

THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai
Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 638/Mum/2022 (A.Y. 2006-07)
I.T.A. No. 639/Mum/2022 (A.Y. 2007-08)
I.T.A. No. 640/Mum/2022 (A.Y. 2008-09)

JCIT (OSD)(IT)-Circle 3(3)(2) Room No. 1607 16 th Floor Air India Building Nariman Point Mumbai-400 021. (Appellant)	Vs.	Rahul Rajnikant Parikh 701 Panchvati Building Off Yari Road, Versova Andheri West Mumbai-400 061. PAN : AFUPP8362H (Respondent)
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I.T.A. No. 637/Mum/2022 (A.Y. 2006-07)
I.T.A. No. 641/Mum/2022 (A.Y. 2007-08)
I.T.A. No. 636/Mum/2022 (A.Y. 2008-09)

JCIT (OSD)(IT)-Circle 3(3)(2) Room No. 1607 16 th Floor Air India Building Nariman Point Mumbai-400 021.	Vs.	Kalpesh R. Jhaveri 520, 521 Parekh Market 39, Kenedy Bridge Opera House Mumbai-400 007. PAN : ABSPJ9294J
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Assessee by	Shri Vijaykumar S. Biyani
Department by	Shri Soumendu Kumar Dash
Date of Hearing	18.10.2022
Date of Pronouncement	20.10.2022

ORDER

Per Bench:-

The appeals filed by the Revenue relates to A.Y. 2006-07 to 2008-09 in respect of both the assessees. They are directed against the orders passed by the learned CIT(A)-57, Mumbai. As common issues are urged in these appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The Revenue is challenging the decision of the learned CIT(A) in holding that the interest income assessed in the hands of these assesseees, being non residents, in all the three years cannot be brought to tax in India.

3. Facts relating to the cases are stated in brief. This is a second round of proceedings in the hands of both the assesseees. It came to the notice of the Government that both the assesseees are holding a bank account jointly in HSBC Bank, Geneva. It was noticed that some deposits have been made in this bank account during the years relevant to A.Y. 2003-04 & 2004-05. In the three years under consideration namely A.Y. 2006-07 to 2008-09 interest has been credited on the deposits so made in the above said bank account. In the first round, the deposit amounts as well as interest income accrued on the above said deposits were assessed in the hands of the assesseees dividing the same equally. The above said assessments were challenged by filing appeals before the learned CIT(A), who deleted the additions. Hence, the Revenue preferred the appeals before the ITAT and the Tribunal, vide its order dated 1.6.2018 passed in A.Y. 2003-04, 2004-05, 2006-07 to 2008-09, set aside the orders passed by the learned CIT(A) and restored the matter back to the file of the Assessing Officer with the direction to make further investigation into the source of deposits made into the bank account. Accordingly the Assessing Officer passed fresh assessment orders in all the above said year. However, the present appeals are related to A.Y. 2006-07 to 2008-09. Addition made in these years relate to interest income accrued on the deposits kept with the HSBC Bank, which are tabulated below :

S.No.	Assessment year	Amount
1.	2006-07	89,197
2.	2007-08	99,284
3.	2008-09	150,139

The Assessing Officer assessed the above said interest income equally in the hands of both the assesseees respectively in these three years on the

reasoning that interest income shall be **“deemed to have accrued”** to the assesseees in India since the corresponding deposit amount has been assessed in the hands of these assesseees in A.Y. 2003-04 & 2004-05. The Ld CIT(A) deleted the additions of interest income made in AY 2006-07 to 2009-10 on the reasoning that the same cannot be brought to tax in India.

4. We heard the parties and perused the record. There is no dispute with regard to the fact that the status of both the assesseees under the Income tax Act is “Non Resident”. Section 5(2) of the Income tax Act defines the scope of total income, i.e., the income which can be taxed in India in the hands of “non residents”. The said Section reads as under:-

“(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non- resident includes all income from whatever source derived which-

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1-Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2.- For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.”

5. The case of the assessing officer is that the interest income is “deemed to accrue or arise in India”. If any income is deemed to accrue or arise in India, then the same could be taxed in the hands of non residents also. There is no dispute on this proposition. However, the expression “deemed to accrue or arise in India” has been explained in Section 9 of the Act, which lists out the income, which are “deemed to accrue or arise in India”. It is a settled proposition of law that the deeming provisions are legal fiction created

by the statute and hence they have to be construed strictly. Section 9(1)(v) of the Act deals with “interest income” and it reads as under:-

“9(1) (v) ² income by way of interest payable by-

(a) the Government; or

(b) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

(c) a person who is a non- resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India;”.

6. There should not be any dispute that the issue in dispute in the hands of both these assesseees has to be tested in terms of sec. 5(2) and sec. 9(1)(v) of the Income tax Act. No doubt that the income deemed to accrue or arise to a non resident in India is liable to be taxed in India. However, the question is whether the interest income accrued on a deposit kept in a foreign bank account can be considered as “deemed to accrue or arise in India”. Sec. 9(1)(v) of the Act lists out three situations in which an interest income could be “deemed to accrue or arise in India”.

- (a) The first situation is that the case of payment of interest income by Government of India, which is not the fact in the present cases.
- (b) The second situation is the case of payment of interest by a resident, which is also not the case here.
- (c) The Third situation is the case of payment of interest income by a non-resident, where the non-resident has used the borrowed money in India in his business.

Clearly, the situations described in (a) and (b) are not applicable to the facts of the present cases. It is not the case that the HSBC bank has used the deposits for the purpose of business or profession carried in India.

7. In these years, the interest income has accrued on the deposits kept by the assesseees in HSBC bank, Geneva and hence the said interest income cannot be said to fall under the definition of “deemed to accrue or arise in India” as given in sec. 9(1)(v) of the Act, i.e., the interest income has actually accrued outside India. Hence the said interest income cannot be assessed in the hands of the assesseees, since they are non-residents. Accordingly, we do not find any infirmity in the decision rendered by Ld CIT(A) in all the three years in the hands of both the assesseees.

8. In the result, all the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 20.10.2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

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

Mumbai; Dated : 20/10/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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