

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE  
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3866/Del/2017  
AND  
ITA No. 5450/Del/2016  
Asstt. Years: 2012-13

Shri Shyam Sunder Jindal, 12-A, Green Avenue, Sector-D, Pocket-3, Vasant Kunj, Delhi – 110 070 PAN AAGPJ0184N	Vs.	ACIT, Central Circle-30, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Rohit Jain, Advocate Ms. Deepashree Rao, Advocate Shri Shivam Gupta, Advocate
Department by:	Shri Dharamvir Singh, CIT-DR
Date of Hearing:	01.04.2024
Date of pronouncement:	03.05.2024

**ORDER**

**PER ASTHA CHANDRA, JM**

These appeals filed by the assessee are directed against the orders dated 24.08.2016 and 22.03.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-30, New Delhi ("**CIT(A)**") both pertaining to Assessment Year ("**AY**") 2012-13 whereby the Ld. CIT(A) confirmed the addition of Rs. 3,87,075/- made by the Ld. Assessing Officer ("**AO**") on account of accruals/interest on foreign bank account balance in alleged HSBC Bank, Geneva and confirmed the penalty under section 271(1)(c) of the Income Tax Act, 1961 (**the "Act"**) for concealment of particulars of income/furnishing inaccurate particulars of income qua the said addition

respectively. These were heard together and are being disposed of by this common order.

**ITA No. 5450/Del/2016**

The brief facts are that the assessee individual filed his return for AY 2012-13 on 27.09.2012 declaring income of Rs. 3,71,04,136/-. His case was later selected for scrutiny. The assessment was completed on 27.02.2015 under section 143(3)/153A of the Act on total income of Rs. 13,74,91,211/- including therein inter alia an addition of Rs. 3,87,075/- on account of interest @ 4% on credit balance in assessee's foreign bank account with HSBC, Geneva. Aggrieved, the assessee challenged the said addition before the Ld. CIT(A) who vide his appellate order dated 24.08.2016 in Appeal No. 125/15-16/2102 confirmed the addition by observing and recording the following findings:

*“(ii) During the appellate proceedings, the appellant submitted that the alleged bank account with HSBC, Geneva, does not belong to the appellant. It has been further submitted by the appellant that as per the details, the alleged bank account belongs to M/s Portman Investments Holding Limited and not to the appellant.*

*From the details of the bank account, it is clear that name of the appellant is appearing alongwith correct date of birth, place of birth, profession, nationality etc. and even postal address was belonging to the appellant. In these facts and circumstances, the claim of the appellant that the alleged bank account belongs to M/s Portman Investments Holding Limited, is nothing but an intermediary for facilitating to the appellant and the HSBC Bank only, since all the details/ particulars pertain to the appellant only. Therefore, above submission of the appellant, are not acceptable.*

*From the above, following facts emerged:*

- *The appellant Shri Shyam Sunder Jindal, maintained a bank account with HSBC Bank Geneva, Switzerland with BUP no. 9070145843 and this account remained undisclosed to the Income Tax Department.*

*Therefore, the credit entries are also not disclosed as income in the returns of income filed, and*

- *The A.O. has determined the accruals @ 4% p.a. on the balance in the HSBC account, at the beginning of the F.Y. 2007-08, prevailing interest rate in Europe.*

*In view of the above, the arguments of the appellant are hereby rejected and therefore, I do not find any infirmity in the findings of the A.O. Accordingly, addition of Rs. 3,87,075/-, on account of accruals/interest on bank balance, is confirmed. ”*

2. The assessee is aggrieved and is in further appeal before the Tribunal and ground No. 1 and 2 reproduced hereunder relate thereto:-

“1. *That the CIT(Appeals) erred on the facts and in law, in upholding the assessment order dated 27.02.2015 passed by the assessing officer under section 143(3) of the Income- tax Act, 1961 ('the Act').*

1.1. *That the CIT(Appeals) erred on the facts and in law in not appreciating that the assessing officer passed the assessment order in gross violation of principles of natural justice.*

**Without prejudice:**

2. *That the CIT(A) erred on facts and in law in confirming addition of Rs. 3,87,075, being notional interest @ 4% on the alleged credit balance at the end of February 2007 and adopting it as the balance at the beginning of F.Y. 2007-08 along with accumulated interest thereon, appearing in some HSBC Bank, Geneva alleged to be belonging to the appellant, alleging the same to be undisclosed income of the appellant.*

2.1 *That the CIT(A) / assessing officer erred on facts and in law in drawing adverse inference on the basis of some general/ vague particulars appearing in some unsigned/ undated/ unauthenticated loose photocopied sheets of papers, whose source is also not known/ reliable/ credible, not appreciating that the same does not constitute evidence in the eyes of law.*

- 2.2 *That the CIT(A) erred on facts and in law in confirming the above addition of notional interest without appreciating that the assessing officer has admitted in para 6 of the assessment order that authentic information/ communication regarding the alleged foreign bank account was still awaited from the Swiss Authorities.*
- 2.3 *That the CIT(A)/ assessing officer failed to appreciate that (a) the above alleged foreign bank account did not belong to the appellant; (b) none of the deposits, as alleged, related to the appellant; and (c) no transaction was made by the appellant, and the above addition made in the hands of the appellant is without any evidence or basis.*
- 2.4 *That the CIT(A)/assessing officer erred on facts and in law, in making the aforesaid addition on suspicion and surmises and de-hors any material found/ seized during the course of search in the premises of the appellant.*
- 2.5 *That the CIT(A)/assessing officer erred on facts and in law in alleging that the appellant had intentionally concealed vital information by not signing the consent /declaration form, without appreciating that the question of signing such form did not arise as the appellant denied having any foreign bank account in the first place.*
- 2.6 *Without prejudice, that the addition made by the assessing officer by applying interest rate of 4% p.a. is ad-hoc and without any basis and calls for being deleted.”*

3. The Ld. AR submitted that the issue came up for consideration by the Tribunal in assessee's appeal for AYs 2008-09 to 2011-12 and the Tribunal deleted similar addition. A copy of the order of the Tribunal is placed at pages 62-65 of the Compilation. The Ld. AR further submitted that the fundamental allegation of existence of alleged foreign bank account with HSBC Bank, Geneva stands disposed off vide order of Hon'ble Delhi High Court in ITA No. 612/2017 decided on 13.12.2023 for AY 2006-07, a copy of which appears at pages 54-61 of the Compilation. The Ld. AR pointed out that against the Tribunal's order (supra) deleting similar addition the Revenue filed appeal before the Hon'ble Delhi High Court. The appeals of the Revenue has since been decided by the Hon'ble Delhi High Court in ITA Nos. 104, 107, 108 and 109/2021 whereby the order (supra) of the Tribunal has been confirmed, holding that addition of notional interest could not have

been made. A copy of the decision (supra) of the Hon'ble Delhi High Court is available at pages 66-71 of the assessee's Compilation. The Ld. AR therefore urged that there is thus absolutely no basis for the impugned addition in AY 2012-13 and the order of the Ld. CIT(A) deserves to be vacated on the issue.

4. The Ld. CIT-DR relied on the order of Ld. AO/CIT(A).

5. We have considered the rival submissions and perused the records. It is manifest from the material available in the records that similar addition on account of notional interest on the alleged balance in foreign bank account has been made in AY 2008-09 to 2011-12 by the Ld. AO which have been sustained by the Ld. CIT(A). It is also apparent from the records that the assessee's appeal challenging the said addition(s) for the aforesaid AYs have been decided by the Tribunal in favour of the assessee by the order in ITA No. 4125 to 4128/Del/2016 dated 20.12.2019 by observing and recording the following findings:-

*"8. With regard to the taxation of notional interest @4% added by the Assessing Officer, we find that the similar matter stands adjudicated by the CO-ordinate Bench of the Tribunal in the case of Shri Krishna Kumar Modi in ITA No. 2892/Del/2017, wherein the addition made on account of notional interest in respect of alleged foreign bank account with HSBC, Geneva was deleted by holding the same to be notional and without any basis. For the sake of ready reference, the relevant part of the order is reproduced as under:-*

*'Coming to Revenue's appeal in ITA No. 3951/Del/2017, the Department has challenged that the action of the CIT(A) in deleting the addition of Rs. 1,64,962/- made by the assessing officer on account of undisclosed interest income in HSBC Geneva. The facts in respect of the said issue are that in the assessment order passed under section 153A r.w.s. 143(3) of the IT Act, the assessing officer, apart from the addition on account of the deposits/balances appearing in the alleged foreign bank account, made further addition of Rs. 1,64,962/- (US\$ 3,821.22 @ Rs. 43.17) under section 69 of the IT Act on account of "interest" calculated @ 4% p.a. on the alleged balance appearing in the undisclosed foreign bank account.*

6.2 On appeal the Ld. CIT(A) deleted the addition made by the assessing officer holding that since no corroborative evidence has on such bank account, assessee earned interest @4%. We are of the view that the case of the assessee is on a much better footing vis-a-vis the facts in judicial precedents relied upon by the Ld. Counsel in as much as in the foresaid cases there was at least some basis of taxation of notional amount/interest, which was never realised/received by the assessee, but in the case of the assessee, the so-called amount of interest brought to tax is tally without any basis and is clearly hypothetical/imaginary. Since there is no evidence that the assessee actually received interest on the disputed deposit and just by figment of imagination it has been concluded that the assessee earned interest on such deposits @ 4% p.a., the impugned addition on account of notional ITA 2892 to 2894/D/2917 ITA 3952 to 3956/D/2017 interest has even on merits been rightly deleted by the CIT(A). For the said cumulative reasons, the Revenue's appeal on this ground stands dismissed.

9. Since, the matter has been adjudicated on merits, any adjudication of the technical ground taken up by the assessee would academic in nature, hence not resorted to.

10. `In the result, the appeals of the assessee are allowed.’”

6. The Revenue filed appeals against the order (supra) of the Tribunal before the Hon'ble Delhi High Court and suggested the following question of law for consideration:-

“A. Not relevant

B. Whether on facts and in the circumstances and also on the prevailing law, Hon'ble ITAT was legally justified in holding the interest income added by the AO as notional whereas the outstanding balance in HSBC account was interest bearing and there was no materials before Ld. ITAT to hold such interest as notional.” (page 69-70 of compilation)

7. The Hon'ble Delhi High Court answered the above question as follows:-

“9. Since we have concluded in ITA 612/2017 that the impugned addition would have to be deleted as no incriminating material was found during the

*search, in our opinion, the AO could not have calculated notional interest on the addition originally made by him.*

*10. Therefore, the aforementioned question of law is answered in favour of the respondent/assessee and against the appellant/revenue.”*

8. It is thus evident that the Hon'ble Delhi High Court has held that notional interest on the addition originally made in AY 2006-07 by the Ld. AO could not be made in AY 2008-09 to 2011-12. The facts, circumstances and prevailing law admittedly remain the same in AY 2012-13 as well. Respectfully following the order (supra) of the Hon'ble Delhi High Court, we delete the impugned addition of Rs. 3,87,075/- made by the Ld. AO which has been sustained by the Ld. CIT(A) and decide the appeal of the assessee in his favour.

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

**ITA No. 3866/Del/2017**

10. The appeal relates to levy of concealment penalty under section 271(1)(c) of the Act qua the addition of Rs. 3,87,075/- made by the Ld. AO and maintained by the Ld. CIT(A) on account of accruals/interest on foreign bank account balance in alleged HSBC Bank, Geneva pertaining to AY 2012-13.

11. Vide our order of date in quantum appeal in ITA No. 5450/Del/2016 for AY 2012-13, we have deleted the addition of Rs. 3,87,075/- made by the Ld. AO. Therefore, the impugned penalty qua the said addition has no legs to stand. We, therefore, direct the Ld. AO to vacate the penalty levied upon the assessee under section 271(1)(c) of the Act.

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

13. In nutshell, the quantum appeal of the assessee in ITA No. 5450/Del/2016 and penalty appeal in ITA No. 3866/Del/2017 are allowed.

**Order pronounced in the open court on 3<sup>rd</sup> May, 2024.**

**Sd/-  
(G.S. PANNU)  
VICE PRESIDENT**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 03/05/2024

**Veena**

Copy forwarded to -

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

ASSISTANT REGISTRAR  
ITAT, New Delhi