

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.2742/Del/2022
Assessment Year: 2003-04

The DCIT, Central Circle-04, New Delhi	vs.	Anand Persad Jaiswal, 54, Ring Road, Lajpat Nagar-III, New Delhi 110024 PAN ADRPJ 2549 M
(Appellant)		(Respondent)

For Revenue:	Shri Kanv Bali, Sr. DR
For Assessee:	Shri Deepchand Garg, CA

Date of Hearing :	17.08.2023
Date of Pronouncement :	06.09.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed by the Revenue against the order of CIT(A)-23, New Delhi dated 25.08.2022 for AY 2003-04.

2. The grounds raised by the Revenue are as follows:

1. *The Ld. CIT(A) has erred in quashing the assessment order relying on the decision of Hon'ble Delhi High Court in the case of Brahm. Dutt (100 taxmann.com 324) without appreciating that the amendment to Sec 149(1) of the Income-tax Act, 1961 by Finance Act, 2021 was retrospective in nature in view of Explanation to Sec 149 as held by ITAT (D Bench Mumbai) in the case of Dilip J. Thakkar (135 taxmann.com 208) after considering the decision of Hon'ble Delhi High Court in Brahm Dutt (supra).*

2. *The Ld. CIT(A) has erred in holding that the assessee, being non-resident, is out of purview of the tax liability as the income was earned outside India without appreciating the fact that the assessee has failed to discharge its onus in establishing that the source of credit in the bank accounts of the is not from India.*

Ground no. 1 of Revenue

3. The Id. Senior DR submitted that the Id. CIT(A) has erred in quashing the assessment order relying on the decision of Hon'ble Delhi High Court in the case of Brahm Dutt vs. ACIT reported as 100 taxmann.com 324 (Del.) without appreciating that the amendment to section 149(1) of the Act by Finance Act 2021, was retrospective in nature in view of explanation to section 149 of the Act as has been held by ITAT Mumbai in the case of Dilip J. Thakkar 135 taxmann.com 208 (ITAT Mumbai) after considering the judgment of Hon'ble Delhi High Court in the case of Brahm Dutt (supra). Therefore conclusion of Id. CIT(A) quashing the reassessment order may kindly be reversed restoring the reassessment order dated 18.06.2021 for AY 2002-03.

4. Replying to the above, the Id. Assessee Representative (AR) drew our attention towards relevant paras of first appellate order and submitted that when the assessment for AY 2003-04 had attained finality on 31.03.2010 and thus the last date of issuing notice was expired on 31.03.2010 before insertion of amendment in section 149 of the Act on 01.07.2012 then the Id. CIT(A) was right in following the ratio of the judgment of Hon'ble High Court of Delhi in the case of Brahm Dutt (supra) wherein it was held that on 22.03.2021 the Assessing Officer has no power to assume jurisdiction u/s. 147 of the Act for initiation of reassessment proceedings and thus impugned reassessment order was rightly quashed by the Id. CIT(A).

5. On careful consideration of above submissions, first of all, we note that the Assessing Officer issued notice u/s. 148 of the Act on 20.03.2020 and in response to same the assessee filed letter dated 27.03.2021 along with copy of the return of income filed u/s. 139(1) of the Act for AY 2003-04. The assessee carried the matter before Id. CIT(A) on the strength of preposition rendered by Hon'ble jurisdictional High Court of Delhi in the case of Brahm Dutt vs. ACIT (supra). In the said judgment the Hon'ble Delhi High Court rendered preposition that amendment to section 149 by Finance Act 2012, which extended limitation for reopening assessment to sixteen years, cannot be restored to for reopening proceedings concluded before amendment became effective (on 01.07.2012). In that case, the first issue before Hon'ble High Court was, as to

whether AY 1998-99 could not have been reopened beyond 31.03.2005 in terms of provisions of section 149 as applicable at relevant time. Hon'ble High court answered in affirmative. The second issue before the Hon'ble High Court was as to whether subsequent amendment to section 149, by Finance Act, 2012, which extended limitation for initiation of reassessment proceedings to sixteen years, could not be resorted to for reopening concluded proceedings in respect of which limitation had already expired/lapsed before amendment became effective. Hon'ble High Court answered in affirmative. The Id. Senior DR has placed vehement reliance on the order of ITAT Mumbai in the case of Dilip J. Thakkar (supra) and the Id. AR has pressed into service judgment of Hon'ble jurisdictional High Court of Delhi in the case of Brahm Dutt (supra) which has binding effect on all the authorities below including this Tribunal. Therefore, binding preposition rendered by Hon'ble jurisdictional High Court (supra) has rightly been followed by the Id. CIT(A).

6. We are unable to see any ambiguity and perversity or any other valid reason to interfere with the findings recorded by the Id. CIT(A) while quashing the reassessment notice u/s. 148 of the Act dated 20.03.2020 and impugned reassessment order dated 18.06.2021 u/s. 147 r.w.s. 143(3) of the Act by relying ratio of the judgment of Hon'ble jurisdictional High Court of Delhi in the case of Brahm Dutt vs. ACIT (supra). Accordingly, ground no.1 of Revenue is dismissed.

Ground no. 2 of Revenue

7. Apropos ground no. 2 the Id. Senior DR supported the action of the Assessing Officer and the Id. AR supported the first appellate order.

8. As per provision of section 5(2) of the Act which is charging section for non-resident, Indian income of non-resident is taxable under the provisions of Income Tax Act 1961, and any other income earned outside India is not taxable in India. As per said legal position the interest income earned by the non-resident assessee from Standard Chartered Bank, New Jersey Foreign Branch is not taxable in India as the same has been accrued to non-resident assessee from the deposits in the bank situated outside

India and thus the same interest income cannot be deemed as received or deemed to be received in India or accrue or arises or deemed to be accrue or arise in India and thus the Id. CIT(A) was correct and justified in holding that the same was not liable to tax in India in the hands of non-resident Indian assessee. Accordingly, no interference is called for in the conclusion drawn by the Id. CIT(A) on merits and thus the ground no. 2 of Revenue is dismissed.

9. In the result the appeal of Revenue is dismissed.

Order pronounced in the open court on 06.09.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 06th September, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi