

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'C', NEW DELHI**

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

(E-Court module)

ITA No. 300/Del/2020 : Asstt. Year : 2017-18

Harvansh Chawla, C-17, Nizamuddin East, New Delhi-110014	Vs	ACIT, Circle-5, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ADDPC7559G		

Assessee by : Sh. Rohit Tiwari, Adv.

Revenue by : Sh. Anupam Kant Garg, CIT DR

Date of Hearing: 27.05.2020

Date of Pronouncement: 03.06.2020

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A)-35, New Delhi dated 09.12.2019.

2. Following grounds have been raised by the assessee:

"1. That on the facts & in the circumstances of the case and in law, the order passed by the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] is wrong, bad in law & Void-Ab-initio.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A)/AO grossly erred in holding that the assessment for the year under consideration need not be based upon seized incriminating material while framing the assessment u/s 153c of the Income Tax Act, 1961 (The Act)".

3. That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the

impugned assessment order and rejecting the objection of appellant that the approval of Addl. CIT u/s 153BD of the Act being mechanical and without application of the mind.

4. That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition Rs. 63.54,632/-being notional interest on security deposit received by the appellant.

4.1 That on the facts and circumstances of the case and in law, the Ld. CIT (A) and AO failed to appreciate that the appellant has taken a security deposit & not given the security deposit in which he ought to earn interest income.

5. That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the action of the Ld. AO in charging interest u/s 234A, 234B, 234C and 234D of the Act, the same may be cancelled.

6. That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the action of the Ld. AO in initiating penalty proceeding u/s 271AAB of the Act, the same may be kindly be cancelled.”

3. At the outset, the Id. AR submitted that only ground no. 4 which is a substantial ground would be argued and other grounds are not being pressed.

4. The assessee owns a property in DLF, Phase-II, Gurgaon against which he has received a security deposit of Rs.5,29,55,200/-for leasing the premises. During the year, the no rent has been offered to tax and on enquiry, it was found that the said property has been sold for Rs.2.75 crores in the year 2013-14, hence no income from rentals has been offered. However, the assessee continued to hold the security deposit of Rs.5.29 crores. The Assessing Officer held that since the

security deposit is an underlying asset and an interest amount deemed to have derived from such security deposit of Rs.63,54,632/- has been brought to tax under the head "income from other sources".

5. The Id. CIT (A) confirmed the addition on the grounds that the assessee is benefited by way of having the deposit still lying with him.

6. Aggrieved the assessee filed appeal before the Tribunal.

7. During the hearing before us, the Id. AR vehemently argued that there is no concept of notional interest to be taxed on the security deposit received by the assessee as per the provisions of Income Tax Act. Relying on the judgment in the case of Godhra Electrical Co. Ltd. Vs CIT 225 ITR 746 (SC) and Highways Constructions Co. Pvt. Ltd. Vs CIT 199 ITR 702 (Gau), he argued that in the absence of any real income or accrual of income, notional interest cannot be brought to tax being a hypothetical income. It was argued that the amount has been continued to be shown as outstanding liability in the assessment year 2017-18 and so as from 2008-09. As per the security deposit clause, the deposit has been given for a period of 9 years and owing to the lock-in-period, the amount has not been returned. However, he has not disputed the fact that the said property has been sold on 05.03.2013.

8. Against the arguments of the Id. AR, Sh. Anupam Kant, Id. Departmental Representative argued that this matter has to be looked in the overall scheme of things and reasons leading to the search & seizure operation conducted on 07.04.2016 at

the premises of the assessee u/s 132 of the Income Tax Act, 1961. He argued that the Id. CIT (A) has rightly confirmed the addition owing to the benefit reaped by the assessee on account of enjoyment of the security deposit lying with him even after the sale of the premises of DLF, Phase-II which has been leased out initially. It was argued that the premises of the assessee was leased out to one entity namely, M/s. HHG Global Pvt. Ltd. and received interest free deposit of Rs.5.29 crores. The Directors of the company M/s HHG Global Pvt. Ltd., Sh. D.S. Rawat who signed the lease agreement has been a office boy of the assessee as per the submission of the assessee dated 24.12.2018. The other person Sh. Utpal Deka who has been shown to be the representative of M/s HHG Global Pvt. Ltd. is driver in Karina Airlines International Ltd. It was also argued that the confirmations submitted by the assessee that Sh. K. Leelawati W/o Late Sh. K. Krishnan is the owner of Karina Airlines International Ltd. is incorrect as the owner is Sh. Sandeep Singhanian as per the information received from the competent authority of Singapore. Hence, the entire transaction is a "Sham transaction" and the AO has rightly brought the amount to taxation. To a pertinent question asked by the bench as to the fate of the amount of Rs.5.29 crores received as advance and its treatment as per the provisions of income tax, the Id. DR could not reply.

9. Heard the arguments of both the parties and perused the material available on record.

10. The issue before us is whether the notional interest is taxable as per the provision of Income Tax Act or not. The issue of as to how to treat the security deposit after the

completion of the lock-in-period is not the issue before us. The Assessing Officer has not brought anything about earning of the interest by the assessee which has not been offered to tax. The addition was on the sole premise, that the assessee having the security deposit must have earned the interest. In order to tax any amount, the revenue has to prove that the amount as indeed been earned by the assessee. Only the incomes fall under the deemed provisions which have been explicitly mentioned in the Income Tax Act can only be brought to tax under the deeming provision but not any other notional or hypothetical income not envisaged by the Act. Hence, we hereby direct that the addition made by the Assessing Officer on account of notional income on the security deposit cannot be held to be legally valid.

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

Order Pronounced in the Open Court on 03/06/2020.

Sd/-

(Sushma Chowla)
VICE PRESIDENT

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

Dated: 03/06/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR