

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ " ए ", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH " A ", CHANDIGARH

श्री सुधांशु श्रीवास्तव, न्यायिक सदस्य, एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. SUDHANSHU SRIVASTAVA, JM & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 469 to 474/Chd/2016

निर्धारणवर्ष / Assessment Year : 2007-08 to 2012-13

Karnail Singh Yew Lodge, 29-A, Nottingham Road, Nuthall, Nottingham NG161D(UK)	बनाम	The Asst. DIT (International Taxation), Chandigarh
स्थायी लेखा सं./PAN NO: CMZPS3965B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sanat Kapoor, Advocate  
राजस्व की ओर से/ Revenue by : Shri Vivek Nangia, CIT DR  
सुनवाई की तारीख/Date of Hearing : 28/09/2022  
उदघोषणा की तारीख/Date of Pronouncement : 07/11/2022

**आदेश/Order**

**PER VIKRAM SINGH YADAV, AM:**

All these appeals have been filed by the assessee against the consolidated order passed by the Ld. Commissioner of Income Tax(Appeals)-43, New Delhi [hereinafter referred to as 'CIT(A)'] pertaining to A.Y. 2007-08 to A.Y. 2012-13. Since the issues involved in all the appeals were similar, they have been heard together and are being disposed off by this common and consolidated order for the purpose of convenience.

2. At the outset, it is noted that these appeals were initially dismissed by the Coordinate Benches vide order dated 07/09/2017 for want of prosecution and subsequently, in response to misc. application filed by the assessee, the order so passed by the Coordinate Bench was recalled vide order dated 15/01/2019 and hence, these appeals have come up for hearing before us.

3. With the consent of both the parties, the case of the Assessee in ITA No. 469/Chd/2016 in the case of Karnail Singh Vs. The Asst. DIT is taken as the lead case wherein the grounds of appeal read as under:

1. *"That the notice issued under section 153A and the assessment completed under section 153A are illegal, bad in law and without jurisdiction. The additions made are also illegal, bad in law, as the same are not based on any material found during the alleged search.*

2. *That Ld. Commissioner of Income Tax (Appeals) has, in view of facts and circumstances of the case, grossly erred in law in upholding A.O.'s action in issuing notice and framing assessment u/S.153A. The alleged authorization U/s.132 and the notice issued U/s.153A was unauthorized, illegal and unlawful and therefore, the assessment made U/s.153A is also unjust, unlawful and bad in law and the same has been wrongly upheld by the Ld C.I.T (Appeals).*

3. *That alleged warrant of authorization U/s.132 was unauthorized, illegal and unlawful. The alleged execution on 09.03.2012 in case of Sh. Karnail Singh, Joginder Singh Nijjar and Investac Ltd. was also unauthorized, illegal and unlawful. The prohibitory restraint U/s.132 (3) on Bank Account Numbers 1339000500011991 & 1339000100012112 was also unauthorized, illegal and bad in law and it was also wrongly served.*

4. *That in view of the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding the action of the AO in making addition/disallowance to the extent of Rs. 77,428/-.*

5. *That the appellant had no place of residence or any office in India and no search had taken place and the provisions of Section 153A were not applicable and the alleged notice issued U/s.153A was unauthorized, illegal and unlawful and, therefore, the assessment made U/s.153A is also unjust, unlawful and bad in law.*

6. *That in any case, the alleged statement of Karnail Singh recorded on 09.03.2012 could not be treated as search executed on Karnail Singh.*

7. *That the income was rightly declared as Rental Income under the head House Property and the Statutory Deduction of 30% was rightly claimed. The Ld. Assessing Officer has grossly erred in law and on facts in assessing the income as Assured Return under the head Other Sources without allowing the statutory deduction of 30% as claimed. Income has been wrongly computed and wrongly assessed. The Ld. C.I.T.(A) has wrongly upheld the same.*

8. *That, without prejudice, even on the basis of stated facts, the assured return should have been assessed as income from Investment U/s. 115C of the I.T. Act and tax should have been charged @20%. This provision of the act has not been correctly interpreted and has been wrongly ignored for assessment.*

9. *That, without prejudice, the provisions of Double Taxation Avoidance Agreement between India and U.K. has been wrongly interpreted. Even on the basis of stated facts and observations made by the Ld. A.O., the income was assessable under the head Interest Income and chargeable to tax @15% accordingly. The Ld. C.I.T. (A) has wrongly upheld the income assessed by the A.O.*

*10. That the Lower Authorities have further grossly erred in law and on facts in not allowing the deduction of Interest paid on the capital borrowed for acquiring the Immovable Property. The interest claimed has been wrongly disallowed. In any case, the interest paid on the borrowed capital was allowable deduction from the income whether assessed as Rental Income or assessed under the head other sources.*

*11. That the deductions claimed by the Appellant have been wrongly disallowed. The observation made by the Ld. A.O. are against facts and are based on surmises & conjectures and do not afford legal justification to the income assessed. That the explanations filed and the evidence placed on record have not been properly considered and judicially interpreted and the deductions have been wrongly disallowed. The Ld. C.I.T. (A) has wrongly upheld the same.*

*12. That in any case, the income has been wrongly computed and wrongly assessed at higher amount than the income declared and the same has been wrongly upheld by the Ld. C.I.T. (A).*

*13. That the Interest U/s.234A, 234B & 234C have been wrongly charged."*

4. Briefly the facts of the case are that the assessee is a non-resident and during the financial year relevant to the impugned Assessment Year the assessee has booked certain units in M/s Omaxe Ltd. Novelty Mall, Amritsar. The assessee has made payment of 95% of the basic sale price at the time of booking the said units and has been provisionally allotted these units and in lieu of 95% payment of the basis sale price, M/s Omaxe Ltd. was to pay monthly assured return to the assessee till the time of possession of these units were handed over to the assessee. In the return of income filed for the impugned assessment year, the assessee has shown the amount received from M/s Omaxe Ltd. as income under the Head "Income from House property" and has claimed statutory deduction under section 24 of the Act. Further the assessee has claimed credit of TDS deducted by M/s Omaxe Ltd. @ 50% as per Article-12 of India and U.K DTAA r/w Section 90 of the Act.

4.1 As per the AO, the income received by the assessee from M/s Omaxe Ltd. cannot be stated to be income from house property as there is no construction/ complete property and the question of letting out the same to third party and earning rental income thereof does not arise. It was held by the AO that assured return being given to the assessee by M/s Omaxe Limited therefore does not fall

under the head "income from house property". Thereafter, the AO analyze the provisions of Article 12 of Indo-UK DTAA as well as definition of interest as per Section 2(28A) of the Act and has held that the money paid by the assessee to M/s Omaxe Ltd. is a capital investment for purchase of the property, the assessee will get back the capital asset and not the money. There is no money borrowed by M/s Omaxe Ltd. which is returnable within a specified time period. There was no debt or deposit taken by the Omaxe Ltd. from the tax payer and it does not have any character of debt or payment of interest. It was accordingly held by the AO that the assured return paid to the assessee is not covered under the definition of interest as per Article-12 of Indo-UK DTAA as well as Section 2(28A) of the Act. Further referring to the allotment letter, the AO held that the agreement does not intend to treat assured return as interest as nowhere in the allotment letter, it has been stated that M/s Omaxe Ltd. shall pay any interest to the assessee otherwise it would have been worded as interest which is absent in the instant case. It was accordingly held by the AO that assured return received by the assessee can only be classified under the head "income from other source" under section 56(1) of the Act and the same was accordingly brought to tax in the hands of the assessee and as against the returned income, the assessed income was determined at Rs 2,58,090/-.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A). The submissions made before the AO were reiterated. It was submitted that the AO has failed to appreciate the nature of income received by way of assured return before allotment of the property. It was submitted that under Article-12 of the Indo-UK DTAA, the term "interest" means income from debt claims of every kind. It was submitted that the amount given by the assessee to M/s Omaxe Ltd. was in the nature of debt claim till the possession of the property was actually handed over to the assessee and in this regard reference was drawn to the contents of the allotment letter dt. 12/06/2007.

5.1 The Ld. CIT considered the submissions of the assessee however the same were not found acceptable. As per the Ld. CIT(A), the payments are in the nature of return on investment as held by the Hon'ble Delhi High Court in case of M/s Omaxe Ltd. Vs. Vikas Malhotra and others vide order dt. 28/07/2014 in ITA FAO(OS) 191/2014. It was further held by the Ld. CIT(A) that payment from M/s Omaxe Ltd. are not in the nature of damages for late delivery of the asset. The payments were merely assured returns of a fixed amount per month. The word "interest" has not been used in the agreement. It was accordingly held that the payments are not interest and Article -12 of India-UK DTAA as well as provision of Section 2(28A) of the Act are not applicable in the instant case.

6. Being aggrieved with the said findings and the order of the Ld. CIT(A), the assessee is in appeal before us. During the course of hearing, various contentions have been raised by the Ld. AR assailing the order of the Ld. CIT(A). One of the contentions which have been raised relates to the fact that the amount so received by the assessee should be treated as interest income under Article-12 of the DTAA. In this regard, our reference was drawn to the submission made before the AO as well as the Ld. CIT(A). It was submitted that both the lower authorities have failed to appreciate the fact that the assured return so received by the assessee from M/s Omaxe Ltd. was in the nature of debt claim till the possession of the units was handed over to the assessee. It was submitted that the allotment letter issued by M/s Omaxe Ltd. has to be read in this entirety and not in a piecemeal manner. It was submitted that an identical matter has come up before the Coordinate Chandigarh Benches in case of Shri Mohinder Singh Sanghera Vs. Astd. DIT (ITA No. 369 to 371/Chd/2016 vide order dt. 17/09/2018) where the Coordinate Benches has clearly held that the assessee had a claim of debt against M/s Omaxe Ltd. till the proposed property is constructed and possession handed over to the assessee and conveyance deed executed and registered. It was accordingly held in that case that the

assured return received by the assessee was in the nature of interest and has been rightly brought to tax as per Indo-UK DTAA.

7. Per contra, the Ld. DR relied on the findings of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. We find that under the identical set of facts and circumstances of the case, the matter has been decided by the Coordinate Chandigarh Benches in case of **Shri Mohinder Singh Sanghera Vs. Astt. DIT (Supra)** and the relevant findings of the Coordinate Bench are contained at para 9 to 13 of its order which read as under:

*"9. Now, coming to the merits of the case, the Assessing officer while making the impugned additions has relied upon the definition of 'interest' as provided under article 12 of the India -U.K. DTAA, which read as under:-*

*"The term interest as used in Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtors profits, and in particular, income from Government Securities and income from bonds and debentures, including premiums and prizes attaching to such securities, bonds or debentures but, subject to the provisions of paragraph 9 of this Article, shall not include any item which is treated as a distribution under the provisions of Article 11 (Dividends) of this convention."*

*10. The Assessing officer has also referred to the clause 23 of the allotment letter issued by the Omaxe Ltd to the assessee, which reads as under-*

*"23. Unless a conveyance deed is executed and registered, the company shall continue to have full authority over the said Unit and all amounts paid by the Allottee (s) under this allotment shall merely be a token payment for purchase of the allotted unit and shall not give him any lien or interest in the said Unit until he has complied with all the terms and conditions of this Allotment and Conveyance of the said Unit has been executed and registered in his favour."*

*A perusal of the above clause 23 of the Allotment letter reveals that as per the terms and conditions of the allotment letter, unless and until the Conveyance deed is executed and registered, the company i.e. Omaxe Ltd will continue to have full authority over the proposed Unit and all the amounts paid by the allottee shall merely be a token payment and shall not give any lien or interest in the said unit to the allottee. Hence, as per the above clause (23), even after payment of 95% of the sale consideration, in advance, the assessee did not get any lien or interest in the proposed unit to be constructed by Omaxe Ltd. However, in lieu of the 95% of the total sale consideration settled, the Omaxe Ltd. agreed to pay a certain fixed monthly amount to the assessee in the name of assured return. Now the question arises what is the nature of the advance payment made by the assessee to the Omaxe Ltd and what is the nature of the amount received by the assessee as assured return. The facts and circumstances on the file reveal that the property for which the assessee had paid the money was not in existence at the time of making payment and even subsequently was not capable of yielding any income in the shape of rent, lease money and even otherwise was not capable to be commercially exploited.*

11. Under the circumstances, it cannot be said that the assured return was any return from the property in respect of which the assessee had paid the amount. **Even as per the clause 23 of the allotment letter as discussed above, even for making the investment, the payment of the advance money at the rate of 95% of the agreed price, the assessee did not get right of lien in the proposed property. The assessee, under the circumstances, had a claim of debt against the Omaxe Ltd, which means the assessee had advanced money to the Omaxe Ltd. which was nothing but a debt claim till the proposed property is constructed, possession handed over to the assessee and the conveyance deed executed and registered. In our view, it was a financial transaction and the assured money return received by the assessee was nothing else than the interest received by the assessee on the finances made by the assessee to the Omaxe Ltd to be used for the construction of the property.** Therefore, the Omaxe Ltd had rightly deducted the tax @ 15% of the interest / assured return paid to the assessee. Even the assessee on being asked to file the return has also treated the said receipts as interest income. However, subsequently, the assessee changed his stand and come with a plea that the assured return is only in the nature of capital receipt. The assessee in this respect has placed reliance on several decisions of the High Courts and Supreme Court. Without referring to each of the decision, we may point out that the decisions referred to by the assessee are not applicable to the facts and circumstances of the case e.g. in the case of 'CIT Vs. Saurashtra Cement Ltd (2010) 325 ITR 042 (SC) : 192 taxman 300 (SC), the assessee in that case had received liquidated damages for delay in supply of plant and machinery. The Hon'ble Supreme Court held that the damages were directly and intrinsically linked with the procurement of the capital assets i.e. cement plant.

12. Similarly in the other case laws relied upon by the Ld. Counsel for the assessee, it was held that if any expenditure is incurred such as interest paid for acquiring assets, the same will be added to the cost of the assets. However, none of the case laws relied upon by the assessee as discussed above, are applicable to the facts and circumstances of this case. Neither any damages were paid by the Omaxe Ltd. to the assessee for late delivery of the possession of the commercial floors in question nor any advance money was paid by the assessee to get the commercial floors at some concessional rate or on an early date rather as discussed above, as per the clause of the agreement, even after payment of 95% of the price, the assessee did not get right or lien in the property and as discussed above, this was a financial transaction between the assessee and Omaxe Ltd. In view of this, we hold that the assured return received by the assessee was in the nature of interest and the assessee has rightly returned / offered the same as interest income.

13. In view of this, we do not find any justification on the part of the lower authorities in treating the receipts of the assessee as 'income from other sources'. We, accordingly, set aside the impugned order and direct that the assessee in this case has rightly paid the taxes as India – U.K. DTAA. No further addition is warranted. However, the claim of the assessee that it is a capital receipt not liable for taxation is rejected. The appeal of the assessee is, therefore, treated as allowed."

9. Nothing has been brought on record to the effect that the aforesaid decision of the Coordinate Bench has either been stayed or reversed by the Higher Courts. Further, no contrary decision of any Higher authority has been brought to our notice. Therefore, we see no reason to deviate from the view already taken by the Coordinate Benches and following the same, the amount received by the assessee is in the nature of interest taxable @ 15% under Article

12 of India-UK DTAA. In the result, ground no. 9 of the assessee's appeal is allowed in favour of the assessee and against the Revenue.

10. In view of the above, the other grounds of appeals and related contentions have become academic in nature and the same are dismissed as infructuous.

11. In the result, the appeal of the assessee is allowed.

12. In ITA No. 470/Chd/2016, ITA No. 471/Chd/2016, ITA No. 472/Chd/2016, ITA No. 473/Chd/2016, ITA No. 474/Chd/2016, both the parties fairly submitted that the facts and circumstances of the case are exactly identical except for the difference in the amount involved. Therefore, our findings and directions contained in ITA No. 469/Chd/2016 shall apply *mutatis mutandis* to these appeals and the same are decided in favour of the assessee.

13. In the result, all the appeals of the assessee stands allowed.

Order pronounced on 07/11/2022.

Sd/-

Sd/-

**सुधांशु श्रीवास्तव**  
(SUDHANSHU SRIVASTAVA)

**न्यायिक सदस्य / JUDICIAL MEMBER**

**AG**

**Date: 07/11/2022**

**विक्रम सिंह यादव**  
(VIKRAM SINGH YADAV)

**लेखा सदस्य/ ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar