

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D': NEW DELHI  
BEFORE,  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.761/Del/2023  
(ASSESSMENT YEAR 2016-17)**

Ranjan Dagar BK-16 (West) Shalimar Bagh North West Delhi-110088 PAN-ADKPD 7090A	Vs.	ACIT International Taxation Circle-1(2)(2) Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Vibhu Gupta, Advocate
Department by	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	23/08/2023
Date of Pronouncement	21/11/2023

**ORDER**

**PER M. BALAGANESH AM:**

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals), Delhi-42, [hereinafter referred to as 'Ld. CIT(A)'] in DIN & Order No: ITBA/APL/S/250/2022-23/1050179946(1) dated 28/02/2023 against the order passed by Assistant Commissioner of Income Tax, Central Int. Tax 1(2)(2), Delhi (hereinafter referred to as the

‘Ld. AO’) u/s 147 of the Income Tax Act (hereinafter referred to as ‘the Act’) on 27/05/2022 for the Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal before us:-

*“1. That on the facts and circumstances of the case the order passed by CIT(A) is contrary to facts and bad in law.*

*2. That on the facts and circumstances of the case and in law the assumption for jurisdiction under section 147 of the I.T. Act by the Assessing Officer is bad in law and therefore, the reassessment order passed by the Assessing Officer needs to be quashed.*

*3. (a) That on the facts and circumstances of the case and in law the CIT(A) erred in upholding the addition of Rs.39,70,120/- on account of alleged interest income from M/s Omaxe Ltd. by giving an erroneous finding that impugned interest had accrued to the appellant in A.Y.2016-17.*

*(b) That CIT(A) failed to consider the settled legal proposition that it is the real income which has accrued which can be brought to tax and not any notional income as per following propositions settled by Supreme Court:-*

*(i) Income tax is not payable on any income which could have been earned but has not been earned.*

*Vide—CIT Vs. Shoorji Vallabhdas & Co. 46 ITR 144 (SC)*

*Godhra Electricity Co. Ltd. Vs. CIT 225 ITR 746 (SC)*

*(ii) Income accrues when the assessee acquires a right to receive the income.*

*Vide—E.D. Sassoon & Co. Ltd. Vs. CIT 26 ITR 27 (SC)*

*4. The on the facts and circumstances of the case and in law the CIT(A) failed to consider the following:-*

*(i) that the interest income of Rs.39,70,120/- from Omax Ltd. was disputed and subject to litigation and hence could not be brought to tax during A.Y.2016-17;*

*(ii) that merely since the TDS on said interest income was reflected in Form 26AS could not form the basis for taxing it in A.Y.2016-17;*

*(iii) that the impugned amount of interest income was offered to tax by the appellant in A.Y.2019-20, when the same was actually received;*

*(iv) that upholding of the addition resulted in double taxation of the same income.*

*5. That appellant craves leave to add, alter, amend, modify any of the grounds of appeal at the time of hearing of earlier.”*

3. We have heard the rival submissions and perused the materials available on record. During the year under consideration, the assessee was a non-resident salaried individual employed with Philips Electronics Singapore Pvt. Ltd and deriving only income from other sources in India. The assessee received only income of Rs.1,53,546/- under the head income from other sources and since it was less than the maximum amount not chargeable to tax, the assessee did not file any return of income for the Asst Year 2016-17 in India. On 26.3.2021, the ld. AO issued a notice u/s 148 of the Act to the assessee. In response thereto, the assessee filed his return of income declaring total income of Rs.1,43,450/- on 19.4.2021 under the head income from other sources. The sole grievance of the revenue is that the assessee was entitled to interest income of Rs.39,70,120/- from Omaxe Ltd on which due deduction of tax at source was also made by the payer and that the said interest income was not offered to tax by the assessee in the return of income. It is not in dispute that the assessee along with his brother Shri Arun Dagar, jointly entered into an agreement with Omaxe Ltd for allotment of a Multiplex in the Commercial Complex

known as 'NRI City Centre' situated at Omega –II, Greater Noida, District Gautam Budh Nagar (U.P.), pursuant to which agreement, the assessee was entitled to receive interest income every month on the lumpsum amount given to Omaxe Ltd. It is not in dispute that such monthly interest was to be paid by Omaxe Ltd till the offer of possession of the Multiplex Unit.

4. During the year under consideration, Omaxe Ltd deducted tax at source of Rs.3,97,012/- in respect of the amount of Rs.39,70,120/- on account of interest. It is a fact that despite deduction of tax at source, the interest was not paid by Omaxe Ltd to the assessee during the financial year 2015-16 relevant to Asst Year 2016-17. Since the assessee was following cash system of accounting, the said interest income of Rs.39,70,120/-, being not received during the year, was not offered to tax by the assessee in the return of income. This fact was duly informed to the ld. AO by the assessee during the course of re-assessment proceedings vide letter dated 19.03.2018. It was also submitted that the assessee had gone into litigation with Omaxe Ltd before the Hon'ble Jurisdictional High Court and the same stood resolved by the

Hon'ble Delhi High Court by passing an order in the case of the assessee and others in OMP (ENF.)(COMM) 25/2017 dated 2.11.2018 directing Omaxe Ltd to pay the assured return (i.e. interest) to the assessee and his brother for the period 1.8.2014 to 11.11.2015 amounting to Rs.5,67,159/- per month along with interest at the rate of 10% commencing from 11.11.2015. The relevant extracts of the order of the Hon'ble Delhi High Court enclosed in Pages 20 to 22 of the Paper Book are reproduced hereunder:-

*“(i) The Judgement Debtor i.e. OMAXE LTD , would pay lease rent for the period spanning between 1.8.2014 and 11.11.2015 at the rate of Rs 5,67,159/- per month, within a period of three months from the date of receipt of a copy of the order with interest at the rate of 10% commencing from 11.11.2015.”*

5. Pursuant to the aforesaid order of Hon'ble Delhi High Court, Omaxe Ltd paid an amount of Rs.56,28,734/- to the assessee which included the amount of Rs.39,70,120/- in respect of which tax was deducted at source in Asst Year 2016-17. The entire amount of Rs.56,28,734/- received from Omaxe Ltd was offered to tax by the assessee in the return filed for the Asst Year 2019-20 in India. The copy of the return for the Asst Year 2019-20 together with the computation of total income is placed on record in Pages 23 to 57 of

the Paper Book. It was specifically submitted before the ld. AO by the assessee, that the interest income of Rs.39,70,120/- was duly offered to tax by him on receipt basis in Asst Year 2019-20. The ld. AO however, disregarded the submissions of the assessee and proceeded to add the interest income based on Form 26AS reflection amounting to Rs.39,70,120/- in the re-assessment framed in the hands of the assessee. This action of the ld. AO was upheld by the ld. CIT(A).

6. It is a fact that assessee had duly offered the interest income of Rs.39,70,120/- on receipt basis in Asst Year 2019-20 which is in consonance with the cash system of accounting regularly followed by him. Hence adding the same again in Asst Year 2016-17 would only amount to double addition. There is no dispute to the fact that the assessee is following cash system of accounting as the assessee has been accounting the interest income from Omaxe Ltd on receipt basis only in earlier assessment years also. Merely because Omaxe Ltd had deducted tax at source during the year under consideration amounting to Rs.3,97,012/- , the assessee cannot be fastened with tax liability ignoring the method of accounting regularly employed by him. In view of the same, we have no hesitation in directing the

ld. AO to delete the addition made in the sum of Rs.39,70,120/- on account of interest during the year under consideration.

7. Since relief is granted to the assessee on merits, the grounds raised on the legal issue are hereby left open and no opinion is given on the same.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21<sup>st</sup> November, 2023.

Sd/-

**(CHALLA NAGENDRA PRASAD)**  
**JUDICIAL MEMBER**

Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 21/11/2023

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI