

IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya, Accountant Member

I.T.A. No.973/Mum/2020  
(Assessment Year 2004-05)

DCIT,CC-6(4) Room No.1925, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai-400 021  PAN : AABPL6707A (Appellant)	Vs.	Smt. Mitali R. Lakhanpal 12/22B, Acropolis Malabar Hills Mumbai-400 006  (Respondent)
--	-----	--

Assessee by	Shri Dilip Thakkar
Department by	Shri Anil Gupta
Date of Hearing	15.11.2021
Date of Pronouncement	17. 01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-54 dated 26.11.2019 and pertains to assessment year 2004-05.

2. Grounds of appeal read as under:-

i. . "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing assessee's appeal by ignoring the intention of the Legislature behind amendment of sub-section (1) of Section 149, thereby inserting clause (c) under Section 149(1) of the Income-tax Act, 1961 by the Finance Act, 2012 and Explanation below Section 149, which clarifies that the provisions of sub-sections (1) & (3) as amended by the Finance Act, 2012 shall also be applicable for any assessment year beginning on or before the 1<sup>st</sup> day of April, 2012".

ii. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the relevant facts of the case in respect of income arising from the foreign assets / investments".

3. Brief facts of the case are that assessment in this case was framed by the AO u/s. 143(3) r.w.s. 147 of the I.T.Act. In the assessment AO added a sum of Rs. 33,72,230/- on the plea that assessee has adopted the modes operandi of depositing unaccounted money abroad in HSBC Bank, Geneva.

4. Against the above order assessee appealed before the Ld. CIT(A). Assessee raised following grounds before Ld.CIT(A).

- 1) The learned Assessing Officer erred in reopening the Assessment beyond six years by wrongly invoking the provisions of Section 149(1)(c) of the Act. The Appellant prays that the reopening be held as bad in law.
- 2) The AO erred in mentioning the method of accounting of the Appellant as 'Mercantile' and thereby ignoring the correct method of accounting being 'Cash Basis' always declared by the Appellant in his Tax Returns.
- 3) The AO erred in issuing notice u/s 142(1) before providing reasons recorded for reopening the assessment.
- 4) The AO erred in discarding the objections to reopening and reasons thereof submitted by the Appellant.
- 5) The AO erred in not providing adequate opportunity of being heard to the Appellant and thereby completely violating the principles of natural justice and 'Audi alteram partem' i.e. no man should be condemned unheard.
- 6) The AO erred in misinterpreting the Scheme of Resurgent India Bonds (RIB) though the whole scheme was provided to the AO during the assessment proceedings.
- 7) The AO erred in ignoring the fact that investments in RIB could only be made by Non Resident Indians, out of their foreign currency funds and the investments in RIB was not allowed to be made by Resident Indians and further that the investments in RIB and income thereon were fully exempt from all Indian Taxes.
- 8) The AO erred in repeating that Mr. Dilip J. Thakkar has an account with HSBC Private Bank, Geneva inspite of the written authentic clarification obtained by the Government of India from Swiss Government that the said Bank accounts were of an offshore Non Resident Trust & not of Dilip J. Thakkar.
- 9) The AO erred in making a high pitched addition of Rs. 33,73,230/- as undisclosed income on account of interest on RIB, which is fully exempt from Tax under the Act.
- 10) The AO erred, in making high pitched addition. The Appellant prays that the same be deleted.

5. Ld.CIT(A) quashed the reopening as devoid jurisdiction being time barred. For merits he held that as the reopening has been quashed, the other ground on merits are not decided.

6. We have heard both the parties and perused the records. Ld. DR submitted that Ld. CIT(A) has erred in quashing the reopening as time barred as the second explanation to section 149(1)(c) expressly provided the section to be applicable to any assessment year beginning on or before the first day of April, 2012. He submitted that in the case laws referred by Ld.CIT(A) this explanation has not at all been referred or considered. That these decisions are based on the premise. That the section is not to expressly or impliedly retrospective. In view of the express language of the explanation above, the exposition that the provision cannot be invoked for prior year is not actually correct. He further submitted that Ld. CIT(A) has erred in not adjudicating the issues raised on merits. Per contra Ld. Counsel of the assessee strongly relied upon the case laws relied upon by the Ld.CIT(A). He submitted that assessee has no foreign asset and the assessment has been wrongly made.

7. Upon hearing both the counsel and perusing the records, we are of the opening that if a decision is challenged before the first appellate authority both on the issue of validity of jurisdiction as well as merits of the case, the adjudication on the issue of jurisdiction can by no stretch of imagination be liable for rejection or non adjudication on the ground that findings have been given on merits of the case. We find that what the Ld.CIT(A) has left the issue of assessee's challenge to the merits of addition undecided. We find that Hon'ble Madras High court in the case of CIT vs Ramdas Pharmacy 77 ITR 276 had expounded that an appellate authority cannot decide only one issue arising out of many issues and decline to go into to the other issues raised before it on the ground that further issues will not arise in view of the

finding on the issue decided the other issues, it could only protract and delay the proceedings, for the assessee has to get the decision of the appellate authority and thereafter again go before the appellate authority for the decision on the other issues left undecided by it earlier. It was held that this will amount to multiplication proceedings under the Act. It was further expounded that subordinate courts and Tribunal's should as far as possible give their views on all the points raised before them so that the higher courts will have the benefit of the decision on other points also, if the necessity arises.

8. Examining the present issue, on the touchstone of the above said case law, we find that the order of Ld.CIT(A) here directly falls under the ambit of Hon'ble High court's order as above. Ld.CIT(A) has decided one issue and has left undecided another issue duly raised before him. Hence, we are of the considered opinion that the issue needs to be remitted to the file of Ld.CIT(A). Ld.CIT(A) is directed to complete his appellate order by deciding on merits, which was duly raised before him by the assessee. After the order of Ld.CIT(A) is complete upon adjudication of the issue on merits, both the parties will be at liberty to file necessary appeals as and if necessary.

9. In the result, this appeal is allowed for statistical purposes.

Pronounced in the open court on 17.01.2022

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 17 .01.2022

*Thirumalesh, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai