

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.7861/Del/2017
(ASSESSMENT YEAR 2012-13)**

Dy. CIT Central Circle-26, New Delhi.	Vs.	Sh. Anurag Dalmia 2 nd Floor, Indraprakash Building 21, Barakhamba Road, New Delhi. PAN-AADPD 9439P
(Appellant)		(Respondent)

**I.T.A No.7862/Del/2017
(ASSESSMENT YEAR 2012-13)**

Asst. CIT Central Circle-26, New Delhi.	Vs.	Sh. Anurag Dalmia 2 nd Floor, Indraprakash Building 21, Barakhamba Road, New Delhi. PAN-AADPD 9439P
(Appellant)		(Respondent)

Appellant By	Sh. V.K. Bindal, CA Mrs. Rinki Sharma, CA
Respondent by	Sh. Prakash Dubey, Sr. DR
Date of Hearing	14.01.2021
Date of Pronouncement	13.04.2021

ORDER**PER SUDHANSHU SRIVASTAVA, JM:**

Both the appeals are preferred by the Department. ITA No.7861/Del/2017 is the Department's appeal against the quantum order dated 12.10.2017 passed by the Learned Commissioner of Income Tax (Appeals)-29, New Delhi {CIT(A)} for Assessment Year 2012-13 whereas ITA No.7862/Del/2017 is the Department's appeal against order dated 12.10.2017 passed by the Learned Commissioner of Income Tax (Appeals)-29, New Delhi {CIT(A)} for Assessment Year 2012-13, wherein the Ld. CIT(A) has deleted the penalty of Rs.45,46,111/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called 'the Act').

2.0 The brief facts of the case are that during the year, the assessee had declared his income from salary and income from other sources. The original return was filed on 31.07.2012 declaring an income of Rs.83,71,100/-. A search and seizure action u/s 132 of the Act was carried out in this case on 20.01.2012 and during the course of search, cash of Rs.2,21,630/- was found at the assessee's residence and cash of Rs.6,08,750/- was found at 2nd

Floor, Indra Prakash Building, 21 Barakhamba Road, New Delhi and also jewellery valuing Rs.2,02,52,864/- was found. During the course of assessment proceedings, the Assessing Officer took note that information had been received which related to the assessee having accounts in HSBC Bank, Geneva. The Assessing Officer also noted that during the course of search, the statement of assessee was recorded u/s 132(4) of the Act on 20.01.2012 in which specific query was raised as to whether the assessee had maintained any bank accounts abroad to which the assessee had replied in the negative. The Assessing Officer further observed in the assessment order that further, during the course of assessment proceedings u/s 153A of the Act, the statement of assessee was recorded on 03.12.2014 and the assessee was again specifically asked as to whether the assessee maintained any bank accounts with HSBC, Switzerland. The Assessing Officer further noted that the assessee during the course of search, was shown a copy of the bank statement with HSBC, Switzerland and the assessee had replied in the negative. Thereafter, the Assessing Officer noted that from the records and evidences, it was evident that the assessee had

opened/operated accounts in HSBC Bank, Switzerland. The Assessing Officer further noted that there were four such undisclosed accounts which were linked to the assessee. Thereafter, the Assessing Officer proceeded to compute interest income from these four Bank Accounts for the year under consideration at Rs.1,47,12,333.41. This amount was added to the income of the assessee u/s 69 of the Act as undisclosed interest income. Penalty proceedings for concealment of particulars of income and/or filing inaccurate particulars of such income were also initiated. Apart from this undisclosed cash found at 2nd Floor, 2nd Floor, Indra Prakash Building, 21 Barakhamba Road, New Delhi found during the course of search was also added to the income of the assessee and assessment was completed u/s143(3) of the Act.

2.1 Aggrieved, the assessee approached the Ld. CIT(A) who deleted the addition pertaining to interest by following his order in assessee's own case for Assessment Year 2006-07 on identical facts. The Ld. CIT(A) also deleted the addition with respect to the cash

found at the premises on 2nd Floor, Indra Prakash Building, 21 Barakhamba Road, New Delh.

2.2 Subsequently, to the completion of the assessment as above, penalty u/s 271(1)(c) of the Act to the tune of Rs.45,46,111/- was imposed. Since, the Ld. CIT(A) had already deleted the addition in quantum proceedings, the penalty imposed was also deleted by the CIT(A).

2.3 Aggrieved by both these orders, the Department has now approached this Tribunal and has raised the following grounds of appeal:

ITA No.7861/Del/2017

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,47,12,333/- made by the AO on account of undisclosed interest income on the undisclosed deposits of Rs 36.78 crore in HSBC Bank, Geneva without appreciating the fact that the assessee had no intent to disclose the Foreign Bank Account as he had not given the department "Consent Form" not the assessee had submitted any details regarding the same during the assessment proceedings or appellate proceedings or prior to that while filing the returns.

2. The Ld. CIT(A) has erred in deleting the addition of Rs.6,08,750/- on account of undisclosed cash found during search and seizure without appreciating the fact that the

assessee had not submitted any documentary evidence in support of his contention to the contrary viz to whom this cash belongs.

3. *That the ground of appeal are without prejudice to each other.*

4. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

ITA No.7862/Del/2017

“1. *That on the facts and in the circumstances of the case the Ld. CIT (A) has erred in law and on facts in deleting the Penalty of Rs.45,46,111/- which was imposed by the AO on account of conceal interest income of Rs.1,47,12,333/- on account of undisclosed interest income in HSBC Geneva.*

2. *That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on facts in deleting the Penalty disregarding the facts that the assessee has deliberately concealed interest income of Rs. 1,47,12,333/- in HSBC, Geneva.*

3. *That the grounds of appeals are without prejudice to each other.*

4. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

3.0 The Ld. CIT-DR submitted that the information had been received in terms of the information regarding the foreign bank accounts which had been received in terms of the information

exchange programme with the Government of France and that as per the records, the name of the assessee, his friends and relatives were appearing in the said information. It was submitted that this information established that the assessee was beneficiary holder of these accounts and, therefore, the Ld. CIT(A) was wrong in deleting the quantum addition based on his order for Assessment Year 2006-07. The Ld. CIT-DR further submitted that the order of the Ld. CIT(A) in Assessment Year 2006-07 was upheld by the Tribunal but there was a basic difference in the facts between Assessment Year 2006-07 and the present year now under consideration for the reason that in Assessment Year 2006-07, the assessment was completed u/s 153A of the Act and since no incriminating document was found during the course of search, the Ld. CIT(A) had deleted the addition whereas in the present year, the assessment was completed u/s 143(3) of the Act and, therefore, on factual matrix of the case, the Ld. CIT(A) should not have followed his order in Assessment Year 2006-07. The Ld. CIT-DR also referred to the order of the ITAT in assessee's own case for Assessment Year 2014-15 wherein an identical addition on account of interest had

been deleted. The Ld. CIT-DR submitted that there was perversity in the findings of the ITAT and, therefore, the same should not be followed.

4.0 The Ld. CIT-DR also submitted that the penalty imposed was consequential and the sustenance of the penalty would depend on the outcome of the quantum appeal filed by the Department.

5.0 Per contra, the Ld. AR placed reliance on the order of the ITAT in assessee's own case in Assessment Year 2014-15 and submitted that in view of the finding of the Tribunal that since the quantum pertaining to bank deposits itself had been deleted, no addition on account of interest could be sustained, the addition in this year also should be deleted. The Ld. AR also submitted that the information received under the information exchange programme related to Assessment Years 2006-07 and 2007-08 and not to the year under consideration. The Ld. AR submitted that the quantum as well as the penalty had been rightly deleted by the Ld. CIT(A).

6.0 We have heard the rival submissions and have also perused the material on record. We have also gone through the

order of the Co-ordinate Bench of the ITAT in assessee's own case for Assessment Year 2014-15 in ITA No.6542/Del/2017 wherein an identical addition on account of interest has been deleted on the ground that the ITAT had earlier deleted the addition on account of investment in the bank accounts itself. The relevant observations of the Co-ordinate Bench are contained in paragraph-5 of the said order. The same is reproduced herein under for a ready reference.

“5.0 We have carefully heard the rival contentions of the learned departmental representative as well as the learned authorised representative and perused the orders of the lower authorities. The learned authorised representative submitted a photocopy of the appellate order dated 15th of February 2018 passed by the coordinate bench in the case of the assessee for assessment year 2006 - 07 and 2007 - 08 in quantum appeal. He also submitted a copy of the order of the coordinate bench dated 23 August 2019 in case of the assessee for assessment year 2008 - 09. He also submitted a chart for the various years wherein the addition of notional interest on account of balance in the alleged foreign bank account of the assessee starting from assessment year 2006 - 07 to assessment year 2014 - 15 are added by the learned assessing officer and deleted by the learned CIT - A. We have carefully considered the order of the coordinate bench in ITA number 5395 and 5396/del/2017 for

assessment year 2006 - 07 and 2007 - 08 dated 15th of February 2018 wherein the addition on account of investment in the bank account itself was deleted. As the quantum addition itself has been deleted by the coordinate bench with respect to balance in the foreign bank account, there is no question of making an addition on account of the notional interest on that balance. With respect to the main addition in paragraph number 14 the coordinate bench has held that revenue has several other options left but not the action u/s 153A read with the second proviso thereto. Therefore, when the assessee is not found to be owner of any bank account, till now, there is no reason to uphold the interest on such bank balances. If the assessee is not owner of the amount lying in the bank account, naturally the interest income cannot be added in the hands of the assessee. Even otherwise if the revenue gets any information with respect to the ownership of the money lying in the bank account with HSBC bank Geneva, then the provisions of explanation 2 (d) of Section 148 applies and the interest income can be added in the hands of the assessee. The time limit available with the revenue according to the provisions of Section 149 (1) (C) is up to 16 years. Therefore, we do not find any infirmity in the order of the learned CIT - A, at present, in deleting the addition on account of interest in the hands of the assessee for this year with respect to the alleged the holding of

bank balance in the HSBC bank Geneva account, as the addition on the quantum itself has been deleted.”

6.1 The Ld. CIT-DR has submitted that there is perversity in the order of the ITAT in Assessment Year 2014-15. However, how that order was perverse was not demonstrated before us with evidence and, therefore, being bound by judicial discipline, we have no choice but to respectfully follow the order passed by the Coordinate bench in assessee's own case for Assessment Year 2014-15 as above mentioned. Accordingly, we find no reason to deviate from the findings of the Ld. CIT(A) in the quantum proceedings in the year under consideration and we uphold the same.

7.0 In the result, the Department's appeal bearing ITA No.7861/Del/2017 stands dismissed.

8.0 Since, we have upheld the deletion of the quantum addition by the Ld. CIT(A) in the foregoing paragraphs, there is again no reason to deviate from the findings of the Ld. CIT(A) in deleting the penalty imposed against the quantum addition. We uphold the deletion of penalty by the Ld. CIT(A).

9.0 In the result, ITA No.7862/Del/2017 stands dismissed.

10. In the final result, both the appeals of the Revenue stand dismissed.

Order pronounced on 13th April, 2021.

Sd/-
(G.S.PANNU)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated:13/04/2021

PK/Ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI