

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5422/Del/2017
(Assessment Year: 2014-15)

Smt. Sneh Lata Sawhney, Wife of Late Shri Bhushan Lal Sawhney, 6, Link Road, Jangpura Extension, New Delhi (Appellant)	Vs. ACIT, Central Circle-7, New Delhi
PAN: EJKPS1519F	(Respondent)

Assessee by :	Dr. Rakesh Gupta, Adv Shri Somil Agarwal, Adv Shri Tarun Kumar, Adv
Revenue by:	Shri Kanv Bali, Sr. DR
Date of Hearing	09/02/2024
Date of pronouncement	14/02/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.5422/Del/2017 for AY 2014-15, arises out of the order of the Commissioner of Income Tax (Appeals)-24, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 177/16-17, dated 28.06.2017 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.09.2016 by the Assessing Officer, ACIT, Central Circle-07, New Delhi (hereinafter referred to as 'ld. AO').
2. The assessee has raised the following grounds of appeal :-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.53,92,649/- on account of notional interest on the alleged bank account with HSBC and that too by recording incorrect facts and findings and in violation of principles of natural justice and without confronting the entire adverse material available on records.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.53,92,649/- on account of notional interest is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 234A and 234B of Income Tax Act, 1961.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

3. The only effective issue to decide in this appeal is whether the Id CIT(A) was justified in confirming the addition made on account of notional interest income on alleged deposit with HSBC Bank Account in Geneva.

4. We have heard the rival submissions and perused the material available on record. The return of income for AY 2014-15 was filed by the assessee on 08.09.2014 declaring loss of Rs. 6,86,251/- from business and profession. During the course of scrutiny assessment proceedings, information was called for from the assessee in respect of foreign bank account held with HSBC Bank, Geneva and interest income thereon. The Id AO also observed that there was search operation conducted on the assessee on 28.07.2011. As per information available with the department, the assessee has maintained an account with HSBC Bank, Geneva. The Id AO relied on the observation made by his processor for AY 2006-07 assessment orders framed in the case of the assessee. The assessee in response to the query raised by the Id AO submitted that no bank account with HSBC Bank, Geneva was

maintained by him and accordingly there is no interest income thereon. The Id AO however did not heed to this contention of the assessee. Similar explanation given by the assessee in earlier years were rejected by the Id AO wherein, interest income @4% on the alleged deposit balance was added year on year. The Id AO during the year under consideration made the same addition of notional interest @4% on the deposit balance. The deposit balance was added in FY 2006-07 and thereafter interest @4% alone year on year was added. In this manner, the interest income added in AY 2014-15 was Rs. 53,92,649/-. The Id AO also observed that the assessee and his wife Smt. Sneh Lata Sawhney are the beneficiaries of the said bank account and accordingly added notional interest on alleged deposit in the hands of the assessee on substantive basis and same addition was sought to be made on protective basis in the hands of Smt. Sneh Lata Sawhney. This action of the Id AO was upheld by the Id CIT(A).

5. At the outset, the Id AR submitted that the assessee Mr. Bhushan Lal Sawhney had passed away on 02.12.2018 and that the legal heir of the assessee is Smt. Sneh Lata Sawhney. The Id AR submitted that no foreign bank account was ever maintained by assessee or his wife with HSBC Bank, Geneva and hence, there is no question of adding any notional interest income thereon @4% on the alleged deposit balance. Further, he submitted that though the Id AO in para 4.2 of his order had stated that protective assessment of the same notional interest income has been made in the hands of Smt Sneh Lata Sawhney, but no such protective assessment was ever framed in the hands of wife. The Id AR submitted that this may be taken as a statement made from the bar. He also placed on record the Tribunal order passed in the case of the assessee for AY 2006-07 to 2011-12 in ITA Nos. 427-432/Del/2017 dated 01.06.2021, wherein, the addition made on account of alleged deposit balance with HSBC Bank, Geneva and consequential interest income were deleted. The Id AR submitted that since the Id CIT(A) had

placed reliance on the order passed by his predecessor for the same assessment years, when these orders are quashed by Tribunal, no addition towards interest income could be made for the year under consideration in the case of the assessee.

6. Per contra, the Id DR vehemently submitted that the assessee did not furnish any information despite material seized from the residence at the time of search. He vehemently placed reliance on the decision of the Mumbai Tribunal in the case of Renu T. Tharani in ITA No. 2333/Mum/2018 for AY 2006-07 dated 16.07.2020, wherein, the initial deposit was made in the foreign bank account by some trust where Renu T Tharani was treated as beneficiary and that the deposited amount was added in the hands of the beneficiary which was confirmed by ITAT. The Id DR pleaded that same fact situation arises in the present case also.

7. At the outset, we find that Renu T Tharani factual matrix per se is completely different. In that case, someone created a trust in favour of Renu Tharani and she was held beneficiary of monies lying in the foreign bank account. She did not sign the consent waiver form in that case whereas in the instant case before us, a mere existence of bank account per se was denied by the assessee right from the beginning and consent waiver form was not even asked by the department to be signed by the assessee. Hence, we hold that decision rendered in the case of Renu Tharani is factually distinguishable. Moreover, on perusal of the assessment order for AY 2006-07 u/s 153A read with section 143(3) of the Act dated 02.03.2015 which is enclosed in pages 1 to 9 of the PB, we find that there was a document found and seized during the course of search titled as Annexure A-1 of party SR-1 found and seized from Sri Praveen Sawhney (son of assessee). The said document containing seized document is reproduced in pages 6 and 7 of the paper book and form part of the assessment order dated 02.03.2015 for AY 2006-07. The said seized document nowhere mentions the name of the

assessee or his wife and it only mentions the name of Shri Praveen Sawhney. We find that this Tribunal in assessee's own case for AY 2006-07 to 2011-12 vide order dated 01.06.2021 referred (supra) had held as under:-

"8. We have considered the rival submissions and perused the material on record. It is not in dispute that search was conducted in the case of assessee on 28.07.2011. Both the parties have placed on record copies of the panchanama in the case of assessee at the time of search and thereafter, but, the same did not disclose if any, incriminating material much less than the material was found during the course of search to connect the assessee with maintenance of any bank account with HSBC, Geneva, Switzerland. The Ld. D.R. also placed on record letter of the A.O. Dated 22.08.2019 in which it is clearly mentioned by the A.O. that last panchanama was drawn on Dated 26.09.2011. Learned Counsel for the Assessee also placed on record letter Dated 26.06.2015 issued by Swiss Competent Authority addressed to the Government of India in which it is specifically mentioned that information as required could be provided from F.Y. 2011-2012 as the prior years are not covered by temporal scope of Article 26 of the Amended Double Taxation Avoidance Agreement between India and Switzerland. Therefore, such information could be provided from 01.04.2011. Learned Counsel for the Assessee also placed on record Notification Dated 27.12.2011 between India and Switzerland Confederation for avoidance of double taxation. These would clearly show that these are applicable after assessment years under appeals and as per information provided vide letter Dated 26.06.2015 no such information could be provided prior to 01.04.2011. Therefore, Swiss Authorities have not provided any information to Revenue Authorities in India about assessee's bank account with HSBC, Geneva, Switzerland for assessment years under appeals i.e., A.Ys. 2006-2007 to 2011-2012. Thus, there is no incriminating material available on record to make any addition in any assessment years. It may also be noted here that assessee since the very beginning denied to have maintained any such bank accounts with HSBC, Geneva, Switzerland. There is no material available on record that assessee made deposits in HSBC Bank A/c in A.Y. 2006-2007 or thereafter earned any interest in remaining assessment years under appeals."

8. Considering the aforesaid orders passed in the case of the assessee and also considering the fact that the lower authorities had placed reliance on the orders passed by them for earlier years while making the addition towards notional interest income which stood deleted by the Tribunal vide its order dated 01.06.2021, we hold that there cannot be any addition towards notional interest income that can

be made in the hands of the assessee for year under consideration also.
Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 14/02/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 14/02/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi