

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6607/Del./2017
(Assessment Year : 2010-11)**

ACIT, Central Circle 26, vs. Shri Parag Dalmia,
A-238, Ground Floor,
Okhla Industrial Area, Phase-I,
New Delhi - 110 020.

(PAN : AAAPD3725B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Hiren Mehta, CA

Shri Nirbhey Mehta, CA

REVENUE BY : Ms. Paramita M. Biswas, CIT DR

Date of Hearing : 23.09.2021

Date of Order : 13.10.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Central Circle 26, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 11.08.2017 passed by the Commissioner of Income - tax (Appeals) –XXVI, New Delhi qua the assessment year 2010-11 on the grounds inter alia that :-

"1. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.5,83,739/- which was imposed by the AO on account of undisclosed interest income on amount deposited with HSBC, Geneva. The issue is covered by CBDT's circular no.21/2015 dated 10.12.2015 in the exceptions provided.

2. That on the facts and in the circumstances of the case the Ld. CIT (A) has erred in law and on facts in deleting the addition, disregarding the facts that the assessee has deliberately concealed his interest income of Rs.5,83,739/- in HSBC, Geneva.

3. That the grounds of appeal are without prejudice to each other."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee by filing return of income declared total income of Rs.21,79,201/- which was processed under section 143 (1) of the Income-tax Act, 1961 (for short 'the Act'). On the basis of search and seizure operation carried out u/s 132 of the Act in case of assessee, certain assets viz. cash, jewellery certain documents, etc. were found and seized. Notice u/s 153A was issued. In response to which, assessee filed return of income declaring total income of Rs.21,79,201/- on 22.11.2012.

3. Assessing Officer (AO) on the basis of information concerning assessee having accounts in HSBC Bank, Geneva, which is a 7 pages document which are part of the assessment order, containing the name of the assessee as Parag Dalmia. AO analyzed that the details mentioned in the documents indicate that assessee has been shown as Attorney A in the account

and the maximum constant amount In the account during December 2005 was US \$ 255,246. AO also analyzed that assessee is also beneficial owner of account in the name of Taira Foundation and the maximum constant amount during the period has been shown as non reference.

4. During the course of search u/s 132 of the Act, statement of assessee was recorded u/s 132 (4) of the Act. Assessee also filed a letter dated 09.02.2012 before the DDIT (Inv.), Unit VI (1), New Delhi giving information qua foreign bank account as under :-

"1. During the course of search operation on 20.1.2012, the assessee was asked a question regarding existence of an overseas bank account. The assessee in his reply stated that he does not own any overseas account, in his name. It is in this regard that the undersigned would like to clarify certain issues.

2. During the search operation, just to cross-examine the assessee, certain documents related to an overseas bank were shown to the assessee, where the accounts belonged to some trust/companies. The assessee's name happens to appear in that statement as a beneficiary/attorney holder, together with some of his family members. It is stated that the assessee neither created such an entity nor is aware of one existing as on date.

3. It is noteworthy to point out that the assessee has never operated the said bank account(s) of these Trust(s)/Companies, and therefore is not privy to the transactions therein. Further neither the undersigned is in possession of any bank statement of these trust/companies nor is he in possession of any document showing him as the beneficiary/attorney holder of these trusts/companies. It is also pertinent to note that not a single document related to the above account(s) has been found, during the course of search and seizure operation conducted at his residence and office premises.

4. In view of the above stated position, it is established that neither the assessee, nor any of his family members, are owners of these bank accounts, nor are they aware of such an arrangement, and therefore, the balance shown in the bank statement is in no way his or his family members undisclosed income. Even though the bank statements in respect of the said bank accounts are old and may fall outside the block period, however, as assessee's name accidentally happens to appear in the statement as a beneficiary/attorney holder, in order to buy peace and avoid litigation with the revenue authorities, the assessee is willing to pay income tax and interest due thereon for the relevant assessment year, provided no penal action and/or prosecution action is undertaken.

5. It is submitted that the above disclosure/surrender is being made by the assessee voluntarily in order to buy peace although there is no earning of any undisclosed income. It is therefore, a pre condition that if the assessment of undisclosed income in the hands of the assessee is based upon present letter, no penal action for concealment of income be initiated / undertaken.

6. It is requested that the above statement may kindly be kept confidential and not shared with any agency/individual as the above stated offer has been made to protect myself from undue harassment."

5. During assessment proceedings u/s 153A, statement of the assessee was recorded on 02.12.2014 by the AO and reached the conclusion that the assessee has opened/operated the account in HSBC Bank, Geneva and he was given unique code which is BUP SIFIC PER ID 9070142903. His profile was linked to clients, namely, ASPREY WORLDWIDE S.A.; RONDEBERG LIMITED; TAIRA FOUNDATION, 12717, RSK AND MENKO FOUNDATION, VADUZ. In order to verify the aforesaid foreign bank accounts, references were sent to the competent authorities at

Switzerland and other countries but verificatory report qua the reports of bank have not yet been received.

6. While recording of the statement of the assessee u/s 131 of the Act, assessee has filed reply dated 12.01.2014 which is as under :-

"I wish to submit as under:

"1. During the course of above said assessment proceedings under section 131 of the Income Tax Act, 1961 I have received a copy of the alleged overseas bank account for my comments.

I have to state that I do not own any such account. I have neither created such an entity nor am aware of one existing as on date. I further state that I never operated the said bank accounts of the mentioned Trust(s)/companies and therefore am not aware of any such transactions."

7. From the detailed investigation, AO reached the conclusion that the assessee is having an account in HSBC Bank, Geneva with the details appearing in the documents seized. The assessee has failed to comply with the notices issued u/s 142 (1) of the Act despite availing numerous opportunities by not signing the consent waiver form, for which penalty proceedings are initiated separately. Consequently, AO made addition on account of interest income of Rs.5,83,739/- u/s 69 of the Act and thereby assessed the total income at Rs.27,62,940/- u/s 153(A)/143(3) of the Act.

8. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has allowed the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

9. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

10. Undisputedly, in AY 2006-07, addition of Rs.1,20,37,863/- and Rs.1,23,130/- was made by the AO to the total income of the assessee on the basis of amount figured in the foreign bank account/linked profile of the assessee and on account of undisclosed interest u/s 69 of the Act respectively. It is also not in dispute that AY 2006-07 is the base year for making assessment on the basis of foreign bank account maintained by the assessee with HSBC Bank, Geneva u/s 153A/143(3) of the Act. It is also not in dispute that addition made by the AO in this case amounting to Rs.5,83,739/- is on account of undisclosed interest earned by the assessee for the period 01.04.2009 to 31.03.2010 @ 4% on the closing balance of US \$307749.42 as on 31.03.2009, as per working given below :-

Name of Profile Client	Financial Year	Balance as on 31 st March of earlier year in US \$	Interest rate	Total interest USD	Total balance at the end of year (Col.3 + Col.5)	Average value of \$ at end of the year	Int. in Rupees (Col.5 x Col.7)
Asprey Worldwide S.A.	2009-10	12439.07	4%	497.56	12936.63	47.42	23594.29
Rondeberg Ltd.	2009-10	286580.76	4%	11463.23	298043.99	47.42	543586.37
Taira Foundation	2009-10	8729.61	4%	349.19	9078.79	47.42	16558.59
Total		30779.43	4%	12309.98	320059.41	47.42	583739.25

It is also not in dispute that assessment framed against the assessee on the basis of amount lying deposited in the foreign bank account maintained with HSBC Bank, Geneva for AY 2006-07 was challenged by the assessee before the Tribunal vide **ITA No.5499/Del/2017 for AY 2006-07** which was decided by the **coordinate bench of the Tribunal vide order dated 26.02.2018.**

11. In the backdrop of the aforesaid undisputed facts, we are of the considered view that addition made by the AO and deleted by the Id. CIT (A) on account of undisclosed interest of Rs.5,83,739/- is to be decided as per order passed qua principal amount deposited in assessee's foreign bank maintained with HSBC Bank, Geneva, which has been remitted back to AO for deciding afresh.

12. **Coordinate Bench of the Tribunal in assessee's own case for AY 2006-07** (supra) qua this foreign bank account maintained by the assessee with HSBC Bank, Geneva has partly allowed the appeal for statistical purposes by remitting the case back to the AO with direction to adjudicate afresh in accordance with law after

obtaining the verificatory report from the bank by returning following findings :-

"35. Now, coming to the merits of the case IS concerned, we find the Assessing Officer at para 11 of the order as observed as under :-

"11. From the above facts it is clear that the assessee has opened and/or operated account(s) in HSBC Bank. He has been given a unique code which is BUP SIFIC PER ID 9070142903. His profile was found linked to five client profiles namely, ASPREY WORLDWIDE S.A.; RONDEBERG LIMITED; TAIRA FOUNDATION, 12717 RSK AND MENKO FOUNDATION, VADUZ. With a view to verifying the above foreign bank account(s) a references has/have been sent to competent authorities in Switzerland and other countries. Till date the verificatory report in respect of above foreign bank accounts) has not been received. In view these facts and since the assessment is getting barred by limitation on 31.03.2015, the assessment of the assessee is being completed in the absence of verificatory report and appropriate action as provided in the Act, will be taken as and when the verificatory report is received."

36. This shows that the verificatory letters from the competent authorities in Switzerland was yet to be received before completion of the assessment. Before Id. CIT(A) was also, the same was not available. Even before us nothing was brought to our notice regarding the verificatory letters received from Switzerland. Since assessee in the instant case was denying from the beginning that the accounts does not belong to him and since verificatory report in respect of above is yet to be received, and since in absence of such verificatory letter, it cannot be conclusively proved that the accounts in fact do belong to the assessee, therefore, considering the totality of the facts and in the interest of justice, we restore this issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh and in accordance with law after obtaining the law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are partly allowed for statistical purposes.

37. In the result, the appeal filed by the assessee is partly allowed for statistical purposes."

13. Since the present assessment framed u/s 153A read with section 143(3) of the Act is an offshoot of initial assessment framed in AY 2006-07 qua the foreign bank account maintained with HSBC Bank, Geneva on account of interest income in the subsequent years, we are of the considered view that this case is also required to be remitted back to the AO to decide accordingly as per order passed in AY 2006-07. So, we refrain from entering into merits of this case in order to give free hand to the parties to the appeal to argue their case before the AO afresh. Consequently, the impugned order passed by the Id. CIT (A) is set aside and remitted back to the AO to decide afresh after providing an opportunity of being heard to the assessee. Resultantly, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in open court on this 13th day of October, 2021.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 13th day of October, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**