

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI**

**BEFORE  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1606/Del/2022  
Asstt. Year: 2016-17

New Horizon Commercial Co. L-74(LGF), South Extension Part-II, New Delhi – 110 049. PAN AAJFN8269P (Appellant)	Vs.	ACIT, Central Circle-5, New Delhi.  (Respondent)
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Assessee by:	Shri Rajkumar Gupta, CA
Department by :	Ms. Sarita Kumari, CIT-DR
Date of Hearing	20.03.2023
Date of pronouncement	20.04.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals) - 24, New Delhi ("**CIT(A)**") dated 31.05.2022 pertaining to the Assessment Year ("**AY**") 2016-17.

2. The assessee has taken the following grounds of appeal: -

- "1. *That under the facts and circumstances, the Ld. A.O. exceeded his jurisdiction in examining the issue of bank FDR intt. of Rs.71,998/since A.Y. 16-17 is unabated year and no incriminating material found and seized during search relating to this issue.*
2. *That in law as well as on merits, the bank FDR intt. of Rs.69,692/- (71,998 - 2306) which relates to last 03 quarters of F.Y.2015-16 i.e. from 01.07.15 to 31.03.16, since accrued and also majorly relates to the period subsequent to the dissolution of assessee partnership firm on 06.05.15, therefore, under no circumstance it can be assessed in the hands of assessee firm.*

2.1 *That the Ld. CIT erred on facts in holding that dissolution deed was not filed before A.O. while it was duly filed during asstt. vide letter Dtd.23.04.21 and the said letter alongwith dissolution deed was filed to Ld. CIT (A) also.*

3. *That without prejudice under the facts and circumstances, addition made without issuing any SCN is violative of principles of natural justice, thus needs to be quashed.”*

3. It is a case of search. Search under section 132 of the Income Tax Act, 1961 **(the “Act”)** was conducted on 12.03.2019. The assessee is a partnership firm. It had not furnished its original return for AY 2016-17 as required under section 139(1) of the Act. Since search under section 132 of the Act was carried out in its case, notice under section 153A was issued and served. In response thereto, the assessee filed return on 25.02.2021 declaring income of Rs. 20,755/-.

4. During assessment proceedings, the Ld. Assessing Officer **(“AO”)** found from Form 26AS that the assessee had received interest income of Rs. 92,753/- from ING Vysya Bank Ltd. on which TDS was deducted. However, P&L account revealed that Rs. 20,755/- has been offered to tax and an amount of Rs. 71,998/- remained undisclosed. The Ld. AO therefore added Rs. 71,998/- to the income of the assessee and completed the assessment accordingly on total income of Rs. 92,753/- vide his order under section 153A of the Act on 23.06.2021.

5. The assessee appealed before the Ld. CIT(A), challenging inter alia, the addition of Rs. 71,998/-.The Ld. CIT(A) discussed this issue in para 4.6.1 and 4.6.2 and recorded his findings in para 4.6.3 which is extracted below:-

*“4.6.3 I have gone through the facts of the case and the submission made by the appellant. There is no evidence available as to whether the dissolution of firm was made known to the Assessing Officer. Further the appellant did not file the said dissolution deed before the department after the dissolution for deactivation of PAN. The fixed deposit in the bank continued to be in the name of firm and the interest income was received and utilised by the appellant only. There is no evidence with the Department to conclusively prove that the firm was dissolved on 06.09.2015. The genuineness of the*

*dissolution deed submitted during the appellate proceedings is not proved beyond doubt as the same was neither submitted before the Department or the Assessing Officer immediately after dissolution nor the same was provided to the Bank to discontinue the FDR. The appellant continued to receive the interest income for the entire previous year. In view of the above, I do not find any reason to interfere with the order of the Assessing Officer and Ground No. 6 of the appeal is accordingly dismissed.”*

6. Aggrieved, the assessee is in appeal before the Tribunal and ground No. 2 and 2.1 relate thereto.

7. Ld. AR submitted that the firm was dissolved on 06.09.2015 w.e.f. 07.09.2015 vide dissolution deed dated 06.09.2015. Interest relates to as well as accrued for the period subsequent to dissolution on 06.09.2015. Hence this interest cannot be assessed in the hands of the assessee being a partnership firm which dissolved on 06.09.2015. The Ld. AR further submitted that the Ld. CIT(A) is incorrect in holding that dissolution deed was not filed during assessment proceedings. According to the Ld. AR copy of dissolution deed was filed before the Ld. AO alongwith letter dated 23.04.2021. Reacting to the finding of the Ld. CIT(A), the Ld. AR submitted that there is no material on record to show that the dissolution deed is not proved. The Ld. AR argued that the impugned interest income could have been assessed as AOP but not in the hands of the assessee partnership firm.

8. The Ld. DR relied on the orders of the Ld. AO/CIT(A). He submitted that the Ld. AO did not know that the firm has been dissolved.

9. We have considered the rival submissions and perused the records. It is not in dispute that Form 26AS reflects the receipt of interest of Rs. 92,753/- by the assessee firm from ING Vysya Bank Ltd. on which the bank has deducted tax at source. It shows that the bank has credited the entire amount of interest of the year in the account of the assessee partnership firm in whose name the accounts stand in the books of the bank. The Ld. CIT(A) has recorded a finding of fact that the fixed deposit in the bank continued in the name of the firm and interest income was received for the

entire previous year and utilised by the firm. This finding has not been controverted by the Ld. AR before us. Moreover, section 189 of the Act mandates that where a firm is dissolved the AO shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Act including the provisions relating to levy of a penalty or any other sum chargeable under any provisions of this Act shall apply to such assessment. It is thus obvious that section 189 keeps the firm alive for the purposes of assessment despite its dissolution. It ensures that the firm which is dissolved does not escape the liability to tax after its dissolution. Therefore, we do not find any substance in the argument of the Ld. AR that the entire amount of interest received by the firm during the previous year cannot be assessed in the hands of the assessee firm. Accordingly, we decide ground No. 2 and 2.1 against the assessee.

10. Ground No. 1 raises this jurisdictional issue. Since AY 2016-17 is unabated year and no incriminating material has been found/seized during search, the Ld. AO exceeded his jurisdiction in examining the issue of bank FDR interest. The Ld. CIT(A) has discussed this issue in para 4.5 of his appellate order. He has incorporated the submissions of the assessee made before him in paras 4.5.2, 4.5.3 and 4.5.4 of his order. He recorded his observations and findings in paras 4.5.5, 4.5.6, 4.5.7 and 4.5.8 of his order. The Ld. CIT(A) analysed the decision of Hon'ble Delhi High Court in CIT vs. Kabul Chawla (2016) 380 ITR 573 (Delhi) and tested the facts of the assessee's case on the anvil of the principles of law enunciated by the Hon'ble Delhi High Court in the decision (supra) and recorded his conclusion in para 4.5.8 as under:-

*"4.5.8 This is a case where the return of income was not filed by the appellant for the AY under consideration. Since no return has been filed the entire income shall be regarded as undisclosed income. Consequently, in my considered opinion, the AO would have the authority/jurisdiction to assess the entire income similar to jurisdiction in regular assessment u/s 143(3). Therefore, there will be no requirement to restrict to documents found during the course of search. The assessment year 2016-17 would therefore not be an unabated assessment as no return was filed for AY 2016-17. Accordingly, **Ground No. 5 of the appeal is dismissed.**"*

10.1 Being aggrieved the assessee is in appeal before the Tribunal and ground No. 1 relates thereto.

10.2 Before us, the Ld. AR did not advance any arguments in order to refute the findings of the Ld. CIT(A). It is not in dispute that the assessee had not filed its original return for AY 2016-17 under section 139(1) of the Act leading to the legitimate legal inference that the entire income pertaining to AY 2016-17 would be regarded as undisclosed income in a case where search under section 132 of the Act has been conducted. In such a scenario, in our view the Ld. CIT(A) has rightly held that the Ld. AO would get the jurisdiction to assess the entire income similar to that in regular assessment under section 143(3) of the Act as assessment for AY 2016-17 is unabated. We endorse the finding of the Ld. CIT(A) and decide ground No. 1 against the assessee.

11. Ground No. 3 is of general nature. There is no violation of the principle of natural justice.

12. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open court on 20<sup>th</sup> April, 2023.**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 20/04/2023

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)

5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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