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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd February, 2021

\+ ITA 48/2021 & CM APPL. 6877/2021 (for delay in filing)

PCIT (CENTRAL) -3, NEW DELHI ..... Appellant

Through: Mr. Ajit Sharma, Senior Standing Counsel.

versus

KRISHAN KUMAR MODI ..... Respondent

Through: Mr. Rohit Jain, and Mr. Aniket D. Agrawal, Advocates.

\+ ITA 49/2021 & CM APPL. 6938/2021 (for delay in filing)

PCIT (CENTRAL) -3, NEW DELHI ..... Appellant

Through: Mr. Ajit Sharma, Senior Standing Counsel.

versus

KRISHAN KUMAR MODI ..... Respondent

Through: Mr. Rohit Jain, and Mr. Aniket D. Agrawal, Advocates.

\+ ITA 50/2021 & CM APPL. 6940/2021 (for delay in filing)

PCIT (CENTRAL) -3, NEW DELHI ..... Appellant

Through: Mr. Ajit Sharma, Senior Standing Counsel.

versus

KRISHAN KUMAR MODI ..... Respondent

Through: Mr. Rohit Jain, and Mr. Aniket D. Agrawal, Advocates.

\+ ITA 51/2021 & CM APPL. 6945/2021 (for delay in filing)

PCIT (CENTRAL) -3, NEW DELHI ..... Appellant

Through: Mr. Ajit Sharma, Senior Standing Counsel.

versus

KRISHAN KUMAR MODI ..... Respondent

Through: Mr. Rohit Jain, and Mr. Aniket D. Agrawal, Advocates.

\+ ITA 52/2021 & CM APPL. 6949/2021 (for delay in filing)

PCIT (CENTRAL) -3, NEW DELH ..... Appellant

Through: Mr. Ajit Sharma, Senior Standing Counsel.

versus

KRISHAN KUMAR MODI ..... Respondent

Through: Mr. Rohit Jain, and Mr. Aniket D. Agrawal, Advocates.

\+ ITA 53/2021 & CM APPL. 6952/2021

PCIT (CENTRAL) -3, NEW DELHI ..... Appellant

Through: Mr. Ajit Sharma, Senior Standing Counsel.

versus

KRISHAN KUMAR MODI ..... Respondent

Through: Mr. Rohit Jain, and Mr. Aniket D. Agrawal, Advocates.

\+ ITA 54/2021 & CM APPL. 7191/2021 (for delay in filing)

PCIT (CENTRAL) -3, NEW DELHI ..... Appellant

Through: Mr. Ajit Sharma, Senior Standing Counsel.

versus

KRISHAN KUMAR MODI ..... Respondent

Through: Mr. Rohit Jain, and Mr. Aniket D. Agrawal, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

1. The present appeals under Section 260A of the Income Tax Act, 1961 (hereafter "the Act") arise out of the common order of the Income Tax Appellate Tribunal ("ITAT") dated 5th July, 2019 in ITA No. 3956/Del/2017, ITA No. 3955/Del/2017, ITA No. 3954/Del/2017, ITA No. ITA No. 3953/Del/2017, ITA No. 3952/Del/2017, ITA No. 3951/Del/2017 and ITA No. 2892/Del/2017 for assessment years 2012-13, 2011-12, 2010-11, 2009-10, 2008-09, 2007-08, and 2006-07 respectively. Since all

the appeals raise identical questions of law, the same have been heard together and are being disposed of by way of a common order.

2. Briefly stated, on 9th November, 2011, a search and seizure action under Section 132 of the Act was carried out at the premises of the Respondent-Assessee, on the basis of information and documents made available to the Government of India under a Double Taxation Avoidance Agreement, which revealed existence of an undisclosed Swiss bank account maintained by the Respondent-Assessee. During search, the statement of the Respondent-Assessee was recorded under Section 132(4), wherein the Respondent-Assessee denied maintaining any such foreign bank account. Nonetheless, the Respondent-Assessee agreed to offer to tax, income equivalent to US $11,46,368 to buy peace and avoid litigation. On the basis of the aforesaid statement, to cover the afore-noted amount of US$ 11,46,358/-, the Respondent-Assessee offered to tax, in his return of income filed on 28th July, 2012, under Section 139(1) of the Act an amount of Rs. 5,81,32,321/-, as income for AY 2012-13 under Section 69A of the Act. The said amount was computed by applying the conversion rate of Rs. 50.71 per dollar, as applicable in the relevant year 2012-13. Subsequently, pursuant to search under Section 132 of the Act, proceedings under Section 153A of the Act were initiated by the AO for AYs 2006-07 to 2011-12. In respect of AY 2012-13, the year of search, regular assessment was undertaken under Section 143(3) of the Act. The AO vide assessment order passed under Section 153A/143(3) for AY 2006-07 and AY 2007-2008, rejected Respondent-Assessee's submission that he did not own any such foreign bank account and added the undisclosed monies in Respondent-Assessee's bank account under Section 69 of the Act. For the AYs 2007-08 to 2012-13,

AO also added interest income on the ground that the Respondent-Assessee would have earned interest on the balance available in the foreign bank account. In appeal, the CIT(A) held that deposits in the foreign bank account were rightly taxed by the AO under Section 69, however since no corroborative evidence was adduced to establish that interest was actually earned, the CIT(A) deleted the addition in that respect and the same was upheld by the learned ITAT vide the impugned order. The learned ITAT held that documents received by the Indian government are undated and unsigned and do not contain reference to any bank. Since no evidence emerged that the Respondent-Assessee had earned interest, the addition of interest could not be sustained. For AYs 2006-07 and 2007-08, the learned ITAT also came to the conclusion that there was no investment made by the Respondent-Assessee in the foreign bank account in these two assessment years and thus, the provisions of Section 69 could not have been invoked to make the additions of US$ 11,02,829 and US$ 43,359 respectively.

3. Mr. Ajit Sharma, learned Senior Standing Counsel for the Appellant-Revenue argues that the funds mentioned in the foreign bank account represent the investment or the deposits made by the Respondent-Assessee in the said bank account. The foreign investment was not disclosed in his books of account and as such should be deemed to be the income in terms of Section 69 of the Act. The money discovered in the foreign bank account would be deemed to be income in that financial year in which the information of investment having been made in the foreign account is made available to the department. The statement recorded under Section 132(4), as extracted in the assessment order, itself lends credence to the information and documents made available to the Indian government as

Respondent-Assessee's address on the documents matches with his present address, and he admits to knowing one Mr. Hinderling. Furthermore, the Respondent-Assessee conveniently refused to sign the consent waiver form, which would have enabled the government to unearth the truth behind the foreign account.

4. Mr. Jain, learned counsel for the Respondent-Assessee who appears on advance notice at the outset submits that the Respondent-Assessee has deceased. On merits, he defends the impugned order and argues that no questions of law arise for consideration of the Court.

5. We have considered the submissions advanced by the learned counsel for the parties. Since the Respondent-Assessee has deceased, the appeals are not maintainable in the present form. Be that as it may, since we are not inclined to entertain the appeals, as in our opinion no questions of law arise for our consideration, we are not going into the question of maintainability.

6. The Appellant-Revenue has proposed the common question of law being urged in AY 2006-07 and AY 2007-08 regarding the quantum of amount to be added, subject to a variance in the figures. The said question as proposed in the appeal pertaining to AY 2006-07 is reproduced hereinbelow:

> "*a. Whether ITAT has not erred in deleting the addition of AY 2006-07 on quantum· addition of Rs. 4,90,20,749/- made by the AO equivalent to US$ 11,02,829/- without considering that the Assessee has opened and/or operated account(s) in HSBC Bank and addition was made on account of undisclosed income and interest accrued therein for AY 2006-07 in HSBC Geneva, without appreciating the fact that the Assessee had not submitted any detail regarding the same and neither signed the consent*

waiver form, which would have enabled the department to seek information from HSBC Bank Geneva?"

Further, following identical question of law in AYs 2007-08 to 2012-13, except for the change in the figures, is urged in respect of addition of interest income. The question of law for the sake of convenience is extracted from the appeal in respect of AY 2007-08, as follows:

"b. Whether ITAT has not erred in deleting the addition of AY 2007-08 on Rs. 1,64,962/- made by the AO on account of undisclosed interest income in HSBC Geneva on the alleged balance appearing in the undisclosed foreign bank account without considering that the Assessee would have earned interest on his balance income in HSBC Geneva?"

