why he is one of the two signatory in the bank account. The ld Dr further argued that in the other account bearing no 5094495795, he was joint holder with his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005. The Ld. D.R. submits that had the assessee signed the consent waiver form, the Revenue Authority could have found out the truth behind the curtain. The Ld. D.R. finally submitted that the whole modus operandi which is adopted by the assessee to park the black money is so complex and intricate and also the fact that the assets are in foreign

country, it is very difficult for the Revenue Authority to conduct the enquiry and dig out the truth. The ld DR finally argued that the taking into account the circumstantial evidences, it is quite clear that the money belonged to the assessee and therefore prayed that the order of ld. CIT(A) may be set aside and that of AO may be restored.

7. The ld AR while controverting the arguments of the ld DR submitted that the respondent is an individual residing in Abu Dhabi, UAE since 1976 and is working with Al Nasser Holdings as Group Advisor & Director (formerly as Managing Director). The ld AR also stated that during FY 2005-06 (AY 2006-07), the respondent resided in India for a period of 45 days which did not exceed the maximum threshold limit specified in Section 6 of the Income-tax Act, 1961 ('the Act') and accordingly, the respondent was non-resident for AY 2006-07. The ld AR submitted that ld. CIT(A) after admitting the additional evidences were placed at page nos. 257-335 of the paper book forwarded the same to the AO for examining the same and sending a remand report. The ld AR submitted that the respondent could not place the necessary evidences before the AO because of the fact that the respondent was residing in Abu Dhabi, the bank account was located in Geneva, Switzerland and the company Blueridge Investment Corporation was incorporated in Liberia. However all these evidences were filed before the ld CIT(A) by following due procedure as prescribed under the Income Tax Rules. The ld AR argued that Ld. CIT(A) after considering the facts on records, the remand report and the additional evidences as filed under Rule 46A held that in order to assess the asset/bank account held by a third party in the hands of the respondent assessee the

department has to prove that the assessee has direct beneficial interest in the asset/bank account held by third party (i.e. Blueridge Investment Corporation). The ld. AR while referring to findings of The ld CIT(A) that the department has failed to bring any evidences on record to show that the respondent is having any beneficial interest in the company i.e. Blueridge Investment Corporation or the bank account held by the company with HSBC Geneva. On the contrary the respondent filed three independent/third party evidences to show that he has no beneficial interest either direct or indirect in the company namely Blueridge Investment Corporation or the bank account held by the company held with HSBC Geneva. The ld AR strongly submitted that the respondent has no beneficial interest in the company Blueridge Investment Corporation and the sources of credit in his bank account with HSBC Geneva are from his bank account with HSBC Abu Dhabi. As regards the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005, the ld AR submitted that the respondent assessee had opened a joint account along with his brother in HSBC Geneva in 1998 and had transferred funds since 1998 to this account from his other account in HSBC Abu Dhabi, UAE. The source of the funds transferred from HSBC Abu Dhabi, UAE were stated to be out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. The ld AR argued that the revenue has failed to bring any independent evidences on records to controvert the facts and evidences as placed by the

assessee before the authorities below. Besides the assessee is non resident during the year the ld CIT(A) has rightly deleted the addition which may kindly be upheld. In defense of his arguments the ld AR relied on the decision of ACIT Vs Suresh Nanda ITA No 4802 to 4806/Del/2015 & CO 266 to 269/Del/2015 AY 2006-07 to 2009-10. The decision of the tribunal was upheld by the Hon'ble Delhi High Court in CIT Vs Suresh Kumar in ITA No. 85/2013,100/2013 & 87/2013 order dated 25.02.2013. The ld AR also relied on the recent decision of the Hon'ble ITAT Delhi Bench in the case of Jatinder Mehra vs Addl.CIT in BMA No. 1/Del/2020 and Co. No 26(Del/2021). The ld AR In ground no 3 the revenue has relied on the decision of Hon'ble SC in the case of GVK Industries Ltd. (supra) which is distinguishable as the said case is related to FTS. In ground no 4 the revenue has relied on the decision of Hon'ble Bombay HC in the case of Soignee R Kothari vs DCIT (supra), which is also distinguishable as this is related to Writ petition against reopening of assessment wherein their Lordships have not expressed any opinion on merits.

8. We have heard the rival contentions and perused the material placed before us. The undisputed facts are that Respondent is an individual residing in Abu Dhabi, UAE since 1976. The Respondent is a Chartered Accountant, working with Al Nasser Holdings as Group Advisor & Director (formerly as Managing Director). During FY 2005-06 (AY 2006-07), the respondent resided in India for a period of 45 days which does not exceed the maximum threshold limit specified in Section 6 of the Income-tax Act, 1961 ('the Act') and accordingly, the respondent was non-resident for AY 2006-07. Details of stay in

India prior to FY 2005-06 and subsequent to FY 2005-06 has been tabled in the facts above. Since the respondent assessee was a non-resident, as per Section 5(2) of the Act, incomes earned by him outside India were not required to be disclosed or offered to tax in India though he filed the return of income declaring an income of Rs. 178/-. In view of this, the respondent assessee had not shown his foreign income in his return of income. According to the information received by the Gov of India from French Govt under DTTA in exercise of sovereign powers that some Indian residents and national have foreign bank accounts in HSBC Private Bank(Suisse) SA , Geneva. In the case of assessee also, a base note was received from the office of DIT(Inv)-II, Mumbai mentioning that assessee has bank accounts in HSBC Geneva. The respondent assessee had opened a joint account along with his brother in HSBC Geneva in 1998 and had transferred funds since 1998 to this account from his other account in HSBC Abu Dhabi, UAE. The source of the funds transferred from HSBC Abu Dhabi, UAE were stated to be out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. The funds transferred from HSBC Abu Dhabi according to the respondent assessee to HSBC, Geneva had no source or income accruing or arising from India. The DDIT (Inv.) Unit-III, Mumbai investigated the account with HSBC, Geneva by issuing summons u/s.131 of the Act dated 9.12.2011 and the detailed submissions in reply were made vide letters dated 16.12.2011, 21.12.2011 and 29.12.2011 before the DDIT (Inv.).Thereafter, the assessment was reopened u/s 147 of the Act vide notice u/s 148 of the Act dated

31.10.2014 after recording reasons to believe u/s 148(2) of the Act which were duly supplied to the assessee with notice u/s 148 of the Act. The AO noted in the reasons to believe that information had been received pertaining to respondent assessee having a bank account in HSBC Bank, Geneva bearing number BUP_SIFIC_PER_ID-5090154065 and the peak balance in such account was USD 1,194,388. The AO also supplied a copy of base note received from French Authorities under Indo-French Fiscal Treaty to the respondent assessee. As per base note copy of which is filed at Pg. 185 to 189 of the paper book, there are two accounts with HSBC Geneva. The first account bearing number 5094029263 is in the name of Blueridge Investment Corporation which was incorporated in Liberia having a peak balance of USD 1,184,851 in February 2006 and the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005. The respondent assessee filed objections vide letter dated 7.11.2014 to the reopening of the assessment and also submitted copies of letters filed with DDIT (Inv.) Unit-III in response to the summons u/s 131 of the Act. The objections were disposed-off by the Ld. AO vide order dated 12.11.2014. Thereafter the AO issued statutory notices which were duly served upon the assessee calling upon to furnish the bank account statements of HSBC, Geneva and in case the respondent assessee is not in position to submit the same, he was directed to fill up the Consent Waiver Form enclosed with the notice. The AO also supplied the respondent assessee this information as to two accounts namely; one in the name of a Company viz. Blueridge Investment Corporation

wherein the respondent assessee was merely a joint signatory being a director of the Company and second was the respondent assessee's personal account jointly held along with his brother. The assessee replied the AO queries by filing before the AO detailed submissions dated 19.12. 2014 wherein it was stated that one bank account belonged to a company registered in Liberia. Blueridge Investment Corporation ('the Company') and he was neither a shareholder nor has any beneficial interest, directly or indirectly, in the Company and only a treasurer and a Director in this Company. He also stated that he was a joint signatory of the bank account of the Company along with other Director and all the transactions in the aforesaid bank account of the Company solely belonged to the Company and not to the respondent assessee. The respondent assessee also filed before AO an affidavit duly sworn in before the Assistant Consular Officer Embassy of India Abu Dhabi a copy of which is filed at Pg. no. 201-202 of the paper book, letter dated 04/12/2014 of Blueridge Investment Corporation at Pg. no. 197 certifying that the company is a Tax resident of Liberia with sole beneficial owner is Mr. Nazar Khan who is an Iraqi National and that the respondent is a treasurer and director of the company and he is neither a shareholder nor having any beneficial interest in the company and he is only a joint signatory of the bank account of the company along with other director. The respondent assessee also filed before the AO the credit advices received from HSBC Geneva in respect of Funds transferred to his account from HSBC Abu Dhabi. Finally, the assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 25.03.2015 by making an addition of Rs. 5,30,92,953/- to the income of the

assessee equal to peak balance in both the bank accounts. Ld CIT(A) after admitting the additional evidences and after considering remand report of the AOI on the additional evidences held that in order to assess the asset/bank account held by a third party in the hands of the respondent assessee the department has to prove that the assessee has direct beneficial interest in the asset/bank account held by third party (i.e. Blueridge Investment Corporation). The ld CIT(A) observed that the department has failed to bring any evidences on record to show that the respondent is having any beneficial interest in the company i.e. Blueridge Investment Corporation or the bank account held by the company with HSBC Geneva. On the contrary the respondent filed three independent/third party evidences to show that he has no beneficial interest either direct or indirect in the company namely Blueridge Investment Corporation with HSBC Geneva. The assessee filed the following evidences:

- iv. Letter dated 04/12/2014 of Blueridge Investment Corporation addressed to the Income Tax Department (Pg 205)
- v. Letters dated 22/04/2015 and 10/02/2016 of HSBC Geneva addressed to the Company Secretary of Blueridge Investment Corporation (Pg 257-258)
- vi. Letter dated 22/04/2015 of Blueridge Investment Corporation addressed to the Income Tax Department enclosing the certificate of election and incumbency of directors and officers by the LISCR Trust Company, the appointed registered agent of Blueridge Investment Corporation duly apostilled/notorized by Special Agents of Liberia Maritime Authority (Pg 259-268).

9. As regards the other account bearing no 5094495795 was in the joint names of the respondent assessee and his brother Devendra Singhvi having a peak balance of USD 9,537 in November 2005, the ld AR submitted that the respondent assessee had opened a joint account along with his brother in HSBC Geneva in 1998 and had transferred funds since 1998 to

this account from his other account in HSBC Abu Dhabi, UAE. The source of the funds transferred from HSBC Abu Dhabi, UAE were stated to be out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. After considering the facts of the case are in full agreement with the conclusion drawn by the ld CIT(A) that the assessee is not beneficial owner of the bank account held by Blueridge Investment Corporation with HSBC Geneva. Similarly, as regards the joint account for the assessee with his brother in HSBC Geneva, the ld CIT(A) recorded a finding on the basis of evidences that money was transferred in the bank account out of the income earned in Abu Dhabi and savings made by the respondent assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. Considering all these facts, we are inclined to uphold the order of ld CIT(A) by dismissing the appeal of the revenue.

10. In the result the appeal of the Revenue is dismissed.

Order pronounced in the open court on 01.10.2021.

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 01.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.