

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.659/Kol/2013 Assessment Year:2008-09

Dr. Pallab Ghosh 52, Ripon Street, Kolkata-700016 [PAN No.ADGPG 4320 E]	<u>बनाम/</u> V/s.	ITO Ward-55(1), 54/1, Rafi Adhmed Kidwai Road, Kolata-700 016
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Salong Yaden, Addl-CIT-DR
सुनवाई की तारीख/Date of Hearing	19-12-2016
घोषणा की तारीख/Date of Pronouncement	08-02-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-XXXVI, Kolkata dated 06.02.2013. Assessment was framed by ITO Ward-55(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 29.12.2010 for assessment year 2008-09.

The grounds raised by the assessee per its appeal are as under:-

"1. For that on the facts of the case, the order passed by the Ld. C.LT.(A) is completely arbitrary, unjustified and illegal.

2. For that on the facts of the case, the Ld. C.LT.(A) was wrong in confirming the disallowance of Rs.389 ,550 / - as capitalization of past savings u/ s. 69A of the LT. Act which is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, the Ld. C.LT.(A) was wrong in dittoing the order of the A.O. and confirming the addition u/ s. 40a(ia) of the Income Tax Act amounting to Rs.439,560/- as non- deduction on professional fees which is completely arbitrary, unjustified and illegal.
4. For that on the facts of the case, the Ld. CIT(A) should have consider the facts that the assessee was not liable to deduct TDS under any provisions of the Income Tax Act, therefore, no disallowance u/s. 40(a)(ia) should have been made by the A.O. and sustained by the Ld. CIT(A) amounting to Rs. 439,560/- which is completely arbitrary, unjustified and illegal.
5. For that on the facts of the case, the Ld CIT(A) was wrong in adding payments already made to junior Doctors from Ripon Nursing Home under section 40(a)(ia), although section 40(a)(ia) is only applicable to amount payable, therefore, the whole addition is completely arbitrary, unjustified and illegal.
6. For that on the facts of the case, the Ld. C.LT.(A) was wrong in dittoing the order of the A.O. and confirming the addition u/ s. 41(1) of the Income Tax Act amounting to Rs.656,835/- as cessation of liability which is completely arbitrary, unjustified and illegal.
7. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.O. and confirming the addition u/s. 23(4)(b) of the Income Tax Act amounting to Rs.84,000/- as notional rent which is completely arbitrary, unjustified and illegal.
8. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.G. and confirming the addition amounting to Rs.38,940/- as rates & taxes viz. Municipal Taxes and other taxes which is completely arbitrary, unjustified and illegal.
9. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.G. and confirming the addition amounting to Rs.22,996/- as various heads of expenditure on estimate basis which is completely arbitrary, unjustified and illegal.
10. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.G. and confirming the addition amounting to Rs.28,000/- as accrued interest on taxable HDFC Bond which is completely arbitrary, unjustified and illegal.
11. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in confirming foreign travel expenses amounting to Rs.3,26,345/- disallowed by the A.O. u/s. 69C which is completely arbitrary, unjustified and illegal.

12. For that the interest u/ s. 2348 & 234C amounting to Rs.3,40,211/- and Rs.5,278/- respectively charged mechanically is wrong & illegal.

13. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

Shri Soumitra Choudhury, Ld. Advocate appeared on behalf of assessee and Shri Sallong Yaden, Ld. Departmental Representative appeared on behalf of Revenue.

2. Facts in brief are that assessee in the present case is an individual and engaged as medical practitioner. The assessee for the year under consideration has filed his return of income dated 19.09.2008 declaring the total income ₹8,28,575/- under the head “**business and profession**”. Thereafter the case was selected under scrutiny and accordingly notice u/s 143(2)/142(1) were issued upon assessee. The assessment was framed u/s 143(3) by making certain additions / disallowance at total income of ₹34,25,875/-. The disallowance made by Assessing Officer were subsequently confirmed by Ld. CIT(A). Against these additions/ disallowances the assessee has filed appeal before us, which are discussed here in below.

3. First issue raised by assessee in this appeal in ground No.2 is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of ₹3,89,550/- u/s 69A of the Act.

4. The assessee in the year under consideration has introduced capital in the form of cash on 01.04.2007 in his capital account. On question by AO about source of capital introduction, the assessee submitted that it is arising out of past savings of 22 years. He further submitted that the aforesaid amount has been shown in the personal statement of balance sheet. However, AO disregarded the plea of assessee by observing that:-

- a) The drawing from the balance-sheet of assessee is not reflecting.
- b) There was no point to keep such huge money for such a long time in the form of cash though assessee is maintaining personal bank account.
- c) Assessing Officer also observed that assessee has also introduced cash as capital in his firm in the earlier years;

In view of the above, Assessing Officer disallowed the same u/s 69A of the Act and added the introduction of cash of ₹3,89,550/- to the total income.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that there was drawings in the earlier years and this investment is arising out of such drawings. However, Ld. CIT(A) disregarded the plea of the assessee and confirmed the order of AO by observing as under:-

“The submission of the A/R, grounds of appeal and assessment order were duly considered. Appellant has shown introduction of Rs.3,89,550/- out of past savings in past 22 years. It is a afterthought story. Why he has not keep all these part savings in bank A/c in this world of modernized banking? Appellant is a educated person to handle banking transactions. Hence, AO was right in adding a sum of Rs.3,89,550/- u/s. 69A of Income Tax Act. Appeal of appellant is dismissed on this issue.”

Aggrieved by this order, assessee has come up in appeal before us.

6. Before us Ld AR filed paper book which is running pages from 1 to 71 and stated that assessee has shown drawing for ₹ 15,88,171/- which beginning from AYs 2004-05 to 2007-08 respectively. He in support of assessee's claim has submitted the year-wise details of drawings which is placed on page 13 of the paper book. Ld. AR stated that issue may be decided on merit.

On the other hand, Ld. DR vehemently supported the order of Authorities Below.

7. We have heard rival contentions of both the parties and perused the materials available on record. From the foregoing discussion, we find that assessee has shown introduction of capital in the form of cash as on 01.04.2007 for ₹ 3,89,550/- and assessee claimed that such introduction of cash made out of past savings from several years. However, Authorities Below disregarded the argument of assessee and accordingly the addition was made u/s 69A of the Act. Now the issue before us arises so as to whether the addition made by the Authorities Below u/s. 69A of the Act is justifiable in the facts and circumstances of the facts of the case. In this regard, we find that admittedly the drawing was made by the assessee in the earlier years but the question arises whether the same drawings was introduced as capital in the year under consideration. On perusal of assessment order we find that the assessee has introduced cash as capital in the earlier years as detailed under :

S.No.	Financial Year	Amount (Rs.)
1.	2002-03	Rs. 2,18,613.00
2.	2003-4	NIL
3.	2004-05	Rs. 9,00,000.00
4.	2005-06	Rs. 9,10,000.00

The assessee has shown the drawings in the earlier years as under :

1.	2002-03	No information
2.	2003-4	Rs. 1,32,263.00
3.	2004-05	Rs. 1,79,145.00
4.	2005-06	Rs.10,32,676.00
5.	2006-07	Rs. 2,44,087.00

From the above, it is clear that the assessee has withdrawn and introduced the capital in the earlier years. On verification of the drawing and capital introduction, we find that there was hardly any surplus fund available to the assessee for infusion of fresh capital. The assessee must also be spending money on actual personal expenses. In view of above we are of the view that the assessee failed to explain the sources of cash with supporting evidence. Therefore the ground of appeal of the assessee is dismissed.

8. Next issue raised by assessee in this appeal in grounds No. 3 to 5 is that Ld. CIT(A) erred in confirming the order of AO by sustaining the addition of ₹4,39,560/- u/s 40(a)(ia) of the Act.

9. The assessee, in the year under consideration has claimed certain expenditures towards the payment of several doctors amounting to ₹4,39,560/-. On such payment the assessee did not deduct any TDS u/s 194J of the Act. On question by AO for non-deduction of TDS on the aforesaid payments assessee submitted that gross receipt in the financial year 2006-07 was less than prescribed limit as specified u/s. 44AB of the Act. Therefore, the provision of TDS as specified u/s. 194J of the Act is not applicable. However, AO observed that the gross receipt of assessee for the financial year 2006-07 exceeded the limit as prescribed u/s. 44AB of the Act. Therefore, the

provisions of TDS for the financial year 2007-08 are very much applicable upon the assessee. Thus the AO disallowed the sum of ₹4,39,560/- on account of non-deduction of TDS and added the same to the total income of assessee.

10. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that no fees to the doctors were payable at the end of the financial year and therefore no TDS required to be deducted in terms of ITAT order Special Bench in the case of M/s Marilyn Shipping & Transpors vs. ACIT, Raange-1, Visakhapatnam in **ITA No.477/Viz/2008** relating to assessment year 2005-06 reported in 136 ITD page 23 & 146 TTJ page 1. However, Ld. CIT(A) sustained the addition made by AO by observing as under:-

*“The submission of A/R, grounds of appeal and assessment order were duly considered. The AO disallowed a sum of Rs.4,39,560/- for non-deduction of TDS on professional fees. Appellant relied on the order of Hon'ble ITAT Special Bench judgement M/s Merilyn Shipping & Transports vs. ACIT, Range-1, Vishakhapatnam ITA No. 477/Viz/2008, as nothing is payable, addition should be deleted. But the operation of the aforesaid judgment has been stayed by Hon'ble High Court of Andhra Pradesh till further orders. Hence, disallowance made by AO u/s 40(a)(ia) of Rs.4,39,560/- is **sustained**.”*

Aggrieved by this, assessee has come up in appeal before us.

11. Before us Ld. AR reiterated same submissions as made before Ld. CIT(A). Further he submitted that the money receipt from nursing home is less than prescribed limit as specified u/s. 44AB of the Act. Ld. AR further submitted that the receipt shown in the financial year 2006-07 is of ₹7.50 lacs only.

On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. From the foregoing discussion, we find that the payments made to the doctors were disallowed by Authorities Below on account of non-deduction of TDS u/s. 194J of the Act. To this issue, argument placed by Ld. AR for the assessee before us was that the gross receipt of assessee in the immediate proceeding financial year was less than as prescribed limit u/s 44AB of the Act. However on perusal of the submission of the assessee we find that the assessee has shown income from two sources (1) medical professional receipts (2) Nursing home receipts. The receipts from both the sources are of Rs. 14,34,833/- only in the

immediate preceding financial year 2006-07. In our view for the applicability of the provisions of section 44AB of the Act and 194J of the Act, the gross receipts from both the sources shall be clubbed. Accordingly we find that the gross receipts for the tax audit for the FY 2006-07 is of more than Rs. 10 lacs so it is clear that the assessee was liable for tax audit for the FY 2006-07, consequently the TDS provisions will be applied for the year under consideration. Hence the assessee has defaulted in the TDS deduction on the professional payment to doctors, therefore the deduction for the same shall not be allowed. Hence the ground of appeal of the assessee is hereby dismissed.

13. Next issue in this appeal of assessee raised in Ground No.6 is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of ₹6,56,835/- u/s 41(1) of the Act.

14. Assessee in its balance-sheet as on 31.03.2008 has shown closing sundry creditor for ₹ 9,36,441/- whereas the opening sundry creditor as on 01.04.2007 was shown for ₹6,56,835/-. On question by AO to produce necessary details of all the sundry creditors such as name, address, bill No. date of credit etc. In compliance thereto, assessee submitted that out of opening sundry creditors of ₹5,56,835/- a sum has been offered for taxation in the financial year 2009-10 and the balance of ₹ 2.23 lacs will be offered for taxation in financial year 2010-11. However, AO observed that the opening sundry creditors of ₹6,56,835/- are the fake creditors and therefore same was to be deleted u/s. 41(1) of the Act and added to the total income of assessee.

15. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that AO cannot make the addition of the liability u/s. 41(1) of the Act until and unless there is a cessation of trading liability. The period of limitation as provided in the Limitation Act is not applicable in the instance case because the trading liability has actually not been written off in the books of account of assessee. The expenditures corresponding to such trading liability were claimed in AYs 2005-06 and 2007-08 and no disallowance was made by AO. However, Ld. CIT(A) confirmed the order of AO by observing as under:-

“The submission of the A/R, grounds of appeal and assessment order were duly considered. The AO added a sum of Rs.6,56,835/- u/s. 41(1) of Income Tax Act. The issue has been dealt by the AO in detail in assessment order. Appellant in

the assessment proceeding could not verify the creditors. These creditors are 2-3 years old and their genuineness could not be established before AO. Appellant has taken a plea that I have disclosed these creditors u/s. 41(1) in A.Y 2010-11 and A.Y 2011-12. From the disclosure of appellant it is clear that these creditors are unexplained. Hence, A.O was right in treating the sum of Rs.5,56,835/- as unexplained sundry creditors and adding u/s 41(1) of Income Tax Act as fake creditors having no liability of appellant. The addition made u/s. 41(1) to the tune of Rs.6,56,835/- is sustained.”

Aggrieved by this, assessee has come up in appeal before us.

16. Before us Ld. AR submitted that the liabilities were not written off in the books of account assessee and therefore same cannot be held as ceased to exist. Ld. AR for assessee in support of assessee's claim drew our attention on page 68 of the paper book where the Schedule-C of the balance-sheet of the assessee was placed showing the amount of sundry creditors.

On the other hand, Ld. DR vehemently supported the order of Authorities Below.

17. We have heard the rival contentions of both the parties and perused the materials available on record. We find that the liability ceased to exist if it is written off by assessee in its books of account. In case on hand we find that the liability is very much reflecting in the balance-sheet of assessee. Therefore the same cannot be added under the provisions of section 41(1) of the Act. Hence this ground of appeal of the assessee is allowed.

18. Next issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of AO by sustaining the addition of ₹ 84,000/- u/s 23(4)(b) of the Act.

19. Assessee is owner of two individual properties - first property is located at 52, Ripon Street, Kolkata comprising of ground floor plus 3 floors and second property is a flat at Highland Park, Kolkata. Accordingly, AO issued notice to assessee vide letter No.999 dated 02.12.2010 for making the addition of rental income u/s. 23(4)(b) of the Act on notional basis. In compliance thereto, assessee submitted that the building located at Ripon Street is used for the purpose of business and also rental income is derived from such property. The flat located at Highland Park is also used for

residential purpose of assessee. The AO deputed an Inspector for physical verification of immovable property of assessee. The said Inspector, in turn submitted his report that assessee is running its nursing home at the ground and first floor of building located at Ripon Street and second floor of the building has been rented out and assessee is earning rental income of ₹1,200/- per month. The third floor of the said building is used by assessee for his residential purpose. Accordingly, AO observed that the flat located at Highland Park is not used for residential purpose and he worked out market rate on notional basis @ ₹10,000/- p.m. Therefore, AO added the notional rent in the hands of assessee.

20. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that notional rent worked out by AO should be restricted at ₹ 14,400/- for the entire year. The assessee submitted that second floor of Ripon Street has been let out for ₹ 1,200/- p.m. and the same rate should also be applied in the case of flat located at Highland Park. After considering the same, Ld. CIT(A) disregarded the claim of assessee and confirmed the order of AO by observing as under:-

*“The submission of the A/R, grounds of appeal and assessment order were duly considered AO has dealt with the issue in details. I do not find any discrepancy in the order of AO on this issue. Hence, addition made by AO on this issue of Rs.84,000/- u/s 23(4)(b) is **sustained.**”*

Aggrieved by this, assessee has come up in appeal before us.

21. Before us Ld. AR stated that flat located at Highland Park is exclusively used for residential purpose of assessee and the third floor of the building located at Ripon Street is part and parcel of the nursing home which is running from ground and first floor of said building. The third floor is used by assessee for the purpose of rest when the assessee is tired after performing tedious professional duties for which third floor cannot be said to be used for the purpose of his residence purpose.

On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

22. We have heard rival contentions of both the parties and perused the materials available on record. At the outset we find that the learned AR has not brought anything on record to demonstrate that the flat at high land park is used for the purpose of assessee residence. In the absence of any documentary evidence we find no

infirmary in the order of ld. CIT(A). Hence this ground of appeal of the assessee is dismissed.

23. Next issue raised by assessee in Ground No.8 is that Ld. CIT(A) erred in confirming the order of AO by sustaining of ₹38,940/- on account of non-availability of supporting evidence.

24. Assessee for the year under consideration has claimed expenditure on rates and taxes for ₹38,940/- but failed to produce supporting evidence. Therefore, AO has disallowed the same and added to the total income of assessee.

25. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that municipal and other taxes in connection with nursing home has been paid for an amount of ₹38,940/- which is liable for deduction u/s. 37 of the Act. However, Ld. CIT(A) disregarded the claim of assessee and confirmed the order of AO by observing as under:-

*“The submission of the A/R, grounds of appeal and assessment order were duly considered AO disallowed a sum of Rs.38,940/- on account of rent and taxes as no bills were produced as supporting evidences and none of the bills pertain to the assessment year under consideration. I agree with the views of AO and hence addition made of Rs.38,940/- on account of disallowance of municipal taxes is **sustained.**”*

Aggrieved by this, assessee has come up in appeal before us.

26. Before us Ld. AR for the assessee reiterated same submissions as made before Ld. CIT(A) and further stated that the supporting evidence to justify the expenditure incurred on the rates and taxes were not available at the time of assessment proceedings. However, these documents are now available with assessee. Accordingly, AR prayed to restore the issue to the file of Assessing Officer for fresh adjudication.

On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

27. We have heard rival contentions of both the parties and perused the materials available on record. The limited issue in the instant case relates to disallowance of expenditure claimed by assessee under the head “**rates and taxes**” on account of non-availability of supporting evidence. The view taken by AO was subsequently upheld

by Ld. CIT(A). But Ld. AR before us pleaded that supporting evidence was not available at the assessment proceedings as well as appellate stage. But the documents are now available. Accordingly, Ld. AR requested before the Bench to restore the same to the file of AO for fresh adjudication. However, AR did not produce any supporting evidence for our reference. As the Ld. AR failed to bring supporting evidence, we are not inclined to restore this issue to the file of AO. Had there been supporting evidence available with the assessee, in our view, it should have been submitted now before us. As no relevant document has been submitted before us, Therefore we uphold the order of Ld. CIT(A) and this ground of assessee is dismissed.

28. Next issue raised by assessee in ground No. 9 is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of ₹22,996/- on account of non-availability of supporting evidence in assessee's profit and loss account for the year ended on 31.03.2008. The assessee has claimed following expenditure:-

Sl.No	Head of expenditure	Amount
1	Doctor's refreshment	46,890
2	General charges	25,524
3	Accounting charges	18,000
4	General charges	12,564
5	Accounting charges	12,000
		1,14,978

At the time of assessment proceedings, assessee submitted ledger copy of the aforesaid expenditures but failed to provide supporting evidence in support of his claim. Assessing Officer also observed that the payment for the aforesaid expenditure has been made through cash and only self-made vouchers have been maintained. Accordingly, AO has disallowed 20% of the aforesaid expenses and added a sum of ₹22,996/- to the total income of assessee.

29. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that AO has disallowed the expenditure on ad hoc basis. The assessee prayed to restrict the disallowance to 5% of such expenditure. However, Ld. CIT(A)

disregarded the claim of assessee and confirmed the order of AO by observing as under:-

*“The submission of the A/R, grounds of appeal and assessment order were duly considered AO disallowed 20% of various expenses of Rs.1,14,978/- in the absence of proper bills and vouchers. This has been mentioned in audit report, disallowance of 20% of such expense is quite reasonable. Hence, addition made of Rs.22,996/- is therefore **sustained.**”*

Aggrieved by this, assessee has come in appeal before us.

30. Before us Ld. AR reiterated same submissions as made before Ld. CIT(A) and he stated that issue may be decided on merit.

On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

31. We have heard rival contentions of both the parties and perused the materials available on record. Admittedly the assessee failed to furnish the evidence in support of the expenditure claimed in the profit and loss account before the AO and the learned CIT(A). Indeed the onus lies on the assessee to justify the expenses claimed in the P&L account. However in the absence of any documentary evidence then the lower authorities can also refer such amount of expenditure claimed in the earlier years before making the disallowance for the purpose of comparison and to check the consistence. As such we find no reference was made to the earlier year expenditure claimed by the assessee. Therefore in the interest of Justice and fair play we're inclined to limit the disallowance at the rate of 10% of such expenditure. Hence this ground of the assessee is partly allowed.

32. Next issue raised by assessee in ground No.10 is that Ld. CIT(A) erred in confirming the order of AO by sustaining disallowance of ₹28,000/- on account of accrued interest on taxable HFC Bond.

33. The assessee has made investment in the financial year 2004-05 @ 8% taxable HDFC bond for ₹3.50 lakh. On perusal of the record, AO observed that the corresponding interest income on such bond has not been offered to tax. The AO also observed that the accrued interest on other fixed deposit for ₹48,658/- was offered to tax and similarly the interest accrued of PPF was also capitalized. Thus, AO was of the view that assessee is offering the interest income on accrual basis and he also

observed from the notes to accounts that assessee is following mercantile system of accounting. As such, AO worked out the interest on ₹3.50 lakh and added the interest income of ₹28,000/- to the total income of assessee.

34. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee demonstrated that as per the agreement with HDFC bank the interest will be given on maturity and accordingly HDFC bank will deduct TDS on maturity of taxable bonds. The assessee also submitted that there would have been mismatch in the amount of interest and TDS in the year of maturity of such bonds if the interest income would have been offered to tax on year to year basis. Therefore, same will be offered in the year of maturity of taxable bonds. However, Ld. CIT(A) disregarded the claim of assessee and confirmed the order of AO by observing as under:-

*“The submission of the A/R, grounds of appeal and assessment order were duly considered. AO added a sum of Rs.28,000/- on account of interest following the mercantile system of accounting. Appellant pleaded that this should be income of the year in which interest is received. On perusal of Balance Sheet of the appellant it was found that he is following mercantile system of accounting. Appellant does not have freedom to follow two system of accounting. Hence AO was right in taking interest income on mercantile system of accounting. Addition made by AO of Rs.28,000/- on account of interest is **sustained**.”*

Aggrieved by this, assessee has come up in appeal before us.

35. Before us Ld. AR for the assessee stated that assessee got the matured value of taxable bonds along with interest in the financial year 2009-10 which was offered to tax in financial year 2009-10. He in support of assessee's claim submitted the copy of balance-sheet along with ITR which is placed on pages 27 to 31 of the paper book.

On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

36. We have heard rival contentions of both the parties and perused the materials available on record. From the foregoing discussion, we find that assessee has not offered the interest income on the taxable bond on the ground that interest income has been offered to tax at the time of maturity of the aforesaid bond i.e. financial year 2009-10. However, we find that Authorities Below observed that assessee is following mercantile system of accounting then assessee has to offer the interest income to tax on accrual basis. Accordingly, Authorities Below disallowed the claim of assessee. On perusal of records and after considering the submissions raised by both the parties, we

find that assessee has already offered the interest income in the financial year 2009-10 and addition the same in the year under consideration would amount to double taxation of the same income earned by assessee. To put this ongoing dispute to rest and in the interest of justice and fair play, we remit back this issue to the file of AO for fresh adjudication as per law with a direction to AO to check whether the interest income has been offered to tax in the assessment year 2010-11 after providing reasonable opportunity of being heard to assessee. If so, then the addition needs to be deleted. Hence, in terms of above, assessee's ground is allowed for statistical purpose.

37. Next issue raised by assessee in ground No.11 is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of ₹3,26,345/- for the foreign travel expenses.

38. During the course of assessment proceedings, AO observed from the bank account of HSBC bank that assessee has incurred foreign travelling expenses for ₹3,26,345/- which has not been shown in the financial statement of assessee. The AO further observed that assessee has shown drawing in the year under consideration for 2,79,788/- only. Accordingly, AO observed that foreign travelling expense has been incurred from undisclosed source of assessee's income and he added the same to the total income of assessee.

39. Aggrieved, assessee preferred an addition appeal before Ld. CIT(A) whereas assessee submitted that the all payments towards foreign travelling expenses had been made from the disclosed bank account. Therefore, the adjudication of AO that such expenditure has been incurred from the undisclosed source is baseless and irrelevant. However, Ld. CIT(A) did not admit the additional ground of appeal filed by assessee and confirmed the order of AO by observing as under:-

“Vide note sheet entry dt. 26/11/2012, the A/R was asked to file copy of additional ground taken, to file re-casted Balance Sheet showing foreign travelling etc. but no such reply was filed. A/R wanted to withdraw additional ground vide note sheet entry dt. 28/01/2013 but did not submit an reply. Since additional ground of appeal were not submitted, same are not adjudicated.”

Aggrieved by this, assessee has come up in appeal before us.

40. Before us Ld. AR for the assessee reiterated same submissions as made before Ld. CIT(A). He drew our attention at pages 35 to 39 of the paper book where detailed bank statement showing the foreign travel expense was placed.

On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

41. We have heard rival contentions of both the parties and perused the materials available on record. From the foregoing discussion, we find that foreign travelling expense incurred by assessee was held by AO as incurred from undisclosed source of assessee's income. Accordingly, AO invoked the provision of Sec.69C of the Act which was subsequently confirmed by Ld. CIT(A). However, on perusal of assessment order we find that aforesaid expense was incurred out of disclosed bank account as evident from the finding of AO which is reproduced below:-

“It is found from the bank account of HSBC Bank, Gariahat branch, S/B account no. 023-057912-006 that the assessee has drawn the following amounts (a per table below) for travelling which was not reflected in the balance sheet a drawing against travelling.”

From the above observation of AO, it is clear that the aforesaid foreign travelling expenses were incurred from the disclosed bank account. Therefore, in our considered view, the question of incurring expense from undisclosed income does not arise.

42. We also find that the same issue has not been adjudicated by Ld. CIT(A) on merit and Ld. CIT(A) did not admit additional ground of assessee by observing that *“assessee failed to produce the re-casted financial statement showing the foreign travelling expenses”*. However, on perusal of additional ground, we find that the matter goes to the root of the case and the issue is arising from the order of AO. Therefore, the additional ground needs to be admitted by Ld. CIT(A) in terms of judgment of Hon'ble Supreme Court in the case of NTPC reported in 229 ITR 383. It is also important to note that the drawing shown by the assessee is less than the amount of travelling expenses. Therefore we are of the view the issue requires to be considered by the ld. CIT(A). Hence, in terms of above, assessee's ground is allowed for statistical purpose.

43. Next issue raised by assessee in Ground No.12 is that Ld. CIT(A) erred in interest u/s. 234B/234C of ₹3,40,211 and Rs.5,278/-.

44. At this stage, levy of interest u/s. 2324B/234C is consequential, therefore, ground No.12 is liable to be dismissed and is accordingly dismissed.

45. Last issue in ground No.13 in general seeking no specific decision from us.

46. **In the result, assessee's appeal stands partly allowed for statistical purpose.**

Order pronounced in open court on 08/02/2017

Sd/-
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(Waseem Ahmed)
Accountant Member

*Dkp Sr.P.S

दिनांक:- 08/02/2017 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Dr. Pallab Ghosh, 52, Ripon Street, Kolkata-16
2. प्रत्यर्थी/Respondent-ITO Ward-55(1), 54/1 Rafi Ahmed Kidwai Road, Kolkata-16
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता