

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI**

Before: **Shri J. Sudhakar Reddy, Accountant Member** and  
**Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A No. 106/Ran/16** A.Y 2008-09

**I.T.O., Ward 3(3), Jamshedpur**

Appellant

Vs.

**Smt. Veena Pandey, Jamshedpur**

Respondent

For the Appellant : Shri P.K. Mondal, JCIT, Id.DR  
For the Respondent : Shri Binod Kr. Saraiwala, CA, Id.AR

Date of hearing : 27-02-2018  
Date of pronouncement : 01-03-2018

**ORDER**

**Per Bench:**

This appeal by Revenue is against the order dt. 22-01-2016 of CIT(A), Jamshedpur for the assessment year 2008-09, wherein he deleted the addition of Rs. 60,00,000/- made by the AO u/s. 69 of the Act on account of investment in Fixed Deposits and charging of interest u/s. 234B of the Act.

2. Ground no.1 is relating to deletion of addition of Rs.60,00,000/- made u/s. 69 of the Act on account of undisclosed fixed deposits by the CIT-A.

3. The case of assessee was that the impugned amount in question arising out of fixed deposits was re-invested on maturity value from earlier deposits.

4. The CIT-A considering the remand report and the submissions of assessee deleted the impugned addition made by the AO.

5. We find that the CIT-A examined the assessment record together with the submissions of assessee and the remand report of

the AO. The CIT-A found that the assessee has not made any fresh investments in the remand report. According to CIT-A, this was only maturity proceeds of re-investments made in earlier year. Relevant portion of CIT-A's order is reproduced herein below:-

*" Therefore before invoking 69, the following condition must be satisfied:-*

- (a) The assessee has made investment in the financial year immediately preceding the assessment year.*
- (b) Such investment are not recorded in the books of account, if any maintained by him for any source of income.*
- (c) The assessee does not offer any explanation about the nature and source of the investment or the explanation offered by him is not in the opinion of the AO satisfactory.*

*If the above conditions are satisfied, the value of such investment may be deemed to be the income of the assessee of such financial year.*

*Now analyzing the above condition, it is found that the assessee has not made any fresh investment, rather it is a re-assessment of maturity proceeds of investment made in earlier year which has also been confirmed by the AO in his remand report as well as supported by bank entries.*

*The second condition is also not fulfilled as the AO in his order has himself mentioned the method of account as ' NA' or Not Account. Even if it is treated as ' Not Applicable' it simply suggests that the assessee is not maintain the books of account. As no books of account is being maintained by the assessee, recording the investment in books of account does not arise. Therefore, the second condition is also not fulfilled. The third ground relates to offering an explanation which has already been quoted herein supra.*

*Therefore none of the condition mentioned is fulfilled in this case. On both the circumstances mentioned above, the addition made by the AO of Rs.60,00,000/- is hereby deleted."*

6. In view of above, we find that the CIT-A was correct in deleting the same. We do not find any infirmity in the impugned order of the CIT-A. Ground no. 1 of revenue's appeal is dismissed.

7. Ground no. 2 is relating to deletion of charging of interest u/s. 234B of the Act.

8. After hearing the rival submissions and perusing the record, we find that the interest u/s. 234B/C of the Act is to be charged on declared returned income and not on assessed income as per decision of the of the Hon'ble Jurisdictional High Court in the case of Shri Ajay Prakash Verma in TA No. 38 of 2010 reported in 2013(1)TMI 140, which in turn, followed the law laid down by the Full Bench in the case of Smt. Tej Kumari reported in 114 Taxman 404 (PAT) (FB),

where it was held that interest cannot be levied on assessed income and it can be levied only on the income declared in the return of income. The appellant Revenue challenged the same before the Hon'ble Supreme Court by way of a SLP and which was dismissed by holding that there is no merits in the appeal vide its order dt. 01-08-2000. The Id. DR could not controvert the same.

9. We further find the Co-ordinate Bench, ITAT, Ranchi in the case of RSB Industries Ltd(Formerly known as M/s. Lal Technologies Ltd) Vs. ACIT, ITA Nos. 199 & 200/Ran/2014 and 212 & 213/Ran/2014 for the A.Ys 2009-10 & 2010-11 and in the case of Shree Niwas Joshi Vs. ACIT, ITA Nos. 279 & 280/Ran/2016 for the A.Ys. 2001-02 & 2005-06, copy of the same are on record, on similar set of facts and circumstances has disposed of the said issue in favour of assessee by dismissing the grounds of appeal of the revenue by following the decision of the Hon'ble Jurisdictional High Court of Jharkhand in the case of *supra*. We further find that the issue in hand, facts and circumstances of those cases of ITAT Ranchi are identical and similar.

10. In view of above, and respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Ajay Prakash Varma *supra*, we are of the view that the order of CIT-A is not justified in confirming the order of AO in charging the interest on assessed income. The AO is directed to modify his order. Therefore, ground no. 2 relating to charging of interest u/s. 234B of the Act raised by the revenue is liable to be modified. Ground no. 2 of revenue's appeal is allowed for statistical purpose.

11. In the result, the appeal of the revenue in ITA No. 106/Ran/06 for the A.Y 2008-09 is allowed in part.

Order pronounced on 01-03-2018

Sd/-  
**J. Sudhakar Reddy**  
**Accountant Member**

Sd/-  
**S.S. Viswanethra Ravi**  
**Judicial Member**

Dated : 01-03-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Income Tax Officer, Ward 3(3), 4 Phalgu Road, Norther Town. Bistupur, Jamshedupur.
2. Respondent –Smt. Veena Pandey, C/o Shri Vijay Pandey, H.No.1, Laxmi Nagar, Bajrang Bagan, Telco, Jamshedpur.
3. The CIT(A), Ranchi
4. CIT , Ranchi
5. DR, ITAT Ranchi Benches, Ranchi.

/True Copy,

By order,

Sr.PS  
ITAT, Ranchi