

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफौर रहमान, लेखा सदस्य के समक्ष ।
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 3919/Mum/2017

(निर्धारण वर्ष / Assessment Years 2012-13)

Mayank Jashwantlal Shah A, Aidun Building, 5 th Floor, 1 st Dhobi Talao Lane, John Crasto Lane, Mumbai-400 002	बनाम/ Vs.	The Pr. Commissioner of Income Tax-4 Room No.629, 6 th floor, Aayakar Bhavan, M.K. road, Churchgate, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAHPS3906Q		

अपीलार्थी की ओर से/ Appellant by	:	Shri Hiro Rai, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Rahul Raman, CIT DR

सुनवाई की तारीख / Date of hearing:	08.12.2020
घोषणा की तारीख / Date of pronouncement:	05.03.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order revision order of the Principal Commissioner of Income Tax -4, Mumbai, [in short



CIT(A)], in No. Pr.cit-4/HQ/order u/s 263/MJS/201213/2016-17/4129 dated 24.03.2017 passed under section 263 of the Act. The assessment was framed by the Dy. Commissioner of Income Tax, Circle 4(1)(2), Mumbai (in short ACIT/ITO/ AO) for the A.Y. 2012-13 vide order dated 30.01.2015 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the revision order passed by PCIT under section 263 of the Act setting aside the assessment framed by the Assessing Officer despite the fact that he was unable to satisfy the twin conditions for invocation of revision proceedings under section 263 of the Act but order being erroneous and prejudicial to the interest of the Revenue. For this assessee has raised the following two grounds: -

"1. The learned CIT erred in passing an order under section 263 and setting aside the assessment framed by the Assessing Officer, although he was unable to satisfy the twin conditions of the Assessing Officer's order being, erroneous and prejudicial to the interest of the Revenue.

2. The learned CIT failed to take into consideration that an order is erroneous and prejudicial only if, it involves an error; deviates from law; is contrary to law; upon

mistaken view of law or upon erroneous application of legal principle. Merely because the revisionary authority feels and opines that verification was not correctly made, does not make an order, erroneous and prejudicial to the interest of Revenue."

3. Briefly stated facts are that the original assessment was framed under section 143(3) of the Act by the Assessing Officer vide order dated 30.01.2015 for the assessment year 2012-13. The PCIT-4, Mumbai subsequently issued show cause notice under section 263 of the Act for revising the assessment framed by the Assessing Officer vide notice dated 26.08.2016 as to why the order of the Assessing Officer be not held as erroneous and prejudicial to the interest of the Revenue. According to PCIT on examination of assessment records and form No. 26AS it reveals that the assessee has received interest income of ₹4,06,26,679/- but actually the assessee credited the total interest of ₹2,26,35,701/- in its computation of income. As against the interest income credited in the computation of income at ₹2,26,35,701/-, the assessee has offered net interest income of ₹2,23,66,329/-. According to PCIT the differential amount remained untaxed and Assessing Officer has not carried out any enquiry in this regard. Hence, he issued show cause notice for revising the assessment. Hence, the PCIT after considering the submissions of the assessee noted that the assessee has received total interest of ₹4,06,26,679/- as per 26AS but offered interest only to the tune of

₹2,23,66,329/-. It was stated that the assessee has claimed expenses of ₹2,69,372/- under various heads and also diverted the income or application of income in regard to a particular payment to 6 (six) other shareholders. Hence, according to him, it has to be determined whether amount sought to be diverted reach to assessee as his own income or not. He further noted that it has to be verified whether disbursement of income made by the assessee is a result of fulfilment of application by him or whether income has been applied to discharge an application after it reaches to assessee. The PCIT was of the view that even expenses claimed at ₹2,69,372/- need to be disallowed as per the provisions of section 57(iii) of the Act. He further noted that the interest income shown by the assessee vis-à-vis that reflected in form 26AS need to be examined in the light of the provisions of section 37BA of the Rules. Hence, he set aside the assessment with a direction to the Assessing Officer to make fresh assessment after conducting detailed enquiries and detailed verification. Hence, he directed the Assessing Officer to reframe the assessment and revised the assessment framed under section 143(3) of the Act. Aggrieved, assessee came in appeal before Tribunal.

4. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee, his family members and group concerns totally held 100% stake in company Biochem Pharmaceutical Industries Ltd. The said company was taken over by Cadila Health Care Limited under a Share Purchase Agreement dated 21.12.2011, pursuant to which the shares of the assessee, his



family members were purchased. In terms of the Share Purchase Agreement, a Net Working Capital and the indemnity Escrow Agreement" dated 26.11.2012 was signed between the Sellers (the Assessee, his family members and group company stake holders of Biochem), the Company - Biochem Pharmaceutical industries Limited, ICCI Bank Ltd as "Escrow Agent" and the Purchaser-Cadila Healthcare Limited. As per this Escrow Agreement -escrow account was to be opened with the Escrow Agent in the name of "Mr. Mayank J. Shah (Networking Capital and Indemnity) Escrow Account" for depositing following amounts to be utilized for the purpose of, (a) Net working capital and net debt adjustments and (b) Indemnifying the Sellers from any losses that may be suffered from Pending Actions from Revenue authorities, Sellers' breach of warranties given, Tax Assessments; non-receipt of valued added/sales tax forms, settling any claims made by the Purchasers against the Sellers etc. Whereas the escrow amounts were to be deposited in designated bank account, the same may be placed in permitted investments agreed by the Parties. The earnings from the investments (say interest on fixed deposits) with bank was to be distributed from time to time between the Sellers and the Purchasers based on whether - the amount kept in the Escrow Account was discharged for meeting the indemnities or refunded to the Buyers - If the indemnities were not required. The proportion, in which the earnings from the Escrow investments was to be disbursed to the beneficiaries was to be agreed between the Sellers and the Purchasers. The Escrow Account was withheld by the Purchaser from the Individual sale considerations payable to the



Sellers and placed in the Escrow. The copies of the Share Purchase Agreement and the Escrow Agreement were furnished to the Assessing Officer in the course of the assessment proceedings. Tax was deductible by the Escrow bank from the interest payable on fixed deposits kept. As per Escrow Agreement, the TDS certificate was to be issued in name of the assessee. This was more particularly so because the exact amount of interest payable to each Seller or the Purchaser was a matter of agreement between the Sellers and the Purchasers and the Escrow Bank had nothing to do with the inter-se allocation of interest between the Sellers and the Purchaser. It was for this reason; the fixed deposit receipt was issued in the name of "Mr. Mayank J. Shah- Biochem (Networking Capital and Indemnity Escrow Account for convenience".

5. We noted that in response to query raised by the Assessing Officer, the assessee has given the details of Escrow Deposit, the interest earned and the disbursement of interest to Cadila Health Care, his family members and group concern stake holders. The details have been reproduced by the Assessing Officer in the assessment order. The assessee explained to Assessing Officer that all the beneficiaries of the interest incomes have declared the same in their individual returns of income and offered the same for tax. The copies of these returns with computations of incomes were also furnished by the assessee before the AO as well as before the CIT(A) and even now before us. The Assessing Officer clearly missed out on a simple principle that if the funds for investment have emanated from one person, then logically

the income from the investments belong to that person only and he only must be assessed to tax on that income. If the income is received by another person on his behalf such a person is only a collector of the income and not the owner. The income is to be assessed in the hand of the real owner and not the fiduciary holder. The fiduciary holder is mere a nominal holder (holder in name) and not the beneficial holder. In the instant case of the assessee, one needs to understand how the Escrow scheme operated and the logics behind its operation.

6. In view of these facts, now we will discuss the facts of this case in the first place. The assessee, his family members and their group concerns held 100% stake in Biochem Pharmaceutical Industries Limited. The company and its business were to be taken over by Cadila Healthcare Ltd by purchase of the 100% shares. The consideration for purchase of shares in such event is worked out by making a valuation of the assets and its liabilities. The purchase price is thus fixed by valuing the net worth of the company- assets minus liabilities. There is always an apprehension in mind of the purchaser that further liabilities may arise which has not been provided in books of accounts. Therefore, when a price is struck between the purchaser and seller for transfer of shares in company based on a net worth perception of the business taken over, the price is made subject to a rider that - further liabilities relating to the period when the seller owned the company surface In future, the incremental liabilities have to be re-imbursed by the seller. Some estimation is made by the seller and the buyer of this probable incremental liabilities and an amount to the extent of this

estimate is placed by the seller in escrow account. If any such liability arises in the future, this is discharged from the escrow account and if the liability does not arise, the amount in escrow is reimbursed to the seller. The escrow funds are parked in some income earning investments in the meantime- say in fixed deposits with banks. There will naturally be interest receivable on the investments. As to whom the interest received has to be paid- whether the seller or the buyer will depend on whether the liability arises or not. If the liability arises, then the interest has to be paid to the buyer because the fund in the escrow is as good as that of the buyer and not the seller. If the liability does not arise, the funds in the escrow can be said to belong to the seller only and the interest has to be paid to him. In assessee's case, it is on these above principles that interest on escrow investments was payable either to Cadila Health Care (the buyer) or the assessee's group (the seller). A reading of the escrow agreement will bring out these principles. The escrow account and fixed deposits have to be kept in name of some legal entity. It cannot be kept in name of the escrow scheme. To enable this, the fixed deposit was kept in the name of the assessee for convenience with a suffix of the escrow account nomenclature i.e. "Mr. Mayank J. Shah - Biochem (Net Working Capital and Indemnity) Escrow Account".

7. Now, tax has to be deducted at source by the escrow banker from the interest paid on fixed deposits and this will mean that a tax deduction certificate has to be issued by the bank as to who is the ultimate beneficiary of the interest - whether Cadila Health Care or the

assessee group members- is call to be taken by Cadila and the assessee group. The escrow banker has no say in this or will it embark on a roving enquiry for this purpose. Its job is to deduct tax at source as per law and pay Inc the government treasury. As per law, it is supposed to issue the TDS certificate in the name of the person on the Fixed Deposit receipt. As seen earlier, the FDR was kept in name of Mr. Mayank J Shah.

8. In view of these facts, we are of the view that the AO as well as CIT(A) erred in holding that the entire interest belongs to assessee whereas, the assessee has passed on its share in proportion to the actual beneficiaries. It is only the assessee's family members and group entities who have received the interest through the assessee and passed it to its real owner.

9. The assessee has filed complete details before the AO and AO after going through the details of interest as is mentioned in letter dated 05.10.2016 filed before Pr.CIT, the AO framed the assessment originally. The PCIT without looking into these details passed Revision Order for verification purpose only. Even in AY 13-14, i.e. immediately succeeding year in assessee's own case the CIT(A) allowed the claim of the assessee in regard to distribution of proportionate interest received on account of Cadila Health Care Limited as well as Biochem Pharmaceutical industries Limited. Even the same Assessing Officer framed assessment in the hands of the assessee's brother Shri Sheyans Jaswantlal Shah while framing assessment under section 143(3) of the Act for AY 2012-13 and accepted the interest declared in

the returned of income. Hence, we are of the view that the assessment framed by AO originally, under section 143(3) of the Act dated 30.01.2015 is neither erroneous nor prejudicial to the interest of the Revenue. Even on facts as discussed above, the assessee has rightly disclosed the interest proportionately in its returned of income for the relevant AY 2012-13. Hence, the Revision Order passed by PCIT is set aside and the appeal of the assessee is allowed.

10. In the Result, the appeal of assessee is allowed.

Order pronounced in the open court on 05.03.2021.

Sd/-

(एस रिफ़ौर रहमान/ S RIFAUR RAHMAN)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 05. 03.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai