

IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 1986/MUM/2025
(Assessment Year : 2019-20)

Green Maiden A 2013 Trust,

B Wing, Ground Floor, DBS Business Centre,
Kanakia Wall Street, Andheri Kurla Road,
Chakala, Andheri East,
Mumbai-400093.

..... Appellant

PAN : AABTG9795M

v/s

**The Assistant Commissioner of Income Tax
International Tax Circle 2(3)(2),**

Room No. 610, 6th Floor,
Kautilya Bhavan, C-41 to C-43,
G-Block, Bandra Kurla Complex,
Bandra (East),
Mumbai – 400051.

..... Respondent

Assessee by : Ms. Hirali Desai/ Shri Hardik Nirmal/ Ms.
Hinal Singh

Revenue by : Shri Krishna Kumar, Sr.DR

Date of Hearing – 17/07/2025

Date of Order - 21/07/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned final assessment order dated 24/01/2025, passed under section 147 read with section 144C(13) of the Income Tax Act, 1960 ("*the Act*") by the Assessing Officer ("*AO*"), pursuant to the directions dated 18/12/2024 issued by the learned Dispute Resolution Panel-1, Mumbai ("*learned DRP*") under section 144C(5) of the Act for the assessment year 2019-20.

2. In this appeal, the assessee has raised the following grounds: –

"Based on the facts and in the circumstances of the case, Green Maiden A 2013 Trust (hereinafter referred to as 'Trust or the Appellant') craves leave to prefer an appeal against the order dated 24 January 2025 passed by the Assistant Commissioner of Income-tax (International taxation) - Circle 2(3)(2), Mumbai (hereinafter referred to as the 'Ld. AO') under section 144C(13) read with section 147 of the Income-tax Act, 1961 ('the Act'), in pursuance of the directions issued by the Hon'ble Dispute Resolution Panel - 1, Mumbai (hereinafter referred to as the 'Ld. DRP') on the following grounds, each of which are without prejudice to and independent of the others:

1. Ground No. 1 - Assessment order is barred by limitation

On the facts and in the circumstances of the case, the final assessment order dated 24 January 2025 passed by the Assessing officer under section 147 r.w.s. 144C(13) of the Act having been passed beyond the limitation provided in terms of section 153 of the Act, is illegal, being barred by limitation, and is therefore, void-ab-initio and liable to be quashed.

2. Ground No. 2 - Validity of Reassessment proceedings

On the facts and circumstances of the case and in law, the Ld. DRP erred in confirming the action of the Assessing officer in initiating and conducting reassessment proceedings for AY 2019-20 in contravention of the provisions of the Act and accordingly, the impugned order is void ab initio, bad in law and liable to be quashed.

3. Ground No.3-Not following binding judicial precedent of the Hon'ble Jurisdictional Bombay High Court and Hon'ble Mumbai Tribunal in Appellant's own case

On the facts and in the circumstances of the case and in the law, the Ld. AO erred in passing the final assessment order without taking cognisance of the decision of the Hon'ble Jurisdictional High Court and Hon'ble Tribunal in its own case for AY 2016-17 to AY 2018-19, thereby, completely ignoring the discipline of binding judicial precedents.

4. Ground No. 4-Disregarding the fact that the income has already been offered to tax in the hands of Abu Dhabi Investment Authority ('ADIA'):

Without Prejudice to the above, on the facts and in the circumstances of the case and in law, the Ld. DRP/AO failed to take the cognisance of the fact that entire income earned by the Appellant is already included in the total income of the ADIA, thereby considering the same income for income-tax purposes twice.

5. Ground No. 5-The income earned by GMT (being revocable trust) is exempt from tax in India as per section 61 read with Article 24 of the India - UAE Tax Treaty.

On the facts and in the circumstances of the case and in law, the Ld. AO erred in taxing the entire income of INR 5.58,71,311 from investments made in India in the hands of the Appellant without appreciating that:

a) the transfer (settlement and contributions) by ADIA to the Appellant is revocable in nature in terms of the provisions of section 63 of the Act and accordingly, by virtue of the provisions of section 61 of the Act, the entire income of INR 5.58,71,311 should be considered as the income of the transferor ie. ADIA

b) as per Article 24 of the India - UAE Double Taxation Avoidance Agreement ('Tax Treaty') the said interest income is exempt from tax in India in the hands of ADIA

c) accordingly, by virtue of provisions of specific provisions of section 61 and section 63 r.w. Article 24 of India UAE Tax Treaty, the income earned by Appellant should be considered as income of ADIA and the same is not chargeable to tax in India.

6. Ground No. 6-Income of the Appellant (being a determinate trust settled by ADIA) is taxable in the hands of Trustee in like manner as ADIA

Without prejudice to above, assuming without admitting that the entire income of INR 5,58,71,311 is taxable in the hands of Equity Trust (Jersey) Limited ('ETJL' or "Trustee") i.e., the trustee of the GMT, the Ld. AO failed to appreciate that:

a) by virtue of the provisions of inter alia section 161(1) of the Act, as a representative assessee of ADIA, tax can be levied on the Trustee (ETJL) in the like manner and to the same extent as would have been leviable upon and recoverable from ADIA;

b) accordingly, by virtue of the provisions of section 161 r.w. section 164 of the Act r.w. Article 24 of India UAE Tax Treaty no tax is leviable in hands of ETJL;

7. Ground No. 7: Not granting credit of tax deducted at source of Rs. 91,43,123

On facts and in the circumstances of the case and in law, the Ld. AO erred in not granting the credit of tax deducted at source amounting to Rs. 91,43,123 in relation to the corresponding income of INR 5,58,71,311 which the Ld. AO sought to be taxed.

8. Ground No. 8: Applying incorrect rate of tax

On the facts and in the circumstances of the case and in law, the Ld. AO erred in taxing the impugned addition of interest income at a rate higher than the rate provided under the provisions of section 115AD of the Act despite noting (in the instant final assessment order) that the provisions of section 115AD are applicable to the Appellant.

9. Ground No. 9: Levy of surcharge at an incorrect rate

Without prejudice to the above, on facts and in the circumstances of the case and in law, the Ld. AO erred in levying surcharge on the tax at the rate of 15 percent vis-à-vis 5 percent.

10. Ground No. 10: Interest under section 234B of the Act

On the facts and in the circumstances of the case and in law, the Ld. AO has erred in levying interest under section 234B of the Act amounting to Rs. 1,38,75,610.

11. Ground No. 11: Initiating penalty proceedings under section 270A of the Act

On the facts and in the circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under section 270A of the Act for underreporting of the income.

The Appellant craves leave to add to, alter, amend or withdraw all or any of the Grounds of Appeal herein and to or produce or submit further documents, facts, and evidence to support its claim before or at the time of hearing with the Hon'ble Tribunal."

3. On merits, the sole issue that arises for our consideration pertains to the taxability of income accruing on investments made by the assessee.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a trust based in New Jersey and was settled by Abu Dhabi Investment Authority ("ADIA") as a revocable and determinant trust vide Deed of Settlement dated 22/07/2013 with Equity Trust (Jersey) Ltd as a trustee of the assessee trust. ADIA is a resident of the UAE and is also registered as a Foreign Institutional Investor ("FII") with the Securities and Exchange Board of India ("SEBI"). For the year under consideration, the assessee filed its return of income on 30/08/2019, declaring a total income of INR Nil. The assessee earned interest income from investments made in non-convertible debentures of Indian portfolio companies. As the ADIA and the trustee were denied the benefit of tax exemption under Article 24 of the India-UAE Double Taxation Avoidance Agreement ("DTAA") and for the assessment

years 2016-17 to 2018-19 similar income was brought to tax, show cause notice dated 23/03/2023 was issued to the assessee under section 148A(b) of the Act. After considering the response of the assessee and necessary approval from the competent authority, an order under section 148A(d) was passed, and notice under section 148 of the Act was issued on 30/03/2023. In response to the notice issued under section 148 of the Act, the assessee filed its return of income declaring income similar to the original return. Subsequently, notice under section 143(2) of the Act was issued. From the submissions made by the assessee, it was found that during the year under consideration, the assessee earned short-term capital gains on the sale of non-convertible debentures of Alliance Infrastructure Projects Private Limited of INR 1,23,57,500 and interest income from Alliance Infrastructure Projects Private Limited of INR 4,25,13,811. Accordingly, the assessee was asked to show cause as to why the income of similar nature during the year under consideration should not be considered taxable income and brought to tax as in the assessment order for the assessment years 2016-17 to 2018-19.

5. The AO, vide draft assessment order dated 12/03/2024 passed under section 144C(1) of the Act, disagreed with the submissions of the assessee and held that the facts of the case and the nature of transactions for the assessment year under consideration are similar to those for the assessment years 2016-17 to 2018-19. Further, the AO noted the fact that the ADIA and the trustee had made an application before the Hon'ble Authority for Advance Ruling ("*Hon'ble AAR*") regarding the claim of exemption under Article 24 of the DTAA and the Hon'ble AAR vide order dated 18/03/2020 held that the

income earned by the assessee from Indian securities is taxable in the hands of assessee in India, thus denying the benefit claimed under the provisions of the DTAA. The AO further noted the fact that the Hon'ble Bombay High Court has negated the observation/conclusions of the Hon'ble AAR, and the Revenue's SLP against the same is pending before the Hon'ble Supreme Court. Despite noting the aforesaid facts, the AO, following the decision of the Hon'ble AAR, held that the income of the assessee is taxable in India. Accordingly, short-term capital gains on the sale of non-convertible debentures of Alliance Infrastructure Projects Private Limited of INR 1,23,57,500 and interest income from Alliance Infrastructure Projects Private Limited of INR 4,25,13,811 were added to the total income of the assessee.

6. The learned DRP, vide its directions, rejected the objections filed by the assessee, following the directions rendered in the assessee's own case for the assessment year 2018-19, and upheld the conclusion of the AO in order to keep the issue alive. In conformity, the AO passed the impugned final assessment order under section 147 read with section 144C(13) of the Act. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the decision of the Hon'ble AAR placed reliance upon by the AO was overruled by the Hon'ble Bombay High Court in a writ petition filed by the ADIA and the trustee. The learned AR further submitted that following the aforesaid decision of the Hon'ble Bombay High Court, the coordinate bench of the Tribunal in the assessee's own case for the

assessment years 2016-17 to 2018-19 deleted the similar addition made by the AO in respect of the investments in India.

8. On the other hand, the learned Departmental Representative ("learned DR") vehemently relied upon the order passed by the lower authorities.

9. We have considered the submissions of both sides and perused the material available on record. We find that the Hon'ble Jurisdictional High Court in Abu Dhabi Investment Authority v/s AAR, reported in [2021] 439 ITR 437 (Bombay), while deciding the writ petition in favour of the petitioner quashed the order dated 18/03/2020 passed by the Hon'ble AAR and held that the income that accrues to the Green Maiden A 2013 Trust is not chargeable to tax in India. The relevant findings of the Hon'ble High Court are reproduced as follows: –

"31. In our view, therefore, the Deed of Settlement dated 22nd July 2013, whereby the trust was set up, contained specific clauses which established the revocable nature of the trust. As the ADIA has settled the trust on the terms mentioned in the Deed of Settlement, the contribution made by it to the trust would be a transfer as defined in section 63 of the Act. As Section 63 does not anywhere specify that a trust covered by it must necessarily be a trust falling under the Indian Trust Act 1882 and as per section 63(b) of the Act, any settlement or trust is included within the meaning of 'transfer' and section 63(b) does not provide that the trust described therein needs to be an Indian Trust, the provisions of sections 61 to 63 of the Act are applicable to the case at hand. As the term 'trust' is not defined either in section 63 or section 2 of the Act 'trust' would clearly be a trust as one understands the term in its common parlance. Even if one has to have recourse to the definition of the term "trust" in section 3 of the Indian Trust Act 1882, i.e., an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owners, or declared and accepted by him, for the benefit of another, or of another and the owner, there is nothing in the language of section 61 or 63 that restricts its applicability only to trusts settled in India and accordingly, AAR was not justified in concluding that a Foreign Trust will not be covered under the said provisions. AAR while expressing its view that India has not ratified Hague Convention on the law applicable to trust has overlooked the fact that ADIA is not seeking to apply Foreign Law to India but is merely seeking an application of section 61 which in no manner excludes, from its applicability, a trust settled outside India. A Foreign Trust can be treated as a trust under the Act also appears from the income tax

return forms prescribed under the Act wherein Schedule FA, Para F, in form ITR-5, require the disclosure of "details of trusts" created under the laws of a country outside India, in which one is trustee, beneficiary or settlor. There are similar requirements in Form ITR-2, ITR-6 and ITR-7. Therefore, the Act presupposes that a Foreign Trust is a trust for the purposes of the Act. In *Estate of Vikramsinhjit of Gondal's case (Supra)*, the Apex Court has applied the provisions of section 164 and 166 of the Act to tax the beneficiary of a trust settled in U.K.

32. Even if, the trust is based out of Jersey and the trust is settled in Jersey, ADIA being the settlor and sole beneficiary of the trust and resident of UAE as per Article 24 of the India-UAE DTAA, the income which arises to it by virtue of investment in Indian Portfolio companies will be governed by the beneficial provisions of the India-UAE DTAA. To take it further, even if the trust structure were to be discarded, then it must necessarily follow that the investment must be regarded as having been made by ADIA and hence the income would arise in the hands of ADIA which income would not be taxable in India by virtue of provisions of India-UAE DTAA. We have to note that there was no attempt whatsoever to reduce the tax liability by using the trust structure. When the provisions of the Trust Deed provided that ADIA has right to re-assume power over the entire income arising on the investments made by the trust in the portfolio companies, the entire income arising therefrom has to be in terms of section 61 of the Act to be assessed in the hands of ADIA. This would mean the exemption under Article 24 of India-UAE DTAA would be attracted. Even if for a moment we say that for any reason the provisions of section 61 are not applicable, then also the trustee can only be assessed in a representative capacity and, accordingly the provisions of section 160(i)(iv) will be applicable. Therefore, even if the income is taxed in the hands of the trustee in terms of section 161(1), it will be taxed in the "like manner and to the same extent" as the beneficiary. Once again, ADIA is the sole beneficiary of the trust, the income assessed in the hands of the trustee will take colour of that of ADIA's income and thereby, the benefit of India-UAE DTAA must be granted.

33. As there is no bar to the settlor and beneficiary being the same person and in view of the judgment in *Bhavna Nalinkant Nanavati's case (supra)* where the court has interpreted section 3 of the Indian Trust Act, 1882 as creating a fiduciary relationship between the trustee and the beneficiary, where the ownership of the trust property has to be for the benefit of another person which can include the settlor himself, if one reads sections 61 and 63 of the Act, it is quite clear that section 61 is independent of section 63 of the Act and a transfer can be a revocable transfer on its own merits and is not restricted only to trusts. A "settlement" or a "trust" are instances of what amount to transfer. So long as the settlor has a right to reassume power over the assets settled, the same would amount to revocable transfer. In the facts of the case at hand, ADIA could reassume the power and hence the contribution to the trust was a revocable transfer thereby making the income arising to the trust taxable in the hands of ADIA which was exempt under Article 24 of India-UAE DTAA. The tax liability of a trust has to be determined by applying the provisions of the Act alongwith the provisions of India-UAE DTAA and not apply the law as applicable in Jersey.

34. In the circumstances, the ruling dated 18th March 2020 has to be quashed. The income that accrues to the trust would not be chargeable to tax in India

either by virtue of application of section 61 read with section 63 or on an application of section 161 of the Act conjointly with the provisions of Article 24 of the India-UAE DTAA. Since we have quashed the Ruling dated 18th March 2020 of the AAR, the steps taken in furtherance of the Ruling order passed therein are also quashed and set aside. Ordered accordingly."

10. We find that following the aforesaid decision, the coordinate bench of the Tribunal in assessee's own case in Green Maiden A 2013 Trust v/s ACIT, in ITAs No. 2105, 1977 and 1978/Mum./2022, vide order dated 30/01/2023, for the assessment years 2016-17 to 2018-19, deleted the similar addition made by the AO, by observing as follows: –

"11. In view of the above facts and findings as discussed supra, it is evident that at the level of the assessing officer the writ petition filed by the assessee before the Hon'ble Bombay High Court was at the admission stage. However, before issuing the direction by the DRP u/s 144C(5) of the Act on 16.02.2022, the Hon'ble Bombay High Court has already decided the writ petition filed by the assessee vide order dated 28.10.2021 (supra). In this regard, the Id. DRP has categorically referred at para 7.14 of their order that the addition to the taxable income has proposed by the assessing officer in his draft assessment order on the basis of AAR ruling itself has already been reversed by the Hon'ble jurisdictional High Court. The DRP has also stated in their finding that question raised in the objection filed by the assessee are squarely covered by the decision dated 28.10.2021 of Hon'ble Bombay High Court.

12. Looking to the above facts, finding and decision of the Hon'ble Bombay High Court as supra we considered that the directions issued by the DRP are not justified, therefore, we set aside the final order passed by the assessing officer. Accordingly, ground of appeal no. 1 to 4 of the assessee are allowed."

11. The learned DR could not show us any reason to deviate from the aforesaid decision, and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the decision of the Hon'ble Jurisdictional High Court cited supra, we uphold the plea of the assessee and delete the addition made by the AO in the hands of the assessee. As a result, ground no.4 raised in assessee's appeal is allowed.

12. In view of aforesaid findings, grounds no.3, 5 and 6 need no specific adjudication.

13. Since the relief has been granted to the assessee on merits, ground no.2 raised in assessee's appeal challenging the validity of reassessment proceedings is kept open.

14. Further, ground no.1 raised in assessee's appeal challenging the validity of the impugned final assessment order was not pressed during the hearing. Accordingly, the same is kept open.

15. The issue arising in ground no.7, raised in assessee's appeal, pertains to the non-granting of TDS credit. Accordingly, we deem it appropriate to restore this issue to the file of the jurisdictional AO with the direction to grant the credit of taxes deducted at source, in accordance with the law, after conducting the necessary verification. We order accordingly. As a result, ground no.7 raised in assessee's appeal is allowed for statistical purposes.

16. Since the relief has been granted to the assessee on merits and the entire addition has been deleted, grounds no.8 and 9 are rendered infructuous and therefore are dismissed.

17. The issue arising in ground no.10, raised in assessee's appeal, pertains to the levy of interest under section 234B of the Act, which is consequential in nature. Therefore, the same needs no separate adjudication.

18. Ground no.11, raised in assessee's appeal, pertains to the initiation of penalty proceedings under section 270A of the Act, which is premature in nature. Therefore, the said ground is dismissed.

19. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 21/07/2025

Sd/-

**VIKRAM SINGH YADAV
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 21/07/2025

ANANDI.NAMBI

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai