

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'B', HYDERABAD**

**SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA No. 2209/Hyd/2018  
Assessment Year: 2014-15

Amitabh Verma, Gurgaon.  PAN – ADFPV 0104L	vs.	Dy. Commissioner of Income-tax, Circle – 12(1), Hyderabad.
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Appellant

Respondent

Assessee by: Shri Pavan Kumar Gorti  
Revenue by: Shri Sunil Kumar Pandey

Date of hearing: 03/03/2020  
Date of pronouncement: 29/07/2020

**ORDER**

**PER SHRI A. MOHAN ALANKAMONY, A.M.:**

This appeal is filed by the assessee against the order of Ld. CIT (A)-1, Hyderabad in appeal No.0021/CIT(A)-1/Hyd/2017-18/2018-19, dated 12/09/2018 passed U/s. 250(6) r.w.s 144 of the Act for the AY 2014-15.

2. The assessee has raised nine grounds in his appeal however, the cruxes of the issues are as follows:-

*(i) The Ld. CIT (A) has erred in upholding the order of the Ld. AO who had made addition of Rs. 40,42,376/- being the difference between the salary income stated in Form 26AS and the income declared by the assessee in the return of income.*

*(ii) The Ld. CIT (A) has erred in upholding the order of the Ld. AO who had not granted an opportunity to the assessee to file the rectified Form 26AS where in the income from consultancy of Rs. 20,99,013/- was clearly stated.*

*(iii) The Ld. CIT (A) has erred in upholding the order of the Ld. AO who had erroneously treated the interest income of the assessee as income from consultancy*

*(iii) The Ld. CIT (A) has erred in upholding the order of the Ld. AO who had disallowed the claim of deduction towards interest on housing loan of Rs. 1,83,940/- .*

*(iv) The Ld. AO has erred by not granting credit of Tax Deducted at Source for Rs. 12,97,509/- and Self-Assessment Tax paid of Rs. 50,000/- aggregating to Rs. 13,47,509/-.*

3. The brief facts of the case are that the assessee is an individual earning income from salary, consultancy services and interest filed his return of income on 30/07/2014 declaring total income of Rs. 47,69,660/-. Subsequently, the case was taken up for scrutiny and the assessment was completed by the Ld. AO by passing an ex-parte order U/s. 144 of the Act due to non-appearance, wherein he made additions towards the difference of salary income stated in Form 26AS and the salary income disclosed in the return of income amounting to Rs. 35,06,316/-, disallowance of deduction under Chapter VI-A Rs. 1,10,000/- and disallowance of interest on housing loan for Rs. 1,83,940/-. On appeal, the Ld. CIT (A) confirmed the order of Ld. AO with respect to the addition made for Rs. 35,06,316/- however, granted partial relief with respect to housing loan and allowed the appeal

of the assessee with respect to the claim of deduction under Chapter VI-A of the Act for Rs. 1,10,000/-.

4. At the outset, we find that, with respect to the ground raised by the assessee towards disallowance of interest on housing loan of Rs. 1,83,940/-, the Ld. CIT (A) has remitted the matter back to the file of the Ld. AO since the facts on that regard require verification, hence, We do not find it necessary to interfere with the order of the Ld. CIT (A) on the issue. Further, with respect to the Ground No. (ii), (iii) & (iv) also we hereby remit the matter back to the file of the Ld. AO for de novo consideration thereby granting the assessee with one more opportunity of being heard in order to furnish all the relevant particulars before the Ld. AO to argue his case because on the earlier occasion the assessee was unable to appear before the Ld. AO due to which the Ld. AO was left with no other option but to pass an ex-parte order. We also hereby direct the Ld. AO to admit any fresh evidence submitted by the assessee on these issues and decide the matter afresh in accordance with law and merit.

**Ground No.(i): Addition due to difference of income stated in Form 26AS and return of income.**

5. During the course of scrutiny assessment proceedings the Ld. AO observed that in the Form 26AS salary income earned by the assessee was stated as Rs. 75,48,692/-. However, the assessee has disclosed his salary income in his return only Rs. 40,42,376/-. Therefore, the Ld. AO added the difference of the salary income disclosed in his return and form 26AS amounting

to Rs. 35,06,316/- as the undisclosed income of the assessee. Before the Ld. CIT (A) the assessee has clarified that he had received Rs. 40,18,200/- as salary from his employer M/s. Google India Pvt Ltd, Bangalore and the remaining amount of Rs. 35,31,392/- was received from his profession as consultancy services provider as he had quit the job. The assessee also furnished the details of the expenditure incurred for earning consultancy income aggregating to Rs. 17,77,945/-. However, since the assessee could not furnish supporting evidence for the expenditure incurred, the Ld. CIT (A) disregarded the claim of expenditure as allowable deduction and confirmed the order of the Ld. AO by sustaining the addition made by him for Rs. 35,06,316/-. Before us, Ld. AR argued by stating that the claim of expenditure made by the assessee may be considered and appropriate relief may be granted because though he had not maintained the proof of expenditure incurred the expenditure was actually incurred by him. The Ld. DR on the other hand requested for confirming the orders of the Ld. Revenue Authorities on the issue. After hearing both the sides, we find merit in the submission of the Ld. AR. It is not in dispute that the amount received by the assessee of Rs. 35,31,392/- is from consultancy services. For rendering such services, it is obvious that the assessee would have definitely incurred expenditure. Therefore, considering the facts and circumstance of the case it would be appropriate and just to estimate the expenditure and thereafter determine the taxable income of the assessee. Further taking cue from the provisions of section 44ADA of the Act (though it was inserted by finance Act 2016 w.e.f. 1/4/2017),

We are of the considered view that in the peculiar circumstances in the case of the assessee 50% of the gross consultancy receipts should be treated as the expenditure incurred by the assessee for earning income from consultancy services. Accordingly, we hereby direct the Ld. AO to grant deduction of Rs. 17,65,696/- ( $\frac{1}{2}$  of Rs.35,31,392/-) towards the expenditure incurred by the assessee towards earning income from providing consultancy services while computing the income of the assessee under the head "income from profession" and treat the balance amount of Rs. 40,42,376/- as income under the head "salary". It is ordered accordingly.

6. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, we find it appropriate, taking into consideration of the extraordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, we have relied on the decision of the Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

7. In the result, appeal of the assessee is partly allowed for statistical purposes as indicated herein above.

Pronounced in the open court on the 29<sup>th</sup> July, 2020.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, dated 29<sup>th</sup> July, 2020.

*okk*

Copy forwarded to:

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3. *CIT(A) - 1, Hyderabad*
4. *Pr. CIT - 1, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*