

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 320/Kol/2013

Assessment Year : 2007-08

Shri Pranab Chatterjee
[PAN: ACQPC 3756 K]
(Appellant)

-vs-

ACIT, Circle-30, Kolkata

(Respondent)

For the Appellant : Shri Saumitra Choudhury, Advocate

For the Respondent : None

Date of Hearing : 11.07.2017

Date of Pronouncement : 11.08.2017

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)- XIV, Kolkata [in short the Id CITA] in Appeal No. 302/CIT(A)-XIV/09-10 dated 30.12.2012 against the orders passed by the ITO, Ward-30(4), Kolkata [in short the Id AO] under section 144 of the Income Tax Act, 1961 (in short “the Act”) dated 31.12.2009 for the Assessment Year 2007-08.

2. The Ground Nos. 1 & 10 raised by the assessee are general in nature and does not require any specific adjudication.

3. During the course of hearing, the Id AR stated that the Ground No.3 raised by the assessee is not pressed. The same is reckoned as a statement from the Bar and hence the same is dismissed as not pressed.

4. The first interconnected issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition made towards capital introduction of Rs 5,76,982/- in 'Pranab Chaterjee & Associates' and capital introduction of Rs 8,35,000/- in firm styled as M/s Viswakarma, in the facts and circumstances of the case.

4.1. The brief facts of this issue is that the assessee is a proprietor of 'M/s Pranab Chaterjee & Associates' engaged in the business of consultants, Architects and Interior Decorators. He is also a proprietor of another proprietary concern styled as 'M/s Module', engaged in the business of promoting, developing and real estate. The assessee is also a partner in a partnership firm styled as 'M/s Viswakarma' and also a Karta of HUF. The assessee was in receipt of salary income, rental income and maintenance charges, partners remuneration, share of profit from firm and HUF, business income, short term capital gains on sale of shares, long term capital gains on sale of gold, interest income from NSC, KVP, PPF and clubbing of minor's income. The original return of income for the Asst Year 2007-08 was filed by the assessee on 2.11.2007 declaring total income of Rs 1,95,432/- and later the assessee revised his return on 12.3.2009 declaring total income of Rs 3,41,756/-. The Id AO observed that the assessee failed to submit his books of accounts and documents in support of his contention and that there were some discrepancies between the balance sheet filed earlier and reflection of closing capital balance thereon with the opening capital balance in the next year and accordingly proceeded to frame the assessment on best judgement basis u/s 144 of the Act. The Id AO observed that the assessee had introduced capital for Rs 5,76,982/- and observed that the assessee had failed to provide the source of such introduction of capital, the same was treated as unexplained income and added to the total income of the assessee. Similarly the Id AO observed that the assessee failed to provide specific source of his investment of capital introduction in the firm 'Viswakarma' in the sum of Rs 8,35,000/- and accordingly added back the same to the total income of the assessee.

4.2. It was explained before the Id CITA that the detailed books of accounts were maintained in the regular course of business of various proprietary concerns, firms and HUF which are also duly supported by bills and vouchers. It was further submitted that the books of accounts were duly audited u/s 44AB of the Act, wherever applicable. The chartered accountant of the assessee appeared on 4 different dates on record before the Id AO explained the points and details as required by the Id AO and had also produced and presented all the relevant papers, documents, bank accounts, computation of income, audited financial statements of Pranab Chaterjee & Associates, financial statements of Module, personal balance sheet & income and expenditure account of Pranab Chatterjee, copy of financial statements of Viswakarma and copy of return and financial statement of Pranab Chaterjee (HUF) . It was also submitted that the Id AO had considered all the figures from the financial statements of assessee and so it is evident that he had accepted all the figure of the financial statements presented at assessment level other than the points which he specifically raised. Moreover, in the computation potion of the order, the Id AO had started with the income disclosed in the revised return. So it is evident that the Id AO had accepted the revised return submitted by the assessee. During the course of hearing, it was submitted that the source of Rs 5,76,982/- towards capital was made out of drawings to the tune of Rs 6,58,500/- and hence the source is duly explained and there is no case for making any addition in this regard. With regard to capital introduction in the firm 'Viswakarma' in the sum of Rs 8,35,000/-, it was explained that the drawings have been made from the said firm to the tune of Rs 9,01,900/- which explains the source for future investment of capital in the said firm.

4.3. The Id CITA though observed that the assessee had indeed filed the fund flow statement explaining that the sources were met out of drawings from the other bank account. But he observed that the assessee had not explained the source of drawings. Accordingly he confirmed the addition made by the Id AO in the sum of Rs 5,76,982/-.

Similarly, he observed that there is no satisfactory evidence that cash withdrawals from M/s Viswakarma explains the source of introduction of capital in the said firm and accordingly confirmed the addition of Rs 8,35,000/- made by the Id AO. Aggrieved, the assessee is in appeal before us on the following grounds:-

2. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming capital introduction of Rs. 5,76,982/- in "Pranab Chatterjee & Associates" which is completely arbitrary, unjustified and illegal.

3. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming capital introduction of Rs. 8,35,000/- in "M/s Viswakarma" as unexplained income of the assessee which is completely arbitrary, unjustified and illegal.

4.4. We have heard the Id AR. None appeared for the revenue when the case was called for hearing. No adjournment petition has been moved by the revenue on the date of hearing. Hence we proceed to hear the Id AR and based on materials available on record. We have gone through the relevant pages of the paper book filed by the Id AR comprising of (i) financial statements of various proprietary concerns and personal balance sheet (enclosed in pages 1 to 37 of PB) ; (ii) statement showing flow of drawings and capital introduction in Pranab Chaterjee & Associates by the Proprietor (assessee herein) (enclosed in pages 38 & 39 of PB) and (iii) statement showing flow of drawings and capital introduction in Viswakarma by the assessee along with bank statement (enclosed in pages 43 to 53 of PB). We find from pages 38 & 39 of the paper book placed on record that the assessee had duly explained the source of capital introduction made on each date in M/s Pranab Chaterjee & Associates starting from 1.6.2006 to 7.2.2007 totalling to the tune of Rs 5,76,982/- . The source has been explained out of cash withdrawals from the personal bank account of the assessee on each date with specific reference to the cheque numbers which are cross verifiable with the corresponding bank statement. We also find that assessee had incurred business expenditure of Pranab Chaterjee & Associates by making payment to SPA Consultants (Structural Engineer) on 23.10.2006 by issuing cheque from his personal bank account

to the tune of Rs 10,000/- which was treated as capital introduction in the books of the proprietary concern 'Pranab Chaterjee & Associates'. Hence the source is also explained for the same. Similarly the assessee had paid a sum of Rs 982/- towards bank charges on 3.10.2006 on behalf of the proprietary concern, which was treated as capital introduction by the assessee in the said proprietary concern. We also find that the assessee had explained the source of cash deposit of Rs 30,000/- on 7.2.2007 to be made out of drawings made from the firm M/s Viswakarma. Hence we find that the sources of capital introduction in the proprietary concern M/s Pranab Chaterjee & Associates in the sum of Rs 5,76,982/- (more detailed in pages 38 & 39 of PB) stand explained in the following manner:-

- a) Partly out of cash withdrawals from personal bank account of assessee ;
- b) Partly out of cheques issued from personal bank account of assessee on behalf of proprietary concern ; and
- c) Partly out of withdrawals from partnership firm M/s Viswakarma.

Hence there is no need to make any addition towards the capital introduction in Pranab Chaterjee & Associates as the sources for the same stand clearly explained. Accordingly, the Ground No. 2 raised by the assessee is allowed.

