

INCOME TAX APPELLATE TRIBUNALSURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER
(Virtual Hearing)

आ.अ.सं./I.T.A No. 43/SRT/2021
निर्धारण वर्ष/Assessment Year: 2017-18

Dr Swati Mahesh Vinchurkar, D-1108, Somnath Enclave, Behind Sargam Shopping Centre, Parle Point, Suart- 395007 [PAN: ACBPV 1310 R]	Vs	DCIT, CPC, Bangalore
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओर से /Assessee by	Shri Pallav Desai CA
राजस्वकीओर से /Revenue by	Ms. Anupma Singla – Sr. DR

सुनवाई की तारीख/ Date of hearing:	24.06.2021
घोषणा की तारीख/Pronouncement on:	28.06.2021

आदेश /ORDER

PER PAWAN SINGH, JUDICIAL MEMEBER:

1. This appeal by assessee is directed against the order of learned Commissioner of Income Tax (Appeals), National Faceless Centre, hereinafter referred as “Ld. CIT(A)”, dated 28.02.2021, which in turn arise against the order passed made by Central Processing Centre (CPC) Bangalore, under section 143(1) of the Income Tax Act (hereinafter called ‘the Act’) dated 28.02.2021 for assessment year (AY) 2017-18. The assessee has raised following grounds of appeal;

(1) *The ld CIT(A)NFAC, Delhi erred in law and facts in confirming an additions made by DCIT, CPC of Rs. 563,592/- under the head salary under section 143(1) of the Income tax Act 1961, based on entry in Form-26AS.*

(2) The ld CIT(A)NFAC, Delhi erred in law and facts in ignoring the assessee's response against the adjustment proposed in processing of ITR by DCIT, CPC as per First Proviso to section 143(1) (a)(vi). Hence, additions of Rs. 5,63,952/- on the basis of entries in Form-26AS is unfair unjust and against the principles of natural justice hence the same should be deleted.

2. Brief facts of the case are that the assessee is resident of Surat City, State of Gujarat. The assessee is Doctor by profession. The assessee filed her return of income for assessment year (AY) 2017-18 on 14th October 2017 declaring taxable income of Rs. 5,23,413/-. In the computation of total income by showing income from "profession" and "other source". The assessee claimed refund of Rs. 450/-, while filing return of income. The CPC, Bangalore while processing the return of income made addition of Rs.5,63,952/-. Though, in response to the notice under section 143(2) the assessee denied of having earned any kind of such income. The CPC made these additions on the basis of statement of TDS in Form-26AS, being tax deducted at source (TDS) of Rs. 10,000/- by Electricity Distribution Division Gajraula-UP (TAN-LKNE05103A) and other entry of Rs.98,252/- by way of salary income and TDS of Rs. 5000/- deducted (shown) by Electricity test division Amroha-UP (TAN-LKNE05166A). Aggrieved by the additions on the basis of statement of TDS in Form-26AS, the assessee filed appeal before learned CIT(A). Before learned CIT(A) the assessee filed detailed written submissions and have categorically stated vide

submissions dated 29.01.2021, that the assessee has not earned any such income as reflected in Form-26 AS. The assessee has not included such income in her total income and that before the CPC the assessee made her submissions but the same was ignored and made addition under the head 'income from salary'. The assessee also relied on certain case laws. The ld. CIT(A) despite recording the submissions of the assessee confirmed the addition made by AO/ CPC Bangalore by taking view that "it seems that CPC had considered the appellant explanation before making disallowance". It was also held that there is prima facie evidence that the assessee has earned such income and dismissed the appeal of assessee. Further aggrieved, the assessee has filed present appeal before this Tribunal.

3. We have heard the submissions of the learned authorised representative (AR) for the assessee and the learned departmental representative (DR) for the revenue and have gone through the order of the lower authorities. The ld. AR for the assessee submits that the assessee is Doctor and living in Surat. The assessee has not rendered any professional or other services either to Electricity Distribution Division Gajraula-UP or to Electricity test division Amroha-UP. The Electricity Distribution Division Gajraula-UP or to Electricity test division Amroha-UP is more than 1000 Kilometers away from Surat City. The assessee has no concern or casual connection or any kind

of relation with the alleged deductor, the entry of TDS in the Form-26AS issued to the assessee are wrong. The assessee submitted her response to CPC Bangalore as well as before Id. CIT(A) the assessee specifically denied of having earned such income. The Ld AR for the assessee submits that it is far from imagination that the assessee served such organization which are based 1000 KM away from the residence of the assessee. The ld. AR for the assessee furnished the details of consultation charges rendered by the assessee to various Hospitals and organization in Surat City and interest earned on fixed deposits. The ld AR for the assessee submits that the assessee has not rendered any other professional services, the assessee specifically denied such services or transaction. Once the assessee denied such transaction the onus was on the revenue to establish that the assessee had entered into any such transactions. The ld. CIT(A) has not made any verification or effort to verify such transactions. There is possibility of entering the wrong PAN, which belongs to the assessee and the assessee has been unnecessary put to mental pressure by making such additions despite denying such income. To support his contention the learned AR for the assessee relied on the following decisions;

- ACIT Vs Zee Media Corporation Ltd (ITA No. 2166 & 2695 /Mum/2016) dated 16.4.2018,

- Seal For Life India (P)Ltd Vs DCIT (ITA No. 1236/Ahd/2017 dated 02.08.2018)
- Ravindra Pratap Thareja Vs ITO [2015] 60 taxmann.com 304 (Jabalpur-Trib),

4. On the other hand the ld. Sr DR for the revenue supported the order of lower authorities. The ld. Sr DR for the revenue in alternative submissions further submits that the matter may be restore to the assessing officer for verification of facts.
5. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. There is no dispute that the assessee is resident of Surat. The assessee is qualified Doctor being Pediatric (Child Specialist). While filing her return of income the assessee has shown income from profession and other sources. During the process by CPC, the additions were made in the hand of assessee on the basis of TDS shown in Form-26AS. We find that in response to the notice of CPC, the assessee denied of having such income and that her response was ignored. Before ld CIT(A) the assessee again specifically contended that she has not earned such income nor any work was performed by her. We find that despite specific contention of the assessee, the ld CIT(A) instead of verifying the facts confirmed the additions by taking view that it seems that CPC had considered the appellant explanation before making disallowance and that there is prima facie evidence. We find

that both the authorities below acted in a mechanical way. There is no consideration of the contentions raised by the assessee that she has not worked or earned any income from such deductor. In our view once the assessee denied that she has not earned such income as reflected in her Form-26 AS, the onus shift on the revenue authorities to prove such income of the assessee. The addition is based solely on the basis of TDS shown in Form-26AS, ignoring the submissions of the assessee. The ld. AR for the assessee vehemently argued before us that the deductor is more than 1000 KM away from the place of practice of assessee. Considering the peculiar facts of the present case, we find merit in the submissions of the ld AR for the assessee that the assessee had entered into any such transactions and the lower authorities have not made any verification or effort to verify such transactions and there is certain mistake of entering the wrong PAN, which belongs to the assessee and the addition made in the income is uncalled for.

6. We further find that the coordinate bench of Tribunal in Ravindra Pratap Thareja Vs ITO (supra) held that merely because a payment was reflected in Form-26AS and was shown to have been made to the assessee, it could not be brought to tax as it could not be established that the assessee was actual beneficiary of said payments and the additions were liable to be deleted. Considering the above said factual

and legal discussions, and keeping in view of the peculiar facts of the case, no purpose would serve to restore the matter back to the file of assessing officer or to Income-tax Officer (TDS), as prayed by ld Sr.DR for the revenue. In the result, the grounds of appeal raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 28.06.2021 2021 by placing result on the notice board.

Sd/-

Sd/-

(Dr. ARJUN LAL SAINI)

(PAWAN SINGH)

(लेखा सदस्य/ACCOUNTANT MEMBER)

(न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/Surat, दिनांक Dated: 28th June 2021

#Self

Copy of order sent to:-

Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)

Guard file of ITAT.

By order

Assistant Registrar, Surat