

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2013/MUM/2022
(ASSESSMENT YEAR: 2012-13)

Sunita Vinod Tibrewala,
7/b, Patel Apartment,
Campa Cola Compound,
Worli, Mumbai - 400018
[PAN: AEGPT6603Q]

..... Appellant

Vs

National Faceless Appeal Centre, Delhi

..... Respondent

Appearances

For the Appellant/Assessee : Shri Vinod Shankarlal Tibrewal
For the Respondent/Department : Shri Sanyam Suresh Joshi

Date of conclusion of hearing : 11.10.2022
Date of pronouncement of order : 03.01.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 14.06.2022, passed by the Learned Commissioner of Income Tax (Appeals), National Faceless (Appeals) Centre, Delhi [hereinafter referred to as 'the CIT(A)'] dismissing the appeal for the Assessment Year 2012-13, filed against the Assessment Order, dated 13.12.2019, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:
 1. *The Ld. CIT(A) has erred in confirming the addition of Rs. 3,23,000/- being an amount which was pertaining to assessment year 2011-12 but was taxed in the assessment year 2012-13 on*

receipt basis. Ignoring the fact that the said Income accrued in the assessment year 2011-12 and was merely received in the impugned assessment year i.e. Assessment year 2012-13.

- 2. The Ld. CIT (A) erred in confirming the reopening proceedings initiated by the Ld A.O. without verifying and conducting independent enquiries the same being mechanical in nature.*
 - 3. The Ld. CIT (A) has erred in not considering the submissions made by the Assessee before the Ld. Assessing officer and which was also stated by the assessee in the statement of the facts which was relied by CIT(A) before passing the order u/s 250.*
 - 4. The Ld. CIT (A) has erred in not considering the fact that the income in question pertains to AY. 2011-12 and hence any notice if any in connection with such income should have been issued only in the relevant assessment year i.e. AY. 2011-12 only. However, since reopening the case for AY. 2011-12 was time barred, the Ld. A.O. has added the income in A.Y. 2012-13 on receipt basis. Thus, the Ld. A.O. has erred in reopening the case."*
3. All the above grounds raised by the Appellant are connected and are, therefore, being taken up and disposed together.
 4. The relevant facts, in brief, are that the Appellant, an individual. For the Assessment Year 2012-13, the Appellant did not file return of income as according to the Appellant, her income was below the minimum threshold limit. A notice under Section 148 of the Act was issued on 31.03.2019 on the basis of information received by the Assessing Officer from the office of ITO-34(3)(5), Mumbai, vide letter dated 28.03.2019, that the Appellant had received interest of INR 3,23,800/- from her husband (i.e., Shri Vinod S. Tibrewal) vide cheque, dated 29.07.2011 (INR 2,00,000/-) and 24.02.2011 (INR 1,60,000/-) drawn on Kotak Mahindra Bank. During the proceedings, the Appellant was asked to show cause why interest should not be treated as income. In response, the Appellant submitted that interest income did not pertain to the Assessment Year 2012-13. However, the Assessing Officer was

not convinced and therefore, made an addition of INR 3,23,800/- in the hands of the Appellant vide order, dated 13.12.2019, passed under Section 147 read with Section 143(3) of the Act.

5. Being aggrieved, the Appellant preferred appeal against CIT(A) challenging the reopening of assessment under Section 147/148 of the Act and the aforesaid addition of interest income of INR 3,23,800/-. Vide order, dated 14.06.2022, the CIT(A) dismissed the appeal holding that the reassessment proceedings were initiated on the basis of tangible material that the Appellant had received interest income of INR 3,23,800/- that was above the threshold limit for filing the return of income. On merits, the CIT(A) rejected the contentions raised by the Appellant holding that the Appellant had failed to produce evidence to show that the interest income of INR 3,23,800/- pertained to the Assessment Year 2011-12 and the same was offered to tax.

6. Against the order dated 14.06.2022, passed by CIT(A) the Appellant has preferred the present appeal. On behalf of the Appellant, it was stated that the interest income pertain to Assessment Year 2011-12 and therefore, the same could not have been brought to tax in the hands of the Appellant for the Assessment Year 2012-13. Ld. Departmental Representative submitted that sufficient opportunity were granted to the Appellant to show that the interest income of INR 3,23,800/- has been offered to tax during the Assessment Year 2011-12. However, the Appellant failed to provide any documents even though the interest income was received by the Appellant from her husband.

7. We have considered the rival submissions and perused the material on record. We note that the Assessing Officer has, in paragraph 3 and 3.1 of the Assessment Order, recorded the facts/observations which read as under:

"3. The proceedings 147 was initiated based on the information received from the O/o ITO-34(3)(5), Mumbai vide his letter dt.28/03/2019 that assessee has received interest of Rs. 3,23,800/- from her husband, Shri Vinod S. Tibrewala vide cheque dated 29/07/2011 (Rs.2,00,000) and on 24/02/2012 (Rs. 1,60,000). Both the cheques as per the submission of the assessee dated 01/12/2018 filed before the ITO-34(3)(5), Mumbai are drawn on Kotak Mahindra Bank and out of total interest of Rs. 3,60,000/- Rs. 3,23,800/- refers to interest received from her husband Shri Vinod Tibrewala.

3.1 The assessee vide this office notice u/s 142(1) dt 30/11/2019 was asked to file loan confirmation of her husband Shri Vinod S. Tibrewala for F.Y. 2011-12 relevant to A.Y. 2012-13. However, no such confirmation has been filed by the assessee from her husband. The assessee vide this office show cause notice dt. 08/12/2019 was asked as to why the sum of Rs.3,23,800/- should not be added to her total income. The assessee in response to the said show cause had forwarded a hand written letter through e-submission stating that interest of Rs. 3,23,800/- from her husband pertains to A.Y. 2011-12 and interest offered in the return for the year under consideration refers to A.Y. 2012-13. The assessee before the ITO-34(3)(5), Mumbai had filed a loan confirmation, for A.Y. 2011-12 from her husband which was forwarded to this office and on perusal of the said loan confirmation, it is noticed that assessee had carried forward interest of Rs. 3,23,800/- from her husband as on 31/03/2011 and same has been received in the current financial year relevant to A.Y. 2012-13. It is further seen from the system that no return for A.Y. 2011-12 has been filed by the assessee to prove the fact that the sum of Rs. 3,23,800/- has been offered for taxation in A.Y. 2011-12."

8. On perusal of above, it can be seen that loan was given by the Appellant to her husband and the same was outstanding as on 31.03.2011. A confirmation to this effect was filed before ITO-34(3)(5). This confirmation was forwarded by ITO-34(3)(5) to the Assessing Officer and therefore, formed part of the assessment record. It formed part of the tangible material on the basis of

which re-assessment proceedings were initiated. The Assessing Officer also noted that the interest of INR 3,23,800/- was also outstanding as on 31.03.2011 and was carried forward to the previous year relevant to the Assessment Year 2012-13. The Assessing Officer made the addition for the reason that the Appellant failed to furnish evidence to show that the aforesaid income has been offered to tax for the Assessment Year 2011-12. However, we note that the Assessing Officer had noted the fact that it was further seen from the (internal) system that the Appellant had not filed return of income for the Assessment Year 2011-12. Therefore, the Assessing Officer could not have produced the income tax return for the Assessment Year 2011-12. In any case, the test to be applied was not whether the interest income was offered to tax for the Assessment Year 2011-12, but whether the interest income pertained to Assessment Year 2012-13. The facts on record suggested that the interest income pertained to Assessment Year 2011-12. It was not the case of the Assessing Officer that the Appellant was following cash basis of accounting in respect of interest income. To the contrary before CIT(A), the Appellant contended that interest income accrued during the previous year relevant to the Assessment Year 2011-12 and the interest income could not be taxed on receipt basis during the Assessment Year 2012-13. The CIT(A) did not deal with this contention and dismissed the appeal holding that the Appellant had failed to produce the loan confirmation and/or the uploaded return. We note that in paragraph 5.1.4.2 the CIT(A) has observed that a loan confirmation filed before ITO-34(3)(5), Mumbai which was forwarded to the Assessing Officer and on the basis of the same reassessment proceedings were initiated. Thus, loan confirmation for the Assessment Year 2011-12 issued by the

husband of the Appellant was already on record. Though the Appellant did not file the loan confirmation, the same was available on record. Therefore, to this extent the finding returned by the CIT(A) and Assessing Officer are contrary to material on record. The material on record suggested that the interest income did not pertain to Assessment Year 2012-13. Therefore, the onus shifted on Revenue, and the Revenue failed to bring on record any material to establish that the interest income pertained to Assessment Year 2012-13. Accordingly, we accept the contention of the Appellant that the interest income pertained to Assessment Year 2011-12 and delete the addition of INR 3,23,800/- made by the Assessing Officer. Ground No. 1 raised by the Appellant is allowed while all the other grounds raised by the Appellant are disposed off as being infructuous.

9. In the result, appeal filed by the Appellant is allowed.

Order pronounced on 03.01.2023.

Sd/-

(Om Prakash Kant)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 03.01.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai