

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE 'B' BENCH, BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.447(BNG)/2015
(Assessment year : 2011-12)**

Shri Gnanaprakash Dominic,
Vincent Aranha,
16-5-348, VAS Lane,
Mangalore
Pan No.AGWPA3061F

Appellant

Vs

The Asst. Director of Income-tax, Intl.Transaction,
Mangalore

Respondent

**Assessee by : Shri Ravish Rao, CA
Revenue by : Shri Naresh Saka, Addl.CIT**

**Date of hearing : 30-11-2015
Date of pronouncement : 11-12-2015**

ORDER

PER SHRI INTURI RAMA RAO, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-12, Bangalore dated 19-01-2015 for the assessment year : 2011-12.

2. The assessee raised the following grounds in its appeal;

"1. The learned assessing officer has erred in assessing to tax during the asst year 2011-12, the interest accrued in earlier years the learned assessing officer, after obtaining the correct interest figures should have proceeded to assess in accordance with the provisions of law. The income by way of interest should

have been assessed on accrual basis and accordingly for the asst year 2011-12 interest income on fixed deposits was T14,975.06 from Syndicate Bank and .32,349.57 from Canara Bank. Only these two figures totaling to Z.47, 324.63 should have been assessed as income from other sources for the asst year 2011-12.

2. The learned assessing officer has erred in adding a sum offt. 4, 36,109.00 to the income of the assessee as interest income, on cash basis. It includes the interest pertaining to the earlier assessment years also as the as the period of deposit is spread over to different previous years i.e. 23-12-2008 to 01-06-2010.The interest relating to the period 01-04-2010 to 31-03-2011 only should have been added under the accrual system.

3. The addition of the interest earned by the assessee during different previous year to current year's total income by the learned assessing officer is opposed to the general accepted practice and the system followed by the appellant consistently. The appellant has declared accrued income on FD as appearing in 26AS.

4. The interest earned on savings bank account maintained in connection with agricultural operations is to be treated as agricultural income only. It has been held by various courts that interest earned on savings bank account of a business is assessable as business income. The same principle is applicable here and the interest on savings bank account has to be added to agricultural income.

5. The learned First Appellate Authority has not considered the submissions made and has passed the order which is not in accordance with the provisions of law.

6. Based on the above grounds and other grounds that may be permitted to be urged at the time of hearing it is prayed to set aside the addition of Z. 4. 47,490.00 made to income from income from other sources.

3. Brief facts of the case are that the assessee is an individual and is a Non-resident Indian. The return of income for the assessment year 2011-12 was filed on 26-03-2012 declaring total income of Rs.30,207/-. Against the said return of income the assessment was completed by the ADIT

(Itl.Taxn.) Mangalore vide order dated 22-11-2013 at a total income of Rs.4,77,490/-. While doing so, the AO made addition of interest earned on deposit with Canara Bank of Rs.2,36,649/- and Syndicate Bank of Rs.1,78,916/- and the interest earned from SB account of Rs.11,173/-. When the assessee was called upon to explain as to why the interest income should not be brought to tax the assessee explained that the interest income was offered to tax on accrual basis of income accrued during the previous year relevant to assessment year under consideration is only Rs.30,207/- which was offered to tax and the contention of the assessee has been turned down by the AO by holding as under;

“ Considering the above line of argument an attempt was made to find out the acceptability of claim by collecting the details from the bankers.

From the details furnished by the bankers following facts came to light.

As regards the interest earnings from Syndicate Bank, Hampankatta, the assessee had received an amount of Rs.1,99,460/- including an amount of Rs.1,78,916/- mentioned in Table above for the year under scrutiny and

subjected the entire amount to TDS for the same year. Whereas the assessee has not declared any amount as interest from the above source.

As regards interest received from Canara Bank Valencia Branch, it is seen from the closure of deposits the bank has paid an amount of Rs.2,36,649/- on those deposits which were closed and amounts were repatriated. However, it is also learnt from the details furnished by the said bank that it has made TDS on an amount of Rs.32,349/- only as it has subjected the balance amount to TDS on accrual basis for earlier years.

When the above findings compared with the returns of the assessee for earlier years following facts revealed.

The assessee has not declared any income from Syndicate Bank for earlier years.

The assessee has admitted only Rs.51,730/- in his return of income for AY: 2010-11 which is nothing but interest from Canara Bank but that does not include the interest of Rs.1,83,888/- which was shown as paid by the Bank on the deposits which were prematurely closed during the subject assessment year for repatriation. So the entire interests

received on account of closure of deposits during the year are still lies untaxed.

The returns revealed that the incomes admitted by the assessee were not of accrual basis. So though the payer accounts for the same on accrual basis, when the element of income that has to be considered in the hands of the payee, it right to consider it on receipt basis. So the entire interest received from the above two banks which were received during the previous year relevant to subject assessment year will be the income from these sources for the current year only.

Interestingly, it is also learnt from the income declared by the assessee for different years that the basis for the total income determined by the assessee was nothing but receipts those are being reflected in form 26AS.

From the foregoing discussion, now it is clear that the assessee earnings to the extent of Rs.1,99,460/- from Syndicate Bank and Rs.2,36,649/- which comes to Rs.4,36,109/- has been omitted in the return of the assessee that needs to be brought to tax. The authorized representative's submission that the same are to be considered on accrual basis is hereby rejected for the reasons

already discussed. The above sum of Rs.4,36,09/- is hereby added to the income of the assessee for the subject assessment year”.

4. On appeal before the CIT(A) the action of the AO in bringing to tax the income earned in FD of the banks of Rs.4,36,109/- was confirmed b y holding as under;

“I have carefully considered the facts and circumstances f the case and am of the considered opinion that a sum of Rs.4.36 lakhs was received by the assessee during the year it is clear finding of the AO that such amounts have not been brought or offered to tax earlier. In such case there is absolutely no justification into entering into the controversy of whether such income needs to be taxed on accrual or receipt basis. The term deposit receipts were and encashed prematurely during the year and the assessee received this amount in his hands during the year. Income from interest has arisen during the year in his hands and no part of this income has been offered to tax in any earlier year. The assessee was fully aware f the situation and it was duty upon him to report this income received during the year as the same had both accrued and arisen to him in this very year Taking recourse to ignorance of the law and

dependence on form 26AS cannot absolute the assessee as he was a guided and represented by a qualified accountant. Hence there is no reason to interfere in the action of the AO. The same is hereby upheld with respect to the argument that a sum of Rs.11,173/- represents agricultural income it is sufficient to say that the same is highly misconceived and fallacious and cannot be tenable. The interest income has clearly been derived from savings bank accounts and clearly falls under the head income from other sources and can in no way linked to agricultural activity”.

5. Being aggrieved by this assessment order the assessee is in appeal before us.

5.1 Before us it was contended that the bankers have deducted TDS in the year of maturity of FD on entire amount of interest and whereas the assessee was offering the interest income from FD on accrual basis. Therefore, he submitted that the AO was not justified in bringing to tax the entire interest income in one year only i.e in the year of maturity of FD.

5. On the other, learned SR.DR vehemently opposed the submission of the leaned AR of the assessee and contended that the assessee has not offered the interest income even on accrual basis and he brought to our notice the return of income for the AY: 201-11 wherein only interest income of Rs.51,727/- was offered and whereas the interest income on FA was much higher.

6. We have heard the rival submissions and perused the material on record. Even assuming that assessee is offering the interest income on accrual basis, it is not clear from the material on record whether the assessee is following the same method in deposits held with Canara Bank and Syndicate Bank etc. In fact, the AO had given categorical finding that the assessee had not offered any income on a FD held with Syndicate Bank. This findings remains uncontroverted. Therefore, we are of considered opinion that the interest of justice would be met if the matter is restored to the file of the AO with the direction that if the assessee is following regularly the accrual system in offering interest of FD with the banks to tax only the interest income accrued during the year relevant to the

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assessment year under consideration in respect of the income from all FDs.

We order accordingly.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on the 11th December, 2015.

Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER

Place: Bangalore

D a t e d : 11-12-2015

am*

Copy to :

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

Sd/-
(INTURI RAMARAO)
ACCOUNTANT MEMBER

By order, AR,ITAT, Bangalore