



ITA NO.169-176/Mum/2016
Rakesh Khanna & Anita Khanna

आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.169-172/Mum/2016

(निर्धारण वर्ष / Assessment Years: 2008-09 to 2010-11 & 2012-13)

Rakesh Khanna 161B, Twin Towers Twin Towers Lane, Prabhadevi Mumbai-400 025	बनाम/ Vs.	Assistant Commissioner of Income-Tax Central Circle-20 Aaykar Bhavan Mumbai 400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.AADPK-9771-B		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No 173-176/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2007-08 to 2010-11)

Anita Khanna 161B, Twin Towers Twin Towers Lane, Prabhadevi Mumbai-400 025	बनाम/ Vs.	Assistant Commissioner of Income-Tax Central Circle-20 Aaykar Bhavan Mumbai-400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.AADPK-9772-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	M.C.Omi Ningshen & B.Srinivas, Ld. CIT(DR)
Assessee by	:	Ashok Rao, Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	05/04/2018
घोषणा की तारीख / Date of Pronouncement	:	11 /04/2018



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आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. The bunch of captioned appeals by two assessee for different Assessment Years [AY] contest separate orders of Ld. first appellate authority. Since the issues under appeal are inter-related, all the appeals are being disposed-off by way of this common order for the sake of convenience & brevity. These appeals may be tabulated in the following manner and the same are taken up in the succeeding paragraphs:-

Name of the Assessee	Assessment Year	Appeal No.
<i>Rakesh Khanna</i>	<i>2008-09</i>	<i>171/Mum/2016</i>
<i>Rakesh Khanna</i>	<i>2009-10</i>	<i>170/Mum/2016</i>
<i>Rakesh Khanna</i>	<i>2010-11</i>	<i>172/Mum/2016</i>
<i>Rakesh Khanna</i>	<i>2012-13</i>	<i>169/Mum/2016</i>
<i>Anita Khanna</i>	<i>2007-08</i>	<i>175/Mum/2016</i>
<i>Anita Khanna</i>	<i>2008-09</i>	<i>173/Mum/2016</i>
<i>Anita Khanna</i>	<i>2009-10</i>	<i>174/Mum/2016</i>
<i>Anita Khanna</i>	<i>2010-11</i>	<i>176/Mum/2016</i>

ITA Nos. 169-172/Mum/2016 AYs 2008-09 to 2010-11 & 2012-13 :

Rakesh Khanna

2. The appeal for Assessment Year [AY] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-51 [CIT(A)], Mumbai, *Appeal No.CIT(A)-51/IT-60/2014-15* dated 20/10/2015. The assessment for impugned AY was framed by *Ld. Assistant Commissioner of Income Tax, Central Circle-20, Mumbai [AO]* u/s 143(3) of the Income Tax Act, 1961 on



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24/03/2014. The assessee has raised the following effective grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) was not justified in sustaining the addition of Rs.1,89,000/- made by the Assessing Officer by way of 9% additional interest income allegedly earned in cash and not declared in the return.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in upholding an addition of Rs.12,77,130/- representing gifts of jewellery received on various occasion from parents, in-laws and others.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in upholding an addition of Rs.35,83,674/-, representing jewellery inherited by your Appellant from his mother.*
4. *On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in not deleting an amount of Rs.19,904/- representing jewellery purchased by your Appellant for his children.*
5. *On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in not giving a finding in respect of jewellery aggregating Rs.12,76,651/- (Rs.3,52,893/- by parents/in-laws, Rs.6,71,678/- by parents and Rs.2,52,080/- by in-laws) given by the parents and in-laws on the engagement of your Appellant and his wife and, hence, in not deleting the concerned addition by the AO.*
6. *On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have allowed a largest amount than 500 gms. For your Appellant's wife and 100 gms. For your Appellant in respect of relief available under Instruction no.1916 dated 11th May,1994 as para (iii) thereof.*

3.1 Facts in brief are that the assessee being *resident individual* has been assessed u/s 143(3) on 24/03/2014 at Rs.133.21 Lacs after certain adjustments/disallowances as against returned income of Rs.64.05 Lacs filed by the assessee on 16/09/2012. Consequent to search operations u/s 132 on 16/09/2011 on *Universal Medical Group*, the assessee being director of *Universal Group*, was also covered in the said operations. The return of income was filed by the assessee for the impugned AY u/s 139(1) on 16/09/2012 declaring total income of Rs.64,05,380/- which comprised of Income from Salary, Business Income, Capital Gains and Income from other sources.



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3.2 During search operations, backup of laptop of the assessee was taken wherein *loan and interest calculation sheet* was found containing certain interest calculations and the same is extracted below:-

FOR THE PERIOD 01.04.08-31.12.2008

	AMT.(Rs.)	AMT.(Rs.)
(I) LOAN ACCOUNT		
RAKESH KHANNA(HUF)	1500000	
RAKESH KHANNA/ANITA KHANNA	2100000	
ANITA KHANNA/RAKESH KHANNA	5400000	9000000
(II) PROFESSION FEES O/S AS ON 05/01/09	262044	262044
(III) INTREST ON LOAN O/S AS ON 31/12/08		
ANITA KHANNA	972000	
RAKESH KHANNA	402000	
CHANDAN KHANNA	96000	1470000
		10732044

Intt. Calculated at the rate of 24% (15% in cheques and 9% in cash)

Rs. 25.00 Lacs (20 to Mr. Chandan and 5 to Mr Rakesh) was paid on 12/06/08. Intt. For 73 days

The assessee submitted that it was an attachment of an *email* sent by one *Shri Sanjeev Swamy, Chief Promoter* of an entity namely *Douceur Sportswear Mfg. Co. Pvt. Ltd. [DSM]*. Consequently, the statement u/s 131 of the assessee as well as *Sh. Sanjeev Swamy* was recorded, the relevant extract of which has been reproduced at page numbers 3 & 4 of the quantum assessment order. During assessment proceedings, the assessee was *show-caused* to explain the details of loan advanced to the said entity namely *DSM*. The main dispute under appeal is year of taxability of 9% additional sum as stated in the above *email* receivable by the assessee against the said loan. The assessee as well as *Sanjeev Swamy* admitted that interest of 9% referred to in above *e-mail* was payable to the assessee



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against *Share Application Money* advanced by assessee to *DSM* as *additional compensation* in personal capacity of *Sanjeev Swamy* whereas the interest amount of 15% was payable by *DSM* to the assessee. The assessee submitted that the said additional compensation of 9% was not received by the assessee and therefore, the same was to be offered on '*cash basis*' upon actual receipt thereof. However, not convinced, Ld. AO worked out 9% additional interest for relevant AYs and added the same to the income of the assessee as unexplained income, which are as follows:-

No.	AY	Amount (Rs.)
1.	2008-09	89,112/-
2.	2009-10	1,98,366/-
3.	2010-11	1,89,000/-
4.	2011-12	1,89,000/-
5.	2012-13	1,89,000/-
	Total	8,54,478/-

3.3 The second addition pertains to Gold & Diamond jewellery & Silver Articles valued at Rs.67,27,325/- found at the residential premises as well as from the Locker held by the assessee with *HDFC Bank*. The assessee attributed the source of jewellery as Gifts received on various occasions, inheritance through Will upon death of assessee's mother on 09/12/2009 & purchases from time to time through Banking Channels. However, not convinced with assessee's submissions, the Ld. AO added the same to the income of the assessee as unexplained jewellery.

4. Aggrieved as above, the assessee, contested both the additions with partial success before Ld. CIT(A) vide impugned order where Ld. CIT(A)



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after considering factual matrix and assessee's submissions concluded that matter *qua* interest income in the following manner:-

*C. Once it is clear that the amount is taxable and should be offered to tax, the only question that is to be addressed is the year of taxability. Based on the evidence filed I have no hesitation that assessee is following cash system of accounting and the cash interest needs to be taxed in the year of receipt and not on accrual basis. Having said so, the issue that needs to be further addressed is whether assessee did not yet receive the cash portion of interest as claimed by him and Swamy. This, in my opinion, is not that simple as it looks. It is already made clear in the above paras that the cash portion of interest is not meant to be disclosed to the department. Therefore, the relevant facts to be considered are not the averments in the affidavit but the general behavior in such cases and the market practices that govern such transactions. It is undisputed that Swamy (M/s DSW) paid 15% interest in F.Yr 07-08, 08-09 corresponding to AYr.08-09 and 09-10. For A.Yr. 2010-11 interest was not paid though TDS was deducted and certificate given, the reason being alleged financial constraints of DSW. General market practice in cases of cash interest is that it is paid along with the cheque interest or even prior to cheque payment. As there is no written document for the cash portion of interest and as the same is not meant to be brought into regular books, as discussed above, it is but natural to assume that the parties went by the general market practice for settlement of cash portion of interest. Thus, it can be concluded that assessee was paid cash portion of interest for A.Yr. 08-09 and 09-10. For the remaining A.Yrs. Swamy could not even pay the 15% interest and therefore it cannot be assumed that 9% interest was paid by him. As the assessee is following cash system of accounting, the cash interest which was not received cannot be taxed. In the result it is held that 9% interest should be brought to tax in A.Yr 08-09 and 09-10 only being the years in which 15% interest is received by the assessee, and not in A.Yr. 10-11, 11-12 and 12-13. AO is directed accordingly. As far as A.Yr. 12-13 is concerned; the addition made by AO in this regard will not stand. AO is directed to delete the addition for the year under consideration. **This ground of appeal is, thus, allowed.***

Similarly, partial relief has been provided against jewellery addition by Ld. CIT(A) to the following extent:-

No.	Particulars	Relief Provided	Addition Sustained
1.	Purchases Made by Assessee	5,70,776/-	19,094/-
2.	Gifts Received on Various Occasions	Overall Relief as per CBDT Circular No. 1916	Not Quantified
3.	Inherited from Mother's Will	Nil	35,83,674/-

Aggrieved, the assessee is in further appeal before us.

5. The Ld. Authorized Representative [AR] taking us through documents placed in the *paper-book* contested the impugned additions as sustained by Ld. CIT(A) whereas Ld. Departmental Representative submitted that Ld.



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CIT(A) erred in providing interest relief to the assessee for AYs 2010-11 to 2012-13 since the assessee was following *mercantile system of accounting* as evident from the quantum assessment order. Our attention is drawn to the letter No. DCIT-CC-3(2)/ITAT/2017-18 dated 19/03/2018 of Ld. AO to submit that the revenue is not in appeal for different assessment years only due to *low tax effect circular issued by CBDT* and therefore, the additions, as made by Ld. CIT(A) should be confirmed.

6.1 We have carefully heard the rival contentions and perused relevant material on record. First we take up the issue of year of taxability of 9% *additional compensation / interest component* on amount advanced by assessee to *DSM*. At the outset, we find that whatever nomenclature is given to the said amount viz. *interest or additional compensation*, the same was taxable under the head *Income from Other Sources* only. As per the provisions of Section 145, the income under this head could be offered by the assessee either on *cash basis* or on *mercantile basis*. However, the said method is to be followed consistently and the assessee is not permitted to flicker its stand *qua* the same for different assessment years. Therefore, the year of taxability of the said amount would depend upon the method of accounting being regularly followed by the assessee in earlier assessment years to offer income under the head *Income from Other Sources*. The Ld. AR has stressed the point that the said sum has never been received by the assessee which has been substantiated by the affidavit of *Shri Sanjeev Swamy*. On the other hand, in terms of submission of Ld. DR, we find that the Ld. AO, in the quantum order, has noted that the



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assessee was following *mercantile system of accounting*. Further, the material on record does not decipher the exact method of accounting being followed by the assessee and both the representatives have failed to demonstrate the said fact conclusively. In the absence of *Statement of Account of DSM, Bank Statement* of the assessee and earlier *Income Tax Returns / Computations*, we are unable to examine the same. It is noted that the assessee has offered interest income of 15% in original return of income for AYs 2008-09 & 2009-10 which has been filed before the date of search. The examination of the same couple with bank statement and aforesaid documents would reveal the method of accounting being followed by the assessee. Therefore, on factual matrix, we are left with no option, but to remit the matter back to the file of Ld. AO for re-examination of documentary evidences to find out the method of accounting being followed by the assessee and re-adjudicate accordingly. The assessee, in turn, is directed to substantiate his stand in this regard by filing requisite information / documentary evidences.

6.2 It is also noted that Ld. CIT(A) has deleted additions for AY 2010-11 to 2012-13, against which the revenue is not in further appeal before us, apparently due to *low tax effect circular issued by CBDT*. The principal of natural justice demands that the assessee remain benefitted by the concessions granted by the said circular, irrespective of the stand taken by Ld. AO in this regard. Consequently, no additions *qua* interest amounts shall be warranted for AYs 2010-11 to 2012-13.



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6.3 Resultantly, this ground raised in AYs 2008-09 & 2009-10 stands allowed for statistical purposes whereas this ground for AYs 2010-11 & 2012-13 becomes *infructuous* since Ld. CIT(A) has already provided the relief to the assessee for these AYs.

6.4 So far as the addition on account of jewellery is concerned, upon consideration of factual matrix, we find that the assessee is unable to reconcile the jewellery in *toto* and refute the finding of Ld. CIT(A) that the jewellery bestowed upon by the will of the assessee's mother was meant for the assessee's two sons who were married and living separately and therefore, it is difficult to accept the proposition that the said jewellery represented inheritance from mother. At the same time, the assessee was qualified *Chartered Accountant* and he and his wife were Income tax Assessee for several years and offering healthy returned income and therefore, the acquisition of jewellery from time to time could not be ruled out. Further, the receipt of gifts in the shape of Jewellery on various occasions, being customary, could also not be ruled out. We find that the Ld. CIT(A) has already directed Ld. AO to provide relief to the assessee jewellery weight in terms of *CBDT circular No. 1916*. However, we find that the same would not be an appropriate direction since the jewellery has been acquired by the assessee over a long period of time and the same being of numerous variety / quality / standard would give rise to difficulty in arriving at the valuation. Hence, on peculiar facts of the case, taking a holistic view, we restrict the said disallowance to an *ad hoc* amount of Rs.20 Lacs, which the assessee shall suffer in the impugned AY. No further relief,



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whatsoever, shall be available to assessee against this addition. We order accordingly. Ground Numbers 2 to 6 stands partly allowed.

7. The assessee's appeal for AY 2010-11 contest another addition of Rs.2,83,495/- (excluding TDS) on account of alleged receipt of interest income of 15% from *DSM*. We find that the taxability of the same, in similar manner, would depend upon the method of accounting being followed by the assessee. Therefore, the same stands remitted back to the file of Ld. AO for re-adjudication with similar directions.

8. Resultantly, ITA No. 170/Mum/2016 for AY 2009-10 & 171/Mum/2016 for AY 2008-09 stands allowed for statistical purposes. ITA 172/Mum/2016 for AY 2010-11 stands partly allowed for statistical purposes. ITA 169/Mum/2016 for AY 2012-13 stands partly allowed. No order as to costs.

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9.1 The sole ground raised in appeals for AY 2008-09 & 2009-10 contest interest addition of 9%. Factual matrix being the same, taking the same stand, the issue stands remitted back to the file of Ld. AO for re-adjudication on similar lines. ITA Nos.173/Mum/2016 & 174/Mum/2016 stands allowed for statistical purposes.

9.2 The Ground No. 2 of appeal for AY 2010-11 contest addition of interest income of 15% from *DSM* which stand remitted back to the file of Ld. AO for re-adjudication on similar lines. Ground No.1 becomes *infructuous* since relief has already been provided by Ld. CIT(A) in this



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regard. The appeal ITA No. 176/Mum/2016 stands partly allowed for statistical purposes.

9.3 The sole ground raised in assessee's appeal for AY 2007-08 contest the stand of lower authorities in not allowing a new claim of the assessee in assessment u/s 153A which was never claimed in original return of income. The claim of the assessee, in our opinion, is not tenable since this was an *un-abated* assessment and the time limit for filing revised return of income had already expired since a long time back. ITA No 175/Mum/2016 stands dismissed.

10. All the appeals stands disposed off in the following manner:-

Name of the Assessee	AY	Appeal No.	Decision
Rakesh Khanna	2008-09	171/Mum/2016	Allowed for statistical purposes
Rakesh Khanna	2009-10	170/Mum/2016	Allowed for statistical purposes
Rakesh Khanna	2010-11	172/Mum/2016	Partly allowed for statistical purposes
Rakesh Khanna	2012-13	169/Mum/2016	Partly Allowed
Anita Khanna	2007-08	175/Mum/2016	Dismissed
Anita Khanna	2008-09	173/Mum/2016	Allowed for statistical purposes
Anita Khanna	2009-10	174/Mum/2016	Allowed for statistical purposes
Anita Khanna	2010-11	176/Mum/2016	Partly allowed for statistical purposes

Order pronounced in the open court on 11th April, 2018.

Sd/-

Sd/-

(Mahavir Singh)

न्यायिकसदस्य / **Judicial Member**

(Manoj Kumar Aggarwal)

लेखासदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11 .04.2018

Sr.PS:- Thirumalesh



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

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