



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.2757/Mum./2018  
(Assessment Year :2011-12)

Dhiraj HaribhaiPatel (HUF)  
New Patel Saw Mill  
47, New Nagardas Road  
Andheri (E), Mumbai 400 069  
PAN – AACHP5974Q

..... Appellant

v/s

Income Tax Officer  
Ward-20(2)(1), Mumbai

..... Respondent

Assessee by : Shri Aziz Mutvalli  
Revenue by : Shri S.K. Mitra

Date of Hearing – 10.12.2018

Date of Order – 30.01.2019

**ORDER**

Aforesaid appeal has been filed by the assessee challenging the order dated 12<sup>th</sup> January 2018, passed by the learned Commissioner (Appeals)-36, Mumbai, for the assessment year 2011-12.

2. In ground no.1, the assessee has challenged the addition of ₹ 6,71,684, made on the basis of information contained in Form no.26AS.

3. Brief facts are, the assessee is a Hindu Undivided Family (HUF). For the assessment year under dispute, the assessee filed its return of income on 30<sup>th</sup> September 2011, declaring total income of ₹ 1,58,592. In the course of assessment proceedings, the Assessing Officer found that as per the AIR information available on record, the total receipt of the assessee for the relevant previous year as mentioned in Form no.26AS, is ₹ 7,46,950, with TDS of ₹ 74,698. Whereas, he observed, the total income declared by the assessee in the return of income is ₹ 1,58,592, with TDS claimed of ₹ 3,320. Therefore, he called upon the assessee to explain the difference. In response, it was submitted by the assessee that it has correctly offered the income and claimed TDS. However, the Assessing Officer was not convinced with the reply of the assessee that it has neither received the balance income nor claimed the TDS. He also rejected assessee's claim that the differential income along with TDS pertains to the individual account. Thus, ultimately, he added back the amount of ₹ 6,71,684, to the income of the assessee.

4. Though, the assessee challenged the aforesaid addition before the first appellate authority, however, he also sustained the addition made by the Assessing Officer.

5. The learned Authorised Representative submitted, out of ₹ 6,71,684, shown in the name of the assessee in Form no.26AS, an amount of ₹ 2,43,000, has been offered at the hands of the individual.

In this context, he drew our attention to a certificate dated 17<sup>th</sup> January 2017, issued by the M/s. Bhavan Patel & Co., Chartered Accountants. As regards the balance amount, the learned Authorised Representative submitted, in respect of three parties, notices issued under section 133(6) though were served but no reply was received. Therefore, the receipt shown against these parties cannot be treated as income of the assessee. Thus, he submitted, the addition made should be deleted.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals).

7. I have considered rival submissions and perused material on record. As could be seen from the facts on record, on the basis of information contained in Form no.26AS, the Assessing Officer has held that the assessee has received an amount of ₹ 6,71,684, from five parties. However, in course of proceeding before the first appellate authority, the Assessing Officer on the direction of the learned Commissioner (Appeals) conducted fresh enquiry to cross verify the alleged receipts by the assessee as per Form no.26AS. As could be seen from the remand report date 7<sup>th</sup> June 2017 of the Assessing Officer, though, he issued notices under section 133(6) of the Act to all the parties, he received reply only from one party i.e., Paramount

Health Services and Insurance TPA Pvt. Ltd., confirming that the payment was made to the assessee. The rest of the notices issued under section 133(6) of the Act, though, were served on three parties, however, no reply was received. In respect of Medi Assist TPA, the notice returned back unserved. Thus, except the information contained in Form no.26AS,the Assessing Officerhad no other material before him to prove that the assessee has received any amount from the other parties except Paramount Health Services and Insurance TPA Pvt. Ltd. Therefore, the claim of the assessee that it has not received any income from the concerned parties is believable. Further, the contention of the assessee that out of the amount of ₹ 6,71,684, an amount of ₹ 2,43,975, has been offered as income in the hands of the individual appears to be correct. Therefore, merely on the basis of AIR information, without being backed by any other evidence, no addition can be made in respect of amount shown to have been received from Medi Assist India Pvt. Ltd., United Healthcare India Pvt. Ltd. and Medsave Healthcare (TPA) Ltd. However, the same cannot be said about the amount of ₹ 46,046, received from Paramount Health Services and Insurance TPA Pvt. Ltd., who has confirmed of having paid the amount to the assessee. Therefore, I direct the Assessing Officer to restrict the addition to ₹ 46,046, and delete the balance amount. However, TDS credit, if any, corresponding to the aforesaid

receipt would be allowed to the assessee. Ground raised is partly allowed.

8. In view of the decision in ground no.1, ground no.2, need not be adjudicated separately.

9. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 31.01.2019

**SD/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 31.01.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai