

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.553 & 554/Hyd/2021		
Assessment Year: 2016-17 & 2017-18		
Shri Kishore Kumar Narsapur PAN:ACWPK3287H (Appellant)	Vs.	A.C.I.T. Central Circle 1(2) Hyderabad (Respondent)
Assessee by:	Shri K.A. Sai Prasad	
Revenue by:	Shri K.P.R.R. Murty, DR	
Date of hearing:	18/07/2022	
Date of pronouncement:	20/07/2022	

ORDER

Per R.K. Panda, A.M

The above two appeals filed by the assessee are directed against the separate orders dated 26.10.2021 of the learned CIT (A)-11, Hyderabad relating to A.Ys. 2016-17 & 2017-18 respectively. Since identical grounds have been raised by the assessee in both the appeals, therefore, these were heard together and are being decided by this common order.

ITA No.553/Hyd/2021 – A.Y 2016-17

2. The grounds raised by the assessee in this appeal are as under:

“Addition of interest of Rs.80,592/-receivable from firm already included in the income returned and taxed u/s.115BBE

The learned Commissioner of Income Tax (Appeals) is not justified in confirming the addition of interest receivable from firm of M/s. Maruthi Service Station, Naraspur made by the Assessing Officer and also in confirming the taxing thereof u/s.115BBE for the following reasons.

1. The learned Commissioner (Appeals) as well as the Assessing Officer overlooked the fact that the said amount of interest from the firm of M/s. Service Station Naraspur, in which the Appellant is a partner, amounting to Rs.80,592/-was already included in the income returned by the Appellant both in the original return filed and also in the return filed in response to notice u/s.153A. Hence, the double taxation of the same amount by way addition to the income returned is and is superfluous impermissible both in law and on facts as Officer and explained both before the Assessing the Learned Commissioner of Income Tax (Appeals).

2. The assessment being unabated , In the absence of incriminating materials , no addition is called for.

3. As interest from ,firm in which the Appellant is a partner is made specifically assessable only u/s.28(v) of the 1.T.Act,1961, and ,hence, the taxing of the same u/s.115BBE is absolutely incorrect.

For these and such other reasons that may be urged at the time of hearing it is prayed that the appeal may kindly be allowed.

3. At the outset the learned Counsel for the assessee did not press ground of appeal No.2 for which the learned DR has no objection. Accordingly, ground of appeal No.2 is dismissed as not pressed.

4. So far as the remaining grounds are concerned, the grievance of the assessee in the grounds relates to the order of the learned CIT (A) in sustaining the addition of Rs.80,592/- made by the Assessing Officer on account of assessee's share of profit in the partnership firm of Rs.16,534/-and interest on capital at Rs.64,058/-.

5. Facts of the case, in brief, are that the assessee is an individual and in the business of gold and pawn broking in the name and style of M/s. Jaidevi Jewellers and Jawanmal

Gulabchand Bankers respectively at Narsapuram where he is proprietor. He is also a Partner in Maruthi Service Station. The Assessing Officer completed the assessment u/s 153A on 21.4.2021 determining the total income at Rs8,96,522/- wherein he made an addition of Rs.80,592/- to the returned income of Rs.8,15,930/- filed u/s 153A by observing as under:

“4. Interest credited to capital:

4.1 On verification of the capital account furnished by the assessee during assessment proceedings, it is seen that an amount of Rs. 80,592/- is credited with narration " M.S Interest received - Rs. 64,058/- and M.S Net Profit- Rs. 16,534/-" . During the course of assessment, the AR vide order sheet noting dated 05-04-2021, was requested to explain why the said credit should not be added. The case was posted for hearing on 09-04-2021. However, the assessee has not furnished reply till date. Hence, the amount of Rs. 80,592/- is added to income returned as unexplained credit.

4.2 In view of the above, an amount of Rs. 80,592/- is added u/s. 68 of the IT Act. 4.3 Penalty proceedings u/s. 271(1)(c) read with Explanation 1 are initiated for concealment of income particulars. Addition Rs. 80,592/-“

6. Before the learned CIT (A), the assessee submitted that the assessee has already declared the interest on capital from the partnership firm in the return of income and the share of profit from the firm is exempt u/s 10(2A) of the Act. Therefore, the action of the Assessing Officer is not justified.

6.1 However, the learned CIT (A) was not fully satisfied with the arguments advanced by the assessee. He directed the assessee to file evidence of profit from the partnership firm of Rs.16,534/- before the Assessing Officer. He also directed the Assessing Officer to consider the same. However, he sustained the addition of Rs.64,508/- on the ground that the interest

received from the firm on the capital deployed in the firm by the partner has to be taxed in the hands of the Partner.

7. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

7.1 The learned Counsel for the assessee at the outset drew the attention of the Bench to the copy of the return filed for the A.Y 2016-17 along with the computation statement and submitted that the business income of Rs.8,69,984/- includes the interest on capital from Maruthi Service Station of Rs.64,058/- and Rs.16,534/- being the share of profit which is exempt from income tax. He accordingly submitted that once the assessee, as a partner of M/s. Matuthi Service Station, has already disclosed the interest on capital from the firm at Rs.65,058/- and the share of profit at Rs.16,534/- has been claimed as exempt u/s 10(2A), the CIT (A) was not justified in sustaining the addition made by the Assessing Officer.

8. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A).

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We find the AO in the instant case made an addition of Rs.80,592/- being the interest on capital received from the firm at Rs.64,058/- and net profit of Rs.16,534/- on the ground that the assessee did not furnish reply to his satisfaction. We find the learned CIT (A)

although directed the assessee to furnish the details of share of profit at Rs.16,534/- and directed the Assessing Officer to consider the same and allow the addition, however, sustained the addition of Rs.64,508/- on the ground that the interest received from the firm on the capital deployed in the firm by the Partner has to be taxed in the hands of the Partner. A perusal of the computation statement filed along with the return of income by the assessee clearly shows that the income from the business/ profession declared at Rs.8,69,984/- include the interest income of Rs.65,058/- and the assessee has separately claimed the profit of Rs.16,534/- being share of the profit as exempt u/s 10(2A) of the Act. Although these evidences were available with the Assessing Officer as well as the CIT (A), however, they have not considered the same in the way the same should have been considered. Since the assessee has already offered the income of Rs.64,508/- being the interest received from the firm in the return of income filed, therefore, addition of the same again amounts to double addition. We, therefore, set aside the order of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition of Rs.64,508/-.

9.1 So far as the profit of Rs.16,534/- from the firm is concerned, the assessee has already claimed the same as exempt u/s 10(2A) of the Act. Since the share of profit from the firm is exempt u/s 10(2A) of the Act, therefore, we modify the order of the learned CIT (A) and direct the Assessing Officer to delete the addition. Grounds of appeal No.1 & 3 raised by the assessee are accordingly allowed.

ITA No.554/Hyd/2021 – A.Y 2017-18

10. Grounds raised by the assessee are as under:

“Addition of interest of Rs.86,540/- receivable from firm already income returned included in the and taxed u/s.115BBE

The learned Commissioner of Income Tax (Appeals) is not justified in confirming the addition of interest receivable from firm of M/s. Maruthi Service Station, Naraspur made by the Assessing Officer and also in confirming the taxing thereof u/s.115BBE for the following reasons.

1. The learned Commissioner (Appeals) as well as the Assessing Officer overlooked the fact that the said amount of interest from the firm of M/s. Service Station Naraspur, in which the Appellant is a partner, amounting to Rs.80,592/-was already included in the income returned by the Appellant in the original return filed and also, in the return filed in response to notice u/s.153A . Hence, the double taxation of the same amount by way addition to the income returned is superfluous and is impermissible both in law and on facts as explained both before the Assessing Officer and the Learned Commissioner of Income Tax (Appeals).

2. The assessment being unabated, In the absence of incriminating materials, no addition is called for.

3 As interest from ,firm in which the Appellant is a Partner is made specifically assessable only u/s.28(v) of the I.T.Act,1961, and hence, the taxing u/s.115BBE is of the same absolutely incorrect.

For these and such other reasons that may be urged at the time of that the hearing it is prayed appeal may kindly be allowed.

11. The learned Counsel for the assessee did not press Ground No.2 for which the learned DR has no objection. Accordingly Ground No.2 is dismissed as not pressed.

12. So far as the remaining grounds are concerned, the same relate to the order of the learned CIT (A) in sustaining the addition of Rs.86,540/- being interest on capital received from the Partnership firm. After hearing both sides, we find the grounds raised by the assessee in the instant case are identical to the grounds raised in ITA No.553/Hyd/2021. We have already decided the issue and the grounds raised by the assessee have

been allowed. Accordingly, following similar reasoning the grounds raised by the assessee are allowed.

13. In the result, both the appeals filed by assessee are partly allowed.

Order pronounced in the Open Court on 20th July, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 20th July, 2022.

Vinodan/sps

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5	DR, ITAT Hyderabad Benches
6	Guard File

By Order