

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F" NEW DELHI]**

BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 5931/DEL/2017(A.Y. 2001-02)

ACIT, Circle : 54 (1), New Delhi.	Vs.	Shri Rajiv Agarwal, DDA Flat No. 632, Ground Floor, B-Block, Pocket : A, Lok Nayak Puram, Bakkarwala, New Delhi – 110 014. PAN No. AAEP A0271B
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I.T.A. No. 5932/DEL/2017 (A.Y. 2002-03)

ACIT, Circle : 54 (1), New Delhi.	Vs.	Shri Rajiv Agarwal, DDA Flat No. 632, Ground Floor, B-Block, Pocket : A, Lok Nayak Puram, Bakkarwala, New Delhi – 110 014. PAN No. AAEP A0271B
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I.T.A. No. 5933/DEL/2017 (A.Y. 2003-04)

ACIT, Circle : 54 (1), New Delhi.	Vs.	Shri Rajiv Agarwal, DDA Flat No. 632, Ground Floor, B-Block, Pocket : A, Lok Nayak Puram, Bakkarwala, New Delhi – 110 014. PAN No. AAEP A0271B
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AND
I.T.A. No. 5934/DEL/2017 (A.Y. 2004-05)

ACIT, Circle :54 (1), New Delhi. (APPELLANT)	Vs.	Shri Rajiv Agarwal, DDA Flat No. 632, Ground Floor, B-Block, Pocket : A, Lok Nayak Puram, Bakkarwala, New Delhi - 110 014. PAN No. AAEP A0271B (RESPONDENT)
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Assessee by :	N o n e;
Department by:	Shri T. Kipgen, [CIT] - D.R.;

Date of Hearing	01.08.2022
Date of Pronouncement	08.08.2022

ORDER

PER YOGESH KUMAR U.S., JM

These four appeals have been preferred by the Revenue-Department against the order of the Id. Commissioner of Income Tax (Appeals)-18, New Delhi, dated 01.06.2017 for assessment years 2001-02 to 2004-05.

2. The Revenue has raised the following common grounds of appeal (except for the amounts) for assessment years 2001-02 and 2002-03:-

I.T.A. Nos. 5931 & 5932/DEL/2017 (A.Ys. 2001-02 & 2002-03) :

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.98,91,000/-(GBP 1,50,000) made by A.O u/s 68 of the Income Tax Act, 1961 on account of

undisclosed income credited in Account No.5893-60047354 GBP with RBS international on protective basis.

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.32,856.58 made by A.O on account of undisclosed interest income credited in Account No.5893-60047354 GBP with RBS international on protective basis.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,10,50,292.46/- (USD237,334.46) made by A.O u/s 68 of the Income Tax Act, 1961 on account of unexplained income credited in Account No.5893-54035646 USD with RBS international on protective basis.*

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,38,551.56/- made by A.O on account of undisclosed interest income credited in Account No.5893-54035646 USD with RBS international on protective basis.*

3. The Revenue has raised the following substantive common grounds of appeal (except for the amounts) for assessment years 2003-04 and 2004-05:-

I.T.A. Nos. 5933 & 5934/DEL/2017 (A.Ys. 2003-04 & 2004-05) :

“1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has' erred in deleting the addition of Rs.16,878.73 made by A.O on account of undisclosed interest income created in Account No.5893-60047354 GBP with RBS international on protective basis.*

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.85,659.03 made by A.O u/s 68 of the Income Tax Act, 1961 on account of undisclosed income credited in Account No.5893-60047354 GBP with RBS international on protective basis.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,42,500/- made by A.O u/s 68 of the Income Tax Act, 1961 on account of unexplained income credited in Account No.5893-54035646 USD with RBS international on protective basis.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.99,75,000/- made by A.O u/s 68 of the Income Tax Act, 1961 on account of unexplained income credited in Account No.5893-54035646 USD with RBS international on protective basis.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,678.18 made by A.O on account of undisclosed interest income credited in Account No.5893-54035646 USD with RBS international on protective basis.

4. The factual matrix and the Grounds of Appeal raised by the Department in the above appeals are similar except the amount involved thereon, further by considering the similar questions involved in the matter, the above four appeals have been clubbed together and heard together, thus we proceed to decide the Appeal by a common order.

I.T.A. No. 5931/DEL/2017 (A.Y. 2001-02)

5. Brief facts of the case are that, the information under “spontaneous exchange information under the Indo UK Double Taxation Avoidance Convention’ was received from UK Authorities by the department of Revenue. In view of the said information on record, the A.O had reason to believe that the income corresponding to credit of total sum of Rs. 2,14,07,949.71 chargeable to tax escaped assessment for the Financial Year 2000-01 relevant to Assessment Year 2001-02 by reason of the failure on the part of the assessee to disclose fully and truly all the material fact necessary for his assessment. Accordingly, notice u/s 148 has been issued, the case of the assessee for the Assessment Year 2000-01 to 2004-05 was reopened. The Representative of the assessee submitted that, the original return for Assessment Year 2001-02 to 2004-05 be treated as return filed in response to the notice u/s 148 of the Act.

6. The main contention of the assessee before the A.O is that, the overseas bank accounts are not belong to the assessee and thus the reassessment for Assessment Year 2001-02 is void ab-initio and the bank accounts available with the Department are in the joint names of Sh. P. N. Aggarwal and Sh. Rajiv Aggarwal. Further contended that, no third party interest has been earned in the said accounts and the credits in both the accounts were taxable in the hands of Sh. P. N. Aggarwal who is the sole beneficiary of the credit/income. Hence, no income is taxable in the hands of the assessee. The Ld. A.O while deciding the said issue observed as under:

“ All the undisclosed income of the year under consideration as reflected in the said Bank Accounts have been assessed in hand of Sh. P. N. Agarwal substantially as the first name in the joint account and admitted by P.N. Agarwal. However, other than the statement made by P.N. Agarwal, the 'assessee could not produce any credible

evidence to provide that the money in the joint bank account belong only to P.N. Agarwal and not to Sh. Rajiv Agarwal, the assessee. Therefore, to protect interest of revenue the undisclosed income of the relevant assessment year have been assessed on protective basis in the hand of the assessee.”

7. Thus, the Ld. A.O has assessed the income of the assessee at Rs. 2,24,17,296.38 on protective basis in the hands of the assessee vide assessment order dated 29/11/2016.

8. Aggrieved by the order dated 29/11/2016, the assessee has filed an Appeal before the CIT(A). The Ld.CIT(A) vide order dated 31/05/2017 has observed as under: -

“ I also find that the issue as to in whose hands the deposits and income is to be assessed so far as the joint accounts are concerned has been discussed in detail in Assessment Year 2006-07 in ITA No. 128/15-16 for the appellants and it has been held there that Mr. Rajiv Agarwal could not be held to be the beneficial owner. No other findings have been made by the A.O to depart from that view in this year. There is nothing brought on record by the assessee A.O to differ from the view that the operation of these accounts have been made by Mr. Perbodh Nath Agarwal and no new facts have come out to dispute that he is the ultimate beneficiary as far as the transactions for this year is concerned, and as has been found from the trail of credits and debits in these accounts.”

9. Further, the Ld. CIT (A) considering the fact that, Mr. P. N. Aggarwal who is the first person in the joint account along with assessee who has been assessed and the additions have been made in his hands in substantive basis,

the additions made in the hands of the assessee on protective basis has been deleted.

10. Aggrieved by the order of Ld.CIT(A) in deletion of the protective addition made by the A.O against the assessee, the Department of Revenue is before us on the grounds mentioned above.

11. None appeared for the assessee even after issuing the notices repeatedly by the Registry. The assessee has not interested to contest the appeal; therefore, we are compelled to decide the appeals after hearing the Ld. DR and based on the material available on record.

12. We have heard the Ld. DR perused the material on record and gave our thoughtful consideration. It is not in dispute that the assessee along with one Mr. P. N. Aggarwal are the joint account holders. The said Mr. P. N. Aggarwal is the first person in the said bank account and the assessee is the second person. The assessee has taken specific contention before the A.O that, there is no third party income has been earned in the accounts and credit in the accounts were taxable in the hands of Sh. P. N. Aggarwal and all the income arose to the first name owner i.e. Sh. P. N. Aggarwal and he is the sole real beneficiary of the credits/incomes. But the Ld. A.O considering the said submission and based on the materials with an intention to protect the interest of the Revenue, undisclosed income of the relevant Assessment Year have been assessed on protective basis in the hands of the assessee. The Ld.CIT (A) has deleted the said addition.

13. It is well settled law that the same income cannot be taxed in two hands at the same time and that the income has to be assessed in the correct hands. Once it is found that the entire amount belongs to Sh. P. N. Aggarwal and who is the sole beneficiary being first name person in the joint account, the same cannot be taxed in the hands of the assessee on protective basis. Therefore, we

do not find any error or infirmity in the approach of the Ld.CIT(A), thus the order of the Ld.CIT(A) requires no interference. Accordingly, we dismiss the Grounds of Appeal filed by the Revenue.

14. In the result, Appeal in ITA No. 5931/DEL/2017 filed by the Department is dismissed.

15. In view of the dismissal of the Appeal in ITA No. 5931/Del/2017 for Assessment Year 2001-02. Considering the fact that there is no change of circumstances and there being similar grounds raised by the Department, the Appeal filed by the Department in ITA Nos. 5932/Del/2017, 5933/Del/2017 & 5934/Del/2017 are dismissed in terms of ITA No. 5931/Del/2017.

16. In result, Appeal Nos. 5931/Del/2017, 5932/Del/2017, 5933/Del/2017 & 5934/Del/2017 are dismissed.

Order pronounced in the open court on : **08/08/2022.**

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 08/08/2022

**R. N, Sr. PS*

Copy forwarded to:

1. Appellants
2. Respondents
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI