

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA Nos. 6295 to 6298/DEL/2017
[Assessment Years: 2008-09 to 2011-12]

Shyam Sunder Jindal
12-A, Green Avenue, Sector -D
Pocket - 3, Vasant Kunj
New Delhi

Vs.

The A.C.I.T
Circle - 30
New Delhi

PAN : AAGPJ 0184 N

[Appellant]

[Respondent]

Date of Hearing : 24.06.2021
Date of Pronouncement : 24.06.2021

Assessee by : Shri Rohit Jain, Adv
Ms. Deepashree Rao, Adv
Ms. Madhvi Sharma, CA

Revenue by : Shri Prakash Dubey, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned four separate appeals by the assessee are preferred against the order of the Id. CIT(A)- 30, New Delhi dated 22.08.2017 pertaining to A.Ys 2008-09 to 2011-12.

2. Since common issues are involved in all the captioned appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in all these appeals relates to the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act']. The common ground on which penalty has been levied is the addition of notional interest in HDFC Bank account.

4. The dispute relating to the quantum addition travelled upto the Tribunal and the Tribunal in MA Nos. 780 to 783/DEL/2019 arising out of ITA Nos. 4125 to 4128/DEL/2016 by order dated 20.12.2019 has deleted the quantum addition. The relevant findings of the co-ordinate bench read as under:

"8. With regard to the taxation of notional interest @4% added by the Assessing Officer, we find that the similar matter stands adjudicated by the Co-ordinate Bench of the Tribunal in the case of Sh. Krishna Kumar Modi in ITA No. 2892/Del/2017, wherein the addition made on account of notional interest in respect of alleged foreign bank account with HSBC, Geneva was deleted by holding the same to be notional and without any basis. For the sake of

ready reference, the relevant part of the order is reproduced as under:

"Coming to Revenue's appeal in ITA No. 3951/ Del /2017, the Department has challenged that the action of the CIT(A) in deleting the addition of Rs.1,64,962/- made by the assessing officer on account of undisclosed interest income in HSBC Geneva. The facts in respect of the said issue are that in the assessment order passed under section 153A r.w.s. 143(3) of the IT Act, the assessing officer, apart from the addition on account of the deposits/ balances appearing in the alleged foreign bank account, made further addition of Rs.1,64,962/- (US\$ 3,821.22 @ Rs.43.17) under section 69 of the IT Act on account of "interest" calculated @ 4% p.a. on the alleged balance appearing in the undisclosed foreign bank account.

6.2 On appeal, the Ld. CIT (A) deleted the addition made by the assessing officer holding that since no corroborative evidence has been brought out by the assessing officer to substantiate that the assessee has actually earned any interest ITA 2892 to 2894/D/2017 ITA 3952 to 3956/D/2017 income, therefore, the addition made only on the basis of estimate and presumption is not sustainable.

6.3 In support of the aforesaid ground, the Ld. CIT-DR/ Departmental Representative heavily relied on the order of the assessing officer and contended that the addition of Rs. 1,64,962/- made on account of interest should be confirmed and the finding of the CIT(A) to this extent should be reversed. In rebuttal, the Ld. Senior Counsel vehemently argued that the addition on account of notional interest has been rightly deleted by Ld. CIT (A) since the said addition was made by the assessing officer in the absence of any bank statement or any other

documents, merely on the basis of presumption that interest @4% p.a. would have been credited on the balance in the account, without even first establishing the existence of the alleged foreign bank account in the period under consideration. The Ld. Counsel contended that under the scheme of the Act, liability to pay tax is attracted at two points of time, viz., the accrual of the income or its receipt, but the substance of the matter is income. Thus, in the absence of any information, evidence or record, notional interest income cannot be added in the assessee's hands, merely on hypothesis, assumption, ITA 2892 to 2894/D/2017 ITA 3952 to 3956/D/2017 conjectures & surmises. For the said proposition reliance was placed on the following decisions, wherein it has been held that no addition on account of interest can be made where no interest has in fact been charged by the parties within the terms of funds/loan advanced.

- *CIT vs. Goyal M.G. Gases (P) Ltd.: 303 ITR 159 (Del.)*
- *B & A Plantations and Industries vs. CIT: 242 ITR 22 (Gau.)*
- *KeshrichandJaisukhlal vs. CIT: 248 ITR 47 (Gau.)*
- *Highways Construction Co. Pvt. Ltd vs. CIT: 199 ITR 702 (Gau.)*
- *Jwala Prasad Radha Krishna vs. CIT [1992]: 198 ITR 415 (All)*
- *CIT vs. Punjab Financial Corpn. Ltd.: 295 ITR 510 (P&H HC)*
- *CIT vs. South India Corpn. (Agencies) Ltd.: 293 ITR 237 (Chennai HC)*
- *CIT vs. Sanghi Finance and Investment Ltd.: 190 CTR 207 (MP)*
ITA 2892 to 2894/D/2017 ITA 3952 to 3956/D/2017

6.4 We have considered rival submissions and the decisions relied upon by both the parties. We have already deleted the addition made in assessment year 2006-07 and also in assessment year

2007-08, therefore, on this ground itself the addition made by the assessing officer is liable to be deleted. Independent thereof, we note that in the instant case, the addition of Rs.1,64,962 has been made purely on notional basis on the premise that the assessee: (a) had alleged foreign bank account, which itself is under serious challenge; and (b) on such bank account, assessee earned interest @ 4%. We are of the view that the case of the assessee is on a much better footing vis-à-vis the facts in judicial precedents relied upon by the Ld.Counsel inasmuch as in the aforesaid cases there was at least some basis of taxation of notional amount/ interest, which was never realized/ received by the assessee, but in the case of the assessee, the so-called amount of interest brought to tax is totally without any basis and is clearly hypothetical/ imaginary. Since there is no evidence that the assessee actually received interest on the disputed deposit and just by figment of imagination it has been concluded that the assessee earned interest on such deposits @ 4% p.a., the impugned addition on account of notional ITA 2892 to 2894/D/2017 ITA 3952 to 3956/D/2017 interest, has, even on merits, been rightly deleted by the CIT(A). For the said cumulative reasons, the Revenue's appeal on this ground stands dismissed."

9. Since, the matter has been adjudicated on merits, any adjudication of the technical grounds taken up by the assessee would academic in nature, hence not resorted to."

5. Since the addition has been deleted, the penalty so levied must also be deleted. Sublato Fundamento Cedit Opus, meaning thereby, that in case the foundation is removed, the super structure falls. Since the foundation [addition] has been removed, the super structure i.e.

penalty must fall. We, accordingly, direct the Assessing Officer to delete the penalty so levied.

6. In the result the appeals of the assessee in ITA Nos. 6295 to 6298/DEL/2017 are allowed.

The order is pronounced in the open court in the presence of both the representatives on 24.06.2021.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated : 24th June, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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