

**आयकर अपीलीय अधिकरण “एल” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “L” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./I.T.A. No.	निर्धारण वर्ष / Assessment Year	(अपीलार्थी /Appellant)	(प्रत्यर्थी / Respondent)
5889/Mum/2016	2003-04	Dy. CIT (International Taxation)-3(3)(2), Room No. 1603, 16 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 021	Shri Rahul Rajnikant Parikh C/o. Sampat & Mehta Chartered Accountants, B-501/502, 11 Sarvoday, Western Express Highway, Bandra (East), Mumbai-400 051 PAN: AFUPP 8362 H
5568/Mum/2016	2003-04	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5890/Mum/2016	2006-07	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5891/Mum/2016	2004-05	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5892/Mum/2016	2007-08	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5893/Mum/2016	2008-09	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5567/Mum/2016	2006-07	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5569/Mum/2016	2008-09	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5570/Mum/2016	2007-08	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5571/Mum/2016	2004-05	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Shri Rahul Rajnikant Parikh Mumbai-400 051
5897/Mum/2016	2007-08	Dy. CIT (International Taxation)-3(3)(2), Room No. 1603, 16 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 021	Kalpesh R. Jhaveri
5898/Mum/2016	2006-07	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Kalpesh R. Jhaveri
5572/Mum/2016	2008-09	Dy. CIT (International Taxation)-3(3)(2),	Kalpesh R. Jhaveri

		Mumbai-400 021	
5573/Mum/2016	2007-08	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Kalpesh R. Jhaveri
5574/Mum/2016	2006-07	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Kalpesh R. Jhaveri
5575/Mum/2016	2004-05	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Kalpesh R. Jhaveri
5576//Mum/2016	2003-04	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Kalpesh R. Jhaveri
5874//Mum/2016	2008-09	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Kalpesh R. Jhaveri
5875//Mum/2016	2003-04	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Kalpesh R. Jhaveri
5896//Mum/2016	2004-05	Dy. CIT (International Taxation)-3(3)(2), Mumbai-400 021	Kalpesh R. Jhaveri

अपीलार्थी की ओर से / Appellant by	:	Shri Vidhyadhar
प्रत्यर्थी की ओर से/Respondent by	:	Shri Vijay Mehta

सुनवाई की तारीख / Date of Hearing	:	21.05.2018
घोषणा की तारीख / Date of Pronouncement	:	01.06.2018

### आदेश / ORDER

Per Bench:

These are appeals by the Revenue against two assessee's against the respective common order of the Id. Commissioner of Income Tax (Appeals) for the concerned assessment years, by way of which quantum addition and penalty u/s. 271(1)(c) of the Income Tax Act, 1961 have been deleted as under:

I.T.A. No.	Assessee	Assessment year	Issue	Amount (in Rs.)
5568/Mum/2016	Shri Rahul Rajnikant Parikh	2003-04	Quantum	19,11,675
5571/Mum/2016	Shri Rahul Rajnikant Parikh	2004-05	Quantum	29,31,204
5567/Mum/2016	Shri Rahul Rajnikant Parikh	2006-07	Quantum	89,197
5570/Mum/2016	Shri Rahul Rajnikant Parikh	2007-08	Quantum	99,289
5569/Mum/2016	Shri Rahul Rajnikant Parikh	2008-09	Quantum	1,50,139
5889/Mum/2016	Shri Rahul Rajnikant Parikh	2003-04	u/s. 271(1)(c)	17,54,370
5891/Mum/2016	Shri Rahul Rajnikant Parikh	2004-05	u/s. 271(1)(c)	26,90,844
5890/Mum/2016	Shri Rahul Rajnikant Parikh	2006-07	u/s. 271(1)(c)	81,882
5892/Mum/2016	Shri Rahul Rajnikant Parikh	2007-08	u/s. 271(1)(c)	91,147
5893/Mum/2016	Shri Rahul Rajnikant Parikh	2008-09	u/s. 271(1)(c)	1,37,825
5576//Mum/2016	Kalpesh R. Jhaveri	2003-04	Quantum	19,11,081
5575/Mum/2016	Kalpesh R. Jhaveri	2004-05	Quantum	29,31,204
5574/Mum/2016	Kalpesh R. Jhaveri	2006-07	Quantum	89,197
5573/Mum/2016	Kalpesh R. Jhaveri	2007-08	Quantum	99,289
5572/Mum/2016	Kalpesh R. Jhaveri	2008-09	Quantum	1,50,139
5875//Mum/2016	Kalpesh R. Jhaveri	2003-04	u/s. 271(1)(c)	17,54,370
5896//Mum/2016	Kalpesh R. Jhaveri	2004-05	u/s. 271(1)(c)	26,90,894
5898/Mum/2016	Kalpesh R. Jhaveri	2006-07	u/s. 271(1)(c)	81,882
5897/Mum/2016	Kalpesh R. Jhaveri	2007-08	u/s. 271(1)(c)	91,147
5874//Mum/2016	Kalpesh R. Jhaveri	2008-09	u/s. 271(1)(c)	1,37,823

2. At the outset, the learned counsel of the assessee submitted that the tax effect individually in these appeals is less than the limit of Rs.10 lacks fixed by the CBDT for filing appeals before the ITAT. In response, the Revenue has submitted that the appeal is maintainable in view of the exception carved out in the said circular no. 21/2015 dated 10/12/2015 of the CBDT in paragraph 8(d). In this regard, the learned counsel of the assessee has also referred to a CBDT circular dated 23<sup>rd</sup> of January 2017 in which it has been clarified that the import and intent of paragraph 8 of the Circular No. 21/2015 is that

even on issues mention in the said paragraph, appeals against the adverse judgments should only be filed on merits. Referring to this, the learned counsel of the assessee submitted that Revenue has to demonstrate that this appeal was filed on merits and not in a mechanical manner. Upon our enquiry, the Id. Counsel of the assessee accepted that he has no information that the appeal has not been filed by revenue following due departmental process.

3. Upon careful consideration, we note that aforesaid CBDT circular provides in para 8 thereof, exceptions where appeals had to be filed by the Revenue even if the tax effect is below the limit specified.

8. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

- (a) Where the constitutional validity of the provisions of an Act or Rule are under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or
- (d) Where the addition relates to undisclosed foreign assets/ bank accounts.

From the reading of the above, it is clear that this appeal has been filed inasmuch as it falls under paragraph 8(d) wherein irrespective of the tax effect, appeals have to be contested where the addition relates to undisclosed foreign assets/bank accounts. In the present case, we have noted that assessee is having foreign bank account and information thereof has been received by Indian authorities inasmuch as the assessee has used Indian address. Stashing black money in foreign bank accounts is anathema to tax authorities world over and is being vigorously enquired upon by various tax jurisdictions. In such

contemporaneous scenario, by no stretch of imagination it can be said that an appeal against an adverse judgment in case the deposit of undisclosed money in foreign bank account has been filed without application of mind. Accordingly, in our considered opinion, this submission of the learned counsel of the assessee cannot be sustained. Hence, in our considered opinion, the appeal by the Revenue having been filed in accordance with the CBDT Circular in this regard is duly maintainable.

4. Since the facts are identical, we are referring to the Appeal No. 5568/Mum/2016 for the assessment year 2003-04. For the sake of convenience, we are referring to the grounds of appeal of the Revenue in this case, in quantum appeals which reads as under:

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct deleting the addition of Rs.19,11,675/- made by AO in the AY 2003-04.
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring the fact that the assessee is a person of an Indian origin and has used his passport to open the impugned HSBC, Geneva Account even after obtaining US citizenship.
3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring the fact that the assessee is in the diamond business with his partner Mr. Kalpesh Jhaveri who is a partner of a firm in the name of Navinchand Navalchand & Co. having his address at Opera House, Mumbai, which shows that the assessee 's diamond business outside India cannot be independent of India as India is an important diamond market.
4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring the point that the assessee could not prove that the above funds were not from India despite the fact that the narration in the bank statement, business connection of the assessee with Pearl Enterprises LLC and Exim Jewellers LLC and not proved that they are trade receipts.
5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring the provision of section 5(2) of I. T. Act, which defines the income of a non-resident as under and more so that the assessee has not made out a case that the deposits in the HSBC, Geneva Account do not fall within the ambit of the provision of the above section-

"Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

- (a) is received or is deemed to be received in India in such year by or on behalf of such person ; or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year".

6. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in ignoring the provisions of Section 114 of the Indian Evidence Act, 1872 which reads as under and amply applies to the case of the assessee:-

"Section 114. Court may presume existence of certain facts -

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The Court may presume -

.... (g) That evidence which could be and is not produced would, if produced be unfavorable to the person who withholds it..... "

Section 114(g) of The Indian Evidence Act. 1872, thus clearly says that the Courts can presume existence of certain facts if the person liable to produce evidence which could be and is not produced, which if produced would have been unfavourable to the person who withholds it.

