

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**I.T.A. No. 299/HYD/2017**

Assessment Year: 2008-09

Shri K.Ranga Rao, DCIT, Circle-2(1),  
SECUNDERABAD Vs HYDERABAD  
[PAN: AGGPK4226L]

(Appellant)

(Respondent)

For Assessee : ShriA.V.Raghuram, AR  
For Revenue : Shri D.J.Prabhakar Anand, DR

Date of Hearing : 10-09-2020

Date of Pronouncement : 11-09-2020

**ORDER**

**PER D.S. SUNDER SINGH, A.M. :**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax(Appeals)-10, Hyderabad, dated 30-09-2016.

2. Ground Nos.1 and 6 are general in nature, hence does not require specific adjudication.

3. During the appeal hearing, Ld.AR did not press Ground No.5. Hence, the same is dismissed as not pressed.

4. Ground No.2 is related to challenging the validity of initiation of proceedings u/s.147 of the Income Tax Act [Act].

5. Brief facts of the case are that, the assessee filed the return of income, declaring total income of Rs.1,95,16,925/- on 12-09-2008. The assessment was completed u/s.143(3) of the Act on the total income of Rs.2,05,29,512/-. Subsequently, the AO re-opened the assessment for the reason of escapement of income with regard to the interest receipt of Rs.34,55,684/-. The AO observed that in the original assessment framed u/s 143(3) dated 31-12-2010 the AO made the addition of Rs.7,99,567/-, as against the sum of Rs. 34,55,684/- and the difference between the amount of Rs.34,55,684/- and 7,99,567/- amounting to Rs.26,56,117/-, had escaped the assessment within the meaning of Section 147 of the Act, as per reasoning, given by the AO in para 2 of the assessment order, framed u/s.143(3) r.w.s.147 of the Act, dt.21-03-2014.

6. Assailing the validity of the issue of re-opening the assessment, the Ld.AR submitted that the issue with regard to interest receipts of Rs.34,55,684/- was considered by the AO in the original assessment made u/s.143(3) of the Act, dt.31-12-2010 and concluded the assessment, after having satisfied that the only net receipts are required to be brought to tax.

6.1. At the time of hearing, Ld.AR taking our attention to Pg.2 of the assessment order, stated that the AO considered the issue in detail and made the addition of Rs.7,99,567/-, after netting-of the interest received and interest paid by the assessee, since, both the receipts represents the business transactions. Therefore argued that the re-opening of assessment on the same issue which was already examined by the AO constitutes difference of opinion and the AO is not

permitted to initiate proceedings u/s.147 of the Act on difference of opinion. Hence, the Ld.A.R requested to set aside the orders of the Ld.CIT(A) and quash the notice issued.

7. On the other hand, Ld.DR vehemently opposed the arguments of the AR and argued that the AO has rightly reopened the assessment having reason to believe that income had escaped assessment and hence, submitted that no interference is called for with regard to issue of notice.

8. We have heard both the parties through video conference and gone through the material placed on record. In this case, the assessment was originally completed u/s.143(3) of the Act on 31-12-2010 and the AO had examined the issue in detail and considered the sum of Rs.7,99,567/- for tax. At Pg.2 of the assessment order, the AO verified the Profit & Loss A/c and summarized the bank interest at Rs.12,04,820/-, which was debited to the Profit & Loss A/c. For the sake of clarity and convenience, we extract Page No.2 of the AO dated 31-12-2010, which reads as under:

*On verification of profit and loss account filed along with return of income it is observed that net bank interest paid amounting to Rs.12,04,820/- was debited to profit and loss account break up of which is as follows.*

	Rs.
<i>Interest earned on deposit other banks</i>	<i>33,24,031</i>
<i>Interest earned on MCF</i>	<i>1,31,653</i>
<i>Total interest earned</i>	<i>34,55,684</i>
<i>Interest paid on loans</i>	<i>31,40,195</i>
<i>Interest on ICICI bank loan</i>	<i>15,20,309</i>
<i>Total interest paid</i>	<i>46,60,504</i>

*Net Bank interest paid: Rs.12,04,820/-*

8.1. In Pg.4 of the assessment order, the AO, after verifying the details, brought to tax the sum of Rs.7,99,567/-. For the sake of clarity and convenience, we extract Paras 2 & 3 at Pg.4 of the assessment order, which reads as under:

*“On verification of the information submitted by the Assessee it is observed that out of the interest amount of Rs.33,24,031/- earned an amount of Rs.26,56,117/- is earned from the fixed deposits sourced from OCC limits. The remaining balance interest of Rs.6,67,914/- and interest earned on MCF has no nexus with the funds borrowed.*

*In view of the above, interest income of Rs.6,67,914/- and Rs.1,31,653/- totalling to Rs.7,99,567/- is treated as ‘Income from other sources’. Remaining interest income is allowed to net off interest paid”.*

Thus, it is clear that the AO made the addition of Rs.7,99,567/- after being satisfied that income required to be brought to tax only the sum of Rs. 7,99,567/- but not the entire amount of Rs. 34,55,684/-

8.2. The AO re-opened the assessment, by issuing a notice u/s.148 of the Act on the same issue of interest receipts of Rs.34,55,684/-. The same is evident from Pg.2 of the order u/s.143(3) r.w.s 147, which reads as under:

*“2. Later it is brought to the notice that the assessee derived interest income to the tune of Rs.33,24,031 and reduced an amount of Rs.46,60,504 as interest paid on the loans taken and the net interest paid of Rs.12,04,820 was claimed as expenditure on the debit side of the P&L a/ c. Since the income from business has been computed on estimation basis, the interest receipts of Rs.34,55,684 needs to be brought to tax. However in the assessment order u/s 143(3), the AO had already considered an amount of Rs.7,99,567/-, the difference amount of Rs.26,56,117 (Rs.34,55,684 - Rs.7,99,567) escaped assessment within meaning of provisions of Sec.147 of I.T.Act and the same needs brought to tax. Accordingly a notice u/s.148 dt.11.01.2013 was issued and served on the assessee”.*

8.3. From the original assessment order dt.31-12-2010, we find that the issue had been examined by the AO in detail and has taken a conscious decision to tax the sum of Rs.7,99,567/- against debit of Rs.12,04,820/-, after netting-of the interest earned and interest paid by the assessee. The AO also has given a finding in the original assessment that the interest required to be brought to tax under other sources was only Rs.7,99,567/- but not Rs. 34,55,684/-. The present AO re-opened the assessment for the same issue, which was already considered by the erstwhile AO. Since the AO has taken a conscious decision, after examining the complete details, re-opening of assessment on the same issue amounts to difference of opinion and the AO is not permitted to initiate the re-assessment proceedings u/s.147 of the Act on difference of opinion. Therefore, the notice issued u/s.148 of the Act is bad in law and the same is quashed. Since the issue of notice u/s.148 is quashed, we consider it is not necessary to adjudicate the other grounds, raised by the assessee in this appeal. Accordingly, the appeal of assessee is allowed.

*Order pronounced in the open court on 11<sup>th</sup> September,2020*

Sd/-  
**(P.MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(D.S.SUNDER SINGH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 11-09-2020

*Copy to :*

*1. Sri K.Ranga Rao, C/o.K.Vasant Kumar, A.V.Raghu Ram, P.Vinod&M.Neelima Devi, Advocates, 610, Babukhan Estate, Basheerbagh, Hyderabad.*

*2. The DCIT, Circle-2(1), Hyderabad.*

*3. CIT(Appeals)-10, Hyderabad.*

*4. Pr.CIT-2, Hyderabad.*

*5. D.R. ITAT, Hyderabad.*

*6. Guard File.*