

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. 3436 to 3440/Bang/2018
Assessment Years : 2007-08 to 2011-12

Shri Thimmiah Mandepandra Kalappa, No. 1 H, Belvendre Court No. 6, Spencer Road, Frazer Town, Bangalore – 560 005. PAN: AAVPT9563C	Vs.	The Assistant Commissioner of Income Tax, Circle – 1 (2) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri S. Parthasarathi, Advocate
Revenue by	:	Shri K.R. Narayanan, JCIT (DR)
Date of hearing	:	22.08.2019
Date of Pronouncement	:	28.08.2019

ORDER

Per Bench

These five appeals are filed by the assessee which are directed against five separate orders of Id. CIT(A)-1, Bangalore all dated 26.10.2018 for Assessment Years 2007-08 to 2011-12. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee for Assessment Year 2007-08 in ITA No. 3436/Bang/2018 are as under.

“1. On the facts and in the circumstances of the case, the reopening of the assessment u/s 147 of the Act by issuing the notice u/s 148 was opposed to law and accordingly the assessment as made is liable to be cancelled.

2. The conditions precedent being absent, the reopening of the assessment u/s 147 is bad in law.

3. There being no omission much less an omission of declaration of income in the relevant assessment year in the return of income by the appellant, the reopening of the assessment u/s 147 was without jurisdiction and consequently the reassessment is liable to be annulled.

4. The learned CIT(A) ought to have accepted the explanation of the Appellant and refrained from including interest and dividend income earned outside India and he ought to have appreciated that the said income was exempted from taxation under the Act on account of DTAA

between India and UK.

5. The learned CIT (A) ought to have appreciated that amount received is only on account of compensation for which the Appellant had furnished sufficient evidence to support the same. Without appreciating the same the CIT(A) have made addition which is not sustainable.

6. The learned CIT(A) erred in not considering the explanation given and the evidence produced to support the claim of the appellant ignoring the facts and evidence, alleging that the original letters have not been produced and accordingly the order of the CIT (A) is opposed to law and to the principles of natural justice and accordingly the impugned addition are liable to be deleted.

7. Without prejudice, additions as made are excessive, arbitrary and unreasonable and liable to be deleted in toto.

8. The learned CIT (A) erred in upholding the levy of interest u/s.234A, 234B and 234C of the Act.

9. Without prejudice, the quantum of interest levied u/s 234A, 234B, 234C are excessive and ought to be reduced subsequently.

10. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed”

3. The grounds raised by the assessee for Assessment Year 2008-09 in ITA No. 3437/Bang/2018 are as under.

“1. On the facts and in the circumstances of the case, the reopening of the assessment u/s 147 of the Act by issuing the notice u/s 148 was opposed to law and accordingly the assessment as made is liable to be cancelled.

2. The conditions precedent being absent, the reopening of the assessment u/s 147 is bad in law.

3. There being no omission much less an omission of declaration of income in the relevant assessment year in the return of income by the appellant, the reopening of the assessment u/s 147 was without jurisdiction and consequently the reassessment is liable to be annulled.

4. The learned CIT(A) ought to have accepted the explanation of the Appellant and refrained from including interest and dividend income earned outside India and he ought to have appreciated that the said income was exempted from taxation under the Act on account of DTAA between India and UK.

5. The learned CIT (A) ought to have appreciated that amount received is only on account of compensation for which the Appellant had furnished sufficient evidence to support the same. Without appreciating the same the CIT(A) have made addition which is not sustainable.

6. The learned CIT(A) erred in not considering the explanation given and the evidence produced to support the claim of the appellant ignoring the facts and evidence, alleging that the original letters have not been produced and accordingly the order of the CIT (A) is opposed to law and to the principles of natural justice and accordingly the impugned addition are liable to be deleted.

7. Without prejudice, additions as made are excessive, arbitrary and

unreasonable and liable to be deleted in toto.

8. The learned CIT (A) erred in upholding the levy of interest u/s.234A, 234B and 234C of the Act.

9. Without prejudice, the quantum of interest levied u/s 234A, 234B, 234C are excessive and ought to be reduced subsequently.

10. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed”

4. The grounds raised by the assessee for Assessment Year 2009-10 in ITA No. 3438/Bang/2018 are as under.

“1. On the facts and in the circumstances of the case, the reopening of the assessment u/s 147 of the Act by issuing the notice u/s 148 was opposed to law and accordingly the assessment as made is liable to be cancelled.

2. The conditions precedent being absent, the reopening of the assessment u/s 147 is bad in law.

3. There being no omission much less an omission of declaration of income in the relevant assessment year in the return of income by the appellant, the reopening of the assessment u/s 147 was without jurisdiction and consequently the reassessment is liable to be annulled.

4. The learned CIT(A) ought to have accepted the explanation of the Appellant and refrained from including interest and dividend income earned outside India and he ought to have appreciated that the said income was exempted from taxation under the Act on account of DTAA between India and UK.

5. The learned CIT (A) ought to have appreciated that amount received is only on account of compensation for which the Appellant had furnished sufficient evidence to support the same. Without appreciating the same the CIT(A) have made addition which is not sustainable.

6. The learned CIT(A) erred in not considering the explanation given and the evidence produced to support the claim of the appellant ignoring the facts and evidence, alleging that the original letters have not been produced and accordingly the order of the CIT (A) is opposed to law and to the principles of natural justice and accordingly the impugned addition are liable to be deleted.

7. Without prejudice, additions as made are excessive, arbitrary and unreasonable and liable to be deleted in toto.

8. The learned CIT (A) erred in upholding the levy of interest u/s.234A, 234B and 234C of the Act.

9. Without prejudice, the quantum of interest levied u/s 234A, 234B, 234C are excessive and ought to be reduced subsequently.

10. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be

allowed”

5. The grounds raised by the assessee for Assessment Year 2010-11 in ITA No. 3439/Bang/2018 are as under.

“1. On the facts and in the circumstances of the case, the reopening of the assessment u/s 147 of the Act by issuing the notice u/s 148 was opposed to law and accordingly the assessment as made is liable to be cancelled.

2. The conditions precedent being absent, the reopening of the assessment u/s 147 is bad in law.

3. There being no omission much less an omission of declaration of income in the relevant assessment year in the return of income by the appellant, the reopening of the assessment u/s 147 was without jurisdiction and consequently the reassessment is liable to be annulled.

4. The learned CIT(A) ought to have accepted the explanation of the Appellant and refrained from including interest and dividend income earned outside India and he ought to have appreciated that the said income was exempted from taxation under the Act on account of DTAA between India and UK.

5. The learned CIT (A) ought to have appreciated that amount received is only on account of compensation for which the Appellant had furnished sufficient evidence to support the same. Without appreciating the same the CIT(A) have made addition which is not sustainable.

6. The learned CIT(A) erred in not considering the explanation given and the evidence produced to support the claim of the appellant ignoring the facts and evidence, alleging that the original letters have not been produced and accordingly the order of the CIT (A) is opposed to law and to the principles of natural justice and accordingly the impugned addition are liable to be deleted.

7. Without prejudice, additions as made are excessive, arbitrary and unreasonable and liable to be deleted in toto.

8. The learned CIT (A) erred in upholding the levy of interest u/s.234A, 234B and 234C of the Act.

9. Without prejudice, the quantum of interest levied u/s 234A, 234B, 234C are excessive and ought to be reduced subsequently.

10. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed”

6. The grounds raised by the assessee for Assessment Year 2011-12 in ITA No. 3440/Bang/2018 are as under.

“1. On the facts and in the circumstances of the case, the reopening of the assessment u/s 147 of the Act by issuing the notice u/s 148 was opposed to law and accordingly the assessment as made is liable to be cancelled.

2. The conditions precedent being absent, the reopening of the assessment u/s 147 is bad in law.

3. There being no omission much less an omission of declaration of income in the relevant assessment year in the return of income by the appellant, the reopening of the assessment u/s 147 was without jurisdiction and consequently the reassessment is liable to be annulled.

4. The learned CIT(A) ought to have accepted the explanation of the Appellant and refrained from including interest and dividend income earned outside India and he ought to have appreciated that the said income was exempted from taxation under the Act on account of DTAA between India and UK.

5. The learned CIT (A) ought to have appreciated that amount received is only on account of compensation for which the Appellant had furnished sufficient evidence to support the same. Without appreciating the same the CIT(A) have made addition which is not sustainable.

6. The learned CIT(A) erred in not considering the explanation given and the evidence produced to support the claim of the appellant ignoring the facts and evidence, alleging that the original letters have not been produced and accordingly the order of the CIT (A) is opposed to law and to the principles of natural justice and accordingly the impugned addition are liable to be deleted.

7. Without prejudice, additions as made are excessive, arbitrary and unreasonable and liable to be deleted in toto.

8. The learned CIT (A) erred in upholding the levy of interest u/s.234A, 234B and 234C of the Act.

9. Without prejudice, the quantum of interest levied u/s 234A, 234B, 234C are excessive and ought to be reduced subsequently.

10. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed”

7. At the very outset, it was submitted by Id. AR of assessee that as per para no. 4.2.3 of his order in all these five years, Id. CIT(A) has decided the issue against the assessee on this basis that in spite of specific request made by the AO and also again by him in the appellate proceedings, necessary details have not been provided by assessee and therefore, it cannot be held that the

receipt in question is a retirement benefit and as such exempt under the UK Tax Law. He submitted that now those details in original are available with the assessee and the same can be furnished before the authorities below and hence, in the interest of justice, the matter may be restored back to the file of AO/Id. CIT(A) for fresh decision and if this is done, the assessee will furnish all the necessary details and evidences. The Id. DR of revenue supported the orders of authorities below.

8. We have considered the rival submissions. We find that the only issue in dispute on merit is regarding taxability of various amounts received by the assessee in these years received from Texmatch is liable to tax in India or not. In this regard, the decision of Id. CIT(A) is contained in para no. 4.2.3 of its order which is reproduced hereinbelow for ready reference.

“4.2.3 The case was adjourned to 30.8.2018 and at the request of the AR the matter was adjourned to 27.09.2018 to give additional time. However, the AR sought further time to appear and again adjourned to 23.10.2018 on which date the AR of the appellant appeared and expressed her inability to produce the information called for. It is also pertinent to mention that the appellant failed to furnish the true nature and source of income with proper documentary evidence before the AO and also before the Hon'ble Settlement Commission (ITSC) which is evident from their orders passed by the ITSC. In the absence of the above information, the nature of the payment received by the appellant stands out to be unexplained. Thus, the amount received in the HSBC bank is not proved to the satisfaction.

4.2.3 Considering the fact that the nature, genuineness, source, the identity of the party remitted the funds, purpose of such remittance and other connected details have not been established by the appellant in spite of specific request made by the AO and also again by me in this appellate proceedings, it cannot be assumed that the said income is a retirement benefit and as such exempt under the UK Tax Law. Further, considering the fact that the appellant was a resident in India during the relevant period, the said amount can be reasonably assumed to be the income earned by the appellant from the undisclosed sources and accordingly taxed in India. Without establishing the true nature of the receipt along with the genuineness of the said transaction the taxability of the same under UK Tax Law is not possible. Even otherwise, the appellant failed to establish the relevant head under which the said income was considered for taxing the said receipt under the UK Tax Law. Only after this, the applicability of DTAA can be validly considered. Considering the above, I am of the view that the provisions of DTAA are not applicable at all, to the given set of facts under the circumstances discussed supra.”

9. From the above para reproduced from the order of Id. CIT(A), it is seen that Id. CIT(A) decision is on this basis that necessary details were not produced by assessee before him. As per the Id. AR of assessee, it was submitted before us that these details along with the evidences are now available with the assessee and the same can be now produced before the AO/Id. CIT(A) if the matter is restored back to anyone of these two authorities. Under these facts and in the interest of justice, we feel it proper to set aside the order of Id. CIT(A) in all the five years and restore the matter back to its file for fresh decision after providing adequate opportunity of being heard to both sides. We order accordingly. We make it clear that assessee should produce all the relevant details and evidences before Id. CIT(A) and co-operate with him in the proceedings. In view of this decision, no adjudication on merit is called for at the present stage and hence, we make no comment on the merit of the case.
10. In the result, all the five appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 28th August, 2019.
/MS/

Copy to:

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.