

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 5739/Mum/2019
(A.Y: 2013-14)

DCIT-4(3)(1) Room No. 649, 6 th floor Aayakar Bhavan, MK Road, Mumbai -400020	Vs.	JHP Securities Pvt Ltd 201, Dev Neo Vikranm, New Link Road, Andheri (W), Mumbai - 400053.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACJ2847H		
Appellant	..	Respondent

Appellant by :	Mr.S N Kabra. DR
Respondent by :	Mr. Vasudev Ginde .AR

Date of Hearing	05.01.2022
Date of Pronouncement	17.01.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-2, Mumbai passed u/s 143(3) and 250 of the Act. The revenue has raised the following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in directing AO to delete the addition made on account of interest accrued without appreciating the fact that in view of the agreement of the assessee with their client in KYC for, as

per mercantile method accounting followed by the assessee right to receive interest on delayed payment has been created and hence such accrued interest income is chargeable to tax.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in directing AO to delete the addition made on account of interest accrued without appreciating the fact that the assessee has camouflaged the real nature of the transaction to escape from the tax the accrued interest income.”

2. The Brief facts of the case that the assessee company is engaged in the business of share broking services. The assessee has filed the return of income for the A.Y 2013-14 on 01.10.2013 with a total income of Rs. Nil after claiming the carry forward loss of Rs. 1,88,64,373/- and the assessee has offered the income under 115JB of the Act of Rs. 6,46,744/-. Subsequently the case was selected for scrutiny under the CASS and the notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance, the Ld. AR of the assessee has appeared from time to time and filed the details and the case was discussed. The A.O on perusal of the Balance sheet found that the assessee has trade receivables of Rs.39,18,98,714/- and some are outstanding for

more than 3 years and in many cases the assessee has not charged interest and in some cases normal interest was charged. The A.O has observed that as per the agreement, the assessee has to charge the interest @ 18.5% on the outstanding balances receivable from the clients and the assessee is also not charging the interest on belated payments to the date of settlement of trade.

3. The assessee in response to the show cause notice issued by the A.O. has submitted that due to business exigencies, doubtful nature of debts and pending complaints with the Economic Offence Wing (E O W) no interest is charged to clients. The A.O has made a list of total outstanding balances and pending cases of EOW referred at Para 3.4 of the order. Whereas in the case of one Mr. Prashant J Patel the amount was outstanding only for few months and therefore the assessee has not charged any interest. Finally the A.O. has charged the interest @ 18.5%p.a. on the balances and worked out Rs.1,58,19,304/-. The A.O has made disallowance u/s 14A r.w.r 8D of I T Rules of Rs. 65,747/- after setting off the amount offered of Rs. 10,000/- and Assessed the total income

of Rs. Nil after setoff of carry forward of loss and passed the order u/s 143(3) of the Act dated 11.03.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the scrutiny assessment. The CIT (A) has forwarded the submissions of the assessee on notional income chargeability and accrual concept to the Assessing officer. Whereas the A.O has filed the remand report and the CIT(A) has dealt on the issue and was of the opinion that the charging of interest on the overdue balance of trade receivables is not mandatory and directed the Assessing officer to delete the addition. Whereas in respect of disallowance u/s 14A r.w.r8D of I T rules, the CIT(A) has granted partial relief and partly allowed the assessee appeal. Aggrieved by the CIT(A)order, the Revenue has filed an appeal with the Honble Tribunal.

5. At the time of hearing ,the Ld. DR submitted that the CIT(A) has erred in deleting the addition

irrespective of the fact that there is a requirement of charging of interest on the overdue balances by the assessee. The Ld. DR referred to the observations of the A.O in respect of outstanding balances and prayed for restoration of the assessing officer order.

6. Contra, the Ld.AR submitted that the assessee cannot be subject to charging of notional interest as there is no income accrued neither received during the year. Further the transactions of the assessee are case to case basis and in some cases because of voluminous turnover from the clients the assessee may not charge interest. The Ld.AR submitted that the notional income cannot be taxed and relied on the judicial decisions and the order of the CIT(A).

7. We have heard the rival submissions and perused the material available on record. The sole crux of the disputed issue envisaged by the Ld. DR that the CIT(A) has erred in deleting the notional interest levied by the A.O on the trade receivables. We find that the CIT(A) has considered the submissions of the assessee and called for the remand report from the

Assessing officer. At this juncture, we consider it appropriate to refer to the observations of the CIT(A) at page 12 Para 4.3 to 4.3.6 of the order as under:

“4.3 I have considered the AO's order, submissions made and details filed by the appellant, remand report submitted by the AO.

4.3.1 The AO has observed in the assessment order that the appellant, who is a share broker, has shown an amount of Rs.39,18,98,741/- as trade receivables and is involved in client funding since they pay on behalf of the clients and charge interest on funds paid by them on behalf of client. The AO has observed that there is a clause in the contract form signed by the client at the time of joining the broker which provide that the client shall be liable to pay interest on the delays on the payment of his transactions. The AO found that the appellant has charged interest from some of the clients @ 18.5% per annum whereas no interest was charged from some other clients. The AO has rejected the contention of the appellant that the interest is charged for delayed payment from the clients keeping in mind the business conditions and the business potential with the client. The AO has taken the view that interest had accrued on the amounts outstanding to the appellant and has made an addition of Rs.106,00,458/- @ 18.5% in respect of outstanding amounts from various parties aggregating to Rs.572,99,773/-, as reproduced in chart on page 3 of assessment order. Further addition of Rs.52,18,846/- @ 18.5% of Rs.22,88,14,262/- (for 45 days) was made in respect of the amount outstanding in the case of Shri Prashant J. Patel from 18.02.2013.

4.3.2 I find that the appellant has submitted copy of the agreement with various clients and copy of ledger accounts as additional evidence and the same are admitted as additional evidence since the same would be relevant for disposal of this appeal.

4.3.3 From the agreement with the clients, it is noticed that the appellant had a discretion to charge interest and it was not mandatory to charge interest for the delay in payment of amounts outstanding. The relevant clause in one of the agreements read as under :

"16. The Client(s) agree, that without prejudice to any other remedy of right prescribed in these presents, the Member Broker may withhold money/ securities lying with it and deliverable/payable to Client(s) and/or charge daily interest at the rate of 2% per month for any delay in Payment of charges, margin or any other sum due to the Member Broker as may be applicable"

I find that similar clause is there in agreements with other clients. Thus, when charging of interest is not mandatory in terms of the agreement between the broker/appellant and its clients, it cannot be held that the interest had accrued on the outstanding balances and the appellant should have offered such interest income on accrual basis in its return of income. In the case of one of the clients, Pat Financial Consultants Pvt. Ltd., there is no such clause for charging of interest on overdue balance. Therefore, charging of interest on such balance was not required.

3.4 From the details submitted by the appellant, it is observed that 8orpe of the amounts (Item 1 to 6 of the chart reproduced by the AO in the assessment order), outstanding were such in respect of which the recovery of the said amount was doubtful and eventually the balances Were written off as bad debts in subsequent years. Similarly, the appellant has not charged interest in respect of 344 parties where small balances were outstanding considering the smallness of amounts and considering the cost and efforts involved in the process. The appellant has used his discretion not to charge interest on such overdue balances which is found to be in order.

4.3.5 In the case of Prashant J. Patel, the appellant has stated that the / amount was outstanding for only 45 days and the

agreement provides for discretionary charging of interest. I find that similar clause regarding discretionary charging of interest is there in the agreement with the said party as clause no.22. It was a business decision of the appellant not to charge any interest from the said party. Further, there is no scope of assessing any 'notional income' in view of the decision of Hon'ble Supreme Court in the case of CIT vs Raman 86 Co. 67 TR 11.

4.3.6 In view of above discussion, I am of the considered opinion that the charging of interest on the overdue balances of trade receivables was not mandatory and the AO was not correct in holding that interest on such balances had accrued and should have been offered to tax by the appellant. Accordingly, the addition of Rs. 158,19,304/- is deleted. Ground No.1 is allowed."

8. On perusal of the findings of the CIT(A), we find that the CIT(A) has called for the remand report and the A.O in the remand report has confirmed that the assessee has not charged the interest though there is an agreement. We find the A.O went on a presumption that the interest should be taxed but there is no actual interest received by the assessee. We are of the considered view that, the CIT(A) has relied on the factual aspects, provisions of law and overlooked the presumptions made by the A.O and passed a valid and reasonable order. Whereas the Ld.DR could not controvert the findings of the CIT(A) with any new cogent material or information. Accordingly, we do not

- 9 -

find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 17.01.2022.

Sd/-
(OM PRAKSH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 17.01.2022

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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(Asst. Registrar)
ITAT, Mumbai