

आयकर अपीलीय अधिकरण, न्यायपीठ – “B(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

I.T.A. No. 1996/Kol/2018
Assessment Year: 2010-11

Shri Ramesh Chandra Senapati (PAN: AUHPS4462K)	Vs.	Income-tax Officer, Wd-21(2), Kolkata.
Applicant		Respondent

Date of Hearing	15.01.2019
Date of Pronouncement	15.01.2019
For the Applicant	Shri S. Banerjee, Advocate
For the Respondent	Md. Ghayas Uddin, Addl. CIT

ORDER

Per Shri A.T.Varkey, JM

This appeal filed by the assessee against the order of Ld. CIT(A)-12, Kolkata dated 26.06.2018 for AY 2010-11.

2. At the outset itself, it has been brought to our notice by the Ld. Advocate Shri S. Banerjee, Advocate that the impugned order is an ex parte order passed by the Ld. CIT(A). It was also brought to our notice that the Ld. CIT(A) after giving two notices on 28.05.2018 and 19.06.2018, the matter was fixed for hearing on 07.06.2018. However on 07.06.2018, the assessee had to go to Pune for taking care of his daughter's birth. In support of his submission, the assessee has filed copies his air ticket and discharge summary from the hospital which corroborates that a grand-son has been born. So, we find that there is some reasonable cause for the assessee not to have attended before the Ld. CIT(A) on the last date mentioned by him to dismiss the appeal.

3. Further, it was brought to our notice by the ld. Advocate that the assessee was a government servant working for the Government (Bhaba Atomic Research Centre). According to him, the AO has made the first addition based on the difference between the

26AS and the income offered by the assessee. According to Ld. AR, the assessee is a government servant and so a salaried person and his only income is from government as well as interest income which comes to his bank account and gets duly credited in the bank pass book and he has no other source of income. According to the assessee, despite knowing that assessee is a government servant the AO erred in observing that the assessee has to maintain books of account which is not at all a necessity of law for a salaried person. According to Ld. Advocate, once the AO came to know that the assessee was a salaried person and has only income from government and interest income, the AO ought to have taken the exercise to find out the veracity of TDS remittance as reflected in 26AS which was not done by the AO. And according to Ld Advocate, the difference reflected in 26AS and the income offered by the assessee was wrongly saddled on the assessee. Since the AO did not do the exercise as aforesaid, according to Ld. Advocate, the assessee has taken the effort and has got records to prove that this 26AS is not correct and he has worked out the reconciliation in respect to the difference and pleaded that given an opportunity the assessee would be able to convince the AO about how the 26AS is wrong and will be able to reconcile the difference. So, he pleads that the matter may be remitted back to AO since no proper opportunity to adduce evidence with the third parties was available to the assessee. Per contra the Ld. DR stoutly opposes the plea of the Ld. Advocate of the assessee. However, after hearing both the parties, we are of the opinion that no proper opportunity was given to the assessee at the assessment stage to reconcile the mis-match between the income offered by assessee and the 26AS, so for the interest of justice and fair play for both parties, we are inclined to set aside the impugned order and remand the matter back to the file of the AO and direct the AO to go through the documents and reconciliation filed by the assessee to explain the difference between 26AS and the income offered by the assessee and to pass a speaking order after hearing him. The assessee is at liberty to produce documents to substantiate his claim and file reconciliation in support of his contention.

4. Coming to the next issue of medical reimbursement claim made by the assessee to the tune of Rs.45,000/-, we note that the AO has erred in restricting the amount to Rs.15,000/- since according to AO, the assessee was covered by the CGHS which was

factually wrong. It was brought to our notice that the assessee is covered by the Contributory Health Service Scheme (CHSS) and when there is no cap of Rs.15,000/- there could not have been any restriction in allowing the medical claim and need to have been allowed in full. We are of the opinion that this contention of the assessee needs to be verified by the AO and if there is no such cap as contended by the assessee, the assessee should be given the relief as prayed for. With the aforesaid observation, the appeal of assessee is disposed of.

4. In the result, the appeal of assessee is allowed for statistical purposes.

Order is pronounced in the open court.

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 15th January, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant - Shri Ramesh Chandra Senapati, Flat-B4/56, Kendriya Vihar, VIP Road, Kolkata-52.
2. Respondent – ITO, Ward-21(2), Kolkata.
3. CIT(A)-12, Kolkata(sent through e-mail)
4. CIT, Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,
Assistant Registrar