

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G" MUMBAI**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

AND

SHRI RAJENDRA, ACCOUNTANT MEMBER

ITA No. 2430/Mum/2011
Assessment Year 2005-06

Smt. Gita Yogendra Divecha, 807, Cumballa Crest, 42, Peddar Road, Mumbai . PAN: AAIPD 2688 R	Vs.	Income Tax Officer – 16(1)(1), Mumbai
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(Appellant)

(Respondent)

Assessee by	:	Shri S.C. Tiwari, Ms. Natasha Mangat
Revenue by	:	Shri A.K. Nayak
Date of hearing	:	12-07-2012
Date of pronouncement	:	01-08-2012

ORDER

PER RAJENDRA, A.M.

The present appeal lies against the order of the CIT(A)-25, Mumbai dated 11.02.2011, raising following Grounds of Appeal:

"1. The learned Commissioner of Income Tax (Appeals)-25, Mumbai erred in confirming the addition of Rs.6,56,049/- on account of interest on the credit balance in the Partnership firm.

2. Your appellant submits that your appellant has not received any interest from the Partnership firm and as such the learned CIT(A) ought to have considered this and ought not to have confirmed the addition of Rs.6,56,049/- made by the learned A.O. on account of non receipt of the interest from the Partnership firm.

3. Your appellant submits that no interest has been paid to the partners by the partnership firm and as such the learned A.O. cannot estimate the interest receivable on the credit balance of your appellant.

4. Your appellant submits that the partners have decided not to take any interest from the Partnership firm and as such the learned A.O. cannot arbitrarily make addition on account of non charging of the interest on the credit balance of the partners.

5. Your appellant craves, leave to add, alter, amend, withdraw or substitute all or any of the grounds of appeal as the circumstances of the appeal may require.”

Though they are four grounds of appeal, but the effective ground of appeal is about addition made by the Assessing Officer (AO) amounting to Rs.6.56 lakhs to the income of the assessee on account of accrued interest for the year under consideration.

2. The assessee, an individual filed her return of income on 27.10.2005, declaring total income of Rs.1,81,154/- whereas the assessment was completed on 07.12.2007, assessing the total income at Rs. 8,37,200/-.

3. During the course of assessment proceedings, AO found that the assessee had advanced loan of Rs.1.07 Crores to a partnership firm in which she was a partner of 25% shares and that she had not shown interest income from the said firm while filing her return of income. In reply to a query of the AO with regard to issue of interest, the assessee submitted that the firm had incurred loss of Rs. 7.35 Lacs for the relevant AY. Hence, the question of charging of interest did not arise. On verification of computation of income the AO found that she had shown share of profits from the firm at Rs. 10.66 lakhs and had claimed the same as exempt income u/s.10(2A) of the Income –tax Act, 1961(Act). AO held that the claim of the assessee about incurring of loss by the firm was not correct, that interest income accrued to the assessee was liable for taxation. AO examined the clause 7 of the partnership deed of the firm according to which the assessee was entitled for simple interest @ of 12% on the amount standing to the credit of capital, current or loan account. Referring to the said clause, AO worked out interest receivable by the assessee @ 12%, amounting to Rs. 6,56, 049/-.

4. Assessee preferred an appeal before the First Appellate Authority (FAA). After considering the submissions of the assessee and the assessment order FAA held that although there was loss from Manufacturing activity of the firm, but there was income of Rs. 50 lakhs by way of sale of tenancy right which was credited in Appropriation account, that the said income was part and parcel of the firm in which the assessee was a partner, that it was incorrect to claim that firm had incurred loss, that on the basis of said income of Rs. 50 lakhs, net profit was transferred to the partners' capital account amounting to Rs.10.6 lakhs to each of the partners, that loss had nothing to do with contractual obligation to pay interest, that in view of the explicit provision of the partnership deed a right to receive interests had accrued in favour of the assessee partner. As a result he affirmed order of the AO.

5. Before us, the Authorised Representative (AR) submitted that firm had suffered losses and had not paid interest to the assessee-partner, that no income was received by the assessee from the firm during the AY under consideration. Departmental Representative (DR) submitted that income had accrued to the assessee, that same was the part of income for the AY under consideration, that receipt of a particular income was not important where the assessee was following Mercantile system of accounting.

6. After hearing the rival submissions, we are of the opinion that the amount in question had accrued to the assessee. Accrual of income is a well-known concept of taxation jurisprudence. It is a fact that assessee is following the Mercantile system of accounting and as per the established principles of that system, whatever accrues to an assessee in a particular AY has to be offered for taxation for that particular year. In our opinion the concept of real income or no real income can never be a concept which can work if it is at variance with the statutory provisions. Under section 5 of the Act the moment there is an accrual of income by way of interest income, it has to be inevitably offered to tax and even if it is not so offered, it is the duty of the income-tax authorities to bring it to tax. In other words the accrual of income must be real. What really accrues to the assessee has to be found out and what accrues must be considered from the point of view of real income taking the probability or improbability of realisation in a realistic manner and dovetailing of these factors together, but once the accrual takes place on the conduct of the parties subsequent to the year of closing, an income which has accrued cannot be made as no income. In the case under consideration interest of Rs.6.5 Lacs had accrued to the assessee-partner as per the provisions of agreement entered into between the assessee partner and the firm. It is also a fact that the assessee had claimed to have received Rs.10.6 lakhs from the firm during the AY. under consideration. In these circumstances, mere filing of a loss return for trading activities by the firm, cannot be a basis for not offering the accrued interest to the assessee for taxation.

Ground Nos. 1 – 5 are dismissed.

Appeal filed by the assessee stands rejected.

Order pronounced in the open court on 1st August, 2012.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-
(RAJENDRA)
ACCOUNTANT MEMBER

Mumbai,
Date 1st August, 2012

TNMM

Copy to:

1. Assessee
2. Respondent
3. The concerned CIT (A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

(True copy)

By Order

Asst. Registrar,
Income Tax Appellate Tribunal,
Mumbai Benches, Mumbai