

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH : BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.1824/Bang/2016
Assessment year : 2010-11

Shri Sanjay Ballambat Pai, # 220, Inland Everglades Apartments, Dasarahalli Main Road, Hebbal, Bangalore – 560 085. PAN: AXAPP 9840Q	Vs.	The Assistant Commissioner of Income Tax, Circle 14(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Akshaya K.S., CA
Respondent by	:	Shri AR.V. Sreenivas, JCIT(DR)

Date of hearing	:	16.02.2017
Date of Pronouncement	:	23.02.2017

ORDER

Per A.K. Garodia, Accountant Member

This is an appeal of the assessee directed against the order of the Id. CIT (Appeals)-V, Bengaluru dated 28.04.2016 for the assessment year 2010-11.

2. The grounds raised by the assessee are as under:-

“1. The Order of the learned Commissioner of Income-tax Appeals, passed under section 250 of the Act in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the

Appellant's case. The Learned CIT (A) has erred in dismissing all the grounds of appeal failing to take on account the submissions made by the Appellant on the facts and circumstances of the case.

2. The grounds of the Appellant on the merits of the matter are as under-

- a) The learned CIT(A) failed to understand that the learned AO erred in passing the assessment order without considering the explanations and submission made and revised computation provided to support the Appellants claims, which is bad in law.
- b) The Learned CIT (A) has erred in holding that provisions of Section 198 are to be applied only when the assessee has no other income to show and the TDS made on the income would be shown as deemed income and accordingly, credit would be claimed as Income would be exempted from Tax. Thus, the order of the CIT (A) is unjustified and bad in law.
- c) The learned CIT(A) failed to appreciate that the learned AO erred in passing the assessment order by treating and taxing the Interest Income on Fixed Deposits lying with Karnataka Bank on **ACCRUAL BASIS** instead of **CASH BASIS on receipt** as opted by the Appellant.
- d) The learned CIT(A) failed to appreciate that the said Interest income was already being taxed in the later years on Cash Basis, based on the Additional evidences produced before him.
- e) The learned CIT (A) failed to note and consider the ground relating to exemption u/s 10(4) (ii) relating to Interest Income received on Savings Bank NRE account as sought by the appellant, which is bad in law.
- f) The learned CIT(A) failed to consider the ground and to understand that the learned AO has erred by computing the tax payable without giving credit to TDS on Interest Income amounting to Rs. 90,018/-, which is bad in law.
- g) On relief of the above, we pray to the learned Tribunal that the Interest u/s 234B be recomputed accordingly.

3. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

4. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

3. It was submitted by the Id. AR of assessee that as per computation of income available on pages 51 & 52 of PB, the assessee is offering income from other sources on cash basis, which is permitted u/s. 145 of the I.T. Act. He thereafter submitted that an amount of Rs.90,018 was deducted as TDS in respect of interest on 3 FDRs. He further submitted that assessee has considered only the TDS amount as interest income in the present year but the AO has made addition of the entire amount of interest on which ITDS was deducted by the bank. He submitted that this addition made by the AO is not justified. At this juncture, a query was raised by the Bench that if only TDS amount is offered as income on the basis of cash basis of accounting, then how the assessee can claim the credit of entire amount of TDS in view of Rule 37BA(3)(ii), as per which where the income on which tax is deducted is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax. In reply, the Id. AR of assessee had nothing to say.

4. Thereafter, he submitted that in respect of ground No.2(e) of the assessee in respect of exemption u/s. 10(4)(ii) in respect of interest income received on Savings Bank NRE account, the matter may be restored to the file of CIT(Appeals) because this issue has not been decided by the CIT(Appeals).

5. The Id. DR of revenue supported the order of CIT(Appeals).

6. I have considered the rival submissions. I find that although assessee has raised several grounds but the issues involved are two only. The first issue is regarding addition made by the AO of Rs.8,79,492 on account of FD interest from Karnataka Bank. On this aspect, I find that the addition made by the AO is not justified because admittedly, the assessee is following cash system of accounting in respect of income from other sources and it is permitted by section 145 of the Act. Hence the addition made by the AO is not justified. But at the same time, the claim of assessee regarding credit of TDS to the extent of entire amount of TDS is not allowable in view of Rule 37BA(3)(ii) of the Income-Tax Rules, 1962. Hence I delete the addition but at the same time, direct the AO to allow credit of TDS in respect of interest on FD from Karnataka Bank as per Rule 37BA(3)(II) of the I.T. Rules, 1962.

7. Regarding the second issue raised by the assessee as per ground No.2(e), I find that this issue was raised by the assessee before the CIT(Appeals) also, but the CIT(A) has not decided this issue and hence, on

this aspect, I restore the matter back to the file of CIT(Appeals) for a decision.

8. In the result, the appeal of the assessee stands allowed in the terms indicated above.

Pronounced in the open court on this 23rd day of February, 2017.

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated, the 23rd February, 2017.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.