

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5504/Del/2018
Assessment Year: 2008-09

Sudarshan Kumar Jain,
16/315, Khanjoor Road,
Near Joshi Road,
Karol Bagh,
New Delhi.

Vs. DCIT,
Ward-61(5),
New Delhi.

PAN: AALPJ2202N

(Appellant)

(Respondent)

Assessee by	:	Shri Manjeet Singh Kapoor, FCA
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	21.02.2019
Date of Pronouncement	:	28.02.2019

ORDER

This appeal by the assessee is directed against the order dated 29th June, 2018 of the CIT(A)-20, New Delhi, relating to Assessment Year 2008-09.

2. Although a number of grounds have been raised by the assessee, they all relate to the order of the CIT(A) confirming the addition of Rs.10,01,000/- made by the Assessing Officer on account of unexplained money u/s 69A of the IT Act. The assessee has also challenged the validity of the reassessment proceedings in the other grounds.

3. Facts of the case, in brief, are that the assessee is an individual and a doctor by profession. He filed his return of income declaring an income of Rs.1,42,160/-. On the basis of the information received from the DDIT (Inv.), Unit 5(1), New Delhi that the assessee has made cash payments of Rs.21,01,000/- as donation/capitation fee over and above the regular course fee to Santosh Medical College, Ghaziabad for admission of his son, the Assessing Officer reopened the assessment u/s 147/148 of the IT Act. Subsequently, the Assessing Officer also issued notice u/s 143(2)/142(1) which was duly served on the assessee. The assessee, in response to the same, appeared before the Assessing Officer from time to time and filed necessary details/information as required. During the course of assessment proceedings, the Id. AR of the assessee was confronted with the query regarding the cash payment of Rs.21,01,000/- to M/s Santosh Medical College over and above the regular course fee as donation/capitation fee. The Assessing Officer also issued summons u/s 131 of the IT Act to the assessee for recording his statement. It was submitted by the Id. AR of the assessee that the assessee is 88 years old senior citizen and suffering from diseases and not able to travel to the office and, therefore, is not in a position to attend personally. However, Shri Sandeep Jain, son of the assessee appeared before the Assessing Officer along with AR of the assessee whose statement was recorded. Shri Sandeep Jain in his statement before the Assessing Officer submitted that he has paid the required amount which has been extracted by the Assessing Officer in his order, and which reads as under:-

“I don't remember the exact amount but whatever was required to be paid was paid by me and not my father Shri S.K. Jain. Me and my wife are doctors and since 1996 (12 year from this period) and we had sufficient source to pay this. Sh. Sandeep Jain nothing has submitted in support of his statement recorded as above.”

4. The Assessing Officer, thereafter asked Shri Sandeep Jain to file supporting documents in evidence of his claim. However, according to the Assessing Officer, Shri Jain failed to substantiate the source to his satisfaction. Since the information regarding the assessee was received from the DDIT (Inv.) Unit, New Delhi, wherein Dr. P. Mahalingam in his statement recorded u/s 132(4) of the Act has admitted to have accepted capitation fee as unaccounted money from Shri S.K. Jain, f/o Shri Sandeep Jain and surrendered the same for taxation, the Assessing Officer made addition of Rs.10,01,000/- to the income of the assessee as unexplained u/s 69A which pertained to this assessment year. The Assessing Officer, accordingly determined the total income at Rs.11,43,160/-. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The assessee in his grounds of appeal has challenged the validity of the reassessment proceedings as well as the addition on merit. The Id. counsel for the assessee, at the outset, submitted that the son of the assessee is an income-tax payee since long and addition, if any, on account of such capitation fee could have been made in his hands and not in the hands of his father. He submitted that Shri Sandeep Jain qualified and became an MBBS doctor in 1995 as per his statement recorded

before the Assessing Officer on 16th March, 2016. His wife also is a doctor and both of them had worked in reputed hospitals for the last 12 years drawing good salaries and could have easily paid the capitation fee. Therefore, the addition, if any could have been made in their hands who are income-tax payees. So far as the validity of reassessment proceedings are concerned, the Id. counsel for the assessee submitted that wrong reasons were recorded by the Assessing Officer for reopening of the assessment which do not constitute valid reasons to believe for initiating proceedings u/s 148 of the Act. Further, the Assessing Officer has not applied his mind and has mechanically reopened the assessment on borrowed satisfaction of the Investigation Wing. He submitted that the Assessing Officer has not granted the opportunity to cross-examine Dr. P. Mahalingam. Further, Dr. Mahalingam, nowhere has stated that the assessee had paid capitation fee nor any document found mentioning assessee's name. Relying on various decisions, he submitted that the reassessment proceedings initiated by the Assessing Officer are illegal and *void ab initio*.

6. The Id. DR, on the other hand, heavily relied on the orders of the Assessing Officer and CIT(A).

7. I have considered the rival arguments made by both the sides and perused the relevant material on record. I have also considered the various decisions cited before me. I find the son of the assessee Dr. Sandeep Jain who appeared before the Assessing Officer had categorically stated that whatever amount has been paid towards admission and donation/capitation fee has been paid by him. He and his wife are

doctors since 1996 and have sufficient source to pay this amount. Therefore, when Shri Sandeep Jain admitted before the Assessing Officer regarding the payment of such capitation fee and when Shri Sandeep Jain and his wife are both doctors which is not in dispute, therefore, in my considered opinion, addition, if any could have been made in the hands of the son of the assessee i.e., Shri Sandeep Jain and not in the hands of the assessee. No doubt Shri P. Mahalingam in his statement had accepted to have received capitation fee as unaccounted money from Shri S.K. Jain, f/o Shri Sandeep Jain and has surrendered the same for taxation as mentioned by the Assessing Officer. However, a perusal of the statement recorded of Shri Mahalingam, which has been reproduced by the CIT(A) in his order, nowhere shows he has taken the name of the assessee. Page 21 of the order of the CIT(A) shows the name of the students/course pursued and the students' fathers' name and addresses. Nowhere it conclusively shows that the capitation fee was paid by Shri Sudarshan Kumar Jain, father of Dr. Sandeep Jain. Since the son of the assessee Dr. Sandeep Jain had appeared before the Assessing Officer and has stated that he and his wife are doctors and had enough source to pay the admission and donation/capitation fees for his higher studies, therefore, in the facts and circumstances of the case, I am of the considered opinion that no addition is called for in the hands of the assessee. Addition, if any, could have been made in the hands of only Dr. Sandeep Jain. In this view of the matter, I set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition of Rs.10,01,000/- made u/s 69A of the IT Act. Since the

assessee succeeds on merits, the legal grounds raised by him challenging the validity of reassessment proceedings is not being adjudicated being academic in nature.

8. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 28.02.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 28th February, 2019

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi