

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.522/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Dr. Santosh Kamlesh Prabhu,
1971, C Ward, Laxmipuri,
Maharana Pratap Chowk,
Kolhapur

PAN : AAUPP6602R

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle - 1, Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : Written Submission
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 20-03-2019
घोषणा की तारीख / Date of Pronouncement : 04-04-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolhapur dated 13-12-2016 for the assessment year 2012-13.

2. The notice of appeal was sent to the assessee through RPAD on the address mentioned in Form No. 36. The notice of appeal was duly served as is evident from the records. Despite service of notice neither the

assessee nor any Authorized Representative of the assessee was present in the court. The assessee has filed written submissions through post and has requested to decide the appeal after considering the same. Thus, in view of the request made by the assessee, the appeal is taken up for hearing with the assistance of ld. DR, material available on record and written submissions of the assessee.

3. The brief facts of the case as emanating from the records are : The assessee is an individual and is a medical practitioner. The assessee filed his return of income for the impugned assessment year on 30-09-2012 declaring total income of Rs.1,93,69,610/-. In scrutiny assessment proceedings the Assessing Officer inter alia made addition on account of mismatch in the income returned by the assessee and Form No. 26AS. The Assessing Officer made addition of Rs.4,76,060/- in respect of corresponding amount reflected in TDS statement i.e. Form No. 26AS.

Aggrieved against the assessment order dated 09-03-2015 passed u/s. 143(3) of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the addition of Rs.4,76,060/- in respect of payments received from E Meditex Services Ltd. as per Form No. 26AS. Hence, the present appeal by the assessee.

4. The assessee has assailed the addition by raising following grounds :

- “1. In the facts and circumstances and in law, AO as well as CIT(A) both have erred in treating Rs.476060 as income of assessee, being amount reflected in form 26AS as credited from E Meditex without considering the fact that said amount is not related to assessee.
2. Without prejudicial to above, amount reflected in the form 26AS as credited from E Meditex is not received during Financial Year 2011-12 and hence is not the income of assessee as assessee follows cash system of accounting.”

5. In written submissions, the contentions of assessee are :

- a. *The amount reflected in 26AS as credited from E-Meditex of Rs.4,76,060 is not related to assessee and not received during financial year.*
- b. *As the Income doesn't belong to assessee the corresponding TDS is also not claimed by the assessee in return of income and this fact is confirmed by AO.*
- c. *The wrong entry filed by the deductor (E-Meditex) cannot be the reason to treat the same as income of assessee."*

5.1 The assessee/appellant has further contended that the assessee is maintaining books of account which are subject to audit. The alleged amount received from E-Meditex is not reflected in books. The Assessing Officer has not made any enquiry from the party and hence, has failed to discharge the burden on proof before making addition. The assessee has placed reliance on the decision of Chennai Tribunal in the case of P.K. Rajasekar Vs. Income-tax Officer reported as 74 taxmann.com 151 to contend that where assessee claimed that there was wrong credit entry by payer-client in Form 26AS, Assessing Officer had to examine its genuineness.

6. On the other hand Shri Pankaj Garg representing the Department vehemently defended the impugned order.

7. We have heard the submissions made by the ld. DR and have perused the orders of authorities below. We have also considered the written submissions filed by assessee. The assessee in appeal has assailed the findings of Commissioner of Income Tax (Appeals) in confirming the addition of Rs.4,76,060/- made by Assessing Officer based on TDS entry in Form No. 26AS. The contention of assessee is that the amount was never received by the assessee. After taking into consideration entirety of facts we are of considered view that this issue needs revisit to the file of

Assessing Officer. The Assessing Officer is directed to decide this issue afresh after verifying the veracity of assessee's claim and also find out factual aspects of TDS amount reflected in Form 26AS corresponding to addition of Rs.4,76,060/-. The Assessing Officer while deciding the issue afresh shall grant reasonable opportunity of hearing to the assessee, in accordance with law. The appeal of assessee is allowed for statistical purpose, accordingly.

8. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced on Thursday, the 04th day of April, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th April, 2019.

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Kolhapur
4. The Pr. Commissioner of Income Tax-2, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune