

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.1679/Hyd/2017
(Asst. Year : 2013-14)**

Asst. Commissioner of Income Tax,
Circle 16(1), Hyderabad.Appellant.

Vs.

Shri Madhusudan Rao Lagadapati,
Lanco House, Plot No.4,
Software Units Layout, Madhapur,
Hyderabad.Respondent
PAN ABCPL 8904D

Appellant By : Shri Rajendra Kumar (D.R)
Respondent By : Shri P. Murali Mohan Rao.

Date of Hearing : 7.4.2021.
Date of Pronouncement : 09.06.2021.

O R D E R

Per Smt. P. Madhavi Devi, J.M. :

This is Revenue's appeal filed for the Assessment Year 2013-14 against the order of the Commissioner of Income Tax (Appeals)-4, Hyderabad Dt.20.07.2017.

2. The brief facts of the case are that the assessee, an individual and one of the promoters and Chairman of M/s. Lanco Infratech

Limited filed his Return of Income for the Assessment Year 2013-14 on 31.7.2013 admitting total income of Rs.3,42,66,780 (income from salary of Rs.3,37,87,481 and income from other sources of Rs.7,01,407). The Return of Income was processed u/s. 143(1) of the Act and subsequently the case was selected for scrutiny.

4. During the course of assessment u/s. 143(3) of the Act, the Assessing Officer observed that there were credits in assessee's Axis Bank A/c. No.836486982 totalling to Rs.17,78,15,615 deposited in US \$. The assessee explained that the same were received from his NRI account maintained with Barclays Bank and Standard Bank Ltd., Mauritius duly complying with the guidelines of the Regulatory Authorities/RBI and the same was shown in his capital account for the year under consideration. The assessee also filed inward remittances certificate as evidence of receipt of money from his NRI Account. The Assessing Officer observed that in all such transactions, the purpose of receiving such inward remittances is stated as migrant transfer including person / non-resident deposits. It is also observed by the A.O. that though the assessee himself was the remitter of the funds into Standard Bank (Mauritius) Ltd., Port Louis MU, he has not

furnished the copies of Bank accounts held with these banks and that the assessee had only stated that he had made a term deposit of US \$ 10,00,000 during the F.Y. 2011-12. Since no evidence was furnished in support of the total credit by the assessee, the Assessing Officer made a reference to FT & TR Division, inter alia, for providing the details of the bank accounts maintained at Standard Bank (Mauritius) Ltd., the same was obtained from the Bank and he observed that on 17.10.2012, US \$ 23,00,000 was credited to this account and on the next date i.e. 18.10.2012, the total amount was transferred to the NRI account of the assessee, in India. As regards the credit of US \$ 23 lakhs into his bank account at Mauritius, the Assessing Officer observed that the same was received from M/s. Virtual Intern – Teletransmission Inward, a group company in which the assessee has substantial interest and was the lone investor. Therefore, according to the Assessing Officer, the source of the credit was a concocted evidence to show that the amount was received from M/s. Virtual International Limited. He thus held that the assessee has failed to prove the genuineness of the transaction. The Assessing Officer, therefore,

issued a show cause notice to the assessee to provide the following details :-

- “ i. The interest of Sri Lagadapati Madhusudan Rao in M/s. Vitrual International Ltd;
- ii. Proof of genuineness, identity, creditworthiness of M/s. Vitrual, Mauritius;
- iii. The audited financial statements of Vitrual International Limited, Mauritius for the financial year 2012-13.
- iv. Sources of capital, since inception of M/s. Vitrual, Mauritius, shareholding pattern, its line of business, main customers, current state of the company.”

In response, the assessee submitted that he is a ‘resident but not ordinarily resident’ of India and therefore the receipts brought into India from outside sources cannot be taxed in India. In support of the same, the assessee referred to provisions of Section 5(1)(c) and 6(6) of the Income Tax Act and submitted that no enquiry on the source of income earned outside India can be called for. However, the Assessing Officer has held that the assessee has not filed any evidence in support of his residential

status, to be called 'as resident but not ordinary resident of India'. Therefore, he did not consider the claim of the assessee. Accordingly, the Assessing Officer treated the total amount of Rs.17,78,15,615 as unexplained credit and brought it to tax u/s. 68 of the Act. Aggrieved, the assessee preferred an appeal before the CIT(Appeals) and the CIT(A) granted relief to the assessee by following the ITAT order in assessee's own case for the earlier assessment years 2011-12 and 2012-13. Against the relief granted by the CIT(Appeals), the Revenue is in appeal before us by raising the following grounds :

- “ 1. The CIT(A) erred in holding the status of the assessee ;as Resident but not ordinarily resident.*
- 2. The CIT(A) erred in deleting the addition made Rs.17,78,15,615 u/s.68 of the IT Act.*
- 3. The CIT(A) erred in ignoring the fact that Revenue's appeal on identical issue in the assessee's own case for A.Y. 2011-12 is pending before Hon'ble High Court.*
- 4. Any other ground that may be urged at the time of hearing.”*

3. In the grounds of appeal itself, it is seen that the Revenue has filed this appeal only to keep the issue alive as the issue is already covered in favour of the assessee by orders of ITAT in

assessee's own case (ITA No.1482/Hyd/2014 Dt.18.03.2015) for the Assessment Year 2011-12. Relevant paras of the order of Tribunal are reproduced hereunder for reference :

“ 4. Assessing Officer asked for the source of the above credit. Assessee explained and also accepted by the Assessing Officer that assessee has received US \$1,74,00,000 valued at Rs.78,04,58,374/- as a credit into his NRI A/c. Assessee provided bank transcripts from Indus Ind Bank, Secunderabad as well as Axis Bank, Hyderabad explaining the foreign inward remittance. These remittances were under the heads family maintenance, personal use/savings. Assessing Officer admits that such transcripts indicate that the remittal was by assessee himself. Assessing Officer issued a show cause notice calling for details of various remittances and sources thereof. Assessee has explained that the moneys remitted into the above banks were his own funds from abroad. He further submitted that the source of the above funds abroad were from M/s.Vitruval International Ltd., Mauritius who has provided loan of US \$1,74,00,000 and a certificate from the above company was filed in support of the claim that the said company has provided the above sum during the period 01-04-2010 to 31-03-2011 as a loan to assessee. Assessing Officer did not accept the same on the reason that it is not an original certificate, no mention of tax residency, no seal of company and no date on the certificate nor other details. Even though he doubted the existence of the above company, subsequently, Assessing Officer verified the internet and found out that the above said company was registered in Mauritius and assessee is a single shareholder. As per the annual financial statements published by M/s. Lanco Infratech Limited, this company M/s.Vitruval International Ltd., was shown as 'persons constituting group' as defined under MRTP Act, 1969 as on 31-03-2011. Assessing Officer also verified the website of SEBI and noted that in the 'red herring' prospectus of M/s. Lanco Infratech Limited, the above said company was shown as a single person company in which assessee is the sole shareholder of single share available as on 29-07-2006. Based on the above, Assessing Officer came to the conclusion that the above said company is nothing but an alter ego of assessee and therefore funds, if at all proved to be transferred from M/s.Vitruval International Ltd., Mauritius to the bank account of assessee in Mauritius, still do not explain the source of funds in the hands of assessee. Considering the above and also the legal position as discussed by him in para 6 of the assessment order, he came to the conclusion vide para 8 of the assessment order as under:

"8. The assessee who is a high net worth individual and who has significant business interest in India, as can be seen from the Statement of Affairs, has failed to furnish sufficient evidence with regard to nature and source of Rs.78,04,58,374/- credited in the NRI Ledger. The assessee has merely relied on a copy of a certificate of loan from a company in Mauritius in which assessee has 100% ownership and claimed that to be sufficient explanation for the purpose of Sec.68 / 69 / 69A /and Sec.5(2)(b) of the I.T.Act, 1961. In such circumstances, a fair analysis of factual evidences and legal position was done by the undersigned and accordingly, I am of the considered view that Rs.78,04,58,374/- credited in the NRI Ledger Account of the assessee shall be treated as the income of the assessee for AY.2011-12 as per Sec.68 / 69 / 69A / 69C of the I.T.Act, 1961."

Para 5.....

Para 6.....

Para 7

8. Ld. DR relied on the detailed orders of Assessing Officer to submit that assessee has not furnished necessary evidences in support of the creditworthiness of the above amounts and his furnishing financial statements before the CIT(A) violates Rule 46A and decision of CIT(A) based on additional evidence is not correct.

9. Ld.Counsel, however, submitted that assessee has transferred his own funds from Mauritius to India and this fact was admitted by Assessing Officer. Not only that it was submitted that the remittance was with the permission of the RBI and funds were utilized for various investments in the group companies, gifts and loans to others including personal expenditure. Therefore, Assessing Officer's observation that remittances have come under three headings do not establish the amount as unexplained. It was further contended that assessee is a non-resident and Assessing Officer has jurisdiction only to the extent of taxing the incomes arising in India. The moneys obtained by assessee abroad and transmitted to India cannot be considered as income in India. It was further submitted that existence of M/s.Vitruval International Ltd., has been accepted by the other authorities like SEBI and FIPB and also the investments are through proper regulatory channels. It was further submitted that assessee being Chairman of the company and also promoter of the group companies has been investing funds in various years and no such problem arose in any of the years. It was further submitted that the sections under which Assessing Officer tried to consider assessee's own funds as income of assessee are not legally correct. He has given detailed written submissions

countering the written submissions filed by the Revenue and his submissions can be summarized as under:

"a. The remittance of Rs.78,04,58,374/- has been made from the assessee's own Overseas Bank account and thus income, if any had already been received in abroad. Consequently the question of receiving the same income again in India does not arise. Hence, such receipt shall not be taxed under [Section 5\(2\)](#) of the Act.

b. The assessee has merely transferred his own money from Mauritius to India and no credit has been obtained by the assessee as the money has been transferred from his Barclays Bank, Mauritius to NRI A/c. held in Axis Bank and Indusind bank. This tantamount to nothing but passing of money from right hand to left hand. Hence, no addition can be made as Unexplained Credit u/s.68/69/69A/69C of the act.

c. The assessee has received the above said amount from his Barclays Bank, Mauritius to NRI A/c. from the loan obtained from M/s.Vitrual International Limited, Mauritius in support of which the assessee has submitted confirmation letter from M/s.Vitrual International Limited, Mauritius.

d. Without prejudice to the above, the assessee has not only established the source of the money as also established the source to source by way of submitting the confirmation from M/s.Vitrual International Limited, Mauritius. As the assessee is a non-resident Indian and the source of money is raised from outside India, the application of 5(2) r.w.s. 9 of the Act is not valid.

e. In support of the submissions/arguments of the respondent here in, he relies on the order of the CIT(Appeals)-V, Hyderabad".

10. We have considered the rival contentions, perused the documents placed on record and the orders of the authorities. First of all we are unable to understand how Assessing Officer can consider inward remittance of moneys into NRI A/c of a non-resident Indian as income of assessee as unexplained. Assessee in the course of assessment proceedings furnished enough evidences in support of inward remittance of funds including a certificate from M/s.Vitrual International Ltd., about the source of funds being loan. If Assessing Officer has any doubt about the said company in Mauritius, he cannot reject the genuineness of the said company without making necessary enquiries either through the internal mechanism of foreign tax division of CBDT or by any other means. Just because the certificate furnished does not have any seal, the same cannot be rejected outright. However, the matter did not end there. Assessing Officer took pains to verify from the internet and also from the website of the SEBI and came to the conclusion that the said company is

one of the group companies of assessee listed as persons constituting group under Monopolies and Restrictive Trade Practices Act, 1969 and further noticed from the red herring prospectus of M/s.Lanco Infratech Limited, wherein this company was shown as single shareholder company of assessee as on 29-07-2006. This means the existence of the company is accepted by the authorities, not only by SEBI and other statutory authorities but even by the Assessing Officer, as can be seen from the enquiries conducted. We are unable to understand how the Revenue could raise ground on existence of the above company in Ground No.7 about the identity of the company when Assessing Officer himself acknowledged the same in the assessment order.

11. Coming to the creditworthiness of the amount, assessee's explanation is that the amounts were transferred from his own bank account in Mauritius to the NRI account in India. Therefore, the immediate source of funds is his own account from Mauritius which is not disputed. If funds are received into Mauritius account, then that becomes source of the source which cannot be examined by Assessing Officer, unless there is any incriminating evidence. Except presumptions and allegations, virtually there is no evidence against assessee that these funds received into his bank account in Mauritius are his own incomes from India or 'round trip' funds of assessee as alleged. Therefore, all the grounds raised on this issue, particularly Ground No.10 & 11 does not require any consideration on the facts of the case.

12. Coming to the issue of creditworthiness of the above said company, there is no dispute with reference to the funds. It has its own funds and Ld.CIT(A) took pains to examine and hold that it is creditworthy. Nothing was brought on record to counter the findings of Ld.CIT(A), except contending that the order of the CIT(A) is not correct. Therefore, the ground regarding creditworthiness of the company particularly from Ground No.6 to 10 also does not require any consideration.

Para 13.....

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Para 18.....

19. In view of the legal principles as stated above, provisions of [Section 5\(2\)](#) are also not applicable as the amount received is received from assessee's own account outside India and no income has accrued or arisen in India. These funds were also received through banking channels with necessary statutory approvals. Therefore, assessee has proved the sources

of receipts and discharged the onus. It is the Revenue which failed in proving that this amount is unexplained income of assessee. In view of these facts of the case, we are of the opinion that various case laws relied by the Revenue does not apply and they are clearly distinguishable. In view of this, we have no hesitation in upholding the order of the CIT(A) and rejecting the Revenue's grounds."

Since the facts and circumstances of the case for the A.Y. 2013-14 are also similar and the Revenue has not been able to produce any decision or any material facts to the contrary, we do not see any reason to interfere with the order of the CIT(Appeals).

4. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 9th June, 2021.

Sd/- (A. MOHAN ALANKAMONY) Accountant Member Hyderabad, Dt.9th June, 2021.	Sd/- (P. MADHAVI DEVI) Judicial Member
* Reddy gp	Copy to :

1.	Shri Madhusudan Rao Lagadapati, Lanco House, Plot No.4, Software Units Layout, Madhapur, Hyderabad.
2.	ACIT, Circle 16(1), Hyderabad.
3.	Pr. C I T-4, Hyderabad.
4.	CIT(Appeals)-4, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.