IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD ñSMCòBENCH

Before: Shri S. S. Godara, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 2500/Ahd/2016 **Assessment Year 2014-15**

Shirish Babalal Shah, GF. 6, Silver Oak Buildings, Mahalaxmi Char Rasta, Paldi, Ahmedabad. PAN: AIOPS3763Q (Appellant)	Vs	The ACIT (CPC), Bangaluru (Respondent)

Revenue by: **Shri Mudit Nagpal, Sr. D.R.**
Assessee by: **Shri S.N. Divatia, A.R.**

Date of hearing : 13-03-2018
Date of pronouncement : 16-04-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assesseeôs appeal for A.Y. 2014-15, arises from order of the CIT(A)-5, Ahmedabad dated 25-07-2016, in proceedings under section 143(1) of the Income Tax Act, 1961; in short ñthe Actò

2. The assessee has raised following grounds of appeal:-

"1.1 The order passed u/s.250 on 25.07.2016 by CIT(A), Ahmedabad-5 upholding the returned income of Rs.45,78,760/- and rejecting the claim of interest income from IDBI Bank Ltd. at Rs. 1,23,426/- as against Rs.12,34,269/- shown in the return of income is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant.

2.1 The Ld. CIT(A) has grievously erred in law and on facts in confirming the total income processed u/s. 143(1) at Rs.45,78,760/-, though there was a mistake in declaring interest income from IDBI Bank Ltd. at Rs.12,34,269/- instead of Rs.1,23,426/-. The Ld. CIT(A) has failed to appreciate that the computation of assessed income could go below the returned income regardless of the revised return.

2.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought to have directed AO to assess the total income of the appellant below the returned income in view of genuine and bonafide mistake committed by the computer data entry operator in respect of interest income from IDBI Bank.

It is, therefore, prayed that the income of the appellant should have been assessed below the returned income and the excess income shown by him may please be deleted."

3. The brief facts of the case is that the assessee has filed return of income electronically on 30th Jan, 2005 declaring total income of Rs. 45,78,760/- during the year. The assessee has received interest of Rs. 1,23,426/- on the fixed deposit maintained with IDBI Bank. However, while entering the data of income by mistake, the assessee has reported this interest income at Rs. 12,34,289/-. The total interest income received from IDBI was reported in form no. 26AS at Rs. 1,23,426/-. As a result the total income of the assessee was assessed at Rs. 11,10,843/- against which the assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee by stating that the returned income of the assessee was processed u/s. 143(1) of the act on the the same income as shown by the assessee himself. During the course of appellate proceedings before us, the ld. counsel has submitted paper book containing written submission made before the ld. CIT(A), copy of form no. 16A received from IDBI Bank, judgment of ITAT, board circular no. 14 etc. He contended that ld. CIT(A) is not justified in dismissing the appeal of the asssessee without considering the issue on merit. On the other hand, ld. departmental representative has supported the order of ld. CIT(A).

4. We have heard both the sides and perused the material on record carefully. The assessee has declared total income of Rs. 48,78,760/- which was processed u/s. 143(1) of the act on the returned income. Thereafter the assessee has noticed that by mistake he has declared excess interest income in

respect of FDR with IDBI bank as the the actual interest received was only Rs. 1,23,426/-. This mistake was occurred on the part of computer data operator while entering the figure online at the time of electronic filing of return of income. After considering the above facts we observe that there is a bona fide mistake in reporting the income earned from interest from FDR with IDBI bank. We have also perused the decision of the Co-ordinate Bench of the ITAT in the case of Sushil Kr. Das vs. ITO (2011) TIOL 583 ITAT-Kolkata in which it was held that the lower authorities cannot say that merely because the assessee has returned income which is higher than the income determined in accordance with the legal principles, such returned income can be lawfully assessed. The relevant part of the finding of the decision of the Co-ordinate Bench as supra is as under:-

> *"The Tribunal noted that the moot question was whether the income determined by the AO on the basis of the return filed by the assessee can be a figure lower than the income returned by the assessee. It held that the principle for determining the taxable income of the assessee under the Act should be within the purview of the law in force. If the taxable income determined by the AO is not in accordance with such principle it is open to the assessee raise the contention to before the higher authorities for following the law to determine the actual taxable income of the assessee. The Tribunal held that the lower authorities cannot say that merely because the assessee has returned income which is higher than the income determined in accordance with the legal principles, such returned income can be lawfully assessed. An assessee is liable to pay tax only on his taxable income. The AO cannot assess an amount which is not taxable merely on the ground that the assessee has returned the same as its income. It is always open to the assessee to show before the higher authorities that Income though returned as income is not taxable underlaw.*
> *On merits, the Tribunal held that the case of CTT v, Charanjit Jawa, (supra) supports the view that interest received as a result of the order of the High Court was not a statutory interest and was in the form of damage/compensation and the same was not liable to tax. The Tribunal held that the interest of Rs.2,53,730/- received by the assessee as per the order of the high court was not taxable and the same is a capital receipt. The Tribunal also found support from the Circular issued by the CBDT being Circular No. 14 (XL-35) dated 11-4-1955 which has directed the officers not to take advantage of the ignorance of the assessees. The Tribunal directed the AO to treat the sum of Rs.2,53,730 as capital receipt. The appeal filed by the assessee was allowed."*

Further, we have also perused the circular no. 014(XL-35) dated 11th April, 1955 stating that the legitimate tax which must be assessed and must be collected. The purpose of this circular is merely to emphasize that one should not take advantage of assesseeôs ignorance to collect tax out of him than his legitimate due from him. After the above facts and judicial finding, we consider it

appropriate to restore this issue to the file of assessing officer to verify the document as reported above and decide the issue afresh on merit after affording adequate opportunity to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 16-04-2018

Sd/-	**Sd/-**
(S.S. GODARA)	**(AMARJIT SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 16/04/2018

आदेश क□□ तालि□ अ□ेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलि□य आ□धकरण,
अहमदाबाद