4.4.1. Similarly we find from page 43 of the paper book placed on record that the assessee had duly explained the source of capital introduction made on each date in the firm M/s Viswakarma starting from 31.10.2006 to 31.1.2007 totalling to the tune of Rs 8,35,000/- . The details of the same are as under:-

31.10.2006 – Cash introduced	- Rs 1,00,000
10.11.2006 – Cash introduced	- Rs 35,000
7.12.2006 – Cheque transfer from personal bank a/c	- Rs 2,00,000
27.12.2006 – Cheque transfer from personal bank a/c	- Rs 2,00,000
8.1.2007 – Cheque transfer from personal bank a/c	- Rs 1,00,000
31.1.2007 - Expense paid from personal a/c on Behalf of Viswakarma	- Rs 2,00,000

	Rs 8,35,000

We find from page 43 of paper book corroborated with the corresponding bank statements, the assessee had withdrawn cash from M/s Viswakarma on various dates ranging from 3.4.2006 to 31.1.2007 totalling to Rs 5,70,900/- which were deposited in the personal bank account of assessee. Later when the cash was required to be introduced in the firm M/s Viswakarma, the assessee had withdrawn cash from his personal bank account and deposited the same in cash in Viswakarma account to the tune of Rs 1,35,000/- (i.e 31.10.06 – 1,00,000 & 10.11.06 – 35,000). Hence the cash deposit of Rs 1,35,000/- stood clearly explained out of cash withdrawals. With regard to the further investment in the firm by cheque to the tune of Rs 7,00,000/- from 7.12.2006 to 8.1.2007, we find that these were nothing but cheque transfers made from personal bank account to the bank account of the firm M/s Viswakarma by the assessee. With regard to the remaining sum of Rs 2,00,000/- introduced in the firm M/s Viswakarma on 31.1.2007, the same represents expenses paid by the assessee on behalf of the firm to Mr Ganesh Deb Mallick (landlord of 52, Golf club project) from his personal account. We find that the assessee had indeed filed before the Id AO the copy of personal balance sheet, income and expenditure account, balance sheet of the firm M/s Viswakarma. The Id CIT(A) having observed that the fund flow statement has been filed by the assessee for explaining the sources, failed to appreciate the same and confirmed the addition. All these transactions stand duly corroborated with the corresponding bank statements. Moreover, it is not in dispute that both the ‘Pranab Chaterjee (HUF)’ and ‘M/s Viswakarma’ are assessed to income tax independently. In these facts and circumstances, we have no hesitation in directing the Id AO to delete the addition of Rs 8,35,000/- towards capital introduction in the firm M/s Viswakarma. Accordingly the Ground No. 3 raised by the assessee is allowed.

5. The next interconnected issue is as to whether the Id CITA was justified in confirming the disallowance of net prior period expenses of Rs 1,47,285/- and

confirming the addition of prior period income of Rs 9,41,900/- in the facts and circumstances of the case.

5.1. The brief facts of this issue is that the Id AO simply observed that the assessee had claimed prior period expenses of Rs 1,47,285/- which is to be disallowed as the same is not incurred during the relevant period under appeal. The Id AO further observed that the assessee had unrecorded income under various heads amounting to Rs 9,41,900/- which was netted off with the prior period expenses without mentioning the period of which the same were related. However, he concluded that the unrecorded income of Rs 9,41,900/- as pertaining to the year under appeal and added the same to the total income.

5.2. The Id CITA observed that the assessee had filed one statement of prior period expenses and prior period income in the paper book. It was submitted that the certain expenses amounting to Rs 10,89,185/- were debited as expenditure during the year which pertained to the earlier year, but were omitted to be accounted as expenditure in the earlier year. Similarly the unrecorded income pertaining to the earlier year amounting to Rs 9,41,900/- was omitted to be recorded in the earlier year and hence the same was offered to tax on finding out the same in the year under appeal. Accordingly the net prior period expenses amounting to Rs 1,47,285/- (10,89,185 – 9,41,900) was claimed as expenditure by the assessee. The entire details of both prior period expenses and prior period income were duly filed. However, the Id CITA did not heed to the said contentions and confirmed the disallowance and addition made by the Id AO in the total sum of Rs 10,89,185/- (9,41,900 + 1,47,285). Aggrieved, the assessee is in appeal before us on the following grounds:-

5. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the disallowance of prior period expenses amounting to Rs. 1,47,285/- which is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the addition of unrecorded income amounting to Rs. 9,41,900/- which is completely arbitrary, unjustified and illegal.

5.3. We have heard the Id AR. We find from page 58 of the paper book placed on record, the details of prior period expenses (net) are as under:-

PRANAB CHATTERJEE & ASSOCIATES		SCH - B	
STATEMENT OF PRIOR PERIOD INCOME & EXPENSES AS ON 31.03.07			
ITEMS OF EXPENSES INCURRED	ACTUAL EXPENSES DURING 2005-06, AND EARLIER OF 2005-06	EXPENSES RECORDED DURING 2005-06 & EARLIER	PROOR PERIOD/UNRECORDED AND NOT ACCOUNTED FOR
	AMOUNT (RS.)	AMOUNT (RS.)	AMOUNT (RS.)
* Telephone Charges including Mobile & Landline.	48600	25707	22893
* Drawing Charges & Designing	45000	31000	14000
* Rates & Taxes	2800	410	2390
* Survey Expenses	20500	10000	10500
* Testing Charges	25000	11020	13980
* A/cing Charges including audit fees	40000	34836	5164
* Books & Periodical	25000	1500	23500
* Conference Expenses	30000	4477	25523
* Travelling & Conveyance	70000	57453	12547
* Refreshment & Entertainment	12000	2500	9500
* Repair & Maintenance	22200	3950	18250
* Postage & Telegraph	15600	20	15580
* Printing & Stationary	45000	38834	6166
* Salary & Bonus	338000	104400	233600
* Welfare Expenses	15000	0	15000
* Site expenses & Establishment charges	165000	151933	13067
* Donation & Subscription	20000	9300	10700
* Legal Advice Charges	10000	0	10000
* Car expenses including driver's salary	249500	21675	227825
* Maintenance charges of Let out Buil	36000	0	36000
* Expenses against unrecorded income	250000	0	250000
*expenses for false cealing	40000	0	40000
* Cash loss during office hours	25000	0	25000
*Expenses for utilisation of space	48000	0	48000
TOTAL (A)	1598200	509015	1089185
LESS: *Unrecorded Professional Fees	800000	0	800000
*Unrecorded H P Incomes net of Sec 24	81900	0	81900
*Unrecorded Maintenance	60000	0	60000
TOTAL (B)	941900	0	941900
DIFERENCES (A - B)	656300	509015	147285

We find that the expenditure listed above were purely business expenditure of the assessee to the tune of Rs 10,89,185/-. Now the short question to be decided is whether the prior period expenses of Rs 10,89,185/- is allowable as deduction in the year under appeal. The ld AR argued that there was no difference in the tax rates in both the years and does not make any difference if the said expenditure is allowed in the earlier year or in the year under appeal. He argued that the bills and vouchers for the said expenditures were received after 31st March and hence was omitted to be accounted as expenditure in the earlier year. We find that the issue of allowability of prior period expenses had been the subject matter of adjudication before the *Hon'ble Delhi High Court in the case of CIT vs Jagatjit Industries Limited in ITA No. 848 / 2010 dated 6.9.2010* wherein it was held as under:-

“16. The present factual matrix has to be tested on the touchstone and anvil of the aforesaid enunciation of law. On a scrutiny of the facts that have been brought on record, it is discernible that the assessee has been claiming prior period of expenses on the ground that the voucher of such expenses from the employees/branch employees were received after 31st March of the financial year. It has also come as a matter of fact that the assessee has branch offices throughout the country. The assessee has been debiting the expenditure spill over to the subsequent years and the assessing officer had been allowing the same. The said accounting practice has been consistently followed by the assessee and accepted by the department. If a particular accounting system has been followed and accepted and there is no acceptable reason to differ with the same, the doctrine of consistency would come into play. The said accounting system has been followed for a number of years and there is no proof that there has been any material change in the activities of the assessee as compared to the earlier years. Nothing has been brought on record to show that there has been distortion of profit or the books of account did not reflect the correct picture in the absence of any reason whatsoever, there was no warrant or justification to depart from the previous accounting system which was accepted by the department in respect of the previous years”.

We find that the expenditures categorized as prior period expenditure are regular business expenditures of the assessee and it is not the case of the revenue that the assessee had claimed the same in the earlier year also. Hence there is no question of double claim. We also find that the Id AO had not disputed the genuinity of these expenditure. It is not the case of the Id AO that they are not incurred for the purpose of business of the assessee. In view of these facts and respectfully following the aforesaid judicial precedent , we hold that the prior period expenses of Rs 10,89,185/- is squarely allowable as deduction in the year under appeal and we direct the Id AO to grant deduction for the same. With regard to the unrecorded income of Rs 9,41,900/- is concerned, we find that the assessee himself had duly offered the same as prior period income in the year under appeal. Since the prior period expenses of Rs 10,89,185/- is directed to be allowed as deduction, the prior period income of Rs 9,41,900/- has been rightly set off with the prior period expenses and net prior period expenses of Rs 1,47,285/- had been rightly claimed as deduction by the assessee. Accordingly, the Ground Nos. 5 & 6 raised by the assessee are allowed.

6. The next issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition of Rs 10,50,000/- as unexplained income in the facts and circumstances of the case.

6.1. The brief facts of this issue is that in the proprietary concern M/s Module, the capital introduction of Rs 10,50,000/- was reflected. For want of proper explanation of the same, the Id AO added the same as income of the assessee which was confirmed by the Id CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

7. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the addition of introduction of capital as unexplained income amounting to Rs. 10,50,000/- which is completely arbitrary, unjustified and illegal.

6.2. We have heard the Id AR. The Id AR stated that the investment in Module was reflected in the balance sheet to the tune of Rs 5,45,600/- in Pranab Chaterjee (HUF) and to that extent the capital introduction in Module stands explained. He fairly stated that the remaining sum of Rs 5,04,400/- (10,50,000 – 5,45,600) requires to be sustained. We find that the addition of Rs 5,04,400/- is directed to be sustained as the balance of Rs 5,45,600/- had been properly explained by the assessee. Accordingly, the Ground No. 7 raised by the assessee is partly allowed.

7. The next ground to be decided in this appeal is as to whether the Id CITA was justified in confirming the disallowance of Rs 1,90,000/- u/s 40(a)(ia) of the Act towards commission , in the facts and circumstances of the case.

7.1. The brief facts of this issue is that the Id AO observed that the assessee had debited Rs 1,90,000/- on account of brokerage without deduction of tax at source. Hence the same was disallowed u/s 40(a)(ia) of the Act. The assessee submitted that this brokerage was incurred in the proprietorship concern Module and the turnover of Module during the year under appeal was below the limits prescribed u/s 44AB of the Act and hence there is no obligation to deduct tax at source u/s 194H of the Act. The Id AR also submitted that the turnover of Module in the immediately preceding year was also less than the limits prescribed u/s 44AB of the Act. The year under appeal is the second year of operation of Module. The Id CITA confirmed the action of the Id AO. Aggrieved, the assessee is in appeal before us on the following grounds:-

8. For that on the facts of the case, the Ld. CIT(A) was wrong in confirming the brokerage paid disallowed u/s 40a(ia) of the I.T. Act amounting to Rs. 1,90,000/- which is completely arbitrary, unjustified and illegal.

9. For that on the facts of the case, the order of the Ld. CIT(A) was wrong in confirming the addition u/s 40a(ia) amounting to Rs. 1,90,000/- on brokerage paid without considering the fact that section 194H of I.T. Act was not applicable to the assessee, therefore, the action of the CIT(A) is completely arbitrary, unjustified and illegal.

7.2. We have heard the ld AR. We find that assessee is not liable for tax audit based on its turnover and accordingly not liable for deduction of tax at source u/s 194H of the Act. Hence no disallowance could be made u/s 40(a)(ia) of the Act. Accordingly, the Ground Nos. 8 & 9 raised by the assessee are allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 11.08.2017

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 11.08.2017

SB, Sr. PS

Copy of the order forwarded to:

1. Shri Pranab Chatterjee, 240, Lake Road, Kolkata-700029
2. ACIT, Cir-30, Kolkata, 2, Gariahat Road (South), Kolkata-700068
- 3..C.I.T.(A)-XIV, Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches