

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH AT NEW DELHI
(Through virtual mode)**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 7797 & 7798/Del/2017
Assessment Years: 2010-11 & 2011-12**

Raju Verma, 17/1, CURZON
ROAD, Dehradun.

PAN: ABIPV8176F
(Appellant)

Versus DCIT, Central Circle,
Dehradun.

(Respondent)

Assessee by: Shri K.K. Juneja, Advocate
Revenue by: Shri N.S. Jangpangi, CIT/DR

Date of hearing : 27.04.2023
Date of pronouncement : 10.05.2023

ORDER

PER SAKTIJIT DEY, J.M.:

Captioned appeals by the assessee arise out of a consolidated order dated 21.09.2017 of ld. Commissioner of Income-tax (Appeals)-IV, Kanpur, confirming penalty imposed u/s. 271(1)(c) of the Income-tax Act, 1961 for nine assessment years, viz., 1998-99 and 2004-05 to 2011-12. However, presently, we are concerned with assessment years 2010-11 and 2011-12.

2. Briefly, the facts are, the assessee is a resident individual deriving income from salary, house property and other sources. There was a search and seizure operation conducted u/s. 132 of the Act on the assessee on 14.03.2012. Pursuant to such search and seizure operation, proceeding u/s. 153A of the Act was initiated. In response to notice issued u/s. 153A of the Act, Assessee furnished its returns of income for the assessment years under dispute. In course of assessment proceedings, Assessing Officer found that during the search and seizure operation, a bank account held by the Assessee in HSBC Bank, Switzerland was found. It was noticed that the said bank account was opened by the Assessee in financial year 1996-97 and as on the date of search and seizure operation, the balance standing in the said bank account was USD 181,426. When confronted with the foreign bank account, the Assessee made a disclosure of Rs.90.56 lacs at the conversion rate of Rs.49.92 per USD, which comprised of the principal component and accumulated interest thereon till closing of account in financial year 2013-14. In course of assessment proceedings, the Assessing Officer, after examining the facts relating to disclosure of income by the Assessee at the time of search and seizure operation and

other materials on record, was of the view that the interest component earned by the Assessee on the deposits in the foreign bank account has to be taxed in the year of accrual only. Since, the Assessee had not offered such interest income in the year of accrual, the Assessing Officer charged interest at the conversion rate prevailing during the relevant period and made additions of Rs.27,09,452/- and Rs.33,13,904/- in the assessment years 2010-11 and 2011-12 respectively. Of course, similar additions were also made in assessment year 1998-99 and assessment years 2004-05 to 2009-10. Based on such additions, the Assessing Officer initiated proceeding for imposition of penalty u/s. 271(1)(c) of the Act and ultimately passed orders imposing penalty of various amounts in different assessment years, as noted above. The penalties so imposed were also confirmed by ld. first appellate authority.

3. Before us, ld. Counsel, appearing for Assessee, submitted that in so far as the present assessment years are concerned, the quantum appeals are still pending before ld. Commissioner (Appeals). Therefore, without disposing of the quantum appeals, ld. first appellate authority should not have decided the penalty appeals. Without prejudice, he submitted, identical additions made by the Assessing Officer in

assessment years 2006-07 to 2009-10 have been deleted by the Tribunal. In this context, he relied upon order dated 29.07.2022 passed in ITA Nos. 1805 to 1808/Del/2017. He submitted, even Id. Commissioner (Appeals) himself had deleted identical addition while deciding Assessee's appeal in assessment year 2009-10. Proceeding further, he submitted, penalty imposed u/s. 271(1)(c) of the Act under identical facts and circumstances for assessment year 1998-99 and 2004-05 to 2009-10 have also been deleted by the Tribunal. In this context, he placed on record relevant orders of the Tribunal. Thus, he submitted, the present appeals are squarely covered in favour of the Assessee by earlier decisions of the Tribunal.

4. Learned Departmental Representative strongly relied upon observations of the Assessing Officer and Id. Commissioner (Appeals). However, he could not controvert Assessee's submission that issues are covered by the earlier decisions of the Tribunal.

5. We have considered rival submissions and perused the materials on record. Undisputedly, the additions leading to imposition of penalty u/s. 271(1)(c) of the Act were on account of interest on the balance standing in the foreign bank account of the Assessee. It is a fact on

record that the assessee had offered the entire balance standing in the foreign bank account along with accumulated interest thereon in the return of income filed for the assessment year 2013-14. However, the Assessing Officer was of the view that the interest income has to be assessed on accrual basis in the relevant assessment years, wherein, the interest income accrued. Accordingly, he added the interest income on accrual basis in assessment year 1998-99 and assessment years 2004-05 to 2011-12. It is observed, while deciding quantum appeals of the Assessee, contesting the addition of interest income on accrual basis, the Tribunal in assessment years 2006-07 to 2009-10 (supra) has deleted the additions made by the Assessing Officer. In fact, Id. Commissioner (Appeals) himself has deleted identical addition while deciding Assessee's appeal for the assessment year 2009-10. As discussed earlier, in the impugned order, Id. Commissioner (Appeals) has disposed of appeals for nine assessment years, starting from 1998-99 and 2004-05 to 2011-12, confirming the penalty imposed u/s. 271(1)(c) of the Act. Pertinently, while deciding Assessee's appeals, challenging the imposition of penalty u/s. 271(1)(c) of the Act, the Tribunal, having taken note of the fact that while deciding quantum

appeals, the additions on account of interest income have been deleted, concluded that penalty imposed u/s. 271(1)(c) of the Act is unsustainable. Accordingly, the Tribunal has already deleted penalty imposed in assessment year 1998-99 and 2005-06 in ITA No. 7785/Del/2017 and others dated 08.11.2021. Further, the Tribunal has deleted similar penalty imposed in assessment years 2006-07 to 2009-10 in ITA No.7793/Del/2017 and others dated 16.12.2022. Factually, the present appeals stand on identical footing. Therefore, when the Assessee has succeeded both in quantum as well as penalty proceedings before the Tribunal in respect of identical additions made in other assessment years, the penalty imposed u/s. 271(1)(c) of the Act in the present assessment years have to be deleted, as they stand on similar footing. Accordingly, we have no hesitation in deleting penalty imposed u/s. 271(1)(c) in both the assessment years under dispute.

6. In the result, appeals are allowed as indicated above.

Order pronounced in the open court on 10/05/2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated : 10.05.2023