

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No. 4554/Del/2018, (A.Y.2014-15)**

ACIT Central Circle-26 Room No. 323, E2, ARA Centre, Jhandewalan Extension, New Delhi	Vs.	Krishan Kumar Modi A-1, Maharani Bagh, New Delhi PAN No: AANPM0159M
(Appellant)		(Respondent)

Appellant by	Sh. Rohit Jain, Adv & Sh. Shivam Gupta, CA
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	24/10/2024
Date of Pronouncement	06/11/2024

ORDER

PER YOGESH KUMAR U.S., JM :

This appeal is filed by the Assessee against the order of Commissioner of Income Tax (Appeals)-34, New Delhi ["Ld. CIT(A)" for short], dated 28/03/2018 for the Assessment Year 2014-15.

2. The grounds of Appeal are as under: -

"On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs 35,48,741/- made by AO on account of undisclosed interest income on the undisclosed deposits of Rs. 8,87,18,528/- in HSBC Bank Geneva without appreciating the fact that the assessee had not submitted any

details regarding the same during the assessment proceeding or appellate proceedings.

3. The only issue emerging for consideration in the present Appeal filed by the Revenue is regarding deletion made by Ld. CIT(A) of Rs. 35,48,741/- made by the A.O. on account of undisclosed interest income on the deposit of Rs. 8,87,18,528/- in HSBC bank Geneva.

4. The facts in brief as mentioned in the order of the Ld. CIT(A) are as under: -

“The appellant is an individual deriving income from salary, business and other sources during the relevant previous year. For the previous year relevant to the assessment year 2014-15, the appellant filed its return declaring income of Rs.7,05,95,220 on 24.07.2014. However, in the impugned assessment completed vide order dated 31.08.2016, passed under section 143(3) of the Income Tax Act, 1961 (Act), income of the appellant has been assessed at Rs.7,41,43,961 as against income of Rs.7,05,95,220 declared by the appellant. In the impugned assessment order, the assessing officer has, merely following the addition(s) made in earlier assessment year(s) proceeded to make addition of Rs.35,48,741 on account of notional interest income received from balances held in some alleged foreign bank account with HSBC, Geneva.

5. Aggrieved by the above addition made by the A.O, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) while deleting the addition made by the A.O. held as under:-

“5. Findings:-

5.1. I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during assessment as well as appellate proceedings.

5.2. Perusal of the assessment order shows that AO has worked out interest on notional basis @ 4% on the credit balance existing as on first day of F.Y. ie as on 01.04.2013, In one undisclosed foreign bank account. It is further seen that identical additions have been made by AO, on notional basis, in earlier assessment years as well, after working out the interest @ 4% on the credit balance existing on the first day of F.Y. in the so called foreign bank account.

5.3. In the assessment order, AO has not discussed/provided any details regarding the background and history of the case of appellant as to how the foreign bank account was assumed to be belonging to appellant. It has also not been discussed in the order, whether the interest was actually credited/received in the bank account. The entire addition has been made on notional basis. It is seen that the AO has presumed that assessee would have earned interest on the credit balance in one foreign bank account existing as on 31.03.2013.

5.4. However, the background of the case has been provided by the appellant's AR in the written submissions. For the sake of clarity, the relevant part is reproduced as under:

"A search and seizure operation under section 132 of the Act was carried out in the case of the appellant on 09.11.2011 at his residential premises located at A-1, Maharani Bagh, New Delhi. During the course of search, the appellant was shown one unsigned/ undated piece of paper and the said paper was stated by the authorized officer to be bank statement of HSBC Bank, Geneva. When the paper was shown to the appellant (copy not provided then), the appellant categorically denied having any

knowledge about the said piece of paper. Despite the fact that the appellant had no concern/ connection with the aforesaid piece of paper shown to him at the time of search, merely to avoid entering into protracted/ costly litigation with the Income Tax Department and particularly having regard to the fact that the tax liability on the basis of the said paper was informed at the time of search to be around Rs.2 crores, the appellant agreed to voluntary offer for tax income equivalent to US \$ 11.46 lacs. The said offer was made only in the spirit of settlement and to avoid litigation, without prejudice to the primary contention of the appellant that the said unsigned/ undated piece of paper did not belong/ pertain to him. In the light of the aforesaid, the appellant additionally offered for tax Rs.5,81,32,321 as income under section 69A of the Act in the return filed on 28.07.2012 for the assessment year 2012-13, in order to cover the aforesaid offer of US \$ 11,46,368. Along with the said return, detailed note was also filed by the appellant explaining the circumstances in which the said amount was offered for tax.

However, in the assessments completed under section 153A r.w.s. 143(3) of the Act, the assessing officer proceeded to make addition under section 69 of the Act of Rs.4,90,20,749 (equivalent to US\$ 11,02,829) and Rs.18,79,578 (equivalent to US \$ 43,5.39) in assessment years 2006-07 and 2007-08 respectively, on the alleged presumption that the appellant maintained a foreign bank account with HSBC, Geneva. Further, despite the said additions being made in assessment years 2006-07 and 2007-08, the assessing officer did not exclude amount of Rs.5,81,32,321 (equivalent to US\$ 11,46,368) offered to tax by the appellant in the assessment year 2012-13, thereby resulting in double addition of the very same amount. Further, apart from the above, the assessing officer also made addition on account of notional interest at the rate 4% on alleged deposits in foreign bank account for the assessment years 2007-08 to 2012-13. In the relevant assessment year i.e. assessment year 2014-15, the assessing officer has made similar addition of Rs.35,48,741 (US\$ 58,214.26 @ Rs.60.96) under section 69 of the Act on account of notional interest received on the alleged foreign bank account with HSBC, Geneva in the assessment year under consideration. It is submitted that the 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 therefore, the question of making any addition in the hands of the appellant could not arise at all. The aforesaid addition on account of notional interest has been made by the assessing officer in the absence of any bank statement or any other documents, merely on the basis of presumption, without even first establishing the existence of the alleged foreign bank account in the period under consideration. Without prejudice, the addition made by the Assessing Officer by applying interest rate of 4% p.a. is without any basis, too high and calls for being reduced."

5.5. *The case of the appellant is connected to various other individuals of the group, on whom search and seizure action was carried out. In one such individual's case Sh. Parag Dalmia (PAN No. AAAPD3725B), In whose case the facts are 100% identical to the fact of the case of appellant and identical addition on account of interest income worked out on notional basis, has been made by AO in that case, Ld. CIT(A)-XXVI, Delhi, has delivered his judgement pertaining to A.Y. 2014-15, In appeal no. 10240/14-15, vide appeal order dated 11.08.2017. The findings of CIT(A) In that case are as under:*

"I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during assessment as well as appellate proceedings. It is seen that the AO has presumed that assessee would have earned interest on the credit balance in its bank account as on February, 2007, It is a fact that no such information is evident from the documents received by the AO from French Government under information exchange mechanism of DTAC. The perusal of said documents only shows that month end balances have been written in respect of the bank account operated by the appellant and, there is no mention of any interest earned on the said credit balances. Perusal of information available in respect of the said bank, account does not show payment of any interest credited with regard to the deposits. The presumption of the AO is apparently based on experience with the Indian Banking System wherein the saving bank accounts generally, earns an interest, of 4% or so. The AO therefore applied the same standards in respect of the credit balances, held by the assessee in Its foreign bank account as well. It is also a matter of common knowledge that

the rate of interest on time deposit/FDRs in developed countries banking system, are generally from low and nowhere in comparison to the Indian banking system. In fact, the rate of interest in the current/saving bank account could sometimes be negative in terms of operational cost of maintaining such an account. This only highlights the absence of certainty in AO's presumption based upon Indian banking system, it clearly shows that there is no documentary evidence to support such a presumption. In view of these facts the earning of interest cannot be taken for granted so as to be made the basis of addition of having earned income. In the circumstances the addition made by the AO on presumptive basis is directed to be deleted."

5.5. I am in agreement with the various findings given by Ld. CIT(A) in his appellate order passed in the case of Sh. Parag Dalmia, as discussed above. Some important findings applicable to the facts of the case of appellant are..

(i) As per assessment order, it is seen that the AO has presumed that assessee would have earned interest on the credit balance in its bank account,

(II) As per assessment order, no such information is evident from the documents received by the AU from Foreign Government.

(iii) As per assessment order, AO has also not discussed that documents showing balances have been written in respect of the bank account operated by the appellant and, and whether there is any mention of any interest earned on the said credit balances.

(iv) The presumption of the AO is apparently based on experience with the Indian Banking System wherein the saving bank accounts generally, earns an interest, of 4% or so. The AO therefore applied the same standards in respect of the credit balances, held by the assessee in its foreign bank account as well.

I am also in agreement with the findings of CIT(A) that it is a matter of common knowledge that the rate of interest on time deposit/FDRs in developed countries banking system, are generally from low and nowhere in comparison to the Indian banking system. In fact, the rate of interest in the current/saving bank account could sometimes be negative in terms of operational cost of maintaining such an account. This only highlights the

absence of certainty in AO's presumption based upon Indian banking system, it clearly shows that there is no documentary evidence to support such a presumption.

5.6. The facts involved in the case of appellant are identical to the case of Sh. Parag Dalmia, the earning of interest in the hands of appellant cannot be taken for granted so as to be made the basis of addition of having earned income. In the circumstances the addition made by the AO, in the hands of appellant, on account of interest income worked out purely on presumptive basis is deleted. The appellant's appeal is allowed."

6. As against the order of the Ld. CIT(A) in deleting the addition, the Department of Revenue preferred the present Appeal on the grounds mentioned above.

7. The Ld. Departmental Representative by relying on the assessment order, submitted that the Ld. CIT(A) committed error in deleting the addition made by the A.O. on account of undisclosed interest income on the undisclosed deposit of Rs. 8,87,18,528/- in HSBC Bank Geneva without appreciating the fact that the Assessee had not submitted any details regarding the same during the assessment proceedings or during the appellate proceedings, therefore, sought for setting aside the order of the Ld. CIT(A).

8. Per contra, the Assessee's Representative submitted that the issue involved in the present Appeal are squarely covered in Assessee's own case for Assessment Year 2006-07 to 2012-13 in ITA No. 2892/Del/2017 and

other connected matters, thus, sought for dismissing the Appeal filed by the Revenue.

9. We have heard both the parties and perused the material available on record. The very same issue regarding the addition made by the A.O. on account of undisclosed interest income on the deposit made in HSBC bank Geneva has been dealt and decided in Assessee's own case for Assessment Year 2006-07 to 2012-13, wherein the Co-ordinate Bench of the Tribunal vide order dated 05/07/2019 held as under: -

"6.1 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 been brought out by the assessing officer to substantiate that the assessee has actually earned any interest income, therefore, the addition made only on the basis of estimate and presumption is not sustainable.

6.3 In support of the aforesaid ground, the Ld. CIT-DR/ Departmental Representative heavily relied on the order of the assessing officer and contended that the addition of Rs. 1,64,962/- made on account of interest should be confirmed and the finding of the CIT(A) to this extent should be reversed. In rebuttal, the Ld. Senior Counsel vehemently argued that the addition on account of notional interest has been rightly deleted by Ld. CIT (A) since the

said addition was made by the assessing officer in the absence of any bank statement or any other documents, merely on the basis of presumption that interest @4% p.a. would have been credited on the balance in the account, without even first establishing the existence of the alleged foreign bank account in the period under consideration. The Ld. Counsel contended that under the scheme of the Act, liability to pay tax is attracted at two points of time, viz., the accrual of the income or its receipt, but the substance of the matter is income. Thus, in the absence of any information, evidence or record, notional interest income cannot be added in the assessee's hands, merely on hypothesis, assumption, conjectures & surmises. For the said proposition reliance was placed on the following decisions, wherein it has been held that no addition on account of interest can be made where no interest has in fact been charged by the parties within the terms of funds/loan advanced.

- *CIT vs. Goyal M.G. Gases (P) Ltd.: 303 ITR 159 (Del.)*
- *B & A Plantations and Industries vs. CIT: 242 ITR 22 (Gau.)*
- *KeshrichandJaisukhlal vs. CIT: 248 ITR 47 (Gau.)*
- *Highways Construction Co. Pvt. Ltd vs. CIT: 199 ITR 702 (Gau.)*
- *Jwala Prasad Radha Krishna vs. CIT [1992]: 198 ITR 415(All)*
- *CIT vs. Punjab Financial Corpn. Ltd.: 295 ITR 510 (P&H HC)*
- *CIT vs. South India Corpn. (Agencies) Ltd.: 293 ITR 237 (Chennai HC)*
- *CIT vs. Sanghi Finance and Investment Ltd.: 190 CTR 207 (MP)*

6.4 We have considered rival submissions and the decisions relied upon by both the parties. We have already deleted the addition made in assessment year 2006-07 and also in assessment year 2007-08, therefore, on this ground itself the addition made by the assessing officer is liable to be deleted. Independent thereof, we note that in the instant case, the addition of Rs.1,64,962 has been made purely on notional basis on the premise that the assessee: (a) had alleged foreign bank account, which itself is under serious challenge; and (b) 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-à-vis the facts in judicial precedents relied upon by the Ld.Counsel inasmuch as in the aforesaid cases there was at least some basis of taxation of notional amount/ interest, which was never realized/ received by the assessee, but in the case of the assessee, the so-called amount of interest brought to tax is totally 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 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."

10. By respectfully following the order of the Tribunal in Assessee's own case for Assessment Year 2006-07 to 2012-13 (supra), we find no merits in the grounds of Appeal of the Revenue, accordingly the Appeal of the Revenue is dismissed.

Order pronounced in open Court on 06th November, 2024

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 06/11/2024

R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT, NEW DELHI

