

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'SMC': NEW DELHI  
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

**ITA No.6283/Del/2019  
Assessment Year : 2016-17**

**ACIT,  
Central Circle-26,  
Room No.323, E-2,  
ARA Centre,  
Jhandewalan Extn.  
New Delhi-110055**

**Vs. Sh. Parag Dalmia,  
11 Hari Bhawan,  
Shri Ram Mandir Marg,  
Sector, D-4, Vasant Kunj,  
New Delhi-110070  
PAN-AAAPD3752B**

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Sanjiv Mahajan, Sr. DR  
Respondent by : Sh. Hiren Mehta, CA

Date of hearing : 28.01.2021  
Date of pronouncement : 31 .03.2021

**ORDER**

**PER R.K. PANDA, AM :**

This appeal filed by the Revenue is directed against the order dated 16.05.2019 of the learned CIT(A)-29, New Delhi, relating to Assessment Year 2016-17.

2. Facts of the case, in brief, are that the assessee is an individual and derives income from business or profession, capital gain and income from other sources. He filed his return of income on 15.07.2016, declaring loss of Rs.10,01,742/-. During the assessment proceedings, the Assessing Officer noted that as per calculation made in AY 2014-15, the closing balance of the foreign bank account including interest was USD 362354.79 as on

31.03.2014 which became the opening balance for the assessment year 2015-16 and the assessee also earned interest income on this sum from 01.04.2014 to 31.03.2015 i.e. for twelve month which @4% works out to Rs.9,04,872.28/- (USD 14494.19 X 62.43), the closing balance of the foreign bank account for the AY 2015-16 including interest was USD 3,76,848.98 as on 31.03.2015 which became the opening balance for the assessment year 2016-17 and the assessee also earned interest income on the sum from 01.04.2015 to 31.03.2016 i.e. for twelve month which @ 4% works out to Rs.9,98,649.85/- (USD 15073.96 X 66.25) as per the calculation in the chart given below.

Name of the profile client	Financial year	Balance as on 31 <sup>st</sup> March of earlier year in US\$	Interest rate	Total interest in US \$	Total balance at the end of year in US\$ (Co.3+Col.5)	Value of US \$ in the end of the F.Y.	Intt. In Rupees (Co. 5 X Col.7)
1	2	3	4	5	6	7	8
Asprey Worldwide S. A.	2013-14	14551.84	4%	582.07	15133.91	60.96	35482.98
Rondeberg Ltd.	2013-14	323653.83	4%	12946.15	336599.98	60.96	789197.30
Taira Foundation	2013-14	10212.40	4%	408.50	10620.90	60.96	24902.16
<b>TOTAL</b>		<b>348418.07</b>	<b>4%</b>	<b>13936.72</b>	<b>362354.79</b>	<b>60.96</b>	<b>849582.44</b>
Asprey Worldwide S.A.	2014-15	15133.91	4%	605.36	15739.27	62.43	37792.62
Rondeberg Ltd.	2014-15	336599.98	4%	13463.99	3500643.97	62.43	840556.90
Taira Foundation	2014-15	10620.90	4%	424.87	11045.77	62.43	26524.63
<b>Total</b>		<b>362354.79</b>	<b>4%</b>	<b>14494.19</b>	<b>376848.98</b>	<b>62.43</b>	<b>904872.28</b>
Asprey Worldwide S.A.	2015-16	15739.27	4%	629.57	16368.84	66.25	41709.01
Rondeberg Ltd.	2015-16	3500643.97	4%	140025.76	3640669.73	66.25	9276706.6
Taira Foundation	2015-16	11045.77	4%	441.83	11487.60	66.25	29271.23
<b>Total</b>		<b>376848.98</b>	<b>4%</b>	<b>15073.96</b>	<b>391922.94</b>	<b>66.25</b>	<b>998649.85</b>

3. The Assessing Officer therefore, held that the interest income of Rs.9,19,649/- was not disclosed by the assessee to the Department. He, therefore, added the same as undisclosed income of the assessee by invoking the provisions of section 69 of the Act.

4. In appeal, the learned CIT(A) following his order for AY 2013-14 deleted the addition by observing as under:-

*“There is only one issue which relates to addition of Rs.9,98,649/- made by the Assessing Officer. The other grounds of appeal are neither general or consequential in nature. The addition was made u/s 69 of the IT Act on account of interest @4% on the balance of an alleged undisclosed foreign investment. However, the appellant has filed a copy of appellate order in the case of the appellant for the AY. 2013.14 in which the on the same issue the appeal was allowed, being identical issue, the order of the then CIT(A)-26, New Delhi in the case of the appellant himself is followed and accordingly, the appeal is allowed.”*

5. Aggrieved with such order of the learned CIT(A), the Revenue is in appeal before the Tribunal by raising following grounds of appeal:-

*“On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on facts in deleting the protective addition of Rs.9,98,649/- made by the Assessing Officer on account of undisclosed interest income without appreciating the fact that the assessee had not submitted any details regarding the same during the assessment proceedings or appellate proceedings.”*

6. The learned DR strongly challenged the order of the CIT(A) in deleting the addition made by the Assessing Officer. He submitted that the assessee must have earned interest on the outstanding credit balance in his foreign bank accounts and, therefore, the AO was justified in making the addition.

7. The learned counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). Referring to the copy of the order for AY 2006-07, copy of which is placed in the paper book at page 1 to 40, he submitted that the addition made by the AO in the impugned assessment year originates from the addition made in AY 2006-07. Referring to the assessment order for 2006-07, he submitted that an amount of

Rs.1,20,37,863/- was added by the AO as undisclosed foreign bank account u/s 69 of the Act being the peak balance of the alleged foreign bank account maintained with HSBC Bank Switzerland. He submitted that irrespective of the fate of the said addition assessing authorities thereafter computed interest @ 4% on the peak balance of the alleged foreign bank account and in subsequent years, such addition was made on the basis of such premises. Accordingly, an amount of Rs.9,98,649/- being interest earned on such account was made to the total income of the assessee for the current assessment year. He submitted that since the CIT(A) following his order for AY 2013-14 has deleted the addition and the order of the CIT(A) is cryptic, therefore, the copy of the order for AY 2013-14 of the CIT(A) is necessary to be gone through, which is placed in the paper book pages 44 to 48. The learned counsel for the assessee drew the attention of the Bench to the findings of the CIT(A) for AY 2013-14 which reads as under:-

*“5. I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during assessment as well as appellate proceedings. It is seen that the AO has presumed that assessee would have earned interest on the credit balance in its bank account as on February, 2007. It is a fact that no such information is evident from the documents received by the AO from French Government under information exchange mechanism of DTAC. The perusal of said documents only shows that month end balances have been written in respect of the bank account operated by the appellant and there is no mention of any interest earned on the said credit balances. Perusal of information available in respect of the said bank account does not show payment of any interest credited with regard to the deposits. The presumption of the AO is apparently based on experience with the Indian Banking System wherein the saving bank accounts generally earns an interest of 4% or so. The AO therefore applied the same standards in respect of the credit balances held by the*

*assessee in its foreign bank account as well. It is also a matter of common knowledge that the rate of interest on time deposit/FDRs in developed countries banking system are generally from low and nowhere in comparison to the Indian banking system. In fact, the rate of interest in the current/saving bank account could sometimes be negative in terms of operational cost of maintaining such an account. This only highlights the absence of certainty in AO's presumption based upon Indian banking system. It clearly shows that there is no documentary evidence to support such a presumption. In view of these facts the earning of interest cannot be taken for granted so as to be made the basis of addition of having earned income. In the circumstances the addition made by the AO on presumptive basis is directed to be deleted."*

8. He submitted that the addition in the instant case is merely based on presumption and surmises that the foreign bank account held by the assessee must have earned some interest income. He submitted that there is not a single document available on record to suggest that the assessee has in fact earned any interest. Since, the addition was based on mere presumption and surmises, therefore, such addition made on account of notional interest being hypothetical income and not real income cannot be added to the total income of the assessee. He submitted that the incidence of tax lies only on real income. Further, the rate of interest @ 4% is not rational whatsoever and arbitrary and fictional. He submitted that the manner of arriving at such arbitrary rate has also not been provided in the assessment order. Relying on various decisions, he submitted that additions made by the income tax authorities can be sustained only on credible and cogent evidence and a fiction cannot be foisted upon another fiction. He submitted that where Revenue fails to demonstrate the same, the addition made on the said basis are liable to be deleted and set aside.

8.1 Referring to the copy of the assessment order for AY 2006-07, copy of which is placed at paper book pages 1-40, the learned counsel for the assessee drew the attention of the Bench to page 3 to 7 of the said order on which the information received from the French Government about the existence of the HSBC Bank account has been reproduced. Referring to pages 10-17 of the order, he drew the attention of the Bench to the translation of the same in English. He submitted that HSBC Bank account in the name of "ASPNEY WORLDWIDE SA" was closed on 14.12.2005. Similarly, HSBC account in the name of "RONDERBERG LIMITED" was closed on 25.01.2006 and HSBC account of "TAIRA FOUNDATION" was closed on 03.01.2006. This fact has been admitted by the AO in the assessment order for AY 2006-07. He accordingly submitted that when the bank accounts are closed way back in financial year 2005-06, as admitted by the AO in the assessment order for AY 2006-07, therefore, the question of making any addition on account of notional interest for the impugned assessment year does not arise.

9. I have considered the rival arguments made by both the sides, perused the orders of the AO and learned CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. A perusal of the table reproduced by the AO at page 2 and 3 of the assessment order shows that the notional interest computed by the AO contains the name of the profile client which are "ASPNEY WORLDWIDE S.A.". "RONDERBERG LTD." and "TAIRA FOUNDATION." These names claimed match with the names mentioned in the assessment order for the

AY 2006-07, wherein, the addition was made on account of peak balance appearing in these bank accounts. It is also mentioned in the said order that the bank accounts are closed in FY 2005-06 on different dates. Therefore, I find merit in the arguments of the learned counsel for the assessee that if these accounts were closed in FY 2005-06, then the question of computing any notional interest for the impugned assessment year does not arise. In my considered opinion, no interest income can be earned on a bank account during AY 2016-17 which stand closed in AY 2006-07. However, considering the totality of the facts of the case and in interest of justice, I deem it proper to restore the matter back to the file of the AO for adjudication of the issue afresh with the following observations/directions:-

- i. The addition towards interest on outstanding credit balance in foreign bank account can only be made on the basis of some evidence/material. Addition cannot be simply made on the basis of presumption and surmises.
- ii. It is the submission of the learned counsel for the assessee that this bank account, which is the basis for computing notional interest were already closed in FY 2005-06 and the client profile names mentioned in the assessment order for AY 2016-17 match with the names appearing in the assessment order AY 2006-07 in assessee's own case. Therefore, the AO is directed to verify the above and if these accounts have been closed then not to make

any addition, since, no interest can be earned on closed bank accounts.

- iii. If the AO finds any evidence/material that there exists any other undisclosed bank account apart from the ones mentioned above in the name of the assessee only then an addition holding interest earned on such bank account is called for and that to at a reasonable rate of interest.

10. Accordingly, the order of the learned CIT(A) is set aside and the matter is remanded back to the AO to decide the issue afresh in the light of the above direction/observation. The grounds raised by the Revenue are accordingly allowed for statistical purpose.

11. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 31.03.2021.

Sd/-

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Delhi/Dated- 31.03.2021

*Shekhar*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,  
ITAT, Delhi