

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.4321/M/2023  
Assessment Year: 2009-10**

<b>ACIT, Circle 20(1)</b> Piramal Chambers, Lalbaug, Mumbai- 400 012	Vs.	<b>Shri Virji Devraj Gada,</b> 38/3, Leela Niwas, 264/A, L.N. Road, Matunga (W), Maharashtra – 400 019 <b>PAN: AACPG5213B</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rahul Hakani, A.R.  
Revenue by : Shri Brajendra Kumar, D.R.

Date of Hearing : 14 . 05 . 2024  
Date of Pronouncement : 31 . 05 . 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the assessee against the order dated 05.10.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2009-10.

**2.** In the instant case, the assessee by filling return of income on dated 30.09.2009 had declared his income to the tune of Rs.15,31,600/- which was accepted vide assessment order dated 15.11.2011 under section 143(3) of the Act.

**3.** Subsequently, Revenue Audit raised objection to the effect that assessee had incurred the expenses of Rs.6,44,914/- which was claimed against the remuneration and interest received from firm which are related to exempt income under section 10(2A) of the Act. As per the provisions of the Act, the above expenses are not allowable for set off against the remuneration and interest received from the firm and therefore there is an under assessment of income of Rs.6,44,914/-. Consequently, the case of the assessee was reopened under section 147 of the Act and notice dated 03.12.2015 under section 148 of the Act was issued, in response to which the assessee requested to treat the return voluntarily filed under section 139(1) of the Act on 30.09.2009. The assessee also tried to justify the interest expenses of Rs.6,44,914/-, however, the AO not being impressed with the claim of the assessee, ultimately made the disallowance of Rs.6,44,914/- and added to the total income of the assessee.

**4.** The assessee, being aggrieved, preferred first appeal before the Ld. Commissioner, who vide impugned order dated 05.10.2023 allowed the appeal of the assessee and consequently deleted the disallowance of Rs.6,44,914/- made by the AO.

**5.** The Revenue Department, being aggrieved, is in appeal before us.

**6.** Though the tax effect in the instant case is less than the monetary limit of Rs.50,00,000/- set out for filing an appeal before

the Tribunal, as per the CBDT Circular No.3/2018 dated 11.07.2018 succeeded by Circular No. 17/2019, F.No. 279/Misc.142/2007-ITJ(Pt.) dated 08.08.2019, however, the Ld. D.R. has claimed that because the case of the assessee was reopened under section 147 of the Act on the audit objection, therefore this case falls under exception carved out in the said circular (supra).

**7.** We have heard the parties and perused the material available on record. The Ld. Commissioner deleted the addition under consideration by following the judgment of the Hon'ble Madhya Pradesh High Court in the case of Commissioner of Income Tax vs. Smt. Gayatri Devi Birla (1997) 91 Taxman 239 (MP) wherein the Hon'ble High Court by following the judgment of the Hon'ble Apex Court in the case of Keshavji Ravji & Co. vs. CIT (1990) 183 ITR 1 (SC), having held that interest paid to firm is liable to be deducted from the interest received from firm and only net interest is liable to be charged to tax. Though the LD. DR did not refute the aforesaid judgement and therefore the impugned order on this count do not requires any interference , however we otherwise observe that in the instant case, the assessee had declared its total income at Rs. 15,31,600/- by filing its return of income on 30.9.2009, which was processed and assessed at Rs. 15,31,600/- vide assessment order dated 15.11.2011 under section 143(3) of the Act. Subsequently the revenue audit has raised objection that the assessee had incurred expenses of Rs. 6,44,914/-, which was claimed against remuneration and interest received from the firm, the expenses relating to exempt income under section 10(29) of the Act, which were not liable for set off against remuneration and interest received from the firm. Consequently, there was an under assessment of income at Rs. 6,44,914/-.

**7.1** Therefore, on the basis of audit objection, the case of the assessee was reopened by recording reasons for reopening and consequently notice dated 3.12.2015 under section 148 of the Act was issued to the assessee.

**7.2** It is a fact that the assessee had shown amount of Rs. 6,44,914/- as expenses incurred and claimed against remuneration and interest received from firm. It is also an admitted fact that income tax return filed by the assessee was processed and completed under section 143(3) of the Act.

**7.3** Admittedly the case of the assessee was reopened after four years from the end of the assessment year and no allegation was levelled qua not disclosing fully and truly all material facts necessary for the assessment as mandatory under the First proviso of section 147 of the Act. Hence, considering peculiar facts and circumstances of the case as the assessee had declared material facts, qua amount of Rs. 6,44,914/- on account of expenses incurred and claimed the same against remuneration and interest received from the firm and the assessment of the assessee was completed under section 143(3) of the Act and there was nothing on record to suggest, qua not disclosing fully and truly all material facts necessary for the assessment and even otherwise except audit objection there was no reason to establish that income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to make a return under section 139 of the etc.. Hence, in our considered view, on this aspect also, Assessment order is un-sustainable and consequently impugned order do not require any interference as the same in neither perverse nor suffered from any impropriety and/or illegality.

8. In the result, the appeal filed by the Revenue stands dismissed.

**Order pronounced in the open court on 31.05.2024.**

**Sd/-  
(RENU JAUHARI)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.