

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos. 68,69,70,71 & 72/Del/2017
Asstt. Yrs: 2008-09 to 2012-13**

Alongwith

**M.A Nos. 01, 02,03,04 & 05/Del/2024
(Arising out of ITA Nos. 68,69,70,71 & 72/Del/2017)
Asstt. Yrs: 2008-09 to 2012-13**

ACIT, Central Circle-27, New Delhi.	v.	Nirguna Balik Satsang Mandal (India), 11/11, Pusa Road, New Delhi.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AAATN 6337 K		
Applicant	..	Respondent

Assessee by :	Sh. Abhishek Mathur, CA
Department by :	Sh. Sahil Kumar Bansal, Sr. DR

Date of Hearing	25.04.2025
Date of Pronouncement	25 .04.2025

ORDER

PER BENCH:

The captioned departmental appeals in ITA Nos. 68,69,70,71 & 72/Del/2017, with consent of both the parties were heard together along with respective Miscellaneous Applications (MA) bearing Nos. 01 to 05/Del/2024 for A. Yrs. 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 and are being disposed of by this common order for the sake of convenience.

2. Ld. DR narrated the facts of the case and submitted that ITAT Delhi Bench 'E' vide consolidated order dated 14.11.2019 had dismissed Revenue's appeals in ITA Nos. 68,69,70,71 & 72/Del/2017 for A.Yrs. 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 on the ground of low tax effect with liberty to Revenue to file miscellaneous application, as under:

"4. We would, however, observe that certain times instances stated in para No. 10 of the CBDT Circular No. 3/2018 dated 11.07.2018 are not discernable from the assessment and appellate orders, therefore, in such cases, we also give liberty to revenue that if such instances comes to their notice than, revenue may file miscellaneous application with such evidences."

2.1 The Revenue on 28.09.2020 filed M.A. No. 241/Del/2020 (in ITA Nos. 68,69,70,71 & 72/Del/2017 for A.Yrs. 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13) for recalling of Tribunal's order dated 14.11.2019 on the ground that in assessment orders for A. Yrs. 2008-09 to 2012-13, additions were made under Section 69 on account of undisclosed interest income earned out of unaccounted deposits in foreign account which fall in the category of exceptions laid down in CBDT circular no. 3/2018 dated 11.07.2018 at para no. 10 (d) "*Where the addition relates to undisclosed foreign assets/bank accounts*". The Hon'ble Apex Court in Cognizance For Extension Of Limitation in re. (2022) 441 ITR 722 (SC) has directed the exclusion of the time period from 15.3.2020 to 28.2.2022 of the Covid-19 Pandemic for all limitation purposes. Thus, the MA No. 241/Del/2020 filed by the Revenue is well within limitation.

2.2 During the course of hearing of MA No. 241/Del/2020, it was pointed out by the Bench that separate MA were to be filed for five different assessment years. In compliance, the Department filed the instant Misc. applications bearing M.A.Nos. 1,2,3,4 & 5/Del/2024 on 2.1.2024 for recalling of Tribunal's consolidated order dated 14.11.2019 in ITA Nos. 68,69,70,71 & 72/Del/2017.

2.3 Ld. DR submitted that as the case of the assessee for the impugned assessment years 2008-09 to 2012-13 falls in the category of exceptions laid down in CBDT circular

no. 3/2018 dated 11.07.2018 at para no. 10 (d), the impugned consolidated order of the Tribunal dated 14.11.2019, dismissing the Revenue's appeals for want of low tax effect may be recalled and the appeals be restored to their original number for decision on merits.

2.4 Ld. DR further submitted that under identical circumstances the coordinate Bench in assessee's own case for A.Yrs. 2006-07 & 2007-08 vide consolidated order dated 26.07.2023 (ITA Nos. 264 to 267/Del/2017) has remitted the impugned issue to the file of AO, inter alia, by observing as under:

"11. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as the material referred to before us. First of all in so far as the first ground raised by the assessee is concerned here in this case once the information was received to the Income Tax Department by the FT & TR which mentioned the names and address of the trust which is the fact and when name of the trust itself appears in the bank account with HSBC Bank, Geneva, then this itself was incriminating. Once during the course of search in the statement recorded these facts have been confronted to the trustees which they might have said it does not belong to the trust, but they were known to the persons who were mentioned in the said information itself leads. This is certainly prima facie material which can be reckoned as incriminating. Therefore, we are rejecting the contention raised by the ld. Counsel that nothing incriminating has been found and the addition made by the Assessing Officer is beyond the scope of section 153A of the Act.

12. The case of the assessee trust is that, it has no role in the opening of the bank account; and the entities mentioned in the client professional link have been claimed to be nowhere linked with the trustees or the office bearers and, therefore, it has been contended that the assessee trust cannot be said to be beneficiary of the HSBC bank account. However, on perusal of the information as mentioned in the assessment order, first of all, it is palpable that account is in the name of the assessee trust and the address mentioned in the said information is address of the assessee trust. Such an information with specific name of the assessee as an account holder cannot be said to be in vacuum. However, as stated above details of client professional link there are various entities which have been mentioned like M/s. JTL Enterprises Ltd., M/s. JTL Trust, Smt. Jamuna Devi Thakurdas Lakhani and Shri Bansri Lakhani New York were also mentioned as beneficial owners and beneficiaries. This linkage of these persons form the assessee trust or the trustees have not been found to be established fully except for the trustees and other persons showing that the names of the persons mentioned were connected with the trustees and were frequent visitors of the trust or were known to the trust.

13. It was under these facts and circumstances, during the course of hearing, the Bench specifically asked the ld. Counsel that, when the name of the assessee trust has been specifically mentioned as an account holder in the information available with the department, and if the assessee trust is denying existence of opening any such bank account and claims it does not belong to it, then the best course should have to sign the 'consent waiver form', to absolve itself and come clean. The ld. Counsel in response, after seeking instruction from the assessee trust has agreed to sign the consent waiver form and is ready for the department to get the relevant information. Under these circumstances and looking to the fact that now the assessee itself has agreed to sign the consent waiver form, accordingly the matter is restored back to the file of the Assessing Officer; before whom assessee will sign the consent waiver form and the Assessing Officer may call for further information about the veracity of the contention of the assessee that the bank account belong to the assessee or not or is beneficiary of such deposits in the said bank account. The reason for remanding back the matter before the AO is that, the entire basis of the Assessing Officer while making the addition was that assessee has not signed the consent waiver form to prove its bonafide. Now when the assessee has consented to sign the consent waiver form then the Assessing Officer should seek the information through proper channel and carry out every enquiry in this regard. And in case no such information is received or the assessee is found not to be beneficiary or owner of the bank account, then no adverse inference should be drawn against the assessee. Needless to say that the ld. Assessing Officer once he procures the consent waiver form from the assessee and calls for the information through proper channel, then the same should be confronted to the assessee and after giving due effective opportunity of hearing, the Assessing Officer may decide the issue in accordance with law."

2.5 Ld. DR, accordingly, submitted that in these peculiar facts of the case the impugned consolidated order of the ITAT in ITA Nos. 68 to 72/Del/2017 for A.Yrs. 2008-09 to 2012-13 may be recalled.

3. Learned AR of the assessee opposed the submissions made by the Ld. DR. He, however, could not controvert the factual position as mentioned hereinbefore. He submitted that if the order of ITAT in ITA Nos. 68 to 72/Del/2017 for A.Yrs. 2008-09 to 2012-13 is recalled then the matters be remitted to the Ld. AO for decision afresh in the light of Tribunal's order in assessee's own case for A.Y. 2006-07 & 2007-08 (supra).

4. After hearing both the parties and going through the materials available on record we find force in the submissions made on behalf of the Revenue. Accordingly, Tribunal's consolidated order dated 14.11.2019 in ITA Nos. 68,69,70,71 & 72/Del/2017 for A. Yrs. 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 is recalled. With the consent of both the parties, the matters for all the five impugned assessment years are restored to the Ld. AO for consideration afresh in the light of Tribunal's order dated 26.07.2023 in assessee's own case for A.Y. 2006-07 & 2007-08. We order accordingly.

5. In the result, Revenue's misc. applications in M.A. Nos. 01,02,03,04 & 05/Del/2024 are allowed and the Revenue's appeals in ITA Nos. 68 to 72/Del/2017 for A.Yrs. 2008-09 to 2012-13 are allowed for statistical purposes.

Order pronounced in the open court on 25.04.2025

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(MS. MADHUMITA ROY)
JUDICIAL MEMBER

Dated 16.05.2025.

PS: *MP*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT DELHI