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring that the assessee has never disclosed the facts of his having the HSBC, Geneva Account in his Return of Income neither to the Indian Tax authorities nor to the US Tax Authorities and has not paid taxes on the credit appearing in the said HSBC. Geneva Account.

8. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in relying on the decisions in the cases of Sushila Ramaswamy vs ACIT (2010) 37 SOT 146 of Hon'ble ITA T Chennai and DCIT vs Birla Corporation Ltd., where the issues were relating to taxation of amount remitted to India from sources outside India where as in the present case, the issue is related to deposit of amounts in foreign bank viz. HSBC Bank, Geneva.

9. The Appellant prays that the order of the Ld. CIT(A) on the above ground(s) be set aside and that of the Assessing Officer be restored.

10. The appellant prays that the appeal is maintainable in this case in view of Circular No. 21/2015 dated 10. 12.2015 of the CBDT.

5. Brief facts of the case as emanating from the Assessing Officer's order are as under:

During the course of the assessment proceedings, the assessee submitted that he is a non-resident since over 20 years and a citizen of the United States of America since the year 2000. He is a diamonds and gems trader and conducts his business from the USA along with one Kalpesh Jhaveri another non-resident and American citizen who also is his brother-in-law. Both the assessee and Kalpesh Jhaveri are partners in KR Gems. For ease of doing business in Europe and the Middle East, they have opened an account in HSBC, Geneva in November 2002 in the name of himself, his sister - Kiran Parikh and Mr. Kalpesh Jhaveri.

6. In this case, bank account detail in original was submitted in the form of a Compact Disc (CD) and the same was authenticated. During this assessment year, the following credits are seen in the HSBC, Geneva account being Account No. 11247750 and client no.1369040:

For AY 2003-04:

Date of deposit	Amount (USD)	Exchange rate (1 USD)	Amount (1IMR)
8.1.2003	12000	Rs. 47.98	5,75,760
14.1.2003	7990	Rs. 47.90	3,82,721
5.3.2003	20000	Rs. 47.63	9,52,600
TOTAL	39990s		19,11,081

Date of deposit	Amount (USD)
8.1.2003	12000
14.1.2003	7990
5.3.2003	20000

For AY 2004-05:

Date of deposit	Amount (USD)	Exchange rate (1 USD)	Amount (1NR)
24.04.2004	66376.90	Rs. 44.16	29,31,204

Date of deposit	Amount (USD)
24.04.2004	66376.90

For A.Y. 2006-07, 2007-08 and 2008-09:

Date of deposit	Amount (USD)
8.1.2003	12000
14.1.2003	7990
5.3.2003	20000
24.4.2004	66376.90

As per the narration on the bank statement, the first two credits are from Pearl Enterprise LLC and Exim Jewellers LLC respectively whereas no narration is available with the third credit entry.

7. During the assessment proceedings, the following queries were raised before the assessee for him to explain the source of the above deposits:

- (a) Explanation on the credit entries appearing with evidences.
- (b) Whether the HSBC, Geneva account was disclosed before the US tax authorities
- (c) Whether his Indian passport was used by him to open an account in HSBC, Geneva.

The assessee could only produce the credit advice with regard to the first two deposits in which it is stated that the remittance was made from Habib American Bank. However, no further details were provided to explain the source of the above credits apart

from the narration already appearing in the bank statement. The assessee contends that the bank itself could not provide him further details on the deposits even after an attempt was made with the bank. The assessee could not prove with documentary evidence that the deposits are not from India. The narration in the bank statement is mentioning Pearl Enterprise LLC and Exim Jewellers LLC, however the assessee has not produced the bills against which these payments were made nor the material sold. As far as the credit of USD 20000 is concerned, there is no explanation as the bank statement itself mentions only 'by order of a client'. No further evidence has been brought on record by the assessee to explain this.

8. The assessee contended that the above deposits have no source from India as there are no LLC entities in India and that the deposits pertain to the business conducted in Middle East and Europe. But the assessee is silent on whether the HSBC, Geneva account was disclosed before the US tax authorities. It is therefore apparent that the same is not disclosed. Also it is stated by the assessee that he continues to hold his Indian passport after acquiring the American citizenship. From the documents pertaining to the opening of the account in HSBC, Geneva, it can be seen that this Indian passport was used to open the said account.

9. The Assessing Officer observed that the assessee is of Indian origin. He is using his Indian passport to open the HSBC Geneva account even after obtaining the US citizenship. During the assessment proceedings, notice u/s 133(6) of the Act was issued

to CDSL and NSDL. In response, NSDL vide their letter dt. 18.3.15 has reported the following demat accounts in the name of the assessee :

Sr.No.	Client ID	No Scripts held	Total number shares held various
1	10246442	4	92
2	10246426	5	386
3	10246434	2	3400
4	10535620	3	116

10. This shows that the assessee has interests in India. Perusal of his return of income in India shows that the assessee is a partner of a firm in the name of Navinchand NavalchandSt Co. which is a firm having address at Opera House, Mumbai. During the year, the assessee has received Rs. 49,369/- as business income u/s 28(v) of the Act being interest received from this firm. This shows that the assessee's diamond business outside India cannot be independent of that in India. The report of the Indian Express on 10.2.2015 on the topic "Why diamonds are the HSBC list's best friend" reported that:

(a) A Paris-based Financial Action Task Force handed in a report revealing what lies at the heart of the diamond trade: close family ties and kinship. "According to industry sources, it is difficult for a new and unknown individual to get involved in the trade of diamonds without being referred or introduced by an already established dealer, the task force summed up. -

(b) In the HSBC list, 77 account-holders are connected to the diamond industry, their deposits totaling an estimated \$203 million. Of the 77 account holders, 64 are beneficial owners from 12 families and only 13 are individual account holders.

(c) There is a common thread: all have bases in the Belgian city of Antwerp, the international capital of rough diamond international capital of rough diamond trade, industry sources say many Indian diamond trading families migrated to Belgium in the 1960s and 1970s. Trade in rough diamonds takes place in Antwerp, London, Tel Aviv, Dubai and, in recent years, Hong Kong while India is the global manufacturing hub, where much of the cutting and polishing is done.

(d) According to data from the Gem and Jewellery Export Promotion Council (GJEPC), India imports 93.75 per cent of the 128 million carats of rough diamonds mined across the world. After cutting and polishing, the diamonds are re-exported. Most traders have relatives, or at least one relative, in India to handle operations.

(e) The Indian Express visited Bharat Diamond Bourse on Mumbai's Bandra Kurta Complex, the biggest diamond trading centre in India. Here deals are struck not over stamp papers, but via firm handshakes. Such is the trust, such are the ties that diamonds worth millions are given on credit for sale without any formal agreement.

(f) The pattern of business with footprints in three or four diamond trading cities is what is often called the "diamond pipeline". It has three legs: rough diamonds are purchased in bulk by sightholders, and brought to markets in Antwerp, Dubai and London; rough diamonds are then sent for cutting and polishing; the CPDs or cut-and-polished diamonds are exported across the world.

(g) In India, where there is no tax on import of rough diamonds, the precious stones are vulnerable to misuse - these are often used for illegal money transfer, money laundering and exploitation of credit facilities. The Income Tax (I-T), Enforcement

Directorate (ED) and Directorate of Revenue Intelligence (DRI) have named diamond traders in at least 65 cases. It is alleged that they are key players in trade-based money laundering of an estimated Rs.60,000 crore. A February 2014 internal I-T paper on the diamond traders of Surat and Mumbai outlines how traders facilitate bogus entries through which black money is converted to legitimate money for other sectors such as real estate.

(h) A forensic report dated October 28, 2013, submitted by a consortium of banks to the Reserve Bank of India in connection with the credit facility used by a diamond trading company, underlines: "It is very common for one family to have multiple companies under multiple names across geographies that receive exports from India so that companies can avail import duty allowances and letters of credit from banks."

11. The provision of Section 5(2) of the Act is reproduced as under:

*"Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which*

*(a) is received or is deemed to be received in India in such year by or on behalf of such person; or .*

*(b) accrues or arises or is deemed to accrue or arise to him in India during such year".*

12. During the assessment proceedings and as can be seen from the facts of the case that the assessee has not made out case that the deposits in the above mentioned accounts in HSBC, Geneva do not fall within the ambit of this provision of law.

13. In view of the above, the circumstances are such that the ultimate source of the credits in the HSBC, Geneva account can be deduced to be from India. This presumption

is as per the provision of The Indian Evidence Act, 1872. The case of the assessee is even worse than any presumption of certain facts as it is a matter of fact that the said HSBC, Geneva account was never disclosed by the assessee in his returns of income anywhere in the world and hence taxes have never been paid on the credits as mentioned in the account. The addition for the different Ays are as under:

2003-04

	Particulars	Amount(Rs.)
	Income as per return of income	594
Add	Addition as above	19,11,081
	Total income	19,11,675

The addition on this account is Rs.19,11,081/-

2004-05

	Particulars	Amount(Rs.)
	Income as per return of income	857
Add	Addition as above	29,31,204
	Total income	29,32,061

The addition on this account is Rs. 29,31,204/-

2006-07

	Particulars	Amount(Rs.)
	Income as per return of income	648
Add	Addition as above	89,197
	Total income	89,845

The addition on this account is Rs.89,197/-

2007-08

	Particulars	Amount(Rs.)
	Income as per return of income	411
Add	Addition as above	99,289
	Total income	99,700

The addition on this account is Rs. 99,289/-

2008-09

	Particulars	Amount(Rs.)
	Income as per return of income	2,879

Add	Addition as above	1,50,139
	Total income	1,53,018

The addition on this account is **Rs. 1,50,139/-**

On this addition, penalty u/s. 271(1)(c) of the Act was also levied.

14. Against the above order, the assessee appealed before the Id. Commissioner of Income Tax (Appeals) challenging both the validity of reopening as well as merits of addition.

15. The Id. Commissioner of Income Tax (Appeals) confirmed the validity of reopening, however, she deleted the addition by accepting the contentions of the assessee.

The Id. Commissioner of Income Tax (Appeals) held as under:

The rest of the grounds deal with these deposits seen in the HSBC account and are accordingly disposed off together. One of the issues raised by the appellant is that he is a non-resident under section 6 of the act since 1987 and therefore is not liable to tax for any income which has neither accrued or arisen or deemed to accrue or having arisen to him in India during the year. That the appellant is a non-resident since 1987 is a matter of record and is not disputed by the AO either. That the 1<sup>st</sup> deposit in the said account has happened only in financial year 2002-03 is also a matter of fact which remains undisputed. The main contention taken by the AO that the said amount would be taxable in India is only because of the address being given of India in the said account; surely this alone cannot be taken to be sufficient evidence to hold that the said amount would have a bearing for tax purposes in India. The reference made by the appellant to the decision of Chennai tribunal in the case of Smt. Sushila Ramaswamy versus ACIT (2010) 37 SOT 146 (Chennai) is found to be relevant to the facts of the present case. Similarly the provisions of section 5 do not permit taxation of amount remitted to India from sources outside India which is not income under the provisions of the act. This issue has been elaborately discussed by the coordinate bench in the case of DCIT versus Birla Corporation limited referred supra and I find that the facts of that case are also directly applicable to the case. Therefore in my considered opinion the appellant being a non-resident having money in a foreign country and with the income not finding any evidence of it being received or deemed to be received or arisen in India, cannot be asked to pay tax on the same in India.

Merely relying on newspaper reports all the working of a particular business as having been reported as the modus operandi would not be sufficient evidence to add income in the hands of the taxpayer. One of the grounds also taken up by the appellant with respect to this addition is that the same amount has been added in the hands of the other account holder, Kamlesh Jhaveri and surely the amount suffers from double taxation. I find that on merit in any case the said addition is not being upheld and therefore this ground is also treated as allowed.

16. Since the Id. Commissioner of Income Tax (Appeals) has deleted the quantum addition, she also deleted the penalty levied on the amount.

17. Against this order, the assessee is in appeal before us.

18. We have heard both the counsel and perused the records. We find that in this case, the assessee is a non resident staying in USA. The assessee has also submitted that in the year 2000 he surrendered his Indian nationality and accepted the citizenship of US. He was given the passport of USA and presently he was residing at California, USA. After obtaining US citizenship and passport, the assessee was not entitled to use Indian passport as per Indian Laws. The assessee had to surrender the said Indian passport. Indian laws do not permit dual citizenship. The assessee used his now invalid Indian passport to give Indian address for opening an account in HSBC bank, Switzerland in the year 2002. This account is in the joint names of the assessee Shri Rahul Rajnikant Parikh and Shri Kalpesh R. Jhaveri and his sister Kiran Parikh. The assessee's Shri Rahul Rajnikant Parikh and Shri Kalpesh R. Jhaveri are partners in K. R. Jems, an Indian firm. The deposits were found in the above said HSBC bank account in Geneva. The Assessing Officer has enquired whether these persons have disclosed these bank accounts to the US authorities, the assessee did not give any cogent reply. From the bank statement it was

stated that two of the remittances were made from Habib American Bank. However, no further details were provided to explain the source of the above credits. Apart from the narration appearing in the bank account, the assessee contended that the bank itself could not provide any further details on the deposits even after an attempt was made with the bank.

19. In the background of the afore-said circumstances, the Assessing Officer was of the opinion that “the assessee could not prove with documentary evidences that the deposits are not from India. The narration in the bank statement is mentioning Pearl Enterprise LLC and Exim Jewellers LLC, however the assessee has not produced the bills against which these payments were made nor the material sold. As far as the credit of USD 20000 is concerned, there is no explanation as the bank statement itself mentions only 'by order of a client'. No further evidence has been brought on record by the assessee to explain this.”

20. Under these circumstances, the Assessing Officer proceeded to add the entire deposits in the bank account to both the assessee's income. In the rest of the years, the interest accrued in the said account was also added. The Id. Commissioner of Income Tax (Appeals), on the other hand, has deleted the addition on the premise that it is a foreign bank account of a non-resident and the deposits therein cannot be added in the hands of the assessee individual.

21. Having carefully perused the facts and circumstances of the case, firstly, we note that at the time of opening of the bank account in Geneva, the assessee was a US citizen

and resident and he was holding a US passport. Still the assessee chose to open the account in HSBC bank account in Geneva by using the address and proof thereof by way of his Indian passport which was no longer valid when he has accepted the US nationality by surrendering Indian citizenship. Here the assessee instead of surrendering his invalid Indian passport has used it to open a bank account in HSBC bank, Geneva. Further, the assessee is not responding that this bank account has been disclosed to the US tax authorities. In such circumstances, the suspicion that the deposits in this bank account have Indian origin is not unfounded. It is because of these circumstances, that when the Id. Commissioner of Income Tax (Appeals) has affirmed the reopening, the assessee has not challenged the same before the ITAT.

22. Now coming to the merits of the addition, we find that account is in the name of three persons and the entire amount deposited has been added in the names of these two assessee's twice. If the account is in the name of three persons, how can the full amount be added twice in the hands of both the assessee, has not been spelt out by the Assessing Officer.

23. Secondly, the narrations in the bank accounts do not give any clue that these amounts originate from India. The assessee has responded that he is not able to obtain the necessary details from the bank. The Assessing Officer has also not made any effort to further identify the source of the deposits. It is also not the case that when the Assessing Officer's inference is that the assessee's are having partnership business of diamonds in India, the money belongs to the partnership firm.

24. In our considered opinion, the issue involves further investigation. The Id. Commissioner of Income Tax (Appeals) has deleted the addition by holding that the amount relates to nonresident foreign national in foreign bank account. Here the Id. Commissioner of Income Tax (Appeals) has totally ignored the crucial fact that the assessee has used his invalid Indian passport which he should have surrendered to the Indian authorities in opening a bank account in Geneva. Hence, the intent of the assessee is not above board. Further it is settled law from the Hon'ble Apex Court that the revenue authorities are entitled to look into the surrounding circumstances and economic reliability.

25. As held by the Hon'ble Apex Court in the case of *Kapoorchand Shrimal* [1981] 131 ITR 451 (SC) it is the duty of the appellate authority to correct the error in the orders of the authorities below and remit the matter for further investigation with a necessary directions unless prohibited by law. In the background of the aforesaid discussion and precedent, we remit the issue to the file of the Assessing Officer. The Assessing Officer is directed to make further investigation into the source of the deposits in the bank accounts. The Assessing Officer is also directed to apportion the amounts in the name of the account holders unless proved otherwise by means of cogent evidence. The assessee is also directed to cooperate and he cannot plead ignorance of the source of his own bank deposits. Needless to add, the assessee should be granted adequate opportunity of being heard. Both the counsels agreed to the proposition of the issue being remitted to the file of Assessing Officer for necessary adjudication.

26. Since we have remitted the issue of addition in the quantum appeals to the file of the Assessing Officer, the penalties levied also do not survive and stand remitted to the file of the Assessing Officer. The Assessing Officer shall consider the issue afresh of levy of penalty u/s. 271(1)(c) of the Act after passing an order afresh in the quantum appeals.

27. In the result, these appeals by the Revenues stands allowed for statistical purposes.

परिणामतः राजस्व की अपीलें सांख्यिकीय उद्देश्य के लिए स्वीकृत की जाती हैं ।

*Order pronounced in the open court on 01.06.2018*

Sd/-

(Ravish Sood)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 01.06.2018

व.नि.स./Roshani, Sr. PS

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**