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

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Judgment reserved on: 01.12.2023
Judgment pronounced on: 12.12.2023

+ **ITA 676/2023**

THE COMMISSIONER OF INCOME TAX
(INTERNATIONAL TAXATION)-1, NEW DELHI Appellant

Through: Mr Puneet Rai, Sr. Standing Counsel
with Mr Ashvini Kumar, Mr Rishab
Nangia and Mr Nikhil Jain, Advs.

versus

HERSH WASHESHER CHADHA Respondent

Through: Mr Ajay Vohra, Sr. Advocate with
Mr Saksham Singhal and Mr Deepesh
Jain, Advs.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****GIRISH KATHPALIA, J.:**

1. By way of this appeal brought under Section 260A of the Income Tax Act, the revenue has assailed order dated 13.04.2023 of the Income Tax Appellate Tribunal, whereby the appeal bearing no. ITA 123/Del/2021 pertaining to the Assessment Year 2017-18 filed by the present respondent/assessee was allowed. On advance notice, the assessee entered appearance through counsel. We heard learned counsel for both sides.



2. According to the appellant/revenue, this appeal raises for our consideration the following questions of law:

“A. Whether on the facts and in the circumstances of the case and in law, the Hon’ble ITAT is justified in holding that Section 69A is not applicable to the present case?”

B. Whether on the facts and in the circumstances of the case and in law, the Hon’ble ITAT is justified in deleting the addition of Rs.1,32,25,533/- made by AO and affirmed by CIT(A) without appreciating that the source of credit entries of Rs.1.32 crores remained unexplained?”

C. Whether on the facts and in the circumstances of the case and in law, the Hon’ble ITAT is justified in deleting the addition of Rs. 1,32,25,533/- without appreciating that the assessee failed to file the documentary evidence related to the credit entries in the bank accounts before the AO ?”

In the course of preliminary hearing, learned counsel for the appellant/revenue submitted that the proposed question ‘A’ may be left open, to be deliberated upon in some other case. As such, the present appeal would be confined to the proposed questions ‘B’ and ‘C’. As discussed hereafter, both the said proposed questions are questions of facts and not questions of law, much less substantial questions of law.

3. Briefly stated, circumstances relevant for present purposes are as follows. The respondent/assessee being a non-resident individual residing in the United Arab Emirates (UAE) filed his Return of Income for Assessment Year 2017-18, thereby declaring his income as Rs.1,02,288/-, which included savings bank interest of Rs.95,305/- and interest on the income tax refund of Rs.6,983/-. By way of scrutiny proceedings, the Assessing Officer made additions under Section 69A of the Act to the tune of Rs.1,40,09,733/- on account of unexplained credit entries in the



bank accounts, a sum of Rs.1,64,219/- on account of under reporting of interest and an amount of Rs.4,69,335/- towards deemed dividend under Section 2(22)(e) of the Act. Feeling aggrieved, the respondent/assessee filed an appeal to the limited extent of assailing the addition made under Section 69A of the Act. The said appeal of the respondent/assessee was partly allowed by the Commissioner Income Tax (Appeals) vide order dated 31.12.2020, thereby deleting out of the impugned addition of Rs.1,40,09,733/- the inter-bank transfer of Rs.5,00,000/- and the income tax refund of Rs.2,84,200/-. Against the said order of CIT(A), the respondent/assessee filed second appeal before the Income Tax Appellate Tribunal, which appeal was allowed by way of the impugned order, thereby deleting completely the addition made under Section 69A of the Act. Hence, the present appeal.

4. In the impugned order, the Tribunal took a view that the provision under Section 69A of the Act does not apply in the present case since the respondent/assessee being a non-resident, whose only source of income in India is from interest on bank account and interest on income tax refund, one of the conditions of Section 69A of the Act is not satisfied, consequently the addition made by invoking Section 69A of the Act is not sustainable. Having observed that, the Tribunal proceeded further and examined the issue even on merits, thereby accepting the explanation of the respondent/assessee on the basis of records that a sum of Rs.1,25,16,533/- was received from his bank account in Dubai by transfer to NRO account in India; Rs.2,42,000/- cash deposits were made during



demonetization period out of earlier cash withdrawal; Rs.3,00,000/- was received by him from his daughter and Rs.1,67,000/- was received from one Sugandha Saigal on cancellation of a hotel booking.

5. During arguments, learned counsel for appellant/revenue contended that if view of the Tribunal is accepted, rigours of Section 69A would not apply to the case of any Non-Resident Indian and would sanctify non-maintenance of account books by such assessee. Learned counsel for appellant/revenue referred to the judgment of the Kerala High Court in the case of *K.V. Mathew vs ITO*, (2014) 42 taxmann.com 571 (Kerala) in support of his arguments. Learned counsel for appellant/revenue also contended that the deletions made in the impugned order are not supported by any evidence on record. On the other hand, learned counsel for respondent/assessee supported the impugned order and contended that no substantial question of law arises for consideration of this court under Section 260A of the Act.

6. The provision under Section 69A of the Act basically deals with unexplained money etc. to be considered in the exercise of aggregation of income under Chapter VI of the Act. Section 69A of the Act lays down that where in any financial year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money etc. is not recorded in the books of account, if any maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the said money etc., or the explanation



offered by him is not satisfactory in the opinion of the Assessing Officer, the said money may be deemed to be the income of the assessee for such financial year.

7. Admittedly, in the present case, the respondent/assessee is a Non-Resident Indian and his source of income in India being from interest on bank accounts and interest on income tax refund, he is not obliged to maintain any books of account in India. It appears to us prima facie that the expression “if any” specifically used in Section 69A of the Act amplifies that where books of account are not maintained, it would not be possible to invoke this provision. But as mentioned above, learned counsel for appellant/revenue requested to keep this question open to be agitated in some better case. We accede to this request.

8. Further, the money in question can also not be treated as unexplained money insofar as the respondent/assessee gave specific explanation of a split up of the money in question as enumerated above. In the impugned order, the Tribunal meticulously examined and elaborately discussed the documentary record in support of the said explanation of money ingress in the bank account of the respondent/assessee. In the absence of a stand taken by the appellant/revenue alleging perversity, this court while acting under Section 260A of the Act cannot enter into the arena of appreciation of facts and documents.



9. In the case of ***K.V. Mathew*** (supra), the High Court of Kerala also took a view that the question involved in the said case being not a question of law did not arise for consideration of the court. However, unlike the present case, there was no material before the authorities and the High Court of Kerala explaining the influx of the subject money in the bank account of the said assessee. In the said case, even the Kerala High Court ultimately held that the question of fact raised in the said case had already been clinched by the fact finding authorities, so it was not fit case to interfere under Section 260A of the Act.

10. In view of the aforesaid, it is held that there is no substantial question of law raised by the appellant/revenue in this appeal for being considered by us. Accordingly, the appeal stands dismissed.

GIRISH KATHPALIA
(JUDGE)

RAJIV SHAKDHER
(JUDGE)

DECEMBER 12, 2023
as/R.Y

