

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1783/KOL/ 2014
Assessment Year: 2004-2005**

&

**I.T.A. Nos. 1784 & 1785/KOL/ 2014
Assessment Year: 2005-2006**

Ram Karan Tiwari,.....Appellant
11A, Palm Avenue, Ashok Towers,
Ballygunge,
Kolkata-700 019
[PAN: ABTPT 8315 M]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-54, Kolkata,
3, Government Place (West),
Kolkata-700 001

Appearances by:

Shri Manoj Kumar Tiwari, C.A., for the assessee
Shri A.K. Singh, JCIT, D.R., for the Department

Date of concluding the hearing : August 10, 2016
Date of pronouncing the order : October 21, 2016

O R D E R

These three appeals filed by the assessee are directed against three separate orders, all dated 27.06.2014 passed by the Id. Commissioner of Income Tax (Appeals)-XXXVI, Kolkata and since some of the issues involved therein are common, the same have been heard together and are being disposed of by this consolidated order for the sake of convenience.

2. First we take up the appeal of the assessee for A.Y. 2004-05 being **ITA No. 1783/KOL/2014.**

Ground No. 1 raised by the assessee in this appeal is general, which does not require any specific adjudication.

3. The issue involved in Ground No. 2 relates to the claim of the assessee for exemption on account of agricultural income of Rs.2,25,000/- which is disallowed by the Assessing Officer and confirmed by the Id. CIT(Appeals).

4. The assessee in the present case is an individual, who is engaged in carrying on legal profession. The return of income for the year under consideration, i.e. A.Y. 2004-05 was filed by him on 29.10.2004 declaring total income of Rs.20,58,220/- and agricultural income of Rs.2,25,000/-. During the course of assessment proceedings, the claim of the assessee of agricultural income was examined by the Assessing Officer. In this regard, the explanation of the assessee of having received his share of agricultural income of Rs.2,25,000/- by cheque from the ancestral agricultural land was not accepted by the Assessing Officer on the ground that the same was not supported by the relevant documentary evidence showing cultivation of crops, sale of crops, expenditure incurred, etc. He, therefore, treated the agricultural income of Rs.2,25,000/- shown by the assessee as income from other sources and brought the same to tax in the hands of the assessee. On appeal, the Id. CIT(Appeals) upheld the action of the Assessing Officer on this issue.

5. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As agreed by the Id. representatives of both the sides, this issue is squarely covered in favour of the assessee by the decision of this Tribunal rendered in assessee's

own case for A.Y. 2003-04 vide its order dated 23.11.2007 passed in ITA No. 343/KOL/2006, wherein the claim of the assessee of having earned the agricultural income of Rs.2,10,000/- was accepted by the Tribunal after taking note of the fact that the assessee had been continuously showing agricultural income in his return from A.Y. 1976-77 and the same was accepted by the Department in the assessments completed either under section 143(1) or under section 143(3). Respectfully following the said decision of the Tribunal rendered in assessee's own case for A.Y. 2002-03, I direct the Assessing Officer to accept the claim of the assessee for agricultural income of Rs.2,25,000/-. Ground No. 2 is accordingly allowed.

6. In Ground No. 3, the assessee has challenged the following disallowances made by the Assessing Officer and confirmed by the Id. CIT(Appeals):-

- (i) Rs.48,895/- out of car running and maintenance expenses;
- (ii) Rs.27,035/- out of telephone expenses;
- (iii) Rs.7,895/- out of chamber maintenance expenses;
- (iv) Rs.49,117/- out of travel and conveyance &
- (v) Rs.1,560/- out of provision for liability.

7. During the course of assessment proceedings, it was noticed by the Assessing Officer that the relevant record in the form of Log Book, etc. was not maintained by the assessee in order to establish that the motor car running and maintenance expenses of Rs.2,93,370/- and salary and bonus paid to the driver of Rs.78,000/- was wholly and exclusively incurred for the purpose of his profession. He also noted that no disallowance out of these expenses was offered by the assessee in his return of income on account of personal use of vehicle. Since such personal use of the vehicle could not be ruled out, the Assessing Officer made a disallowance of Rs.48,895/- being 1/6th of the motor car running

and maintenance expenses and Rs.13,000/- being 1/7th of the Driver's salary and bonus. Similarly a disallowance of Rs.27,035/- being 1/5th of the telephone and Trunk-call expenses of Rs.1,35,175/- claimed by the assessee was made by him for the involvement of the personal element as no proper record was maintained by the assessee to establish that the expenses claimed by him on telephone and Trunk-call were wholly and exclusively incurred for the purpose of his profession. The Assessing Officer also noted that the Chamber maintenance expenses of Rs.47,370/- claimed by the assessee were inclusive of the electricity expenses incurred for the flats, which were being used by the assessee for the stay of his family. He, therefore, made a disallowance of Rs.7,895/- being 1/6th of the Chamber maintenance expenses of Rs.47,370/- claimed by the assessee. A further disallowance of Rs.49,117/- was also made by the Assessing Officer being 1/6th of the travelling and conveyance expenses of Rs.2,94,720/- claimed by the assessee on the ground that the said claim was not duly supported by the relevant documentary evidence to show that the travelling and conveyance expenses claimed by the assessee were wholly and exclusively incurred for the purpose of his profession. The provision for liability of Rs.1,560/- was also disallowed by the Assessing Officer as the same was not supported by any documentary evidence and the assessee also failed to furnish the relevant details in respect of such provision. On appeal, the Id. CIT(Appeals) confirmed all these disallowances made by the Assessing Officer mainly for the same reasons as given by the Assessing Officer, which the assessee failed to rebut or controvert.

8. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. At the time of hearing, the Id. counsel for the assessee has not been able to rebut or controvert the findings recorded by the Assessing Officer that the claim of the assessee for the relevant expenses is not supported by documentary evidence in the form of Log Book, Call Register, bills/vouchers, etc. The

limited relief sought by him is that the disallowance made by the Assessing Officer out of various expenses is excessive and unreasonable and the same may be reduced. However, keeping in view all the facts of the case, the nature of expenses claimed by the assessee, the nature of profession carried out by him and the quantum of expenses claimed under the respective heads, I find that the disallowance made by the Assessing Officer out of the said expenses is quite fair and reasonable and there is no justifiable reason to interfere with the same. I, therefore, uphold the impugned order of the Id. CIT(Appeals) confirming the various disallowances made by the Assessing Officer and dismiss Ground No. 3 of the assessee's appeal.

9. Now I take up the appeal of the assessee for A.Y. 2005-06 being **ITA No. 1784/KOL/2014**.

Ground No. 1 raised by the assessee in this appeal is general, which does not require any specific adjudication.

10. The issue raised in Ground No. 2 relates to the disallowance of Rs.3,37,535/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of legal charges paid by the assessee.

11. In the Profit & Loss Account filed along with his return of income declaring total income of Rs.22,94,210/-, a sum of Rs.3,37,535/- was debited by the assessee on account of professional fees paid to Shri Ranjan Mitra. As no tax had been deducted by the assessee from the payment made to Shri Ranjan Lal Mitra, the Assessing Officer required him to explain as to why the said amount should not be disallowed under section 40(a)(ia). In reply, it was explained by the assessee that the amount in question was paid by him to Shri Ranjan Lal Mitra for making payments to his Juniors, Clerks and other Counsels for the services rendered in favour of the assessee. It was contended by the assessee that since the proper break-up of the amount so paid was not available, it was

not practically possible to deduct tax at source. This contention of the assessee was not found acceptable by the Assessing Officer. According to him, Shri Ranjan Lal Mitra having raised a consolidated bill of Rs.3,37,535/-, the assessee was required to deduct tax at source from the said amount under section 194J of the Act and since there was failure on the part of the assessee to do so, he disallowed the amount of Rs.3,37,535/- under section 40(a)(ia). On appeal, the Id. CIT(Appeals) confirmed the said disallowance made by the Assessing Officer.

12. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The Id. counsel for the assessee has submitted that the amount in question was mainly paid by the assessee to two Advocates, who have already included the said amounts in their income and paid tax thereon. He has contended that no disallowance under section 40(a)(ia) in respect of the amounts paid to these two Advocates can be made in view of the 2nd proviso to section 40(a)(ia), which is applicable with retrospective effect. As regards the balance amount, he has submitted that the same paid to other parties did not exceed Rs.20,000/- in any individual case and, therefore, the provisions of section 194J are not applicable. Id. D.R., on the other hand, has contended that all these submissions now made by the Id. counsel for the assessee for the first time before the Tribunal require verification and the matter may be sent back to the Assessing Officer for this purpose. I find merit in this contention of the Id. D.R. Accordingly, the impugned order of the Id. CIT(Appeals) on this issue is set aside and the matter is restored to the file of the Assessing Officer for deciding the same afresh after verifying the submissions made by the Id. counsel for the assessee for the first time before the Tribunal from the relevant record. Ground No. 2 is accordingly treated as allowed for statistical purposes.

13. The issue raised in Ground No. 3 of the assessee's appeal for A.Y. 2005-06 relates to the disallowance of Rs.67,267/- made by the Assessing

Officer and confirmed by the Id. CIT(Appeals) out of travelling and conveyance expenses.

14. During the course of assessment proceedings, the expenses of Rs.4,41,325/- claimed by the assessee on travelling and conveyance were examined by the Assessing Officer. On such examination, he found that a sum of Rs.67,267/- was paid by the assessee for the air-fare of his daughter Ms. Pragya Tiwari from Mumbai to London. In this regard, the explanation offered by the assessee that his daughter Ms. Pragya Tiwari was graduated in Law from a very reputed U.K. University and had assisted him during the visits to London by working for Goodricke Group of Companies was not found acceptable by the Assessing Officer in the absence of any supporting evidence. He also noted that Ms. Pragya Tiwari was neither the employee or the Associate of the assessee and no amount of salary or professional fees was paid by him to her. He, therefore, held that the visit of Ms. Pragya Tiwari to London is purely personal in nature having no nexus with the profession of the assessee and the expenses claimed on the said visit amounting to Rs.67,267/- was disallowed by him. On appeal, the Id. CIT(Appeals) confirmed the said disallowance.

15. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. Although the Id. counsel for the assessee has contended that the main client of the assessee is having offices in London, he has not been able to rebut or controvert the findings recorded by the Assessing Officer that Ms. Pragya Tiwari was neither the employee nor the Associate of the assessee during the year under consideration. He has also not been able to bring any evidence on record to show that the visit of Ms. Pragya Tiwari to London had any nexus with the profession of the assessee. I, therefore, find no justifiable reason to interfere with the impugned order of the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer

on this issue and upholding the same, I dismiss Ground No. 3 of the assessee's appeal for A.Y. 2005-06.

16. Now I take up the appeal of the assessee for A.Y. 2005-06 being **ITA No. 1785/KOL/2014**, which is arising from the order passed by the Assessing Officer under section 143(3) of the Act read with section 263.

17. The records of the assessment made by the Assessing Officer under section 143(3) was examined by the Id. CIT and on such examination, he was of the view that the amount of Rs.6,55,000/- received by the assessee as loan from M/s. Mahanagar Properties Pvt. Limited clearly fell within the ambit of deemed dividend under section 2(22)(e). Since the said amount was not added by the Assessing Officer to the total income of the assessee as deemed dividend under section 2(22)(e), he set aside the order passed by the Assessing Officer under section 143(3) by treating the same as erroneous as well as prejudicial to the interest of the Revenue with a direction to the Assessing Officer to complete the assessment afresh after giving opportunity of being heard to the assessee. Accordingly, fresh assessment proceedings were initiated by the Assessing Officer and the assessee was afforded an opportunity by him to offer his explanation in the matter. In reply, it was submitted by the assessee that he had entered into an agreement for transfer of property to M/s. Mahanagar Properties Pvt. Limited and the amount in question was received by him against the said transaction as advance. This explanation of the assessee was not found acceptable by the Assessing Officer. According to him, the provisions of section 2(22)(e) were applicable to any payment and the amount in question received by the assessee as advance was covered by the said provision. He accordingly invoked the provision of section 2(22)(e) and treated the amount of Rs.6,55,000/- received by the assessee from M/s. Mahanagar Properties Pvt. Limited as deemed dividend under section 2(22)(e) in the assessment completed under section 143(3) read with section 263 by

order dated 28.12.2010. On appeal, the Id. CIT(Appeals) confirmed the said addition made by the Assessing Officer.

18. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The Id. counsel for the assessee has submitted that the amount in question was received by the assessee as advance from M/s. Mahanagar Properties Pvt. Limited under an agreement by which the property belonging to the assessee was agreed to be sold to the said Company. He has submitted that the sale of the said property, however, was not effected and the property belonging to the assessee was ultimately sold by the assessee to some other party in the year 2008. Relying on the decision of the Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra [338 ITR 538], he has contended that the amount in question received by the assessee as a consequence of any other consideration, which is beneficial to the Company, cannot be said to be deemed dividend within the meaning of section 2(22)(e) of the Act. When he was asked to file the copy of the Unregistered Agreement entered into between the assessee and M/s. Mahanagar Properties Pvt. Limited in support of this contention, the Id. counsel for the assessee, however, has failed to file the same. A perusal of the relevant Balance-sheet of M/s. Mahanagar Properties Pvt. Limited placed by him on record also shows that the amount in question paid to the assessee was shown by the said Company as advance under the head "Loans and Advances" and there is nothing to show that the amount in question was paid by the said Company to the assessee as advance against property. There is also nothing brought on record on behalf of the assessee to show that the Unregistered Agreement stated to be entered into with M/s. Mahanagar Properties Pvt. Limited was subsequently cancelled before the property belonging to the assessee was ultimately sold to some third party. I, therefore, find no merit in the case of the assessee on this issue and rejecting the same, I uphold the impugned order of the Id. CIT(Appeals)

confirming the addition made by the Assessing Officer on account of deemed dividend under section 2(22)(e) of the Act.

19. In the result, the appeal of the assessee being ITA No. 1783/KOL/2014 is partly allowed, the appeal of the assessee being ITA No. 1784/KOL/2014 is treated as partly allowed and ITA No. 1785/KOL/2014 is dismissed.

Order pronounced in the open Court on October 21, 2016.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 21st day of October, 2016

- Copies to :
- (1) **Shri Ram Karan Tiwari,
11A, Palm Avenue, Ashok Towers,
Ballygunge,
Kolkata-700 019**
 - (2) **Assistant Commissioner of Income Tax,
Circle-54, Kolkata,
3, Government Place (West),
Kolkata-700 001**
 - (3) **Commissioner of Income Tax(Appeals)-XXXVI, Kolkata;**
 - (4) **Commissioner of Income Tax- ,**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.