

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

Before **Shri P.M.Jagtap, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.1641/Kol/2017
Assessment Year:2011-12

Dr. Partha Biswas House No.4 Cluster-VII, Purbachal, Salt Lake City, Kolkata-97 [PAN No.AGUPB 7947 B]	बनाम/ V/s.	JCIT, Range-55, Kolkata-700 016
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri A. Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	23-07-2018
घोषणा की तारीख/Date of Pronouncement	31-07-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2011-12 arises against Commissioner of Income Tax (Appeals)-6, Kolkata's order dated 07.03.2017, passed in case No.135/CIT(A)-6/Kol/14-15 upholding Assessing Officer's action disallowing addition his salary payment made to Dr. Shule Kumar of ₹62,000/- as well as depreciation of car and driver salary @ 20% coming to ₹28,204; respectively, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. We come to former issue of section 40(a)(ia) disallowance of ₹62,000/-. The assessee had admittedly paid the impugned sum in the months of June to November, 2010 @ ₹10,000/- per month for four months and ₹ 11,000/- each for two months. He did not deduct TDS thereupon by treating the same to be in the nature of salary. Both the lower authorities have rejected his claim in absence of employee-employer relationship to treat the sum in question as fee in lieu of availing professional services. They conclude that payee doctor had in fact assisted the assessee rather than having

employee-employer relationship between them. We find no merit in the lower authorities' stands. The assessee's above payments sequence at periodic interval; as well as absence of any evidence in books indicating the relevant assistance offered by the payee is forms sufficient material to conclude that there were having employee-employer relationship between them. The impugned salary payments admittedly do not satisfy threshold limit of TDS deduction u/s. 192 of the Act. We therefore accept assessee's former substantive ground challenging of section 40(a)(ia) disallowance of ₹62,000/-. He succeeds in the instant former substantive ground.

3. Next comes to assessee's latter substantive ground challenging both the lower authorities action disallowing his car depreciation and driver salary to the extent 20% coming to ₹28,204/- involving corresponding sums of ₹65,618/- and ₹75,400; respectively. Learned Departmental Representative fails to dispute that the impugned disallowance even if accepted in principle, is on higher side we therefore restrict the same to that @ 10% only coming to this sum ₹14,102/- with a rider that our instant adjudication would not be treated as a precedent. This latter substantive ground is accepted in part.

4. This assessee's appeal is partly allowed.

Order pronounced in open court on 31/07/2018

Sd/-
(लेखा सदस्य)
(P.M.Jagtap)
Accountant Member
*Dkp-Sr.PS

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

दिनांक:- 31/07/2018 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-Dr. Partha Biswas, house No.4 Cluster-VII, Purbachal, Salt Lake City, Kolkata-97
2. प्रत्यर्थी/Respondent-JCIT, Range-55, 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.

By order/आदेश से,

/True Copy/

Sr. Private Secretary,
Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता