

**IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

**ITA No. 415/PUN/2021 : A.Y. 2011-12**

Kishor Kesarimal Oswal  
627/B Budhwar Peth, Pune  
PAN: AABPO 21792 G

:Appellant

Vs.

The I.T.O Ward 6(3) Pune

Respondent

Appellant by : Shri M.K. Kulkarni & Mrs. J.R. Chandekar

Respondent by : Shri Ramnath P. Murkude

Date of Hearing : 21-09-2022

Date of Pronouncement : 21-09-2022

**ORDER**

**PER SHRI PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from order of the National Faceless Appeal Centre (NFAC) dated 30-07-2021 for A.Y. 2011-12 as per the following grounds of appeal.

- 1. On the facts and in the circumstances of the case and in law the NFAC, Delhi was not justified in confirming the addition made rejecting the claim made under IDS 2016 ignoring the judicial precedents filed and relied upon and also ignoring the CBDT circular. The claim be allowed allowing the appeal of the assessee. r*
2. The brief facts in this case are that the assessee is an individual and in his case notice u/s 148 was issued on the basis of non-disclosure of income and non-payment of tax thereon under IDS 2016. The assessee had disclosed an amount of Rs. 20,00,000/- under IDS 2016 for the relevant assessment year on account of investment in fixed deposits and receipt of commission. However, no tax was paid within the stipulated time limit prescribed under IDS 2016 and therefore, such declaration was treated invalid by the Pr. CIT-3, Pune. The A.O therefore, reopened the case and in the reassessment the amount was added as per the provision of IDS 2016 by noting as under:

*“The assessee was declarant under IDS 2016 who have committed default in making payments as per schedule. As the assessee did not pay tax amount within specified time, the declaration became invalid. Action against the declarant shall be taken in accordance with the provisions of sec. 197(b) of the Scheme. As per provision of section 197(b) of scheme which reads as under:*

*“Where any declaration has been made u/s 183 but no tax, surcharge and penalty referred to in section 184 and section 185 has been paid within the time specified u/s 187, the undisclosed income shall be chargeable to tax under the Act in the previous year in which such declaration is made and the provisions of Act shall apply accordingly,”*

*Considering the facts and circumstances of the case as discussed above, the amount declared in IDS 2016 for the year relevant to A.Y. 2011-12 of Rs. 20,00,000/- on account of investment in fixed deposits and receipt of commission is treated as income from undisclosed sources which assessee failed to declare in his return of income filed for A.Y. 2011-12 and is added to the total income of the assessee.”*

3. Before the NFAC notices were issued to the assessee for hearing on 21-01-2021, 22-06-2021 and 29-07-2021 but no submissions were filed by the assessee nor there was any appearance either personally or through his authorised representative. The NFAC proceeded on the basis of the materials available on record and held as follows:

5. *In the other grounds of appeal the appellant has challenged the addition on merit. It is observed that although the appellant made declaration under IDS 2016 of an amount of Rs. 20,00,000/- representing undisclosed investment in fixed deposits and commission income. However, tax was not paid within the prescribed time limit as provided in the scheme. The AO therefore, by applying the relevant provision of sec. 197(b) of IDS 2016 added this amount to the total income. The provision of s197(b) of IDS 2016 reads as under:-*

*“Where any declaration has been made u/s 183 but no tax, surcharge and penalty referred to in section 184 and sec. 185 has been paid within the time specified u/s 187, the undisclosed income, shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made and the provisions of income-tax Act shall apply accordingly.”*

*Thus, the provision contained in IDS 2016 is very clear and the OAO has correctly applied the provision in adding the amount to the total income. The action of the AO does not call for any interference and hence confirmed.”*

4. However, the assessee contends that he is entitled to claim this residue amount as exempt after payments under IDS 2016 scheme. The revenue authorities have clearly observed that the assessee made declaration under IDS for an amount of Rs. 20,00,000/- representing undisclosed investment in Fixed Deposits and commission income. However, tax was not paid within the prescribed time limit as provided in the scheme. The A.O therefore, by applying

the relevant provision of sec. 197(b) of IDS 2016 scheme added this amount to the total income. That, even before us also, the assessee only submitted reiterating the submissions placed before the subordinate authorities that this addition made by the A.O is not warranted. However, whether the assessee could be said to be exempted of IDS 2016 scheme so far as taxability of the income of the assessee is concerned needs detailed factual verification. We are of the considered view therefore, the matter should be examined and re-adjudicated by the A.O as per law while complying with the principles of natural justice. In view thereof, we set aside the order of the NFAC and remand the matter to the file of the A,O as directed hereinabove.

5. In the result, appeal of the assessee is **allowed for statistical purposes**.  
 Order pronounced in the open Court on this 21<sup>st</sup> September 2022.

Sd/-  
**(R.S. SYAL)**  
**VICE PRESIDENT**

sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Pune; Dated, this 21<sup>st</sup> day of September 2022  
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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The concerned CIT Pune .
4. The NFAC, Delhi
5. The D.R. ITAT 'A' Bench Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary  
 ITAT, Pune

		Date	
1	Draft dictated on	21-09-2022	Sr.PS
2	Draft placed before author	21-09-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		