7. In our view of the aforesaid, the learned ITAT has rightly held that there could not be any dispute on the legal proposition that the very same amount cannot be taxed twice in the two assessment years. The relevant portion of the impugned order reads as under-

"*5.1 Importantly, the assessee, while denying ownership of any foreign bank account, in his income tax return for assessment year 2012-13 offered for tax Rs. 5,81,32,321/- as amount equivalent to US $11,46,368. On the other hand, the assessing officer, apart from accepting the said offer in assessment year 2012-13, has also brought to tax US $ 11,02,829 and US$ 43,539 in assessment years 2006-07 and 2007-08 respectively. In fact, by applying conversion rate of Rs. 44.45 per dollar and Rs. 43.17 per dollar in the assessment years 2006-07 and 2007-08, the assessing officer taxed 4,90,20,749 _and Rs.18,79,578 in the said assessment years, aggregating to Rs.5,09,00,327, which is less than Rs.5,81,32,321 offered for tax by the assessee in assessment year 2012-13.* ***There can be no dispute with the settled legal position that the very same amount cannot be taxed twice in two different assessment years, which contention has also been accepted by the Ld. CIT (A). Therefore, the very same amount equivalent to US $11,46,368 cannot, in our view, be taxed twice,***

once in assessment years 2006-07 and 2007-08 and secondly in assessment year 2012-13.

[Emphasis Supplied]

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5.9 On the other hand, the assessee offered for tax Rs.5,81,32,321/- as amount equivalent to US $11,46,368 in assessment year 2012-13 under section 69A of the Act, which amount, as noticed above, is more than Rs. 5,09,00,327/- brought to tax cumulatively by the assessing officer in assessment years 2006-07 and 2007-08. In view thereof and the entirety of the circumstances discussed in the preceding paragraphs we are of the considered opinion that the addition of Rs.4,90,20,749 made by the assessing officer equivalent to US$ 11,02,829 in assessment year 2006-07 under section 69 of the Act and similar addition made in assessment year 2007-08, are not sustainable in law and the same are hereby directed to be deleted. We therefore, hold that the addition of Rs.4,90,20,749 in assessment year 2006-07 and similar addition of Rs.18,79,578 in assessment year 2007-08 are not sustainable in law and are hereby directed to be deleted. As a consequence the amount offered for tax by the assessee in assessment year 2012-13, being Rs. 5,81,32,321/-, which was sustained by the Ld. CIT(A) on protective basis, is hereby directed to be restored on substantive basis in assessment year 2012-13. In the result, the grounds of appeal nos. 2 to 2.3 raised by the assessee in the assessment year 2006-07 are allowed."

8. We do not find any perversity in the aforesaid observations made by the learned ITAT in respect of additions made on quantum and interest. In view of the aforesaid, the question of law raised by the Appellant-Revenue in the present appeals in respect of quantum does not arise for our consideration. Since the addition on quantum cannot be sustained, the addition of interest cannot survive. Thus, no question of law arises in respect

of deletion of addition of interest component.

9. Further, in ITA 53/2021, pertaining to AY 2012-13, there were certain additional facts regarding the discovery of undisclosed jewellery which were dealt with by the learned ITAT in detail. Before moving to the observations of the learned ITAT in this regard, it is necessary to highlight the additional question proposed to be framed by the Appellant-Revenue. The same reads as under:

> "*a. Whether ITAT has not erred in deleting the addition of Rs. 1,12,89,616/- on account of alleged unexplained jewellery found during the course of search, which has been confirmed n appeal by CIT(A) without appreciating that assessee was unable to provide an item wise reconciliation of jewellery to the extent of 6,716.700 grams (valued at Rs. 1,12,89,616) by the departmental valuer applying the rates prevailing on the date of search?*

The issue being canvassed in the aforementioned question has been dealt with by the learned ITAT and the relevant portion of the impugned order reads as under-

> *"8.11 We have carefully considered the rival submissions and the relevant material and ratio of the orders and judgment relied by both the parties, at the very outset we note that undisputedly the quantum of jewellery declared in the wealth tax returns of the assessee and his family members was much higher, than the jewellery found during the course of search. CBDT Instruction dated 11-5-1994 provides that no seizure should be made in the search for the jewellery held by the ladies at 500 gms, girls at 250 gms and males at 100 gms each. Though the Instruction speaks of not seizing the same, the extended meaning of the same shows the intention that the jewellery is to be treated as explained one and is not to be treated as unexplained for the purpose of Income-tax Act. This instruction came to be considered by several Benches all over India in which it has been held that it*

would be relevant for the purposes of making addition as well. The Hon'ble Rajasthan High Court in the case CIT v. Kailash Chand Sharma 147 Taxman 376 has upheld this view. When this instruction is applied to the facts of the case, we observe that the possession of gold jewellery of 38,748.28gms, which is far less than declared jewellery of 46,634.842 gms it cannot be held to be unexplained."

10. In our view of the finding of fact noted above, the conclusion arrived at by the learned ITAT does not warrant any interference. No question of law, much less a substantial question of law, has arisen for our consideration in the present appeals. Accordingly, the present appeals are dismissed along with the pending applications.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

FEBRUARY 22, 2021
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(***corrected and released on 10th March, 2021***)