



[2024] 461 ITR 18 (Guj)

[IN THE GUJARAT HIGH COURT]
NITIN MAVJI VEKARIYA

v.

INCOME-TAX OFFICER

BIREN VAISHNAV and BHARGAV D. KARIA JJ.

September 11, 2023.

Section(s): Income-tax Act, 1961, ss. 147, 148, 148A

Assessment Year: 2018-19

Favouring: Assessee, person

REASSESSMENT — NOTICE — VALIDITY — SOURCE OF INVESTMENTS COMING FROM NON-RESIDENT EXTERNAL ACCOUNTS BEYOND REACH OF AUTHORITIES — NO TANGIBLE MATERIAL FOR BELIEF THAT INCOME HAD ESCAPED ASSESSMENT — NOTICE NOT VALID — INCOME-TAX ACT, 1961, ss. 147 , 148 , 148A

Held, that it was evident from the explanation tendered by the assessee that all the investments in time deposits and mutual funds were made from non-resident external accounts. The source therefore was beyond the reach of the authorities. Under the provisions of section 10(4) such incomes are exempt from being included in the total income. Hence, the order issued under section 148A(d) of the Income-tax Act, 1961, for the assessment year 2018-19 and the consequential notices were not valid.

R/Special Civil Application Nos. 7636 , 11052 and 11053 of 2022.

S. N. Divatia, Advocate, for the petitioner.

Karan G. Sanghani, Standing Counsel, for the respondent.

JUDGMENT

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The judgment of the court was delivered by

Biren Vaishnav J.—Rule returnable forthwith. Mr. Karan Sanghani, learned standing counsel, waives service of notice of rule on behalf of the

respondent-Revenue. With the consent of the learned advocates appearing for the respective parties, the matters are taken up for final hearing today.

2. All the petitioners are family members, who as residents and citizens of the Republic of Uganda, have prayed for directions to quash and set aside the order dated March 29, 2022 issued under section 148A(d) of the Income-tax Act, 1961, for the assessment year 2018-19. Since notices issued and the consequential orders are challenged on the same grounds, facts of Special Civil Application No. 7636 of 2022 are considered.

2.1. Mr. Divatia, learned counsel for the petitioner would submit that the petitioner is a resident and citizen of Republic of Uganda. The petitioner has been allotted PAN : AJUPV7695R and he is having non-resident (external) account No. 008601017024 with ICICI Bank, Puja Complex, Bhuj and also non-resident Indian account No. 008601076903 with the same branch. The petitioner is also having non-resident (external) account No. 50100158161603 with HDFC Bank, Jubilee Circle, Bhuj. The petitioner is also having non-resident (external) account No. 6511210464 with Kotak Mahindra Bank, College Road, Bhuj.

2.2. Mr. Divatia, learned counsel, would further submit that recently, the respondent had issued notice under section 148A(b) on March 16, 2022 calling upon the petitioner to show cause as to why the notice under section 148 should not be issued, in view of the investment in time deposit and mutual fund aggregating to Rs. 1,92,00,000 but he did not file his return of income. The petitioner was asked to furnish response on or before March 21, 2022. Mr. Divatia, learned counsel, would further submit that notice under section 148A(b) dated March 21, 2022 points out that the information was received that the petitioner had indulged in transactions of time deposits and mutual fund investment, but did not file return of income. The said information suggested that there is escapement of

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income to that extent. On March 21, 2022, the petitioner uploaded the reply dated March 20, 2022 along with various details/documents which included non-resident (external) savings bank statements, Uganda citizenship and passport documents, etc.

2.3. It is submitted by Mr. Divatia, learned counsel, that the respondent has on March 29, 2022, passed the impugned order under section 148A(d) holding that the income to the tune of Rs. 1,92,00,000 had escaped assessment for the year under consideration, and therefore, it was a fit case for issuance of notice under section 148 of the Act.

2.4. Mr. S. N. Divatia, learned counsel, would submit that the order dated March 29, 2022 under section 148A(d) and the notice under section 148 dated March 30, 2022 are bad. Reading the reasons, Mr. Divatia, learned counsel, would submit that the conclusion that the income had escaped assessment was bad. That the transactions in question, namely, investments in time deposits and mutual funds were out of foreign funds in the assessee's non-resident (external) accounts, details of which were furnished in response to the notice. A copy of the passport evidencing the fact that the petitioner was a citizen of the Republic of Uganda to substantiate this together with bank details were furnished. Drawing the court's attention to the point-wise reply, Mr. Divatia, learned counsel, would submit that all investments were from respective non-resident (external) accounts and therefore, could not be a subject of tax in accordance with the provisions of section 10(4) of the Income-tax Act, 1961.

3. Mr. Karan Sanghani, learned standing counsel for the Revenue would submit that from the passport details, even if furnished, it was not clear to compute the residency period in India of the petitioner. The investments from the bank accounts were unexplained.

4. Having considered the submissions made by the learned advocates appearing for the respective parties, what is evident from the explanation tendered by the petitioner was that all the investments in time deposits and mutual funds were made from non-resident (external) accounts. The order impugned indicates that the petitioner had furnished such details which read as under :

"(i) Time deposits (non-resident (external)) of Rs. 51,00,000 with Kotak Mahindra Bank Limited were made out of his non-resident (external) savings bank account number 6511210464 with Kotak Mahindra Bank Limited. The assessee submitted bank account statement of his non-resident (external) bank account with Kotak Mahindra Bank Limited.

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(ii) Time deposits (non-resident (external)) of Rs. 80,00,000 with HDFC Bank Ltd. were made out of his non-resident (external) savings bank account number 50100158161603 with HDFC Bank Ltd. The assessee submitted copy of certificate from Bank of Baroda in this regard.

(iii) Investment of Rs. 47,00,000 in ICICI Prudential Mutual Fund was invested out of his non-resident (external) savings bank account (A/c. No. 0086011017024) with ICICI Bank Ltd., Bhuj (Rs. 8,50,000

dated August 8, 2017 + Rs. 8,50,000 dated August 8, 2017 + Rs. 15,00,000 dated January 4, 2018) and from non-resident (external) savings bank account number 50100158161603 with HDFC Bank Ltd. (Rs. 15,00,000 dated August 9, 2017). The assessee submitted copy of summary of ICICI Prudential Mutual Fund statement and statement of ICICI Bank non-resident (external) account.

(iv) Investment of Rs. 14,00,000 in HDFC Mutual Fund was invested out of his non-resident (external) savings bank account (A/c. No. 7611617528) with Kotak Mahindra Bank Ltd., Bhuj (holding jointly with his wife Jasuben). The assessee submitted copy of statement of Kotak Mahindra Bank Ltd. non-resident (external) account.

(v) Investment of Rs. 14,00,000 (Rs. 7,00,000 each on May 31, 2017 and September 28, 2017) in Kotak Mahindra Mutual Fund was invested out of his non-resident (external) savings bank account (account number 6511210464) with Kotak Mahindra Bank Limited. The assessee submitted copy of statement of Kotak Mahindra Bank Ltd. non-resident (external) account.

(vi) The assessee submitted copy of certificate of residence from Uganda, issued to him.

The above reply of the assessee is duly considered. The assessee did not submit copy of his passport. Without that residential status of the assessee cannot be ascertained during the year under consideration which is required as per provisions of section 6 of the Income-tax Act. Therefore, the reply of the assessee has not been found satisfactory."

5. Undisputedly, the funds came from non-resident (external) accounts and the source therefore was beyond the reach of the authorities. Even on reading the provisions of section 10(4), it is apparent that such incomes are exempt from being included in the total income.

6. The impugned orders dated March 29, 2022 in all these petitions are, therefore, without jurisdiction. The orders dated March 29, 2022 in the

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respective petitions are therefore quashed and set aside. The petitions are allowed, accordingly. Rule is made absolute accordingly, with no orders as to costs.