



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.144/CTK/2020

Assessment Year : 2012-2013

Sri Birendra Kumar Mohanty, Ganapatipur, Kodandapur, Jajpur	Vs.	ACIT, Circle -1(1), Cuttack
PAN/GIR No.AEQPM 9529N		
(Appellant)	..	(Respondent)

Assessee by : Shri S.N.Sahu, AR
Revenue by : Shri S.C.Mohanty, DR

Date of Hearing : 28/05/ 2021
Date of Pronouncement : 14/06/2021

ORDER

This is an appeal filed by the assessee against the order of the CIT(A), Cuttack dated 3.12.2019 for the assessment year 2012-13.

2. The concise ground of appeal is as under:

"1. That the Id CIT(A) is not justified in confirming the addition of Rs.9,14,534/- made by the AO even after explaining that the interest received from fixed deposits from the banks shown in the hands of the firm M/s. Biraja Construction wherein the assessee is a partner. Income received on fixed deposit pledged with the contractee of the firm M/s. Biraja Construction as the said amount is the income of the firm duly reflected in the audited accounts.

2. That the said interest income of Rs.9,14,634/-has been offered for taxation in the hands of the firm together with other interest income

of the firm totaling to Rs.19,41,723/- which could be verified from the profit and loss account and income tax return of the firm for the assessment year 2012-13 and this method of accountancy is adopted consistently year after year accepted by the revenue.”

3. The assessee has filed appeal belatedly by 61 days. The assessee has filed condonation petition dated 24.7.2020 contending that due to spread of COVID 19 pandemic and consequent declaration of shut down/lockdown during the month of April and May, 2020, the appeal could not be filed in time; therefore, there was delay of 61 days in filing the appeal. In the petition, it is stated that the delay was not intentional and, therefore, same should be condoned. The Id DR opposed to the condonation of delay prayer. After considering the condonation petition and hearing the parties, I am convinced that the delay in filing by the assessee was not intentional and, therefore, the prayer of the assessee for condoning the delay was accepted. I, therefore, condone the delay of 61 days and admit the appeal for adjudication.

4. The facts in brief are that the assessee is a partner in the firm M/s. Biraja Construction, Ganapatipur, Kodandapur, Jajpur. He derives income from salary and interest income from partnership firm. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had received an interest amount of Rs.9,14,634/- from various banks but not disclosed the same in his return of income. In response to Assessing

Officer's query, the assessee explained that the interest income had already been shown in the hands of his partnership firm M/s Biraja Construction. In support of this, the assessee produced the necessary supporting evidence but the same was not acceptable to the AO and, therefore, the income was enhanced by Rs.9,14,634/-.

5. When the matter travelled upto the first appellate authority, the CIT(A) noticed that the interest income shown in Form 26AS of M/s. Biraja Construction is Nil while as per Form 26AS of the assessee, the interest income of Rs.9,14,634/- was shown. Before the CIT(A), the assessee submitted that the profit and loss account of M/s. Biraja Construction for A.Y.2012-13 shown an interest income of Rs.19,41,723/- and that this amount is inclusive of interest income of Rs.9,14,634/-. The CIT(A) did not accept the contention of the assessee on the ground that it is not open to the assessee to shuffle income tax returns and show income in hands where it has not rightfully accrued. Thus, the findings of the AO was confirmed.

6. Before the Tribunal, it is the contention of the Id A.R. of the assessee that the assessee is a super class contractor and license of Shri Birendra Kumar Mohanty was utilised by the firm M/s. Biraja Construction and bills and TDS are received in the name of Birendra Kumar Mohanty and the money which has been deposited as fixed deposit are also out of the income of the firm. So interest income received in the name of the assessee has been shown in the income of the firm under the head "interest

income". He referred to page 4 of the income tax return of the firm to support his contention. Ld A.R. submitted that since the said amount has already been offered for taxation in the hands of the firm M/s. Biraja Construction, again same amount cannot be assessed in the hands of the individual partner,. He submitted that this practice is consistently followed year after year. Ld A.R. referred to the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang vs CIT, 193 ITR 321 (SC), wherein, it has been held that rule of consistency in regard to accountancy must be accepted. Ld A.R. also filed a bifurcation bank interest shown by the firm for the assessment year 2012-13, wherein, total amount of Rs.19,41,723/- has been accrued, which includes interest received from different banks showing in the 26AS statement of the partner Birendra Kumar Mohanty of Rs.9,14,634/-, interest received from NSC of Rs.9,75,205/- and saving bank interest received from different banks of Rs.51,884/-. By contending this, Ld A.R. submitted that the main allegation of Id CIT(A) that the assessee has not segregated the amount is complied with.

7. Ld A.R. also referred to the decision of this Tribunal in the case of the assessee for the assessment year 2009-2010 in ITA No.592/CTK/2012 order dated 11.1.2013, wherein, it has been held by the Tribunal that the contract receipt in the name of the partner was considered as the amount received by the firm. Ld A.R. submitted that the impugned interest income of a firm is to be taxed in the in the hands of the firm alone. This

can, under no circumstances, be taxed in the hands of its partner. He submitted that since the interest amount has been taxed in the hands of the firm, same amount cannot be taxed in the hands of the assessee-partner.

8. Replying to above, Id DR supported the orders of lower authorities and further submitted that when 26AS statement of the assessee shows that the assessee was in receipt of interest from different banks and the assessee has not declared and shown the same in the income tax return, the authorities below were justified in disallowing the same.

9. I have heard the rival submissions and perused the record of the case. I have also perused the order of the Tribunal in assessee's own case for the assessment year 2009-2010 (supra). The Assessing Officer noticed that in 26AS of M/s. Biraja Construction, the interest income has been shown Nil, wherein, in the 26AS of the assessee, there are entries for interest income of Rs.9,14,634/-. It is the contention of the assessee that the profit and loss account of M/s. Biraja Construction for A.Y. 2012-13, it has been shown interest income of Rs.19,41,723/- which inclusive of interest income of Rs.9,14,634/-, interest received from NSC of Rs.9,75,205/- and saving bank interest received from different banks of Rs.51,884/-. This contention of the assessee was negated by the Id CIT(A) on the ground that this was not supported by segregation of Rs.19,41,723/-

. It is not disputed that the licence of the assessee was utilised by partnership firm and all the receipts, TDS, interest and other sources of

revenue were being shown in the hands of the firm, M/s. Biraja Construction. This practice is being followed by the assessee and partnership firm consistently from year to year and accepted by the Revenue, which is supported by the order of the Tribunal in assessee's own case for the assessment year 2009-2010 (supra), wherein, it has been held that the contract receipt in the name of the partner was to be considered as the amount received by the firm. From the above discussion, I am of the considered view that since amount has already been offered for taxation in the hands of the firm M/s. Biraja Construction, the said amount to be taxed in the hands of the individual partner i.e. assessee would amount to double taxation, which is not permissible under law. Even otherwise, there is no provision of law to deduct TDS on the interest amount received against NSC and saving account. Hence, I direct the AO to delete the amount of Rs.9,14,634/- and allow the appeal of the assessee.

10. In the result, appeal of the assessee is allowed.

Order pronounced on 14 /06/2021.

Sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 14/06/2021
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Sri Birendra Kumar Mohanty,
Ganapatipur, Kodandapur, Jajpur
2. The Respondent. ACIT, Circle -1(1),
Cuttack
3. The CIT(A)- Cuttack
4. Pr.CIT-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack