

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1251/MUM/2024
Assessment Year: 2014-15**

Deepak Ramlal Wadhawan, Bungalow No.26, Vasant Vihar Complex, Dr C.G. Road, Chembur, Mumbai – 400074 (PAN : AAAPW1852G)	Vs.	Assistant Commissioner of Income Tax – 27(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : None
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.07.2024
Date of Pronouncement : 27.09.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1057624397(1), dated 02.11.2023, against the assessment order passed by the Assistant Commissioner of Income Tax-27(1), Mumbai, u/s. 143(3) of the Income-tax Act, 1961

(hereinafter referred to as the "Act"), dated 22.12.2016 for Assessment Year 2014-15.

2. We note that there is a delay of 78 days of filing of this appeal for which assessee has placed on record petition along with affidavit for condonation of the delay. Reasons mentioned in the affidavit state that assessee was suffering from renal cell carcinoma, owing to which appeal could not be filed within the stipulated time. Necessary documentary evidences are placed on record, perusing the same, we find it appropriate to condone the delay and take up the matter for adjudication.

3. The sole issue raised by the assessee is in respect of interest income not received by the assessee and subjected to tax, owing to difference in method of accounting followed by the assessee and the party from whom interest is receivable. None represented the assessee before us. However, on perusal of the records, we are inclined to take up the matter for adjudication, *ex parte qua* the assessee with the able assistance of ld. Sr. DR.

4. Brief facts of the case are that assessee filed his return of income on 11.03.2015 reporting total income at Rs.29,59,350/-. Assessee earned income from salary, house property during the year. He is Executive Vice President of PBA Infrastructure Pvt. Ltd. In the course of assessment proceedings, ld. Assessing Officer noted that assessee had shown interest income of Rs.37,28,381/-, which comprises of interest of Rs.35,56,571/- from PBA Infrastructure Pvt. Ltd., Rs.12,866/- as savings bank interest, Rs.1,30,042/- as interest on FD with IDBI,

Rs.21,402/- as bank interest on FD, Rs.1500/- as interest on bonds and Rs.6000/- as dividend. In the course of assessment proceedings, a revised computation was furnished whereby interest income from PBA Infrastructure Pvt. Ltd. of Rs.35,56,570/- was taken out from the computation of the total income, since it was not received by the assessee. In this respect, Form 26AS of the assessee reported TDS of Rs.3,55,657/- on interest payment which the assessee has claimed for as credit in his return.

4.1. A detailed show cause notice was issued by the ld. Assessing Officer on the assessee to explain the stand taken by him of following cash basis of accounting and rejecting the claim of Rs.32,00,914/- claimed u/s.57 of the Act. Assessee submitted his reply stating that income from interest from FD with PBA Infrastructure Pvt. Ltd of Rs.35,56,571/- was shown in the return. Since the company followed merchantile system of accounts, it credited the income in the account of assessee in its books of accounts and deposited the relevant TDS of Rs.3,55,657/- which reflected in Form 26AS of the assessee. Assessee claimed that since he has not received the interest from the company and he following the cash system of accounting for such income, the unrealized interest income not received by the assessee was shown as a deduction u/s.57 for the purpose of disclosure and representation in the return form. This was done since there is no column in the return form to reflect the situation which was posed before the assessee. According to the assessee, recognition of interest income was postponed to the extent of uncertainty involved and it will be recognised in the year in which it would be reasonably certain of its ultimate collection. Thus, he claimed this interest as "*income not received*" u/s. 57 of the Act, so as to avoid mismatch between the income reflected in the Form 26AS and the return filed by the assessee.

4.2. Ld. Assessing Officer completed the assessment after considering the submission made by the assessee to disallow the claim made u/s. 57 of Rs.32,00,914/-. Aggrieved, assessee went in appeal before the ld. CIT(A), who confirmed the said disallowance. Aggrieved, assessee is in appeal before the Tribunal.

5. We have perused the documents and material placed on record before us and took assistance from the ld. Sr. DR. From the facts and circumstances narrated above and going through the records, it is understood that there is an interest of Rs.35,56,571/- accrued to the assessee from PBA Infrastructure Pvt. Ltd. on which TDS of Rs.3,55,657/- had been done and duly deposited by the said company, reflecting in Form 26AS of the assessee for the year under consideration. However, the interest so accrued has not been paid by the company to the assessee. According to the assessee, owing to the financial instability at the end of the company, it is uncertain about the receipt of the said amount from the company.

5.1. In order to avoid mismatch between the income and TDS reported in Form 26AS and the income to be reported by the assessee in his return of account of non receipt of the interest, assessee devised a methodology of reporting the same in his return under the head "income from other sources" and correspondingly claiming for deduction u/s. 57 of the Act. For this, he submitted explanations by justifying the differences arising out of the method of accounting followed by the company and by the assessee.

6. In our understanding, in order to deal with the situation faced by the assessee in the present case where interest payable by the company has been accrued on which TDS has been done and deposited but the interest component has not been paid to the assessee for which uncertainty exist about its receptivity, the Act provides for section 198. The said section reads as under:

“Tax deducted is income received.

198. All sums deducted in accordance with the foregoing provisions of this Chapter shall, for the purpose of computing the income of an assessee, be deemed to be income received :

Provided that the sum being the tax paid, under sub-section (1A) of section 192 for the purpose of computing the income of an assessee, shall not be deemed to be income received:

Provided further that the sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall not be deemed to be income received.”

6.1. From the above, we note that section 198 provides for deeming the tax deducted as income received by the assessee for the purpose of computing the income of an assessee.

6.2. In the present set of facts, TDS done by the company and deposited of Rs.3,55,657/- which is duly reflected in the Form 26AS of the assessee for the year under consideration, is deemed to be income received by the assessee under the said section. This section deals with treating the TDS as income whenever an amount deducted becomes incapable of being adjusted or counted towards tax payable.

7. Similar issue had arisen before the Hon'ble High Court of Andhra Pradesh, in the case of Y. Rathiesh vs. Commissioner of Income-tax-I (2014) 51 taxmann.com 59 (AP). Facts of this case are similar to the

present set of facts wherein loan was given by the assessee to the company who just showed the accumulated interest in its books of accounts without making payment. However, the said company deducted TDS at source on the amount of interest payable and issued certificate in relation thereto. Assessee did not pay tax on the interest receivable by him from the company but enjoyed benefits of TDS made in that behalf. Ld. AO took objection to this and treated the interest receivable from the company as income and levied tax thereon. Hon'ble High Court on these set of facts and taking into account provisions of section 198 of the Act held that whenever an amount deducted as tax at source become incapable of being adjusted or accounted towards tax payable, it acquires a character of income. In such an event, it partakes the character of any other income and is liable to be dealt with accordingly, in the order of assessment. Hon'ble High Court, further held that since the assessee has adopted cash system and did not receive the interest regarding which TDS was done, the TDS amount deserves to be treated as income. The attempt made by the assessee to treat the amount as tax for the corresponding amount was not permitted by the Hon'ble High Court. The appeal was partly allowed holding that assessee cannot be permitted to give credit to the amount representing TDS as tax and on the other hand, it shall be treated as an item of income for the concerned assessment year.

7.1. Drawing force from the aforesaid judgment of the Hon'ble High Court, we respectfully follow the same to hold that in the present case, the amount of TDS reflected in Form 26AS of the assessee for the year under consideration in respect of TDS done by PBA Infrastructure Pvt. Ltd. is to be treated as an item of income under the head "income from other sources" and provisions of section 198 be applied accordingly. It is important to note that once TDS is deducted, assessee cannot be

permitted to use the certificate to cover other amounts while refusing to show the amount of interest in his return by resorting to difference in method of accounting system. Scenarios given by the ld. AO in this behalf in his show cause notice cannot be treated as applying the parameters for mercantile system to a component of the returns filed under the cash system. The effect of the assessment made by the ld. AO is only that the assessee ought to desist from having the best of both the systems and discarding the one which is disadvantageous to him. If the assessee intends to take the TDS as component of tax paid by him, the corresponding income to the TDS must Form part of the return and the assessment.

7.2. For ease of reference relevant extracts from the above decision are reproduced as under:

“The assessee has option to file returns by adopting the cash system or mercantile system. In a given case, he can adopt both the systems for different components in one and the same returns. The broad distinction between these two systems is well known. Under the cash system, the assessee would be under an obligation to pay tax only on such of the amount which has been actually received by him. In contrast, under the mercantile system, mere entitlement to receive would bring about the obligation to pay tax. The assessee choose one of them or both of them for different parts, after taking note of the advantages and disadvantages in adopting these methods.

8. We are concerned with the income of the assessee in the Form of interest, on the loans which he has advanced to the two companies referred to above. As a matter of fact, he is the Managing Director of the 1st company. His case is that the 2nd company was paying interest regularly and in relation to the transaction of that company, he adopted mercantile system. There is no dispute about payment of tax on that. For the transaction with the 1st company, he has chosen to adopt the cash system. He stated that though the amount payable to him as interest was being shown in the account books of the company, the actual payment of the amount was not done. Another contention was that even while not paying the amount, TDS was affected.

9. By adopting the cash system for this component of his returns, the appellant did not pay any tax on the interest payable to him by the 1st company, on the ground that the amount has not been paid at all. If that were to have been all,

there would not have been any controversy. The reason is that under the cash system, the liability to pay tax arises only when the concerned amount is received

as income. The 1st company made TDS in respect of the amount payable to the appellant as interest and issued certificate. The appellant wanted to use the certificate in its entirety. In other words, the amount reflected in the TDS certificate was being shown as tax already paid. This would have devastating effect. The amount covered by the certificate would take care of the interest payable on other income of the appellant. For example, if the amount reflected in TDS constitutes tax payable on a sum of Rs.1,00,000/-, that would have taken care of the income of the appellant to the extent of Rs.1,00,000/- from other sources, though the interest as regards which the TDS was affected, was not reflected in the returns at all. All the authorities under the Act i.e., the assessing officer, the Commissioner and the Tribunal did not approve the method adopted by the appellant.

10. The appellant cannot be permitted to blow hot and cold at one and the same time. If no TDS was affected and interest was not paid, he would not have been under an obligation to show the amount of interest in his returns, much less to pay tax thereon. However, once TDS is affected, he cannot be permitted to use the certificate to cover other amounts even while refusing to show the amount of interest in his returns. The steps taken by the authorities in this behalf cannot be treated as applying the parameters for mercantile system to a component of the returns filed under the cash system. The effect of the order passed by the assessing officer as upheld by the Commissioner and the Tribunal is only that the appellant must desist from having the best of both the systems and discarding the one, which is disadvantageous to him. Once he intends to treat the amount deducted as TDS as a component of tax paid, the corresponding to the TDS must Form part of the returns and assessment. On the other hand, if he intends to pay the tax on the interest as and when he receives it, the amount covered by the TDS certificate can be treated as just income outstanding, till the actual date of receipt.

11. In the facts of the present case, Section 198 gets attracted. Whenever an amount deducted as tax at source becomes incapable of being adjusted or counted towards tax payable, it acquires the character of income. In such an event, it partakes the character of any other income and is liable to be dealt with accordingly, in the order of assessment. Since the appellant has adopted the cash system and he did not receive the interest regarding which the TDS was affected, the TDS amount deserves to be treated as income. However, the attempt made by him to treat that amount as tax for the corresponding amount, cannot be permitted.”

8. Considering the facts on record, provisions of section 198 and the judicial precedents discussed above, we direct the ld. AO to recompute

the assessed total income in terms of our above observations and findings.

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

Order pronounced on day of 27 September, 2024 under Rule 34 of
The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27 September, 2024

MP, Sr.P.S.

Copy to :

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- 2 The Respondent
- 3 DR, ITAT, Mumbai
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai