

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
 MUMBAI BENCH "G", MUMBAI**
 श्री डि. करुनाकर राव, लेखा सदस्य एवं
 श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
 AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 782/Mum/2014
 (Assessment year :2009-10)

M/s Gagrats, Nirmal, 12 th Floor, Nariman Point, Mumbai -400 021 स्थयी लेखा सं.: PAN: AAGFG 0728 H	Vs	Asst. Commissioner of Income Tax -11(2), Aayakar Bhavan, M K Road, Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Vijay Mehta
Respondent by	:	Shri S T Bidari

सुनवाई की तारीख /Date of Hearing : 15-07-2015
 घोषणा की तारीख /Date of Pronouncement : 15 -10-2015

आदेश
ORDER

अमित शुक्ला, न्या. स.:
PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against impugned order dated 10.12.2013 passed by CIT(A)-3 Mumbai, for the quantum of assessment passed u/s 143(3) for the assessment year 2009-10, vide which following grounds have been raised :-

- "1. On the facts and in the circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing Rs. 1,87,461/- on account of AIR not reconciled. The appellant prays that the said amount has not been received in the said financial year. Hence the same may kindly be allowed.

2. *On the facts and in the circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing the payment made to deceased partner claimed by the appellant and thus disallowing the sum of Rs. 5,62,500/-. The appellant prays that the payment made to the deceased partner may kindly be allowed".*

2. Besides this, the assessee has raised following as additional ground :-

"On the facts and in the circumstances of the case and in law, the Hon'ble CIT (A) erred in confirming the action of the Assessing Officer in not disallowing the claim of the appellant for the payment made by the firm to the spouse of the deceased partner as per the partnership deed and thus disallowing the sum of Rs. 12,00,000/-. The appellant prays that the payment made to the spouse of the deceased partner may kindly be allowed".

3. So far as the issue raised in additional ground, it has been admitted by the Ld. Counsel that, this issue has been decided against the assessee by the Tribunal in assessee's own case for the assessment year 2007-08, however to keep the issue alive assessee is contesting the said disallowance and therefore this additional ground has been raised which is borne out from the records.

4. After hearing both the parties, we admit the additional ground, as it is borne out from the records and no fresh examination is required. However, as admitted by Ld. Counsel, following the earlier year's precedence, this issue is to be decided against the assessee wherein, the Tribunal has decided the issue after observing and holding as under :-

“5. We have considered the rival submissions and also perused the relevant material on record. It is observed that as per the partnership deed dated 11.4.2005, the name and goodwill of the partnership firm was belonging to Mr. J.R. Gagrat and Mr. R.J. Gagrat as their absolute and exclusive property and thereafter to the survivor of them. Mr. J.R. Gagrat and Mr. R.J. Gagrat had agreed to license the user of name, logo and mark “GAGRATS” to the partnership firm as per the license agreement. Thereafter a supplemental deed of partnership was executed on 3.12.2005 on death of one of the partners Mr. Adil Saifuddin Kajiji wherein it was provided that in the event of death or retirement of Mr. J.R. Gagrat, the remaining partners desirous of continuing the profession in the name and style of the firm will pay a sum of Rs. 12 lakhs per annum to his widow or wife. As rightly submitted by the learned DR, if the name and style of the firm were the property belonging to Mr. J.R. Gagrat and Mr. R.J. Gagrat and thereafter to survivor of them, there was no question of making any payment for the use of name and style of the firm to Mrs. M.J. Gagrat. Moreover, on the death of Shri J.R. Gagrat, the name, logo and mark “GAGRATS” along with goodwill became the absolute and exclusive property of Mr. R.J. Gagrat as clearly mentioned in para no. 3.2 of the partnership deed executed on 1.4.2006 and he also licensed the user of the same to the firm pursuant to a license agreement entered into between him and the firm on 21.6.2006. There was thus no justifiable reason for the assessee firm to make payment of Rs. 12 lakhs per annum to Mrs. M.J. Gagrat for use of name and style “GAGRATS” and the said payment, in our opinion, cannot be considered as expenditure incurred by the assessee

firm for the purpose of its business/profession. As rightly held by the authorities below, the said payment was in the nature of gratuitous payment made by the assessee firm which could not be allowed as deduction u/s 37(1).

6. *As regards the alternative claim of the assessee that the impugned payment being diversion of income by overriding title should be allowed as deduction, we find that the learned CIT (A) has given cogent and convincing reasons to reject the same in his impugned order. At the time of hearing before us, the learned DR has not been able to put forth any material argument to controvert or dislodge the basis given by the learned CIT (A) while rejecting the stand of the assessee taken on this issue. As such considering all the facts of the case, we are of the view that the deduction claimed by the assessee on account of impugned payment made to Mrs. M.J. Gagrats was rightly disallowed by the AO and the learned CIT (A) was fully justified in confirming the said disallowance made by the AO. In that view of the matter, we uphold the impugned order of the learned CIT (A) on this issue and dismiss the appeal filed by the assessee”.*

5. Accordingly, following the judicial precedence in the earlier years the additional ground raised by the assessee is treated as dismissed.

6. Now, coming to the ground no. 1, the relevant facts are that, assessee is a firm of lawyers and Solicitors. In wake of AIR Information received the AO asked the assessee to reconcile the difference highlighted in AIR information, wherein certain figures could not be matched/tallied from the books of the assessee. The

relevant observation of the AO in the impugned order reads as under :-

“Assessee was asked to reconcile the AIR information. Keeping in view that assessee was following cash system of accounting in respect of (some entries of professional fees received) if the assessee has received it in next year, then it was assumed to be reconciled. But following entries could not be reconciled :

Sr. No.	Name of party	Amt. as per AIR	Amt. as per Assessee's a/c
1	PMC Rubber Chemicals P Ltd	71,000	Nil
2	BGR Entergy systems Ltd.	9,77,600	6,17,000 (FY 2009-10)
3	Krishna Lifestyle Tech Ltd.	1,87,461	Nil

Since the assessee could not reconcile the above entries, Rs. 71,000 + Rs. 1,87,461 + Rs. 3,60,000 (977,600 – 6,17,000) totaling to Rs. 6,19,061/- is added to the income of the assessee. Penalty proceedings u/s 271(1)(c) read with explanation 1 thereto of the I.T. Act, 1961 are initiated for filing inaccurate particulars of income”.

7. The Ld. CIT(A) after calling for the remand report, has deleted the other addition, however confirmed Rs. 1,87,461/- in respect of party no. 3 (above) on the ground that notice sent to the said party remained uncomplished with.

8. Before us, the Ld. Counsel submitted that the assessee has completely denied the transaction with Krishna Lifestyle Tech Ltd and had also filed an affidavit before the CIT(A) that, no professional services was rendered by the assessee to the said company nor any such amount was received from them. Thus, no addition is called for and if there is any other material then the

revenue has to bring on record that the information given in the AIR is correct.

9. On the other hand, Ld. DR strongly relied upon the order of CIT(A).

10. After considering the rival submissions, we find that assessee is a firm of Solicitors and Advocates. As per the AIR Information, certain payments were received by the assessee, which has not been disclosed in the books of accounts. As regards the other parties mentioned in the AIR, the same have been found to be reconciled at the appellate stage. However, with regard to addition of Rs. 1,87,461/- on account of fee received from Krishna Lifestyle Tech Ltd, the assessee had denied any such transaction or receiving of professional fee from the said concern. So, once the assessee is maintaining regular books of accounts and has shown all the details and has categorically denied any transaction, then onus lies heavily upon the Revenue to prove that AIR Information is correct and is corroborated by further evidence. It is not a case that the said party has furnished any information directly to the Revenue stating that it had made payment to the assessee. In fact, there was no such confirmation received from these parties. Once, the assessee categorically denies the transaction duly supported by an affidavit, then the revenue without any material on record to rebut, cannot hold that the assessee has received any such payment from the said party. Accordingly, addition of Rs. 1,87,467/- stands deleted.

11. So far as issue raised in ground no. 2 is concerned, we find that Ld. CIT(A) has not adjudicated the said ground, which was taken as additional ground before him on the ground that there was delay in filing of additional ground. Once a ground has been raised before the CIT(A) arising out of facts and material on record, even after filing of the appeal, then same can be entertained. The

additional ground cannot be rejected on the ground that, there is a delay in filing of additional ground of appeal. For admission of additional ground, we have to see whether it is a legal ground arising out of facts and material on record or not. Thus, we direct the CIT(A) to admit the additional ground and adjudicate the same in accordance with the facts and provisions of law. Accordingly, we set aside this ground to the file of the CIT(A) to decide the issue in accordance with the law after giving due opportunity to the assessee. Accordingly, impugned ground of appeal of the assessee is treated as partly allowed for statistical purposes.

12. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 15th October, 2015.

Sd/-
(डि. करुणाकर राव)
लेखा सदस्य
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 15th October, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) -3, Mumbai.
 - 4) The CIT -11, Mumbai.
 - 5) विभागीय प्रतिनिधि "जी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "G" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हान व.नि.स

*Chavan, Sr.PS