



IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: D : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.590/Del/2024
Assessment Year: 2018-19

Kuldeep Marwah,
House No.221/10,
Marwah Cottage,
Karnal Road,
Kaithal,
Haryana – 136 027.

Vs DCIT,
International Taxation,
Gurgaon.

PAN: AIAPM5225F

(Appellant)

(Respondent)

Assessee by	: Shri Shaatanu Jain, Advocate & Shri Gurjeet Singh, CA
Revenue by	: Ms Ekta Jain, CIT-DR
Date of Hearing	: 05.05.2025
Date of Pronouncement	: 06.06.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the final assessment order dated 16.01.2024 passed by the Asstt. Commissioner of Income-tax, International Taxation, Gurgaon (hereinafter referred to as the Ld. AO) u/s 147

r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19.

2. Heard and perused the records. In the case of the assessee, certain information was flagged as per Risk Management Strategy formulated by the CBDT on ITBA portal under the head 'NMS cases'. As per information, the assessee invested in mutual funds units to the tune of Rs.19,20,133/-, made time deposits of Rs.1,30,00,000/-, deposited cash amounting to Rs.19,10,030/-, closing balances with HDFC Mutual Fund, ICICI Prudential Mutual Fund and Kailash Vasudev Kulkarni in aggregate amounting to Rs.18,93,388/-, received payment u/s 195 of the Act of Rs. 58,998/- during FY 2017-18 relevant to AY 2018-19. As the assessee had not filed any return of income for Financial Year 2017-18 relevant to A.Y.2018-19, assessment proceedings u/s 147/148 of the Act were initiated by passing order u/s 148A(d) of the act and issuing a notice u/s 148 of the Act on 31.03.2022 after obtaining necessary approval of the Competent Authority u/s 151 of the Act. In response to the notice u/s 148 of the Act, the assessee filed his return of income on 28.04.2022. Thereafter, notice u/s 143(2) of the Act was issued on 12.07.2022. Thereafter, vide notice dated 20.07.2022 u/s 142(1) of the Act, the assessee was requested to furnish the details regarding the sources of above mentioned investments/transactions. The assessee submitted that the assessee had made time deposits and the assessee

explained that part of time deposits were made from funds received from Ms Luo Jianxia from Hong Kong which the assessee claimed to repayment of loan. However, contention of the assessee was not found tenable. Accordingly, vide show cause notice dated 17.03.2023 the assessee was afforded final opportunity to explain as to why receipts amounting to Rs. 28,69,580/- received from Luo Jianxia may not be taxed. The assessee submitted his response on 21.03.2023 and assessee contended that confirmation from the party and copy of bank accounts has already been submitted.

3. The Ld. AO was not satisfied and concluded that the assessee has claimed that receipt was on account of repayment of loan; however, the assessee has failed to substantiate advancement of loan through any documentary evidence. As stated by the assessee, the alleged loan was given in 2016 as per claim of the assessee; however, no documentary evidences could be furnished. The contention can be accepted only when the assessee can show that loan was actually advanced. The assessee has not expressed any difficulty in producing the bank account statement. In show cause notice, it was specifically mentioned that documentary evidences for advancement of loan had not been submitted yet the assessee chose not to file the said documents in response to show cause notice. This shows that the assessee has no evidences to establish that any loan was given to Ms Luo Jianxia. The assessee and the alleged borrower, both did

not furnish their statement for 2016 when the alleged loan was advanced. Thus, merely on the basis of some confirmations which are not supported by any documentary evidences, explanation of the assessee cannot be accepted. In view of the foregoing, explanation of the assessee regarding nature and source of receipts of Rs. 28,69,580/- has not been found satisfactory and the said receipts remained unexplained and the same was held liable to tax u/s 69A rws 115BBE of the Act.

4. It was sustained by the DRP by following observation in para 4.1.4 of the DRP order:-

“4.1.4 The Panel notes that the opportunities to furnish relevant documents were granted over several months but the assessee failed to furnish the same during assessment proceedings. However, in the interest of natural justice, in consideration of the reasons put forth by the assessee and in view of the fact that the proceedings before the DRP are an extension of assessment proceedings, the Panel considers it proper to take the additional evidences filed on record. As regards confirmation from Ms. Luo Lianxia, the AO has observed in the RR that the assessee has not produced bank statement in support of the loan given to her. Mere later of confirmation does not substantiate the claim of the money received as loan. It needs to be corroborated with bank statements in this regard. The assessee has failed to furnish complete documentary evidence in support of his contentions. In view of the above, the Panel finds no ground to interfere with the conclusion of the AO in treating the receipts amounting to Rs. 28,69,580/- as unexplained money. Objections raised on this count are therefore rejected.”

5. Ld. DR has though supported the conclusions of ld. Tax authorities below however, the material facts are that admittedly assessee is resident of Republic of South Africa. Copy of permanent residence permit issued by Department of

Home Affairs, Republic of South Africa is placed on PB at page 4. Tax assessment and clearance certificate issued by South African Revenue Service for 2018 is on record at pages 6 to 10 of PB. Admittedly assessee has no other source of Income in India, except any income earned in investments or from deposits in bank.

6. The assessee has taken a specific plea that loan was given to someone outside India which was received back and remitted to India, but, the Id. AO has doubted the fact of making the loan for the reason that it was not established by the bank account of the assessee. The confirmation from the said borrower Ms Luo Lianxia, resident of Hong Kong along with an attestation by Hong Kong High Court was filed before the DRP and which was admitted as additional evidence.

7. In context to this disputed addition, pertinent to mention is that during assessment, the Assessing Officer had also proposed addition on account of certain deposits in US denominations in the bank account of the assessee for which the assessee has filed currency declaration form and certificate of foreign inward remittances which has been accepted by the DRP and, consequently, deleted by the AO in the final assessment order.

8. Thus, where there is no other alleged source of income accruing or arising in India, then, for failure to file any bank statement of loan being given

outside India which landed in India by way of remittance, from a non-resident, same could not have been made taxable, as they are beyond the scope of section 5(2) and certainly not taxable u/s 68 of the Act. Reliance can be placed on the decisions of the the Hon'ble Delhi High Court in the case of DCIT vs. Finlay Corp. Ltd. (2003) 86 ITD 626 and coordinate bench of Delhi in the case of Russian Technology Centre (P) Ltd. vs. DCIT, Circle-13, New Delhi (ITA No.4932, 4933, 5390 & 5391/Del/2011, the Bangalore Bench in the case of ACIT vs. M/s Kansur Developers India Pvt. Ltd., ITA Nos.1441 & 1442/Bang/2018, order dated 28.10.2022, the Jaipur Bench in the case of Ravindra Gaur vs. ITO, ITA No.673/JPR/2023, order dated 19.02.2024, the Ahmedabad Bench in ITO vs. Madhav Vasant Dalvi; &

9. In the light of the aforesaid, the addition cannot be sustained. Grounds raised are sustained. The appeal of the assessee is allowed. The impugned addition is deleted.

Order pronounced in the open court on 06.06.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 06th June, 2025.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi