

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.4634/Mum./2019**  
**(Assessment Year : 2014-15)**

Bhavya Shashank Shanbhag  
902, Prithvi Emperor,  
202, New Prabhadevi Road,  
Prabhadevi  
Mumbai 400 025  
PAN – AAHPD 2422N

..... Appellant

v/s

Deputy Commissioner of Income Tax  
Central Circle-1(1), Mumbai

..... Respondent

Assessee by : Dr. K. Shivaram, Sr. Adv.  
Revenue by : Shri Milind Chavan, Sr.AR

Date of Hearing – 17/06/2022

Date of Order – 06/09/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 31/05/2019, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-47, Mumbai, for the assessment year 2014-15.

2. During the course of hearing, at the outset, the learned Senior Counsel, appearing for the assessee, submitted that the assessee has filed

declaration in Form no.8, invoking provisions of section 158A of the Act stating that similar questions of law are pending before the Hon'ble Jurisdictional High Court in assessee's own case, for the assessment year 2005-06. The learned Senior Counsel accordingly prayed that a suitable order under section 158A(3) of the Act be passed in respect of the present appeal. The declaration Form no.8 was taken on record and the report of the concerned Assessing Officer was sought as per provisions of section 158A(2) of the Act.

3. The Assessing Officer vide letter dated 04/05/2022, as required in terms of section 158A(2) of the Act, filed its report comparing the grounds of appeal raised in the present appeal and the questions of law pending before the Hon'ble Jurisdictional High Court in assessee's own case, for the assessment year 2005-06. In the aforesaid report, only in respect of ground no.1(vi), raised in assessee's appeal, Assessing Officer submitted that same is not identical to the question of law no. V(vi) pending before the Hon'ble Jurisdictional High Court, by stating as under:

*"Question of Law No.1(vi) raised before Hon'ble ITAT and question of law V(vi) raised before Hon'ble High Court are not identical. In the appeal before the Hon'ble HC, for AY 05 - 06, assessee has only mentioned period from 1.1.2002 to 31.03.2002 for notional interest. However in appeal before Hon'ble ITAT assessee has mentioned multiple assessment years"*

4. In this regard, it is relevant to compare ground no.1(vi), raised in assessee's appeal, with question of law no. V(vi) pending before the Hon'ble Jurisdictional High Court. Ground No. 1(vi), raised in present appeal, reads as under:

*"(vi) No notional interest income has been added for the period 1.1.2002 to 31.03.2002 and also for A.Y. 2003-2004, 2004-2005, 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2013-2014 and thus the entire addition was made on surmises and conjecture, presumptions and the onus cast on the Revenue was not discharged"*

5. On the other hand, the ground of appeal no.V(vi) pending before the Hon'ble Jurisdictional High Court in assessee's own case, for assessment year 2005-06, reads as under:

*"(vi) no notional interest income has been added for the period 1/1/2002 to 31/3/2002 and thus the entire addition was made on surmises and conjecture, presumptions and the onus cast on the Revenue was not discharged"*

6. From the perusal of aforesaid ground, raised in present appeal, and question of law pending before the Hon'ble Jurisdictional High Court, we find that the issue in both is identical and same pertains to addition of notional interest income to the total income of the assessee. Thus, we find the aforesaid objection raised by the Assessing Officer to be very pedantic in nature, without raising doubt about the basic challenge of the assessee in both. Further, we find that in respect of other grounds, raised in present appeal, the Assessing Officer has agreed that same are identical to the questions of law pending before the Hon'ble Jurisdictional High Court.

7. After careful consideration of submissions of both the sides and perusal of Form no.8, as well as the report of the Assessing Officer filed before us, we are of the considered view that the issues involved in the present appeal for assessment year 2014-15 are identical to the questions

of law pending before the Hon'ble Jurisdictional High Court for the assessment year 2005-06.

8. In view of the above, we accept the claim of the assessee under section 158A of the Act. We dispose off the present appeal without awaiting for the final decision on the questions of law in other case, as per the provisions of section 158A(4) of the Act. We further direct the Assessing Officer that when the decision on the questions of law in the other case becomes final, it shall be applied to the relevant assessment year.

9. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 06/09/2022

**Sd/-**  
**PRAMOD KUMAR**  
**VICE PRESIDENT**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 06/09/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai