IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI SMC BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President)]

ITA No. 4472/Mum/2019
Assessment year: 2013-14

Aditya Balkrishna Shroff **…….……Appellant**
#4, 2nd floor, Oshiwara Link Road
Andheri (West), Mumbai 400 053

Vs.

Income Tax Officer
Ward 16(1)(1), Mumbai **……Respondent**

Appearances by
None *for the appellant*
Vijay Kumar Menon *for the respondent*

Date of concluding the hearing : May 10, 2021
Date of pronouncement : May 17, 2021

O R D E R

1. This appeal, calling into question correctness of the order dated 17th May 2019, passed by the Commissioner (Appeals) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2013-14, raises an interesting question about tax implications of foreign exchange fluctuation gains arising upon receiving the repayment of a personal loan, extended by the assessee, denominated in US Dollars.

2. The issue in appeal lies in a very narrow compass of material facts. The assessee before us is an individual. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that "**as per the AIR information, and as per capital account of the assessee, the assessee is in receipt of Rs 1,12,35,326".** When the Assessing Officer probed this entry further, it was explained by the assessee that on 29th March 2010 the assessee had extended a personal interest free loan of US $ 2,00,000 to his cousin one Shravan Shyam Shroff in Singapore (**SSS-S**, in short). The remittance so made was under LRS (Liberalized Remittance Scheme) issued by the Reserve Bank of India. As on that date, the prevailing exchange rate for purchase of one US $ was Rs 45.14, and, therefore, the assessee had to pay Rs 90,30,758 for this remittance of US $ 2,00,000. The borrower, namely SSS-S, paid back this amount of US $ 2,00,000 to the assessee on 24th May 2012. On that day, while converting the US $ into Indian Rupees, the exchange rate for purchase of one US $ was Rs 56.18. Accordingly, the amount credited to the assessee's account was Rs

1,12,35,326. The entry in question was thus explained by the assessee. The matter, however, did not end there. The Assessing Officer was apparently of the view that while entry was explained, the difference, in terms of Indian Rupees, on account of this transaction was of income nature. It was explained by the assessee that the loan account was purely personal, it was not in the nature of a business transaction, and that there was no motive of economic gains in this transaction. It was explained that the loan transaction was in terms of the Liberalized Remittance Scheme of the Reserve Bank of India inasmuch as it was a permitted transaction, and specifically on capital account. It was further explained that the transaction was in capital field and that, therefore, "**the gain is in the nature of capital receipt and hence not offered for taxation".** None of these submissions, however, impressed the Assessing Officer so far as taxability of the surplus amount, in rupee terms, was concerned. The Assessing Officer observed that "**no infirmity is observed on the advancement of loan to Shri Shyam Sunder Shroff,** *(but)..* **the dispute is with respect to gains on foreign exchange fluctuation**". He was of the view that "**the gain on realization of loan would partake character of an income under the head income from other sources**". When the Assessing Officer persisted with this analysis and, as he puts it, 'confronted' the assessee with the same, the assessee, without prejudice to his claim on merits, paid tax on this amount. The Assessing Officer records this development as follows:

> **4.6 On being confronted, with the above facts, the assessee has made a without prejudice submission vide letter dated 28-03-2016, relevant portion of which is reproduced as under:-**
>
> > **"The undersigned hereby VOLUNTARILY AND SUO-MOTO OFFERS the said impugned Amount of Rs.22,02,286/- to Tax, WITHOUT PREJUDICE AND AS A MATTER OF ABDUNDANT PRECAUTION AND WITHOUT CONCEDING TO THE TAXABILITY THERE-OF AND WITH A VIEW TO PURCHASE PEACE, RESERVING THE UNDERSIGNED'S RIGHT TO APPEAL.**
> >
> > **The impugned Tax on the said amount together with all applicable interest, which works out to Appx. Rs.9,00,000/- is paid and necessary challan is attached herewith"**
>
> **In view of the above, the gain on loan arising out of foreign exchange fluctuation amounting to Rs.22,04,568/- is held as taxable under the Head 'Income from Other sources'. Penalty proceedings u/s. 271(1)(c) of the 1.T. Act, 1961 is hereby initiated for furnishing inaccurate particulars of income to conceal income chargeable to tax.**

3. It was in this backdrop that the impugned addition of Rs 22,04,568 was made by the Assessing Officer, aggrieved by which the assessee unsuccessfully carried the matter in appeal before the CIT(A). Once again the assessee made elaborate and erudite submissions on how the receipt in question is a capital receipt which is not taxable in nature. A large number of judicial precedents were cited in the submissions so made. Learned CIT(A)

extensively reproduced these submissions but was not swayed by these submissions nevertheless. He simply brushed aside these submissions, and confirmed the action of the Assessing Officer by observing as follows:

> **6.1.1 I have considered the submission of the appellant. The loan was extended by the appellant to his cousin under the Forex Facilities including the Liberalized Remittance Scheme (LRS) for residents updated as on 17.07.2015. In support of its claim, appellant has submitted FAQ's released by the Reserve Bank of India. It is important to reproduce the question no. 4 of the FAQ as under:**
>
> *Q4. Can a resident individual make a rupee loan to an NRI/PIO who is a close relative of resident individual, by of crossed cheque/electronic transfer?*
>
> *Ans. A Resident individual is permitted to make a rupee loan to a NRI/PIO who is a close relative of the resident individual (relative as defined in section 6 of the Companies Act 1955) by way of crossed cheque/electronic transfer subject to the following conditions:*
>
> *(i) The loan is free of interest and the minimum maturity of the loan is One year.*
>
> *(ii) The loan amount should be within the overall limit under the Liberalized Remittance Scheme of USD 2,50,000 per financial year, available to the resident individual. It would be the responsibility of the lender to ensure that the amount of loan is within the Liberalized Remittance Scheme (limit of USD 2,50,000 during the financial year.*
>
> *(iii) The loan shall be utilized for meeting the borrower's personal requirements or for his own business purposes in India.*
>
> *(iv) The loan shall not be utilized, either singly or in association with other person, or any of the activities in which investments by persons residents outside India is prohibited namely;*
>
> *a. The business of chit fund, or*
> *b. Nidhi Company, or*
> *c. Agricultural or plantation activities or in real estate business, construction of farmhouses or*
> *d. Trading in Transferable Development Rights (TDRs)*
>
> *Explanation: For the purpose of item (c) above, real estate business hall not include development of townships, construction of residential/ commercial premises, roads or bridges*
>
> *(v) The loan amount should be credited to the NRO a/c of the NRI/ PIO: credit of such loan amount may be treated as an eligible credit to NRO account*
>
> *(vi) Repayment of loan shall be made by way of inward remittance-through normal banking channels or by debit to the Non-resident Ordinary*

(NRO)/ Non-resident External (NRE) I Foreign Currency Non- resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable Property against which such loan was granted.

6.1. From perusal of the answer to question no. 4, it is evident that Reserve Bank of India permitted to make only rupee loan to the Non Resident Indian/ PIO. Therefore, the permission was only for rupee loan which was remitted to Foreign Residence according to their convenience in foreign currencies but from perusal of scheme it is evident that loan was in terms of rupees. In case of appellant, the loan was for an amount of Rs 90,30,758/- against which he received an amount of Rs. 1,12,35,326/- resulting into a net surplus of Rs 22,02,286/-. Since the loan was permitted to make a rupee loan, therefore, any surplus resulting as a result of such loan transaction will be treated as an income resulting out of such loan. As per provision of the Income-tax Act if giving and taking loan is not the business of the assessee then income arising out of the loan is treated as interest of the income or income from other sources. In view of these facts, I have no reason to interfere with the findings given by the Ld. AO, therefore I confirm the addition of Rs 22,04,568/- rate by the AO under the head income from other sources.

4. The assessee is not satisfied and is in further appeal before me.

5. None appeared for the assessee. On a perusal of appeal papers, however, I am satisfied that it is a fit case which can be disposed of *ex-parte* qua the assessee and on the basis of pleadings on record- particularly as duly noted by the lower authorities at length. The issue in appeal is a neatly identified legal issue in a very narrow compass of material facts. I have, therefore, heard the learned Departmental Representative, carefully perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. When this appeal came up for hearing before me, I asked the learned Departmental Representative whether he disputes the fact that it is a receipt on capital account as it is not in the course of business, and, if he does not dispute so, on what basis does he justify its taxation as an income. Learned Departmental Representative primarily relied upon the stand of the authorities below and emphasized that an appreciation in the rupee value of foreign currency denominated loan, as in this case, is clearly of income nature as it results in a gain to the assessee, and the said gain is not specifically exempted under the Income Tax Act, 1961.

7. To my mind, so far as the fundamental legal position is concerned, it is very simple and easy to understand. When a receipt is in the capital field, even if that be a gain, it is in the nature of a capital gain, but then, as the definition of income, under section 2(24)(vi), stands, only such capital gains can be brought to tax as are permissible to be taxed under section 45. In other words, a capital gain, which is not taxable under the specific provisions of Section 45 or which is not specifically included in the definition of income, by way of a specific deeming fiction, is outside the ambit of taxable income. However, before I deal with this

legal hypothesis in more detail and with the help of the binding judicial precedents, let me take a quick look at some of the material facts in the backdrop of the above hypothesis. I find that there is no dispute about the factual aspect that the loan given by the assessee to SSS-S, his cousin, was in US Dollars, and the amount received back from SSS-S was also in US Dollars. Whether the assessee was permitted to give loan to this person in a foreign currency or not is not even a relevant question in the present context, though I will come to that aspect of the matter a little later, what is beyond doubt or controversy is that the loan, as a matter of fact, was given in US Dollars. There is also no dispute that the loan was not even given in the course of business of the assessee, and it was on capital account. The explanation given by the assessee, to this effect, to the Assessing Officer was duly accepted by the Assessing Officer, as evident from the observation that **"no infirmity is observed on the advancement of loan to Shri Shyam Sunder Shroff, *(but)*..the dispute is with respect to gains on foreign exchange fluctuation".** Learned CIT(A) also accepts this position implicitly when he states that "as per provision of the Income-tax Act if giving and taking loan is not the business of the assessee then income arising out of the loan is treated as interest of the income or income from other sources**".** His observations so far as the accretion of money, in rupee terms, being in the nature of interest income are concerned, are *ex-facie* incorrect inasmuch as the money advanced and the money received were denominated in terms of US Dollars, and whatever amount was advanced as loan was exactly the same as amount received back by the assessee. The accretion of money, in rupee terms, was on account of increase in the value of the US Dollars advanced *per se*, and these US Dollars advanced were in the field of a capital transaction. The question then arises as to whether an accretion of value in respect of an asset held in capital account, i.e. foreign exchange denominated loan advanced, can be subjected to tax in the hands of the assessee. As I take a look at this aspect of the matter, I am reminded of a decision that I had authored, over twenty years ago, in the case **of Shaw Wallace & Co Ltd Vs DCIT [(2001) 71 TTJ 478 (Cal)].** In this decision, speaking for a division bench of this Tribunal, I had discussed at length as to what are the tax implications of a receipt being in the capital field, as to what constitutes capital receipt in the first place, and the legal hypothesis I set out in the beginning of the present discussion. The discussions, on the related legal issues, in this decision are equally relevant in the present context. In the said decision, I had, *inter alia,* observed as follows:

> ***8.*** **Hon'ble Supreme Court has, in the case of *Padmaraje R. Kadambande* v. *CIT* [1992] 195 ITR 877, observed that, "...we hold that the amounts received by the assessee during the financial years in question have to be regarded as capital receipts and, *therefore,* are not income within meaning of section 2(24) of the Income-tax Act." [Emphasis supplied]. This clearly implies, as is the settled law, that a capital receipt, in principle, is outside the scope of 'income' chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of a revenue receipt or is specifically brought within ambit of 'income' by way of specific provisions of the Income-tax Act. We are, therefore, of the considered view that the receipt in question cannot be brought to tax unless the same is held to be a revenue receipt in nature or unless, in case it is**

held to be a capital receipt, there are specific provision to artificially treat this capital receipt as income. It is not the case of the revenue that there are any specific provisions to artificially treat this receipt as an income and, therefore, taxability of this receipt solely hinges on the nature of receipt *i.e.* whether the receipt is capital receipt or revenue receipt.

9. …….. As observed by Hon'ble Supreme Court, in the case of *CIT* v. *Kamal Behari Lal Singha* [1971] 82 ITR 460, "it is now well settled that, in order to find out whether a receipt is capital receipt or revenue receipt, one has to see what it is in the hands of the receiver and not what it is in the hands of the payer". In other words, the nature of receipt is determined entirely by its character in the hands of the receiver and the source from which the payment is made has no bearing on that question. ……

10. The next things to be examined by us is revenue's reliance on Hon'ble Supreme Court's judgment in *Emil Webber's* case (*supra*). There can hardly be any doubt about the proposition, as reiterated by the Hon'ble Supreme Court in this case, that anything which can be properly described as income is taxable under the Income-tax Act unless, of course, it is exempted under one or the other provisions of the Act. However, it cannot be overlooked that any receipt being described as income cannot be at the unfettered discretion of the revenue authorities; such a receipt has to meet well-settled criterion such as, for example, criterion of nature of receipt being revenue receipt in nature. As discussed earlier in the order, law is fairly well settled that it is only a revenue receipt which can be brought to tax, unless, of course, there are specific provision to artificially treat such a non revenue receipt also as income. We may also mention that, in *Emil Webber's* case (*supra*), Hon'ble Supreme Court's conclusion that payments made by a non employer, towards tax obligations for the assessee, will also be included in 'income' was persuaded by factors including *inter alia* the fact that (*i*) said amount is nothing but a tax upon the salary received by the assessee; (*ii*) such a non employer had undertaken legal obligation to pay tax on salary received by the assessee, and, as such, the payment was made for and on behalf of the assessee; and (*iii*) it cannot be said that the said payment had no integral connection with the salary received by the assessee. These factors will make it clear that it was not even assessee's case before the Hon'ble Supreme Court that the receipt in question is not a revenue receipt. On the contrary, Hon'ble Supreme Court itself observed that impugned receipt's integral nexus with a revenue receipt *i.e.* salary cannot be ruled out. In the case before us, however, facts are altogether different and there is no nexus, direct or indirect, between receipt impugned in this appeal and any revenue receipts of the assessee. On the contrary, there is a clear nexus between receipt impugned in appeal before us, on one hand, and capital assets of the assessee-company. Therefore, there is little support that revenue can derive from *Emil Webber's* case (*supra*).

11. As regards Hon'ble Supreme Court's judgment in the case of *G.R. Karthikeyan* (*supra*), this also deals with the connotations of the expression

'income' which Their Lordships have construed as of widest amplitude so as this expression may be given its natural and grammatical meaning. Howsoever, liberal or narrow be the interpretation of expression 'income', it cannot alter character of a receipt *i.e.* convert a capital receipt into a revenue receipt or *vice versa.* There is no warrant for inference that even the most liberal interpretation of 'income' can nullify or blur the all-important distinction between capital receipt or revenue receipt. In this view of the matter, and considering that primary issue before us is to examine true nature of receipt, we see no help to revenue's case even by this Supreme Court judgment. Similarly, there are other judgments relied upon by the revenue, which only deal with the scope of expression 'income' but do not touch upon the question of capital receipts being outside the ambit of income. These judgments also, for the same reasons, cannot be of any assistance to revenue's case.

12. We find that, as observed by Hon'ble Supreme Court in the case of *Dr. K. George Thomas* (*supra*) "the burden is on the revenue to establish that the receipt is of a revenue nature" though "once the a receipt is found to be of revenue character, whether it comes under exemption or not, it is for the assessee to establish". No doubt that the Income-tax Act imposes a general liability to tax upon all income, but it does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provisions. However, where a receipt is proved to be in the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee. In the case before us, revenue has not sufficiently discharged its onus of proving that the receipt in question is a revenue receipt in nature. The revenue has at best made efforts to demonstrate that the receipt in question is not taxable as a capital gain and, therefore, it can only be in nature of revenue receipt. However, there is a glaring fallacy in this argument, since merely the fact that a receipt is not taxable as a capital gain would not imply, or even suggest, that such a receipt is revenue receipt. There can always be, and have been, cases in which receipts are held to be capital receipts in nature and yet not chargeable to tax as a capital gain.

13. In the case of *Ashoka Mktg. Ltd.* (*supra*), this assessee had entered into an agreement with a vendor for purchase of certain property belonging to the vendor. The vendor, having failed to complete the transaction because title of the property was not marketable as there was a prior mortgage of the property with the Government, paid liquidated damages of Rs. 1 lakh to the assessee. Hon'ble jurisdictional High Court, dealing with taxability of such liquidated damages received by the assessee, observed that such liquidated damages are neither in the nature of capital gain nor in the nature of a revenue receipt, and, therefore, outside the ambit of taxable income. We may, in this regard, quote following observations of the Hon'ble High Court :

> **"2. It may be recalled that on the failure on the part of vendor to complete the agreement, because of the title being not marketable and there having**

been a prior mortgage with the U.P. Government, it was not possible on the part of the assessee to purchase the property. For this transaction, the assessee did not have to part with any money or stock in trade. There was no cost involved in acquisition of the sum of Rs. 1 lakh. Hence, it could not be deemed to be a capital gain at all. The liability of the assessee could arise only if there would have been a transfer of capital asset and since there was no element of cost in the acquisition of Rs. 1 lakh, it could not answer the description of either a capital gain or revenue receipt.

3. We have scrutinized the facts as also the reasoning given by the Tribunal. We are in accord with the findings of the Tribunal that the amount of Rs. 1 lakh is not in the nature of capital gain or in the nature of the revenue receipt. There is no transfer in relation to a capital asset within the meanings of section 2(47) of the Income-tax Act, 1961 and the amount of Rs. 1 lakh also does not confirm to the concept of a capital asset...."

The Hon'ble High Court then formed a view that on the facts and in the circumstances of the case, the Tribunal was right in holding that sum of Rs. 1 lakh received by the assessee is neither a revenue receipt nor a capital gain. In relying upon this judgment, we are only concerned with the proposition that a receipt which is neither a capital gain nor a revenue receipt will be outside the ambit of income chargeable to tax. We can also safely infer that merely because a receipt is not a capital gain chargeable to tax, it would not mean that such a receipt is revenue receipt in nature.

14. We now come to Hon'ble Madras High Court's judgment in the case of *Seshasayee Bros. (P.) Ltd.* (*supra*). Their Lordships of Hon'ble Madras High Court, after elaborately surveying the legal precedents on the characteristics of capital receipts and revenue receipts, came to the following conclusion:

"Thus, a combined reading of the abovesaid judicial pronouncements would go to show that when a receipt is referable to fixed capital, it is not taxable, and it is taxable as a revenue item when it is referable to circulating capital or stock in trade."

In our considered view, the connotations of expression 'referable' are very wide in scope and these cannot be confined to clear nexus between the receipt in question on one hand, and extinction or sterlisation of a capital asset, on the other hand. Even if there is no extinction or sterilisation of a capital asset and yet the receipt can be reasonably attributed to, or linked with, a capital asset, the same will be capital receipt in nature and, accordingly, outside the tax net. In our considered view, therefore, once a receipt is referable to a capital asset, the presumption has to be that the nature of receipt being non revenue receipt, the same is outside the ambit of 'income' within meanings of section. However, it is open to the department to rebut, on any plausible basis, the inference that the receipt in question is not a revenue receipt.

8. In the present case, it is not even in dispute, and rightly so, that the receipt is in question is in the capital field but the Assessing Officer has taxed it on the basis that "**the gain on realization of loan would partake character of an income under the head income from other sources**", and the CIT(A) has justified such a taxation on the basis, which was altogether different vis-à-vis the reasoning adopted by the Assessing Officer, that the accretion in rupee terms is to be considered as interest, and is to be taxed as such by observing that **"as per provision of the Income-tax Act if giving and taking loan is not the business of the assessee then income arising out of the loan is treated as interest of the income or income from other sources".** None of these reasonings meet our approval. The Assessing Officer has proceeded to proceed on the basis that gains on realization of loan partakes the character of an income under the head income from other sources. He proceed to put cart before the horse by deciding the head under which the income is to be taxed, even before deciding whether it is of income nature, and mixes up the concept of 'income' with the concept of 'gains'. What he misses out is the critical fact that, in terms of the provisions of the Income Tax Act, all 'gains' are not covered by the scope of 'income'. Take, for example, capital gains. Section 2(24)(vi) provides that "income, includes……any capital gains chargeable under section 45". Once the statutory provision itself lays down the principle that only such capital gains are included in the scope of 'income' as are chargeable under section 45, it is only elementary that a capital gain, which is not chargeable to tax under section 45, cannot be included in income. It is not even the case of the authorities below that the capital gains in question are taxable under section 45. As noted by Hon'ble Supreme Court in the case of **CIT Vs D P Sandu & Bros Chembur Pvt Ltd [(2005) 273 ITR 1 (SC)]**, **"it would be illogical and against the language of section 56 to hold that everything that is exempted from capital gains by statute could be taxed as a casual or non-recurring receipt under section 10(3) read with section 56. We are fortified in our view by a similar argument being rejected in Nalinikant Ambalal Mody v. S.A.L. Narayan Row, CIT [(1966) 61 ITR 428 (SC)]".** Interestingly, this judicial precedent was repeatedly cited before the authorities below, but there was not even an effort to deal with this judicial precedent. It is also important to note that, as elaborated in **Shaw Wallace case** *(supra),* "**a capital receipt, in principle, is outside the scope of 'income' chargeable to tax and a receipt cannot be taxed as income unless it is in the nature of a revenue receipt or is specifically brought within ambit of 'income' by way of specific provisions of the Income-tax Act"**, and that "**Howsoever liberal or narrow be the interpretation of expression 'income', it cannot alter character of a receipt *i.e.* convert a capital receipt into a revenue receipt or *vice versa.* There is no warrant for inference that even the most liberal interpretation of 'income' can nullify or blur the all-important distinction between capital receipt or revenue receipt".** Viewed thus, the reasoning adopted by the Assessing Officer was incorrect and it does not meet our approval. Learned CIT(A)'s line of reasoning was no better. While he accepts that the transaction in question was in the capital field, he proceeds to hold that 'income' arising out of the loan transaction is required to be

treated as 'interest' or 'income from other sources', but all this was a little premature because he proceeded to decide as to what is the nature of income or under which head is to be taxed, without dealing with the foundational plea that the scope of income does not include the gains in capital field. If the transaction was in capital field, as he accepts, where is the question of a capital receipt being taxed as income unless there is a specific provision of bringing such a capital receipt to tax. In any case, where the loan is foreign currency denominated and the amount advanced as loan, as also received back as repayment, is exactly the same, there is no question of interest component at all. The expression 'interest' is neatly defined under the provisions of the Income Tax Act. Under section 2(28A), **interest is** defined as "**interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized**". Essentially, therefore, interest is the amount "payable" in any manner in respect of "moneys borrowed or debts incurred" but in the present case nothing more than principal debt has been paid by the borrower, and unless borrower pays an amount in respect of moneys borrowed or debts incurred, the definition of interest does not come into play. Yes, there was a benefit or a gain to the assessee; that is not even in dispute. The benefit or the gain was not on account of interest payment; that benefit or gain was on account of foreign exchange fluctuation but since the foreign exchange fluctuation with respect to a transaction in capital field, on the facts of this case foreign exchange fluctuation receipt itself turned out to be a capital receipt. The CIT(A) was, therefore, in error in holding the foreign exchange fluctuation income to be in the nature of 'interest'. As for his holding that the income was taxable as income from other sources, that is exactly what the Assessing Officer had also done, and, for the detailed reasons set out above, that approach does not meet my judicial approval either.

9. Let me now deal with the other limb of reasoning adopted by the CIT(A) with respect to his stand that, under the LERMS issued by the Reserve Bank of India, only rupee loans were permissible to the non-resident close relatives. That cannot be a subject matter of adjudication by an income tax authority, or even for this Tribunal. Whether the transaction of loan to NRI/PIO close relative was permissible or not, the fact remains that, beyond any controversy or dispute, such a transaction did take place, and the Assessing Officer has specifically observed that **"no infirmity is observed on the advancement of loan to Shri Shyam Sunder Shroff, *(but)*..the dispute is with respect to gains on foreign exchange fluctuation"**. The limited question that was required to be adjudicated by the CIT(A), therefore, was whether given this factual matrix, the gains on foreign exchange fluctuations were required to be taxed in the hands of the assessee or not. Nothing, therefore, turns on the fact, even if that be so, that only rupee denominated loans were permitted to be extended by the assessee to his close relative NRI/PIO cousin. In any case, merely because the rupee loans are specifically permitted to the NRI/PIO close relatives, this fact *per se* cannot lead to the conclusion that foreign exchange denominated loans being extended to the NRI/PIO close

relatives was prohibited. Be that as it may, I am not inclined to, nor do I see any reasons to, deal with the broader question as to whether or not such a transaction of foreign exchange denominated loan, as the assessee has indeed entered into, was permissible or not. That is neither my domain nor my concern. If this transaction was impermissible under the Foreign Exchange Management Act, 1999, the consequences must flow under that legislation itself. The Income Tax Act, 1961 has nothing to do with the consequences, even if that be so, of impermissibility of such transactions under the FEMA or Liberalized Remittance Scheme framed thereunder- at least in the context of dealing with an income.

10. For the detailed reason set out above, I am of the considered view that the impugned addition of Rs 22,04,568 is not sustainable in law. The Assessing Officer is, accordingly, directed to delete the same. The assessee gets the relief accordingly.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 17th day of May, 2021.

Sd/xx
Pramod Kumar
Vice President

Mumbai, dated the 17th day of May, 2021

Copies to:

(1)	*The appellant*	*(2)*	*The respondent*		
		(3)	*CIT*	*(4)*	*CIT(A)*
		(5)	*DR*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai