

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI O.P. KANT, A.M.

ITA.No.6780/Del./2013  
Assessment Year 2011-2012

The ACIT, Central Circle-7, Room No.363, E-2, ARA Centre, Jhandewalan Extn. New Delhi.	vs.	Shri Anil Kumar Sharma, 83, AGCR Enclave, New Karkardooma, Delhi-032 PAN AUTPS1076K
(Appellant)		(Respondent)

Cross Objection No.240/Del./2014  
Arising out of  
ITA.No.6780/Del./2013 - Assessment Year 2011-2012

Shri Anil Kumar Sharma, 83, AGCR Enclave, New Karkardooma, Delhi-032 PAN AUTPS1076K	vs.	The ACIT, Central Circle- 7, Room No.363, E-2, ARA Centre, Jhandewalan Extn. New Delhi.
(Appellant)		(Respondent)

For Revenue :	Shri J.K. Mishra, CIT-D.R.
For Assessee :	-None-

Date of Hearing :	12.12.2018
Date of Pronouncement :	01.01.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

The Departmental Appeal as well as Cross Objections by the Assessee are directed against the Order of the Ld. CIT(A)-1, New Delhi, Dated 15.10.2013, for the A.Y.

2011-2012. The Departmental Appeal is filed on the following grounds :

1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.4,73,53,263/-(Rs.34,06,230/- + Rs.4,39,47,033/-) made by AO as benefit/perquisite u/s. 2(24)(iv) of the Income Tax Act, 1961.”*

1.1. The Cross-Objection is filed in support of the order of the Ld. CIT(A) in deleting the above addition.

2. Briefly the facts of the case are that A.O. made two additions of Rs.34,06,230/- as income on account of benefit/perquisite under section 2(24)(iv) of the I.T. Act (M/s. AHS Joint Venture) and Rs.4,39,47,033/- as income on account of benefit/perquisite under section 2(24)(iv) of the I.T. Act (M/s. AIPL).

3. Both the additions were challenged before Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee

explained that Section 2(24)(iv) of the I.T. Act, would not apply in the case of the assessee. The assessee has neither received any interest income nor any interest income has accrued to it. It is only a real income that can be brought to tax. In the absence of any real income, there could be no taxability. The addition made by the A.O. are of hypothetical income and not of any real income. The A.O. himself has recognized the additions as on account of notional interest. The assessee relied upon the decisions of Hon'ble Apex Court in the case of Godhra Electricity Co. Ltd., (1997) 225 ITR 746 (SC). It was submitted that there is no involvement of any "*benefit or perquisite*" given by the company to the assessee. There is no payment for any obligation of the assessee by the company. There were no agreement for charging of any perquisite or benefit. Several case laws were relied upon in support of the contention that no nexus established by A.O. between the above amount received by AHS Joint Venture from Ultra Home Construction Pvt. Ltd., and the amount granted by AHS Joint Venture to the assessee. Since no money has come into on account of

assessee, therefore, there is no question of getting any benefit or perquisite being acquiring to the assessee. The transaction with AIPL was commercial transaction duly explained before A.O. and balance outstanding as advance were in relation to property/project, so Section 2(24)(iv) do not apply.

4. The Ld. CIT(A) however following his appellate order for the A.Y. 2010-2011, deleted the addition. His findings in para 4.2 of the Order is reproduced as under :

*“4.2. I have considered the assessment order, the submissions made and the documents filed. As regards the amount of Rs.34,06,230/- received by the appellant from M/s AHS Joint Venture (AHS), it is seen from the ledger account that there is no payment by M/s Ultra Home Construction Pvt. Ltd. (UHC) to AHS which can be linked even remotely to the said advance. Therefore, the averment of the revenue that the advance originated from UHC has no factual basis. It is further noted that the provisions of section 2(24)(iv) are not applicable in the case of partnership firm but are applicable only in*

*the case of companies. Thus, the provision is inapplicable in the present case. Regarding the amount of Rs.4,39,47,033/- received from Amarpali Infrastructure Pvt. Ltd. (AIPL), it is seen from the ledger account that no such amount was actually received but there are only journal entries passed debiting the appellant's account and correspondingly crediting the UHC account to enhance the promoters' contribution in the joint venture project between AIPL and UHC. These book entries were made to facilitate bank finance for the project and do not have any tax implication as such. In this factual background of the matter, the addition made was not warranted, cannot be legally sustained and are deleted. This decision is in accordance with the decision taken earlier vide order dated 18.09.2013 in appellant's own case for AY 2010-11 in Appeal No.134/13-14. These grounds of appeal are allowed and appellant gets relief of Rs.4,73,53,263/-."*

5. We have heard the Learned D.R. and perused the findings of the authorities below. The Ld. D.R. contended

that similar issue was considered by the ITAT F-Bench in the case of same assessee and in A.Y. 2009-2010 in ITA.No.4836/2014, similar matter in issue have been restored to the A.O. for reconsideration vide Order Dated 26.03.2018. Copy of the Order is placed on record. The Ld. D.R. therefore, submitted that matter may be remanded to the A.O. as is already directed by the Tribunal.

6. None appeared on behalf of the assessee at the time of hearing of the appeal. On earlier occasion, the appeal was adjourned at the request of the Counsel for Assessee. Assessee was also intimated the date of hearing of the appeal fixed on 12.12.2018 through registered post. However, none appeared on behalf of the assessee.

7. After considering the submissions of the Ld. D.R, we are of the view that the matter requires reconsideration at the level of the A.O. The Ld. CIT(A) in this case following his Order for the A.Y. 2010-2011 allowed the appeal of assessee. The Ld. D.R. however filed copy of the Order of the Tribunal Dated 26.03.2018 in the case of same assessee in which for A.Y. 2009-2010 in ITA.No.4836/Del./2014, the

Tribunal has considered the similar issue in Departmental Appeal on Ground No.3 - *“On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.34,06,230/- made by the A.O. on account of benefit of perquisite under section 2(24)(iv) of the I.T. Act, 1961.”* The Ld. D.R. referred to the findings of the Tribunal in para 48 of the Order which reads as under :

*48. (iv) .....In view of above findings, we set aside ground No. 3 of the appeal of the revenue to the file of the Ld. assessing officer with a direction to the assessee to show before him that how the about transaction of receiving loan from a firm to the assessee free of interest where a company where the assessee is director which is provided huge interest free funds to such firm is not chargeable to tax as income under section 2(24)(iv) of the act. The Ld. AO may examine the arguments of the assessee and decide the issue afresh in accordance with the law after granting assessee adequate opportunity of hearing. Accordingly, ground No. 3 of the appeal of the revenue is allowed with above direction.”*

8. The Ld. D.R, therefore, contended that the issue is covered and the matter requires reconsideration at the level of the A.O. as directed by the Tribunal above.

9. Following the reasons for decision of the Coordinate Bench of the Tribunal, we set aside the Orders of the authorities below and restore the matter in issue to the file of A.O. for reconsideration as is directed by the Tribunal vide Order dated 26.03.2018 (supra). The Departmental appeal is allowed for statistical purposes. However, the Cross Objection of the assessee is dismissed as has become infructuous because it was filed merely in support of the Order of the Ld. CIT(A) which is set aside.

10. In the result, appeal of the Department is Allowed for statistical purposes and Cross-Objection of the Assessee is dismissed.

Order pronounced in the open Court.

Sd/-  
(O.P.KANT)  
ACCOUNTANT MEMBER  
Delhi, Dated 01<sup>st</sup> January, 2019  
VBP/-

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi