

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.1299/Del/2019
Assessment Year: 2010-11

Dr. Nusrat Banka C/o. Sh. Amar Mittal D-815, 3 rd Floor, Ratan Mani, New Friend's Colony, New Delhi-110065 PAN No.ALYPB4979L	Vs	Income Tax Officer Ward – 61 (5) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Nem Singh, Advocate
Respondent by	Shri S. L. Anuragi, Sr. DR

Date of hearing:	01/08/2019
Date of Pronouncement:	/08/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 19.12.2018 of the CIT(A)-20, New Delhi relating to A. Y. 2010-11.

2. Facts of the case, in brief, are that the assessee is an individual and is a medical practitioner. From the system of department it was noticed that the assessee has not filed her return of income for the A. Y.2010-11. Information was received through NMS via ITD system that assessee during the impugned

assessment year has earned fee for professional / technical services u/s.194 J to the tune of Rs.18,41,551/-. The Assessing Officer, therefore, initiated proceedings u/s. 147 of the Act and issued notice u/s.148. Thereafter, the Assessing Officer issued statutory notices u/s. 143 (2) and 142 (1). However, there was no proper compliance from the side of the assessee. The Assessing Officer, therefore, completed the assessment u/s.147/144 of the IT Act determining the total income of the assessee at Rs.18,41,550/-.

3. In appeal the Ld. CIT(A) upheld the action of the Assessing Officer in determining the income of Rs.18,41,550/-. She, however, directed the Assessing Officer to give credit of the TDS.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal :-

1(a). That on facts and circumstances of the case the Ld. CIT(A) is not justified and correct in rejecting the ground taken by the appellant that the AO has erred in law and on facts in assuming jurisdiction u/s 147 without any legal and valid mandatory service of notice u/s 148 of the Act, therefore the order passed u/s 147/144 of the Act is arbitrary, void-ab-initio, against the principles of natural justice hence liable to be quashed.

(b). That the Ld. CIT(A) is not justified and correct in observing that the notice u/s

148 was issued and sent by speed post not received back by postal department hence the natural presumption that it was served ignoring the fact that neither the appellant nor any relative was living at the premise where notices were addressed and even subsequent notice dated 30.06.2017 received back with no postal remark by the AO.

2(a). That the Ld CIT(A) has erred in law and on facts in confirming the action of the AO, treating the whole professional receipts of Rs. 18,41,551/- as income of the assessee under 'best

judgment assessment' without appreciating the fact that the receipts were from medical profession and law permits an equivalent to 50% ad-hoc expenses of gross receipts as an allowable expenditure in the case of professional.

(b) *That on facts and circumstances of the case the Ld CIT(A) is not justified and correct in rejecting the additional evidence filed under rule 46A without appreciating the fact the appellant was prevented from sufficient cause for not filing the same before the AO as no service of notice was made to the appellant and the order was ex-parte.*

(c) *.That on facts and circumstances of the case the Ld CIT(A) is not justified and correct in observing that there is no scope for allowance of any expenditure ignoring the detailed documents filed in support of claim and the fact that powers of the CIT(A) co-terminus with that of assessing Authorities.*

(d) *That on facts and circumstances of the case the Ld AO has erred in observing that the assessee is deliberately/ intentionally avoiding the tax liability without any further inquiry and appreciating the fact that the Tax was deducted at source by the payer of the receipts and deposited to the Government account hence mere non-furnishing of return cannot by any stretch of imagination lead to conclusion of escapement of income.*

4. *That on facts and circumstances of the case the Ld AO has erred in initiating penalty proceedings u/s 271(1)(c), u/s 271B and u/s 271F of the Act.*

5. *The appellant craves leave to add, alter, amend or vary or alter any of the grounds of appeal stated herein above either before or at the time of hearing of this appeal."*

5. The ld. Counsel for the assessee submitted that the assessee was frequently travelling due to the illness of her father as he was suffering from cancer for which the return of income could not be filed. Further the various documents filed before the CIT(A) were not accepted by her being additional evidences. In any case the

entire professional receipt could not have been brought to tax without allowing any expenditure which has been incurred wholly and exclusively for the purpose of profession. He submitted that in the interest of justice the matter may be restored to the file of the Assessing Officer to decide the issue afresh after giving an opportunity of being heard to the assessee.

6. The Ld. DR on the other hand strongly opposed the arguments advanced by the Ld. Counsel for the assessee. He submitted that despite ample opportunities granted by the Assessing Officer there was no compliance from the side of the assessee. Referring to the order of the CIT(A) he submitted that she has rejected the submission of the assessee that 50% of the professional receipts should have been charged to tax as per provision of section 44ADA. While rejecting the above submission she had given reason that the provision of section 44ADA can only be allowed to a person who has claimed the same in return of income of filed. Since the assessee in the instant case has neither filed original return nor filed any return in response to notice u/s. 148, therefore, the order of the CIT(A) should be upheld.

7. I have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. It is an admitted fact that although the assessee had earned substantial professional income, however, she has neither filed the original return of income nor filed the return of income in response to notice u/s.148. It is the explanation of the Ld. Counsel for the assessee that the assessee was frequently travelling and was out of India

for a substantial period of time during the financial year 2010-11 and since her father suffering from cancer, she was not in a position to devote time for filing of return of income. It is also the submission of the ld. Counsel for the assessee that the various documents filed before the CIT(A) were not considered by her being additional evidences. Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate her case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer and substantiate her case by filing the requisite documents / details failing which the Assessing Officer is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purposed.

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

Order pronounced in the open court on 05.08.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 05.08.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	05.08.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	