

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC-1" : DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
ITA.No.8320/Del./2018  
Assessment Year 2010-2011

Shri Rajinder Singh, A-56, New Multan Nagar, New Delhi – 110 056. PAN ACCPS9831R	vs.	The Income Tax Officer, Ward – 42 (4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Gautam Jain, Advocate
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	17.06.2020
Date of Pronouncement :	18.06.2020

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-14, New Delhi, Dated 27.11.2018, for the A.Y. 2010-2011.

2. Briefly the facts of the case are that notice under section 148 was issued on 25.03.2015 after receiving information from DDIT (Inv), New Delhi that assessee has

paid fees/capitation fee and donation of Rs.32,50,000/- (Rs.22,75,000/- + Rs.9,75,000/-) to M/s Santosh Medical College for admission of Ms. Priyanka Kadian in MBBS Stream, during the A.Y. 2010-11 under appeal. On the basis of information, notice under section 148 of the Act was issued to the assessee and detailed questionnaire was issued seeking explanation of assessee. The assessee stated before A.O. that the return filed on 11.02.2011 may be treated as return filed in response to the notice under section 148 of the I.T. Act, 1961. The assessee filed explanation before A.O. dated 25.08.2015 which is reproduced in the assessment order in which it was briefly explained that his daughter Ms. Priyanka Kadian has paid a sum of Rs.20,25,000/- from her own source for the medical courses and assessee has not paid any amount to her or to the institute. She was gifted this money from her uncle [real brothers of assessee] who are farmers and have their own agricultural income. The A.O. asked for the source of the payment and to produce the assessee for cross-examination. The assessee filed his affidavit affirming the

same facts. It was also explained in the affidavit that he was having his own Gas Agency since 1997 and due to fraud he has suffered business losses, for which, case have already been filed in the Court. He has three brothers in Village Bhariwas, District Bhiwani who are farmers and his daughter is close to their uncles who encourage her to join Medical Course and helped her by contributing fees for the course. The assessee denied to have paid any amount to his daughter's admission for medical course. The assessee also filed an affidavit of his brothers in which it was confirmed that they have contributed the amount for admission of the daughter of the assessee. The A.O, however, did not accept their creditworthiness and genuineness of the transaction in the matter and made the addition of Rs.32,50,000/- under section 69 of the I.T. Act, 1961.

3. The assessee challenged the initiation of re-assessment proceedings under section 148 of the I.T. Act and addition on merit before the Ld. CIT(A). The Ld. CIT(A) did not accept the contention of assessee as regards initiation of re-assessment proceedings and addition on

merit and did not accept the contention of assessee that source of payment made to the Medical College is contributed by brothers of the assessee. The assessee also took the plea that the amount is not assessable in the hands of the assessee. The Ld. CIT(A), however, did not accept the contention of assessee holding that assessee has not established that his daughter was not dependent on him nor did furnish the complete details of fees which would have helped to investigate the same issue. The Ld. CIT(A), therefore, rejected this contention of assessee as well. The issue as regards protective assessment is to be made in the hands of daughter of assessee was also considered by the Ld. CIT(A) and direction was issued accordingly to take care of this issue in the hands of Ms. Priyanka Kadian. The appeal of assessee was accordingly dismissed.

4. The assessee in the present appeal has challenged the initiation of re-assessment proceedings and addition on merits. The assessee has also challenged the direction issued by Ld. CIT(A) under section 150(1) for taking action in the hands of Ms. Priyanka Kadian.

5. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

6. Learned Counsel for the Assessee referred to PB-13 which are reasons recorded for reopening of the assessment and submitted that the entire case is set-up on the basis of information received from DDIT (Inv.), New Delhi in respect of the search conducted and statement recorded of Shri P. Mahalingam, Chairman/Director of Santosh Medical College Group of institution whose statement was never provided to assessee and was not subjected to cross-examination on behalf of the assessee. He has referred to PB-37 which is receipt of payment of Rs.20,25,000/- by way of cash received from Ms. Priyanka Kadian Dated 20.07.2009 by Maharaji Educational Trust for provisional admission in MBBS course. He has submitted that assessee since beginning has denied to have contributed any amount for admission of her daughter to MBBS course. The daughter of the assessee owned-up the payment made to the Medical Course and the source of

which was the amounts contributed by her uncle. Those evidences were also produced on record. Therefore, there is no evidence on record that assessee made any payment of the impugned amount in question. Therefore, no addition could be made in the hands of the assessee. He has further submitted that even the re-assessment proceedings is illegal and bad in law because it would not make-out any case of reopening of the assessment. He has also filed copy of School Certificate of daughter of the assessee to show that her date of birth is 27.09.1991 and on the day of reopening of the assessment, she was major and as such no reopening could be done in the hands of the assessee and no addition could be made against the assessee. He has submitted that issue is covered by the Order of ITAT, Delhi SMC-Bench, Delhi in the case of Shri Naresh Pamnani, Delhi vs., ITO, Ward 61(5), New Delhi, in ITA.No.1561/Del./2018 Dated 05.03.2019 in which on identical facts addition on merit have been deleted by the Tribunal.

7. On the other hand Ld. D.R. relied upon the Orders of the authorities below and submitted that addition

have been rightly made in the hands of assessee and that reopening of the assessment is wholly justified.

8. We have considered the rival submissions and perused the material on record. It is not in dispute that the assessee has filed original return of income for the assessment year under appeal on 11.02.2011 (PB-1). Such fact is also mentioned in the assessment order. The reopening of the assessment is made subsequently in 2015. Copy of the reasons for reopening of the assessment are filed at page-13 of the PB in which the A.O. has recorded that as per information received from Investigation Wing search was carried-out on 27.06.2013 in Santosh Medical College Group of Institutions and Dr. P. Maha Lingam, who was Chairman/Director of this Institution, in which, he has admitted to have received regular fees by cash as well as unaccounted money and surrendered the same for taxation. A preliminary letter was issued to the assessee to file the documents. Since none attended, therefore, reopening of the assessment was made in the matter. Thus, the entire case is set-up against the assessee on the basis of statement

recorded of Shri P. Mahalingam, Chairman/Director of Santosh Medical College Group recorded during the course of search and seizure operation. It is not brought on record if his statement was ever supplied to assessee or subjected to cross-examination on behalf of assessee. There is no other material available on record to justify the addition made against the assessee. Vide Order Dated 15.06.2020, the Ld. D.R. sought two days time to produce the evidence of payment of amount in question by assessee to the Medical College. However, nothing is produced on record if assessee made actual payment to the Medical College. The assessee since beginning of the re-assessment proceedings have denied to have paid any amount to the Medical College. The assessee in his explanation in writing as well as affidavit has affirmed that he has not paid any amount for admission of his daughter to MBBS Course because of the losses suffered by him in the business. The assessee further explained that amount of admission fees was paid by his brothers on behalf of his daughter which is supported by documentary evidences, though the same were not accepted

by the Revenue. The daughter of the assessee has also owned-up that amount in question have been paid through her uncle for admission to the Medical College. The receipt executed by the College is also affirmed this fact that daughter of the assessee has made the payment for MBBS Course. Thus, no material is available on record to prove that assessee made any payment on behalf of the daughter for admission to the MBBS Course. Since the Revenue alleged that the amount in question is paid by assessee for admission of her daughter to the Medical Course, therefore, burden is very heavy upon Revenue to prove by positive evidence that assessee has in fact made the payment to the Medical College for admission for her daughter. However, no evidence is available on record to prove such contention rather the evidences on record and initial denial of the assessee itself supports the explanation of assessee that no amount is paid by assessee for admission of her daughter in Medical Course. The same issue have been considered by ITAT, Delhi Bench in the case of Shri Naresh Pamnani, Delhi (supra), which is reproduced as under :

**“IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES “SMC” : DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER**

**ITA.Nos.1561/Del./2018  
Assessment Year 2010-2011**

<i>Shri Naresh Pamnani, Delhi.PAN AAFPP4406J C/o. Matta &amp; Associates, 877, Aggarwal Cyber Plaza-II, Netaji Subhash Place, Pitampura, Delhi-034.</i>	<i>vs.</i>	<i>The Income Tax Officer, Ward-61(5), Civic Centre, SP Mukherjee Marg, New Delhi.</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>For Assessee :</i>	<i>Shri Ajay Kumar Matta, C.A.</i>
<i>For Revenue :</i>	<i>Shri S.L. Anuragi, Sr. D.R.</i>

<i>Date of Hearing :</i>	<i>25.02.2019</i>
<i>Date of Pronouncement :</i>	<i>05.03.2019</i>

**ORDER**

*This appeal by assessee has been directed against the Order of Ld. CIT(A)-27, New Delhi, Dated 29<sup>th</sup> January, 2018, for the assessment year 2010-2011.*

2. *Briefly the facts of the case are that assessee filed return of income declaring income of Rs.29,14,950/-. An information was received from DDIT, Investigation, New Delhi, on the basis of which, the case of the assessee was reopened under section 147 of the Income-Tax Act, 1961. The*

*reasons are reproduced in the assessment order, in which, it is mentioned that information was received from DDIT, Investigation, New Delhi, regarding donation/ capitation fees paid for the regular course fees to Santosh Medical College, Ghaziabad, for assessment year 2009-2010 through Pr.CIT, Delhi-15. The DDIT, Investigation New Delhi has submitted that a search and seizure action under section 132 of the Income Tax Act was carried out on 27<sup>th</sup> June, 2013 in Santosh Group of Institute & Dr. P. Mahalingam. During the search, certain documents/books of account were seized from the premises of H-1 to H-6, Santosh Nagar, Pratap Vihar. The main administrative block of the college which revealed receipts of donation/capitation fee, over and above the regular course fees, paid in cash by the parents of students admitted of accepting the donation/ capitation fees in cash and offered the unaccounted money so received for taxation in the relevant assessment year, In the case of the assessee, it was mentioned that he had made cash payment of Rs.19,75,000/- towards donation/ capitation fee over and above the regular course fees to the above college. Therefore,*

*notice under section 148 was issued. The assessee was confronted with the query regarding cash payment to the above college. The assessee was asked to furnish documentary evidences of the source of the aforesaid payments in cash. The assessee is a Doctor by profession. During the course of assessment proceedings, statement of assessee was recorded under section 131 of the Income-Tax Act. The A.O. noted that Dr P Mahalingam has admitted in his statement under section 132(4) of the Income Tax Act that he had accepted the capitation fees from the assessee and surrendered the amount for taxation. The assessing officer, therefore, made addition of Rs.19,75,000/- in the hands of the assessee.*

*2.1. The assessee challenged the reopening of the assessment as well as the addition on merit before the Ld. CIT(A). However, appeal of assessee has been dismissed.*

*3. The assessee, in the present appeal, challenged the reopening of the assessment as well as the addition on merit.*

4. *I have heard the Learned Representatives of both the parties and perused the material available on record.*

5. *Learned Counsel for the Assessee submitted that assessee raised specific ground on merit to challenge the addition on merit, but, the Ld. CIT(A) without any reason noted in the impugned order that assessee has not raised any ground in this regard. He has submitted that Ld. CIT(A) has reproduced all the grounds in the appellate order, in which, in Ground No.6, assessee has challenged the addition of Rs.19,75,000/-. He has submitted that A.O. or the Investigation Wing have not supplied copy of the statement of Dr P Mahalingam to him for rebutting his statement and no cross-examination to his statement have been allowed at any stage, therefore, this statement cannot be read in evidence against the assessee. He has referred to the statement of assessee recorded at assessment stage, copy of which is filed on record, in which he has denied to have paid any amount to Dr P Mahalingam or the above college as capitation fees. He, therefore, submitted that since no material has been*

*confronted to assessee, therefore, no addition could be made against the assessee.*

6. *On the other hand, Ld. D.R. relied upon orders of the authorities below.*

7. *After considering the rival submissions, I am of the view that addition on merit is wholly unjustified. It is well settled Law that unless the incriminating documents or statement used against the assessee are confronted to assessee and assessee have been allowed to cross-examine such statements, no such material or statement, could be read in evidence against the assessee. I rely upon the decision of the Hon'ble Supreme Court in the case of Kishan Chand Chellaram 125 ITR 713 (SC). In the present case, the A.O. has relied upon the statement of Dr P Mahalingam, recorded during the course of search, under section 132(4) of the Income Tax Act against the assessee, in which he has admitted to have received capitation fees from the assessee of Rs.19,75,000/- in cash. The assessing officer recorded statement of assessee at assessment stage, in which, the statement of Dr P Mahalingam recorded under section 132(4)*

*of the Income Tax Act, have been referred to, but, it is nowhere mentioned in which statement, if such copy of the statement was provided to assessee for explanation of assessee. The assessee denied to have made any cash payment to Dr P Mahalingam. The assessing officer in the assessment order also did not mention any fact if statement Dr P Mahalingam have been provided to the assessee for his comments or was confronted to assessee at any stage. The assessing officer did not record in the assessment order if statement of Dr. P Mahalingam recorded at the back of the assessee by the Investigation Wing, was allowed for cross examination on behalf of the assessee at any stage, therefore, statement of third party, cannot be used against the assessee unless assessee has been allowed a right to cross-examine such statement. The A.O. in the assessment order also did not mention, if any, material found during the course of search, was confronted to the assessee. Thus, assessee was justified in denying in making any cash payment to Dr. P Mahalingam at any stage. There is no material available on record to justify the addition against the*

*assessee on merits. In the absence of any material on record against the assessee and in the absence of cross examination to the statement of Dr P Mahalingam on behalf of the assessee, such material cannot be used against the assessee so as to make the impugned addition. I, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.19,75,000/-.*

8. *Both the parties also argued on initiation of reassessment proceedings and have also cited various case Laws and Ld. D.R. also submitted written submissions. However, in view of the fact that addition on merit have been deleted, the issue of reopening of assessment is left with academic discussion only. I do not propose to decide the same. In view of the above, appeal of assessee is allowed.*

9. *In the result, appeal of Assessee is allowed.”*

8.1. Considering the totality of the facts and circumstances of the case noted above in the light of material on record as well as Order of the Tribunal in the case of Shri Naresh Pamnani, Delhi (supra), we are of the

view that no addition could be made against the assessee of the impugned amount. In view of the above, we set aside the Orders of the authorities below and delete the entire addition in the hands of the assessee. However, the Revenue is at liberty to pursue their remedy if any, against Ms. Priyanka Kadian is so advised as per Law. . Since the addition on merit have been deleted, therefore, the issue of reopening of the assessment is left with academic discussion only and we do not propose to decide the same. In view of the above, appeal of the assessee is allowed.

9. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 18<sup>th</sup> June, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.