

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR (SMC)**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER

**I.T.A. No.552/Asr/2017**  
Assessment Year: 2008-09

Rabinder Singh Wann,  
5-Green Acres, Village Heir,  
VPO Rajasansi, Airport Road,  
Amritsar.  
[PAN: AABPW 3903F]

**(Appellant)**

vs. Income Tax Officer,  
Ward-5(3), Amritsar

**(Respondent)**

Appellant by : Sh. Padam Bahl (C.A.)  
Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 27.02.2019  
Date of Pronouncement: 15.03.2019

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-2, Amritsar ('CIT(A)' for short) dated 05.06.2017, confirming the levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 ('the Act' hereinafter) by the Assessing Officer vide order dated 28.03.2016 for the Assessment Year (AY) 2008-09.

2. The assessee, a doctor by profession, filed his return of income for the relevant year on 29.07.2008 at an income of Rs.2,86,520. The same did not include interest income of Rs.79,800/- allowed to the assessee by Sahara India Commercial Corporation Ltd., Lucknow ('Sahara' for short) during the year, deducting tax thereon at Rs.8,220, duly reflected in Form No.26AS, which (tax deducted at

source (TDS)) was though not claimed credit of by the assessee per his return of income. The Assessing Officer (AO), upon confirming the interest credit to the assessee by Sahara, brought the same to tax, also initiating penalty proceedings u/s. 271(1)(c) vide order u/s. 143(3) dated 29.12.2010. The assessee loosing in first appeal, did not carry the matter further, so that the penalty proceedings were proceeded with. The assessee's claim that as tax had already been deducted at source, it could not be regarded as a case of concealment of particulars of income, did not find favour with the Revenue, in whose view the decision in *CIT vs. Zoom Communications Pvt. Ltd.* [2010] 327 ITR 510 (Del) was clearly applicable in the facts and circumstances of the case. Further, the fact that interest had not been paid, but only credited to the assessee's account, would be of no moment. Aggrieved, the assessee is in second appeal.

3. I have heard the parties, and perused the material on record.

It is important, to decide the issue of exigibility to penalty, ascertain the nature of the contract entered into by the assessee with Sahara. The same, it may be noted, is not for an interest yielding deposit, i.e., by way of an interest bearing deposit. The assessee had in fact invested Rs. 2 lacs with Sahara for purchase of a plot of land (in an approved residential colony in or around Amritsar). As it appears, the project did not materialize, and the amount was refunded back after four years (refer para 3, page-1 of the assessment order). The assessee was issued two receipts of Rs.21,000/- each, dated 31.3.2008, for purchase of an immovable property (housing/commercial unit) and/or products of Sahara or its' business associates and/or avail services of Sahara or its business associates, as per the terms and conditions of the company. There is no mention of any interest in the said deposit receipts. No assessee interested in buying a housing unit would enter into such a vague contract. There is, as stated, no stipulation of any rate of interest,

much less at a fixed rate, that the deposit amount shall carry, even if till the time of allotment of plot or availing of service or other products – whatever those products or services may be. The source of the deposit amount/s, which appears to be against the initial deposit of Rs. 1 lac each, is not clear. On the back side of the receipt/s appears a chart as per which the ‘advance payment’ of Rs.20,000/- is to be adjusted (in four installments of Rs.5,000/- each) i.e., at the end of 18, 24, 36, 48 months. For example, after 18 months, Rs.5,000/- shall be stand adjusted at a value of Rs.5,855/- (called ‘credit value’) and so on. What, then, explains the credit of Rs.79,800/- to the assessee’s account (i.e., Rs.39,900 x 2) by Sahara on 31.3.2008? For all we know, the deposit (by way of two receipts of Rs. 21,000 each) is itself by way of interest, i.e., along with Rs. 79,800 (Rs. 39,900 x 2), in which case though tax ought to have been deducted there-from as well.

The impugned interest amount was not actually received by the assessee, who had only bargained for a plot of land or a housing unit. Even if some interest was promised for the period till the allotment of plot/housing unit, there is no written contract therefor. Even otherwise, there was no certainty with regard to the receipt of interest, which, as allowed, appears to be the cumulative interest for four years. Under the circumstances, the assessee was justified in not returning the interest amount, i.e., till the actual receipt thereof. No credit for TDS (Rs.8,220), as stated by the Id. CIT(A), has been claimed by the assessee, which in fact could not be as the same is admissible for the year in which the corresponding income is assessable (sec.199 r/w r. 37BA). The same was not returned by the assessee. There can be no accrual of income unless there is a reasonable certainty as to the realization thereof, even if in future, and a provision by the corresponding party in his books of account does not, by itself, signify that certainty, for which the entirety of facts and circumstances would have to be taken into account. The assessee, who cannot be bound by the entries passed by the debtor/depositee in its’

books of account, thus had plausible a reason for not returning the interest income. Of equal importance, inasmuch as it establishes the assessee's *bona fides*, very relevant in penalty proceedings, is the fact that the assessee returned this interest on receipt.

No penalty, in my view, is under the circumstances, imposable. No examination of the rate at which the penalty stands levied, which appears to be higher than the minimum rate of 100% of the tax sought to be evaded, is, therefore called for. The same is accordingly directed for deletion. I decide accordingly.

4. In the result, the assessee's appeal is allowed.

*Order pronounced in the open court on March 15, 2019*

Sd/-  
(Sanjay Arora)  
Accountant Member

Date: 15.03.2019

/PK/ Ps.

Copy of the order forwarded to:

- (1) The Appellant: Rabinder Singh Wann, 5-Green Acres, Village Heir, VPO Rajasansi, Airport Road, Amritsar.
- (2) The Respondent: Income Tax Officer, Ward-5(3), Amritsar
- (3) The CIT(Appeals)-2, Amritsar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy

By Order

Filename: Rabinder Singh Wann- 552-17  
Directory: D:\DOCUMENT\SANJAY ARORA ORDER\GP - Leave  
Template: C:\Users\etc  
parmod\AppData\Roaming\Microsoft\Templates\Normal.dot  
Title: IN THE INCOME TAX APPELLATE TRIBUNAL  
Subject:  
Author: student  
Keywords:  
Comments:  
Creation Date: 3/11/2019 1:00:00 PM  
Change Number: 61  
Last Saved On: 3/18/2019 10:36:00 AM  
Last Saved By: etc parmod  
Total Editing Time: 208 Minutes  
Last Printed On: 3/18/2019 10:37:00 AM  
As of Last Complete Printing  
Number of Pages: 6 (approx.)  
Number of Words: 1,147 (approx.)  
Number of Characters: 6,542 (approx.)