

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “जी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘G’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, V.P & SHRI PRASHANT MAHARISHI, AM

आयकर अपील सं. / ITA Nos.267 to 270/Del/2015

निर्धारण वर्ष / Assessment Years 2006-07 to 2009-10

Mr. Chander Mohan Merwah,
L/H & Registered Representative of
Late Smt. Shanti Devi Merwah,
Flat No.14A, Tower No.19,
DCentral park-2, Sohna Raod,
Sector-48, Gurgaon, Haryana-122018.
PAN-AAJPD8788R

.....अपीलार्थी/ Appellant

vs

The ACIT,
Central Circle-12,
New Delhi.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Sandeep Ahuja, CA

प्रत्यर्थी की ओर से / Respondent by : Sh. H.K.Choudhary, CIT DR

सुनवाई की तारीख / Date of Hearing : 19.03.2020	घोषणा की तारीख / Date of Pronouncement: 21.05.2020
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आदेश / ORDER

PER SUSHMA CHOWLA,VP

All four appeals filed by assessee are against order of CIT(A)-XXXI, New Delhi dated 31.10.2014 against order passed under section 153A r.w.s 143(3) of the Income-tax Act, 1961 (in short ‘the Act’).

2. These appeals on similar issues relating to assessment years 2006-07 to 2009-10 were heard together and are being disposed off by this consolidated order for the sake of convenience. However, in order to adjudicate the issue, reference is made to the facts and the issue raised in ITA No.267/Del/2015 relating to Assessment Year 2006-07.

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

1. *“Re: Non-Admittance of Appeal by Ld. CIT(A)-XXXI*

a. *As the Department, during the search, had seized jewellery of an amount much higher than the tax and interest liabilities, the assessee had made several requests since admittance of her tax liability to the department to sell the gold seized during the search and appropriate the proceeds towards the required tax demand. The Department has not taken any action in this regard.*

b. *Refusing to admit the appeal on the ground that the assessee has not deposited the tax liability is prejudicial to the interests of the assessee as due to immovable property provisionally attached u/s 281B and seized jewellery, the situation is beyond the control of the assessee who does not have enough cash liquidity to pay the tax dues. In light of such facts, the appeal must be admitted.*

2. *Re: Wrongful Disallowance of Bank Charges as Expense while Calculating Interest Income*

a. *The Ld. Assessing Officer has erred by ignoring the bank charges as charged by bank, being incidental to the earnings of interest income and unavoidable, and has not deducted the same from computing the assessee's interest income.*

b. *The Ld. Assessing Officer in his Order u/s 153A r.w.s 143(3) has erred in computation of the interest income without giving legal or logical reason for not accepting the computation of interest income calculated by the assessee during the course of assessment proceedings.*

c. *It is, therefore, most respectfully prayed that the above grounds of appeal may be accepted, the disallowance of bank charges being unjust, unlawful and prejudicial, it may please be deleted and appropriate relief be given to the assessee.*

d. It is further prayed that the consequent penalty proceedings may be directed to be dropped.

e. The consequent interest u/s 234B and 234C are also wrongly computed and may please be directed to be corrected.

f. The additions made by the Ld. Assessing Officer are baseless, prejudicial, against the principal of natural justice and bad in law.”

4. During the course of hearing, Revised Memo of appeal was filed in the name of legal heir, which is taken on record.

5. The first issue raised in the present appeal is against the non-admittance of the appeal by the CIT(A) on the ground that tax liability arising on account of returned income has not been paid by the assessee.

6. The second issue raised on merits is against the disallowance made on account of bank charges as expenses while calculating the interest income for the respective years.

7. The Ld.AR for the assessee pointed out that the assessee had demised on 25.09.2008 and the younger son of the assessee was brought on record as legal heir of deceased assessee. It was further explained that the issue raised in the present appeal i.e. allowance of bank charges against bank interest stands covered in favour of the assessee by the order of CIT(A) relating to Assessment Years 2010-11 & 2011-12. It was further stated that the CIT(A) dismissed the appeal on the ground that the tax has not been paid by the assessee. However, the assessee had paid the aforesaid taxes. Our attention was drawn to the written submissions filed in this regard with special reference to Page 8

wherein the said taxes have been paid from the sale proceeds of the house property of the assessee during the period between 18.03.2015 to 12.08.2015.

8. The Ld.DR for the Revenue however, pointed out that the assessee had not paid the taxes in time and were paid after the appellate proceedings.

9. We have heard the rival contentions and perused the record. The first aspect of the issue raised before us is that the appeals which were not admitted by the CIT(A) on the ground that the taxes have not been paid against the returned income and hence, the appeals were not maintainable; can such appeals be decided by the Tribunal now? In the peculiar facts and circumstances, the assessee is deceased and the appeal is represented by the legal heir of the assessee. Admittedly, the taxes were not paid by the assessee alongwith return of income; though repeated pleas, were raised before the authorities below to sell the gold ornaments seized and adjust the sale proceeds against the tax payable by the assessee, but no such exercise was carried out by the Department. Thereafter, the assessee claims that she sold house property and paid the taxes due with interest on returned income before her death during 18.03.2015 to 12.08.2015. The details of payments are as under:-

<i>Asst. Year</i>	<i>Rs.</i>	<i>Paid on</i>	<i>Bank</i>	<i>BSR Code</i>	<i>Challan No.</i>
2006-07	1248624	18.03.2015	Union Bank of	0291063	0001
2007-08	1335740	01.05.2015	India, Punjabi		0001
2008-09	1493210	20.07.2015	Bagh, New		0002
2009-10	1085330	12.08.2015	Delhi		0001

10. In such peculiar facts and circumstances especially where the assessee had demised, it is deemed fit to admit the appeals of the assessee and decide the issue on merits. We do not find any merit in setting aside the issue to the CIT(A) and proceed to decide present appeals.

11. Now coming to the next issue raised on merits. The assessee was living in Kuwait till 1985 and deposited funds in the accounts held with HSBC, Switzerland. Against the interest received from different years, the assessee had paid bank charges and the tabulated details are as under:-

Sl.No.	Assessment Year	Bank Charges (Rs.)	Interest received (Rs.)
1.	2006-07	70,454/-	21.61 Lacs
2.	2007-08	71,270/-	24.60 Lacs
3.	2008-09	67,753/-	28.89 Lacs
4.	2009-10	1,29,324/-	24.73 Lacs

12. The issue raised in the present appeal is against the claim of bank charges debited by the foreign bank account maintained by the assessee with HSBC Bank, Switzerland. The case of the assessee is that the accounts were managed by the bank itself by investing the funds in fiduciary deposits with other banks for which maintenance fees and bank charges were charged from the assessee. The assessee has declared its income on account of interest net off of bank charges. The provisions of section 57(1) of the Act is reproduced for ready-reference:-

“As per section 57 of the Income Tax Act, the income chargeable under the head “income from other sources” shall be computed

after making deductions on account of expenses that fulfill the following conditions:-

- (i) The expenditure must have been incurred solely and exclusively for the purpose of earning income or making profit.*
- (ii) The expenditure should not be in the nature of a capital expenditure.*
- (iii) The amount in question should not be in the nature of personal expenses of the assessee.*
- (iv) The expenditure should be incurred in the accounting year.*
- (v) There must be a clear nexus between the expenditure incurred and the income sought to be earned.”*

13. The Hon'ble Supreme Court in the case of Seth R.Dalmia vs CIT [1977] 110 ITR 644 (SC) was held that *“for allowability of such deduction, the dominant purpose of the expenditure incurred must be to earn income. The connection between the expenditure and the earning of income need not be direct; even an indirect connection could prove the nexus between the expenditure incurred and the income.”* The claim of the assessee has been allowed in succeeding years 2010-11 & 2011-12 by the CIT(A) against which no appeal has been filed by the Revenue. We hold that the assessee has merit in her claim; the bank charges being related to the interest income are duly allowable as expenditure in the hands of the assessee. Accordingly, we hold so. The Assessing Officer is directed to allow the deduction on account of bank charges against the interest income assessed in the hands of the assessee. Thus, the grounds of appeal raised by the assessee are allowed.

14. In the result, all appeals filed by the assessee are allowed.

Order pronounced in the open court on 21st May, 2020.

Sd/-
(PRASHANT MAHARISHI)
लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-
(SUSHMA CHOWLA)
उपाध्यक्ष / **VICE PRESIDENT**

दिल्ली / दिनांक Dated : 21st May, 2020

* Amit Kumar *

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi