

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA Nos. 1648 & 1649/MUM/2023
Assessment Year: 2014-15 & 2015-16

M/s Aditya Vikram Birla Memorial
Trust,
C-1, Aditya Birla Centre, S K Ahire
Marg Worli,
Mumbai-400030.
PAN NO. AAATA 7506 M
Appellant

Vs.

DCIT-(Exem.)-1(1),
Room No. 508, 5th floor,
Piramal Chamber,
Lalbaug, Parel,
Mumbai-400012.
Respondent

Assessee by : Mr. Ronak Doshi & Deep Chauhan
Revenue by : Ms. N.V. Nadkarni, CIT-DR

Date of Hearing : 25/07/2023
Date of pronouncement : 31/07/2023

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders both dated 20.03.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2014-15 and 2015-16 respectively. As the issue in dispute involved in both these appeals being identical, same were heard together and disposed off by way of this consolidated order for sake of convenience.



2. The grounds raised in assessment year 2014-15 are reproduced as under:

1. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming addition made by the AO to the total income amounting to Rs.8,84,34,774/-.*
2. *The Hon'ble CIT(A), inter-alia, failed to appreciate and ought to have held that for recognizing interest income, the appellant is consistently following the cash system of accounting and hence, such interest is correctly not offered to sale.*
3. *The appellant can follow receipt/cash basis accounting for the aforesaid interest.*

3. The grounds raised in assessment year 2015-16 are reproduced as under:

GROUND NO. 1: ADDITION ON ACCOUNT OF INTEREST ACCRUED BUT NOT RECEIVED OF RS. 13,95,88,077/-:

1. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming addition made by the Id. AO to the total income amounting to Rs.

13,95,88,077/-.

2. The Hon'ble CIT(A), inter-alia, failed to appreciate and ought to have held that for recognizing the disputed interest income, the Appellant is consistently following the cash system of accounting and hence, such interest is correctly not offered for sale accrual but on receipt.

3. The Appellant can follow receipt / cash basis accounting for the aforesaid interest.

4. Without Prejudice to above, the Appellant prays that the same income should not be taxed twice due to difference in method of accounting followed by the Appellant and the department and hence, appropriate directions be given to eliminate double taxation of same income.



2. Briefly stated, facts of the case are that the assessee is a charitable trust registered with the Charity Commissioner under the Maharashtra Public Trust Act and also registered u/s 12A of the Income-tax Act, 1961 (in short 'the Act') vide Registration granted by the DIT(E), Mumbai dated 10.10.1996. In the return of income filed for the respective assessment years i.e. assessment year 2014-15 and 2015-16, the interest income which had accrued to the assessee, was not taken into account while computing total income for the previous year relevant to the assessment year 2014-15 and 2015-16. It was submitted by the assessee before the Assessing Officer that the assessee was following cash basis of the accounting for the purpose of the interest income. The Assessing Officer rejected the contention of the assessee and held that the interest income of Rs.8,84,34,774/- for AY 2014-15 and interest income of Rs.13,93,88,077/- for assessment year 2015-16 as income of the assessee in the respective assessment years. On further appeal, the Ld. CIT(A) upheld the accrual basis of assessment of interest income. In the assessment year 2014-15, the Assessing Officer reduced the interest income which was assessed on accrual basis in immediately preceding assessment year i.e. assessment year 2013-14, but shown on cash basis in the relevant assessment year. But in assessment year 2015-16, no such benefit of interest income assessed on accrual basis in earlier year was given.



3. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the issue in dispute in the grounds raised is whether the interest income accrued in respect of properties held by the assessee should be included into the income of the year under consideration or not. The provisions of the Act i.e. Explanation below section 11(1) of the Act provides for a situation when interest income though accrued it has not been received in the year under consideration in such cases, the conditions for the application of the income has been relaxed and assessee has been given option to consider the said income for application either in the immediately succeeding year of accrual or previous year in which income is received. For exercising such an option the assessee is required to intimate the Assessing Officer before the expiry of the time allowed under section 139 for filing the return of income. In the case, the assessee did not exercise such an option and therefore the Assessing Officer treated the interest accrued for the purpose of computing income for relevant years. The Ld. CIT(A) has given identical finding in both the assessment years. For ready reference, the finding of the Ld. CIT(A) for assessment year 2014-15 is reproduced as under:

“3.2.1 It is observed from the appellant's audited accounts, more particularly the disclosure provided in the accounts towards "Significant Accounting Policies and Notes to Accounts" that the financial statements have been prepared on accrual basis and there has been no stipulation therein as to the cash basis of accounting followed for interest income. The principles of general commercial accounting require the



accounting for income as and when the right to receive it is vested in the recipient even though the actual receipt is deferred. The appellant has also followed the same principles as is evident from the disclosure made for significant accounting policies. Legally, it has been well settled by now that a trust enjoys a special status as to its income derived from the property held under the trust for which general commercial principles of accountancy is to be applied in exclusion of the mandate as provided in section 145 of the Act. It is to be observed that while section 2(45) specifically defines 'total income', the expression used in section 11(1) is 'only income'. Accordingly, it would be incorrect to assign to the word income used in section 11(1)(a) the same meaning as has been specifically assigned to the expression 'total income' in section 2(45). The CBDT in Circular No. 5P (LXX-6), dated 19.06.1968 has also adopted the same approach. This predicates the necessity of adopting the general commercial principles for computation of income of the trust. The method of computing income of a charitable trust is, thus, different from that followed in the case of other assessees.

In the case of a trust, it is the commercial concept of income which is to be considered and not the income as computed under the various heads of income as specified in section 14. In other words, the income for the purpose of section 11 is the income as per the accounts of the trust. It means the income in the commercial sense, without reference to the heads of income specified in section 14, i.e., the book income and not the total income as defined in section 2(45). Therefore, in computing the income of trust, the provisions of section 145 cannot have any application. It may also be observed that the sub-section (4) of section 11 specifically lays down the mode of determination of the income of the business undertaking of a trust. A similar provision is not to be found with regard to the other incomes of the trust. Thus, by an inferential process, it can be said that the mode of determination in respect of a trust is only restricted to the income of the business undertaking. Impliedly, the income that has to be computed with regard to a trust is one based on the accounts of the trust where the accounts are maintained in conformity with the commercial principles of accounting. Thus, the issue as regards the computation of income needs to be understood in exclusion of the heads of income specified in section 14 and in



exclusion to the manner of computation of income as provided in Chapter IV of the Act. Even in interpreting the several provisions of the Act, wherever the expression 'income' occurs, there has been some divergence in the meaning given to that expression on account of the particular context involved. In the context of section 11, which contemplates application or accumulation of income for charitable or religious purpose, it has necessarily to be the income as accounted for in the accounts and not as computed under the Act. Moreover, wherever the statute contemplated the income being computed in the manner set out in the provisions of the Act, appropriate words are used. Such is not the case with section 11(1). Hence, income from the properties held under trust would have to be arrived at in the normal commercial manner without reference to the provisions which are attracted by section 14 of the Act.

3.2.2 For all the reasons elucidated in para 3.2.1 above, I am of the considered view that the appellant's reliance upon the provisions of section 145 in respect of accounting for interest and computation of income thereof is bereft of any merits and hence, it is rejected. The said interest income has to be computed on normal commercial principles which mandates recognition of income whenever there is a right to receive it. In the case on hand, the income by way of interest of Rs.8,84,34,774/- has rightly accrued to the appellant trust during the previous year 2013-14 which is evident from the accrual method of accounting followed by the appellant, and the disclosure made towards "Significant Accounting Policies and Notes to Accounts" testifies to this fact. Therefore, the AO has rightly held it to be income derived from the property held under the trust in relation to the previous year 2013-14 relevant to AY 2014-15."

3.1 In our opinion as far as the interest receipt for the purpose of income is concerned, the Ld CIT(A) following commercial principle of recognising income treated the interest income as taxable on accrual basis. The finding of the ld CIT(A) is well reasoned and we do not find any error in the order of the Ld. CIT(A) on the issue in



dispute but as far as application of the said interest income is concerned, there is only a technical breach on the part of the assessee and therefore such application could be considered as per the provisions of Explanation below the section 11. Since, no such plea has been made before us for the application of income and therefore, we are not adjudicating upon the same. As far as giving benefit or credit of the income assessed on accrual basis in earlier years , which shown by the assessee on cash basis in the subsequent assessment year, the Ld. CIT(A) in assessment year 2014-15 has held as under:

“4.1 Apropos the above, it is submitted by the appellant that as per the method of accounting followed by it, the appellant had offered income from interest on receipt basis amounting to Rs.3,64,87,862/- in the current AY 2014-15. Although the AO has already taxed it in the preceding AY 2013-14 on accrual basis of interest income after negating the appellant's accounting for interest on receipt basis, yet the AO has not excluded the same amount in the current year's assessment of the total income. It is, thus, submitted by the appellant that the action of the A is tantamount to double taxation of the same income. first in AY 2013-14 and then in AY 2014-15.

4.2 After due consideration of facts of the case, the contentions of the appellant are found to be correct. The above interest of Rs. 3,64,87,862/- accrued to the appellant in the previous year 2012-13 (AY 2013-14) but was received in the previous year 2013-14 (AY 2014-15), and the appellant has shown it as its income for AY 2014-15 on receipt basis. It is observed that while making the assessment for AY 2013-14, the AO has assessed it as income for AY 2013-14 on accrual basis. However, the AO has not excluded it in



the assessment made for the current AY 2014-15. This is, thus, an instance of double taxation of the same income which cannot be countenanced under law.

4.2.1 In view of the above and for decision rendered on Ground No. I above, the contentions of the appellant are accepted. The AO is, therefore, directed to exclude the interest income of Rs.3,64,87,862/- which has been assessed in AY 2013-14 from the computation of income for the current AY 2014-15. Consequently, the Ground No. II (including the sub-Grounds 1, 2 and 3) is allowed.”

3.2 Before us, the Ld. Counsel of the assessee submitted that identical benefit has not been granted by the Ld. CIT(A) in assessment year 2015-16. Before us, the Ld. Counsel of the assessee has filed a computation of the total income for assessment year 2016-17. It is settled law that same income cannot be subjected to assessment twice therefore, we hold that irrespective of the method of accounting followed by the assessee if particular amount of interest income has been assessed by the Assessing Officer on accrual basis in one assessment year, then same interest amount shall not be assessed in the subsequent assessment year on cash basis. Accordingly, we direct the Ld. Assessing Officer to give benefit of the interest income which has been assessed on accrual basis in assessment year 2015-16 and should be excluded for taking into consideration for the purpose of the income on cash basis in subsequent assessment year i.e. assessment year 2016-17 and onwards. The grounds of appeal for assessment year 2014-15



are dismissed whereas grounds for assessment year 2015-16 are accordingly partly allowed.

4. In the result, the appeal of the assessee for AY 2014-5 is dismissed whereas the appeal for the AY 2015-16 is partly allowed.

Order pronounced in the open Court on 31/07/2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/07/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai