

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 107/Ind/2018
A.Y. 2008-09

Abhay Kumar Chopra L/H of
Late Smt. Chandana Chopra, Mahidpur
PAN – ACZPC 8310 Q :: Appellant

Vs

ITO, Ward, Agar Malwa :: Respondent

Assessee by	Shri S.S. Deshpande, CA
Respondent by	Shri Ashish Porwal, Sr. DR
Date of hearing	08.1.2020
Date of pronouncement	09.1.2020

O R D E R

This appeal is filed by the assessee against the order of Id. CIT(A)-Ujjain dated 06.12.2017.

2. First ground raised by the assessee is that the Id. CIT(A) has erred in confirming the addition of Rs.4,58,096/- on account of interest expenses. Facts giving rise to the ground of appeal are that the

assessee filed return of income declaring total income at Rs.2,80,580/- on 30.9.2008. The Assessing Officer passed the original assessment order u/s 143(3) on 23.3.2010 determining total income at Rs.3,81,670/-. Subsequently, notice u/s 148 was issued and income at Rs.8,98,848/- was determined u/s 143(3)/147 of the Income Tax Act vide order dated 08.10.2012 which was challenged before the Id. CIT(A). The Id. CIT(A) confirmed the action of the Assessing Officer, therefore, the matter went in appeal before the ITAT, Indore and the Tribunal vide order dated 21.12.2015 restored the matter back to the file of the Assessing Officer with the direction not to make the addition if the tax has been paid by the recipient of the interest. In second round, the Assessing Officer again made the disallowance and the Id. CIT(A) also confirmed the action. Thus, the assessee is before this Tribunal.

3. Before me, learned counsel for the assessee has reiterated the submission made before the authorities below and submitted that earlier, the Tribunal vide order dated 21.12.2015 restored the matter back to the file of the Assessing Officer for verification of the fact that

the income of interest has been shown in the return of interest recipients in the same assessment year following the order of the ITAT, Indore Bench in case of M/s. Pratibha Exims P. Ltd. passed in ITA No.90/Ind/2013. However, in the second round, the Assessing Officer while passing the order did not take any reference to the order of the Tribunal and passed the order by her own without keeping in mind the directions of the ITAT which is highly objectionable in the judicial system of the country. The Assessing Officer ultimately decided the matter without application of mind and just followed the assessment order of her predecessor. Therefore, the order of the Assessing Officer needs to be quashed on this issue. On the other hand, Id. Sr. DR relied on the orders of the Revenue Authorities but could not controvert the submission of the assessee by bringing any contrary material on record.

4. I have considered the rival submissions of both the parties and gone through the material available on the file. On consideration of above facts, I find that in the second round, the Assessing Officer while passing the order did not take any reference to the order of the

Tribunal and passed the order by her own without keeping in mind the directions of the ITAT, which is not justified. The Assessing Officer should have passed the order in pursuance of the directions issued by the ITAT. But the Assessing Officer did not comply with the same, therefore, the order of the Assessing Officer being void is quashed on this issue. Accordingly, ground no.1 raised by the assessee is allowed.

5. So far as ground no.2 is with regard to addition of Rs.59,382/- on account of interest income is concerned, the facts giving rise to the ground of appeal are that the assessee received an amount of Rs.1,35,000/- from M/s. Rajshree Builders and Developers on which a sum of Rs.20,021/- tax was deducted at source. Under Form No.16 issued by the party, it was mentioned that a sum of Rs.1,94,382/- was provided as interest to the assessee and tax on the same amount was deducted. Therefore, the Assessing Officer added a sum of Rs.59,382/- (Rs.1,94,382 – Rs.1,35,000) towards the difference of the amount between recorded in the books of accounts and as per Form

No.16. Ld. CIT(A) confirmed the same on the basis of mentioning in the Form No.16.

6. Before me, learned counsel for the assessee submitted that the assessee recorded only that amount which was informed by M/s. Rajshree Builders. The assessee only came to know about difference in the amount after receiving Form No.16A from M/s. Rajshree Builders. The mistake is not deliberate or intentional and the assessee never received the balance amount from M/s. Rajshree Builders and as and when the difference amount will be received by the assessee, the same shall be shown as income in the accounts. Therefore, learned counsel for the assessee submitted that addition is unjustified. On the other hand, Id. Sr. DR relied on the orders of the authorities below.

7. On consideration of above facts, I find that the assessee has contended that the mistake is not deliberate or intentional as the assessee only came to know about difference in the amount after receiving Form No.16A from M/s. Rajshree Builders and he has not received the balance amount from M/s. Rajshree Builders and as and

when the difference amount will be received by the assessee, the same shall be shown as income in the accounts, therefore, the Revenue should not be aggrieved. Looking to this factual plea advanced by the assessee, I direct the Assessing Officer to delete the addition of Rs.59,382/-. Accordingly, ground no.2 raised by the assessee is also allowed.

8. In result, the appeal of the assessee is allowed.

Order was pronounced in the open court on 09.1.2020.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated : 09.1.2020

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Appellant/Respondent/Pr.CIT(A)/Pr.CIT/DR, Indore