

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.2122/Bang/2018
Assessment Year : 2012-13

Dr. S. Bikkamchand, No. 6/1, Promenade Road, Near Coles Park, Frazer Town, Bangalore – 560 005. PAN: ABDPB4767D	vs.	The Assistant Commissioner of Income Tax, Circle – 2 (3) (1), Bangalore.
APPELLANT		RESPONDENT
Appellant by	:	Shri Rohit Goutamchand, CA
Respondent by	:	Shri R.N. Siddappaji, Addl. CIT (DR)
Date of hearing	:	20.11.2018
Date of Pronouncement	:	29.11.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-1, Bangalore dated 02.04.2018 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

“1. The Learned Assessing Officer was wrong in denying the Appellant a relief which the Appellant was eligible at the time of Assessment carried out U/s 143(3) of the Act, 1961 in respect of Taxation of Professional Goodwill of Rs, 42,50,000/- received by the Appellant in the Financial Year 2011-2012 against a Take Over Agreement of only the Laboratory Services of the Appellant's Diagnostic Centre as against the entire Diagnostic Centre as understood by the Learned AO.

2. The Learned AO, disregarded the explanations and submissions offered by the AR of the Appellant as also the covered decision of the Honorable Chennai Tribunal, in the case of "Dr. K. Premraj vs. Deputy CIT"-[2014] 41 taxmann.com 81 (Chennai- Trib.)" , where Dr. K Premraj transferred the Assets to M/s Vasan Eye Care Hospital and the same was exempted from Capital Gains tax since the receipt was in the nature of Professional Goodwill.

3. The Learned AO's contention that the Appellant not being a Lab Technician / Radiologist to relate the receipt of such sum as

Professional Goodwill has been construed in a narrow sense, since the very Agreement of Take Over has specifically enumerated the Payment being made in excess of the Assets towards Professional Goodwill of Appellant and in the presence of the Principal document of Take Over, the Learned AO would be grossly erring by riding beyond the intent of the transaction to tax such sum as Business Goodwill.

As held, by The Hon'ble Apex Court in the case of "G.K. Choksi & Co. vs CIT- Gujarat [2007] 165 TAXMAN 299 (SC) "on the similar issue differentiating the terms business and profession.

4. The Learned Commissioner (Appeals) has deprived the Appellant of the Principles of Natural Justice by not awarding an opportunity of filing submissions and additional evidences to show cause and place our objection and explanations. Furthermore, the appellant was not informed about the change in incumbent of the officer as opposed to the provisions of the Income Tax Act, 1961.

5. The Learned Commissioner (Appeals) as mentioned four hearing dates in the appeal order, but only one notice was received for AY 2009-2010, by the Appellant dated 15.11.2016 and other three notices mentioned in the appeal order neither received by Appellant nor by AR to put-forth their submissions and evidences.

6. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above."

3. At the very outset, it was submitted by Id. AR of assessee that the order of CIT(A) is ex-part qua the assessee. He submitted that it is noted by CIT(A) in his order that he has issued four notices of hearing fixing the date of hearing on 15.11.2016, 19.12.2016, 22.02.2017 and 26.02.2018. He submitted that out of these four notices, the assessee has received only one notice dated 11.11.2016 as per which the date of hearing fixed is 15.11.2016. He submitted a copy of this notice and pointed out that in this notice, it is stated that the Assessment Year involved is Assessment Year 2009-10 whereas the impugned order of CIT(A) is for Assessment Year 2012-13. He further submitted that other three notices said to be sent by CIT(A) were not received by assessee at all. He submitted that under these facts, the order of CIT(A) should be set aside and the matter should be restored back to him for fresh decision after providing adequate opportunity of being heard to assessee. The Id. DR of revenue supported the order of CIT(A).

4. We have considered the rival submissions and in view of this fact that as per the impugned order of CIT(A), there is no decision on merit on the grounds raised by the assessee and also, in view of this fact that in the notice dated 11.11.2016 issued by CIT(A) fixing the date of hearing on 15.11.2016, the Assessment Year mentioned is Assessment Year 2009-10 and not Assessment Year 2012-13 to which actually the appeal relates. This is also the submission of the assessee that the remaining three notices were never served on the assessee. As per the order of CIT(A) also, it is stated that the notices of hearing were issued and there is no mention as to whether the notices were served on the assessee or not. Considering all these facts, we feel it proper to set aside this ex-parte order of CIT(A) and restore back the entire matter to his file for fresh decision after providing adequate opportunity of being heard to both sides. In view of this decision, no adjudication is called for at present in respect of various grounds raised by assessee in this appeal.
5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 29th November, 2018.
/MS/

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.