IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1831 OF 2017
ALONGWITH
INCOME TAX APPEAL NO. 1944 OF 2017
ALONGWITH
INCOME TAX APPEAL NO. 171 OF 2020

Pr. Commissioner of Income Tax – 27 ….Appellant

V/s.

Usha Jitendra Dutia …Respondent

Mr. Akhileshwar Sharma for Appellant.
Mr. Pankaj Toprani i/b PRH Juris Consults for Respondent.

CORAM : K.R. SHRIRAM &
M.M. SATHAYE, JJ.
DATED : 7th JUNE 2023

P.C. :

INCOME TAX APPEAL NO. 1831 OF 2017
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1. The questions of law proposed are as under :

SUBSTANTIAL QUESTION OF LAW

1. Whether on the facts and in the circumstances of the case, and in Law the Hon'ble ITAT was justified in vacating the protective assessment instead of blocking the appeal till the attaining of finality in the case of substantive assessment as no appeal lies against a protective assessment ?

2. Whether on the facts and in the circumstances of the case and in Law, the Hon'ble ITAT was justified in deleting the addition of the Assessing Officer, when there is failure on part of the assessee to discharge her onus of proving that the amount declared by her in A.Y. 2010-11 is not the same amount added in A.Y. 1996-97 and 1997-98 by not producing the authenticated and signed copy of HSBC Bank statements of Geneva, Switzerland ?

3. Whether on the facts and in the circumstances of the case and in Law, the Hon'ble ITAT is correct in deciding that only the interest amounts must be taxed and not the cumulative amounts credited in the Bank statements during the financial year ?

2. Both appeals are impugning a common order dated 3rd January 2017 passed by the Income Tax Appellate Tribunal (ITAT) relating to Assessment Years 1996-97 and 1997-98. Respondent had a bank account in HSBC Bank, Geneva, Switzerland in which the peak balance was US$ 64,242 during financial year 2005-06. The assessee, in response to the summons issued under Section 131 of the Income Tax Act, 1961 (the Act), accepted that foreign bank account and declared additional income in the Assessment Year 2010-11 amounting to Rs.31,56,247/- equivalent to US$ 64,242 which was the maximum balance in the bank account with HSBC Private Bank, Geneva and paid the tax on 20th December 2011 amounting to Rs.12,00,480/-. It also appears that the bank account was closed in the year 2009-10. The maximum balance of US$ 64,242.77 in Financial Year 2005-06 continued till the closure of the account in 2009-10. The bank statement of HSBC Private Bank was also filed alongwith the paper book and the ITAT has come to a finding that the balance in the bank account as on 31st March 1996 was US$ 428.87 and not US$ 64,242.77. For the Assessment Years under consideration entries in the bank statement showed interest of US$ 751.033, US$ 720.67, US$ 704.46 and US$ 688.98 credited in the said account on 9th June 1995, 11th September 1995, 11th December 1995 and 11th March 1996, respectively. Certainly the interest earned for that year has to be taxed separately apart from the maximum balance of US$ 64,242. In our view, the Tribunal is correct in coming to a finding that the amount of US$ 64,242.77 which has been surrendered by assessee during Assessment

Year 2010-11 and has paid tax thereon cannot be taxed again for 1996-97 or 1997-98. We agree with the Tribunal's finding that what could be taxed in addition to US$ 64,242.77 is the interest that was earned as mentioned above.

3. Mr. Sharma submitted that CIT(A) has even made an observation that the statements submitted are our computer generated and only had initials but otherwise there is no authentication. To a query posed by the court Mr. Sharma, fairly agreed that this could not form a substantial question of law. In any event these statements have been accepted by the ITAT and were not even objected to by the Revenue.

4. Mr. Toprani submitted that for Assessment Year 2006-07 for which separate appeal has been filed by the department, similar issue was raised by CIT(A) who called upon the Assessing Officer to verify the authenticity of the bank statements and identical statements have been certified as valid by the Assessing Officer. Mr. Toprani submitted that therefore this is a non issue.

5. The entire issue is fact-based. The Tribunal having come to the factual conclusion on the basis of materials on record, no question of law arises. In the circumstances, we see no reason to interfere.

6. Both appeals dismissed.

INCOME TAX APPEAL NO. 171 OF 2020

7. In this appeal the Tribunal has relied upon findings in other two appeals mentioned above and has also observed that identical grounds were raised for the Assessment Year 2006-07 and come to the same conclusion.

8. In view thereof, this appeal also stands dismissed.

(M.M. SATHAYE, J.) **(K.R. SHRIRAM, J.)**