

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI****BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER****ITA No. 1703/DEL/2019**
[Assessment Year: 2010-11]

| | | |
|--|-------------------------------|--|
| Sh. Krishan Pal Yadav, RZ-15, Sayyad Nangloi, Delhi-110063 | <u>Vs</u> | Income-tax Officer, Ward-42(4), New Delhi |
| PAN- AAHPP2515J | | |
| APPELLANT | | RESPONDENT |
| Appellant by | Sh. M.K. Giri, Adv. | |
| Respondent by | Sh. Om Prakash, Sr. DR | |
| Date of hearing | 16.3.2022 | |
| Date of pronouncement | 22.03.2022 | |

ORDER**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of learned CIT(Appeals)-14, New Delhi dated 19.12.2018, pertaining to the assessment year 2010-11.

2. The assessee has raised following ground of appeal:

That the order of the CIT (A)-14, New Delhi is illegal, fallacious and not tenable because:

1.

i. That the CIT(A) failed to appreciate that the notice issued under Section 148 and the assessment order passed under Section 143(3) of the Income Tax Act, 1961 is perverse and void ab-initio for several

reasons including non compliance with valued process of assessment.

- ii. That the CIT(A) has erred in upholding the assessment as made despite statutory bar applicable to such nature of subject matter of the assessment.
 - iii. That the CIT(A) failed to appreciate that the addition made under Section 69 of the Income Tax Act is not tenable in view of the return has filed under Section 44AD of the Income Tax Act, 1961.
 - iv. That the CIT(A) has erred further in upholding the addition of Rs.36,05,400/-, in blatant abuse of the non-concept of appreciating the nature and particulars of the amount in question in view of the fact that the same were even otherwise not tenable under Section 69 of the Act. Neither any cogent reason has been given for upholding the concept illegal addition.
 - v. That the CIT(A) failed to appreciate that the initiation of penalty proceedings under Section 271(1)(c) is not tenable at any grounds whatsoever.
 - vi. That the CIT(A) has erred in arbitrarily pre-judging particulars of documents despite the same being contested even before him by the Appellate. While the admissibility or otherwise of the process under Section 150(1) of the Act is itself an issue at best the CIT(A) to have confined himself to direct the AO to resort thereto but has no power to pre-judge the same. The appellate order is, therefore liable to be struck down on this score.
 - vii. That the CIT(A) has erred in concluding that the particulars filed before him about documents of the appellant as the same were not. If so, he ought to have resorted to reason of Rule 46A.
 - viii. That the appellant prays leave to add alter, amend or vary any of the grounds either before or at the time of hearing of appeal.
2. That the CIT(A) failed to appreciate that interest under Section 234A, 234B, 234C is not tenable at law.”

3. Facts giving rise to the present appeal are that the Assessing Officer recorded that information was received from DDIT (Inv.), Unit-5(1), New Delhi that the assessee made payment for capitation fee and donation of Rs. 36,05,400/-

during the financial year 2009-10 relevant to assessment year 2010-11. The case was selected for scrutiny and the assessment u/s 143(3) was framed vide order dated 30.03.2016. Thereby the Assessing Officer made addition of Rs. 36,05,400/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who dismissed the appeal of the assessee. Aggrieved against this, the assessee is in appeal before this Tribunal.

4. Apropos ground no. 1.i to 1.viii, learned counsel for the assessee submitted that the authorities below have not given sufficient opportunity to the assessee and the evidences filed by the assessee were not considered by the authorities below. He submitted that the Assessing Officer made the addition in a arbitrary manner, on the basis of search conducted at a medical college, where the daughter of the assessee was studying. He contended that the Assessing Officer did not provide opportunity to the assessee for cross-examination and confirmation from the Institute. Furthermore, the assessee had given explanation regarding the source of payment of fee but the authorities below in a arbitrary fashion did not accept the explanation given by the assessee.

5. On the contrary learned Sr. DR opposed the submissions and submitted that there is no infirmity in the order of authorities below. He contended that the learned CIT(Appeals) has given a finding that the assessee has been changing his stand.

6. In rejoinder learned counsel for the assessee submitted that before the learned CIT(Appeals) additional evidences were filed but the learned CIT(Appeals) construed these evidences as not admissible. He submitted that the assessee should have been given a fair hearing and adequate opportunity to represent his case.

7. I have heard rival submissions, perused the material on record and gone through the orders of authorities below. There is no dispute in regard to the fact that the addition is based on some information received from the DDIT(Inv.). The Revenue has not disputed the fact that the assessee was not given opportunity to rebut the information received by the Assessing Officer. It is seen that the assessee has also filed application under Rule 29 for admission of additional evidence. In the application for admission of additional evidence it is stated that for the assessment years 2011-12, 2012-13 and 2013-14 the assessee had opted to Vivad Se Viswas Scheme and paid due taxes on the issues. It was contended that the only payment of Rs. 5,25,000/-, i.e. the only subject matter left for adjudication, was a gift received from Mother-in-law and Brother-in-law of the assessee and the source of the gift was out of agricultural income. He contended that in the interest of principles of natural justice, the evidence relating to this issue may be admitted and the matter may be admitted. For the sake of clarity the contents of the application are reproduced as under:-

“Application under Rule 29 of Income Tax (Appellate Tribunal) Rules. 1963 for admission of additional evidence.

MAY IT PLEASE YOUR HONOURS

1. The Appellant has preferred the captioned appeal against the Appellate Order dated December 19, 2018 passed by the Hon’ble Commissioner of Income Tax (Appeals) - 14, New Delhi [‘CIT(A) - 14’] wherein the Hon’ble CIT(A) - 26 has confirmed the disallowance made by the Learned Assessing Officer (‘Ld. AO’) of Rs. 15,00,000/- being the alleged payment made towards Capitation Fee/ Donation and Rs. 21,05,400/- being the payment made towards Tuition Fees by the Appellant by invoking the provisions of Section 69C of the Income Tax Act, 1961 (‘Act’) on account of the Appellant failing to prove the source of payments made to M/s Santosh Medical College for admission of Ms. Ruby Yadav, daughter of the Appellant, in the following manner:

- Substantive Addition of Capitation Fee of Rs.15,00,000/- for the captioned Assessment Year (‘AY’) i.e., AY 2010-11.*
- Substantive Addition of Tuition Fee of Rs. 5,25,000/- for the captioned AY i.e., AY 2010-11.*
- Protective Addition of Tuition Fee of Rs. 15,80,400/- for the captioned AY 2010-11.*
- Substantive Addition of Tuition Fee Rs. 5,05,000/- for the AY 2011-12.*
- Substantive Addition of Tuition Fee of Rs 5,30,400/- for the AY 2012-13.*
- Substantive Addition of Tuition Fee Rs 5,45,000/- for the AY 2013-14.*

2. That the Hon’ble CIT(A) - 14 has followed his own decision in a similar case of Mr. Rajinder Singh (Appeal No. 37/ 16-17, Appellate Order dated February 22, 2016) wherein the Hon’ble CIT(A) - 14 has held as under (Para 16, Page 20 of the Appellate Order):

‘In view of the above facts, it is held that source of Rs. 20,25,000/- claimed to have been paid has not been established. Moreover, Rs. 20,25,000/- is not the entire expenditure of the MBBS course and the Assessee has not furnished the details of complete fee and expenditure. In view of the same, the amount of Rs. 32,50,000/- determined is on the basis of data found during the search forms part of undisclosed income under section 69C of the Act.’

3. Further, the additional evidence in the form of confirmation received from Santosh Medical College vide a Right to Information (RTI) Application

filed by the Appellant, establishing the fact that Firstly, the payment in the captioned AY i.e., AY 2010-11 with respect to the Tuition Fee was only Rs. 5,25,000/-, Secondly, remaining payments amounting to Rs. 15,80,400/- with respect to the Tuition Fees were made in subsequent AY's i.e., Ay 2011-12, 2012-13 and 2013-14 and Thirdly, the Appellant has not paid any Capitation Fees amounting to Rs. 15,00,000/- to Santosh Medical College was not taken on record by the Hon'ble CIT(A) by holding as under (Refer Para 8 at Page No. 12 of the Appellate Order):

'Since this information was not furnished before the AO and was not enclosed with the application for admission of additional evidence, furnishing of this evidence at the time of rebuttal or remand report cannot be accepted as this case does not fall in any of the clauses under Rule 46A(1) subject to decision given in para 12 of this order.'

The copy of RTI Application filed by the Appellant with the Santosh Medical College and the confirmation received from the said College which clearly establishes the fact that Appellant has only paid Tuition Fees amounting to Rs. 21,05,400/- during the course of four AY's i.e., from the captioned AY 2010-11 to subsequent AY's 2011-12, 2012-13 & 2013-14 and that no Capitation Fee/ Donation amounting to Rs. 15,00,000/- was ever paid by the Appellant is placed at Additional Paper Book Page No. 1-2

4. That for the AY's 2011-12, 2012-13 and 2013-14, the Appellant has opted to avail the benefit of the Vivad Se Vishwas Scheme, 2020 to put an end to its tax dispute for said AY's before the Hon'ble CIT(A) - 14 and the copy of Order in Form No. 5 wherein the Designated Authority has granted immunity to the Appellant from penalty and prosecution proceedings under the Act is placed at Additional Paper Book Page No. 3-5.

5. Further, with respect to the only payment of Rs. 5,25,000/- made by the Appellant during the captioned AY i.e., AY 2010-11, the Appellant submits that the said amount was received by the Appellant as gift from his mother-in-law and brother-in-law and such amount was derived by them from their agricultural sources.

6. The Hon'ble CIT(A) - 14 vide para 8 at page 11 of the Appellate Order has stated as under:

"However, these documents do not have an evidence of land holdings and receipts of agricultural sale proceeds. There is no supporting evidence to establish the claim of receipt of money from Assessee's Mother-in-Law."

7. That the Appellant in order to prove that the In-laws of the Appellant had agriculture land holdings and thereby agricultural income, the

Appellant wishes to place on record the following documentation:

- Certified copy of Form P-4 (Khasra Girdawari) of the land in the name of Father-in-Law of the Appellant, Mr. Bishamber Dayal, obtained from the Revenue Department, Tehsil Najafgarh, South-West Delhi (placed at Additional Paper Book Page No. 6 - 9).

- Copy of Death Certificate of Mr. Bishamber Dayal, who expired on January 1, 2009 (placed at Additional Paper Book Page No. 10).

8. That all the above-mentioned additional evidence(s) have been enclosed in an additional paper book being filed separately.

Prayer

The admission of the said additional evidence would not cause any prejudice to the revenue, rather would assist the Hon'ble Tribunal in its process of adjudication of the matter.

The Appellant humbly prays that the said additional evidence is necessary for proper appreciation of the issue in appeal and would sub-serve the cause of substantial justice.

The Appellant believes that the said additional evidence will have a material bearing on the issue which is to be decided by the Hon'ble Tribunal and ends of justice demand admission of the aforesaid additional evidence.

That the bona fides of the said additional evidence(s) cannot be doubted.

It is humbly prayed that the said additional evidence be taken on record and for this act of kindness, the Appellant shall be ever grateful.

Prayed Accordingly,

Date: September 7, 2021

Place : New Delhi"

8. I have given my thoughtful consideration to the facts made in the application for admission of additional evidence. I find that the learned CIT(Appeals) in para 12 had directed the Assessing Officer as under:

"12. As regards, the genuineness of the claim of gift from the uncles by assessee's daughter Priyanka Kadian, it is noticed from the details of agricultural income furnished by Shri Dharamveer Singh, Asveer Singh and

Dilbagh Singh who claimed to have gifted Rs.6 lakhs, 10.5 lakhs and Rs. 4 lakhs, totalling Rs. 20,50,000/- to assessee's daughter out of which Rs. 20,25,000/- is claimed to have been paid towards fee and remaining Rs. 25,000/- is claimed to have been used towards books and study materials. It is noticed that the net profit from agriculture for the year 2006, 2007, and 2008 comes to 66%, 70% and 69% for Dharamveer Singh 66%, 67% and 66% for Asveer Singh and 69%, 57% and 69% for Dilbagh Singh. The average net profit comes to 67% and each donor claims to be the owner of approximately 14 acres of land. While, it is not clear whether the year 2006, 2007 and 2008 mentioned supra are calendar years or F. Ys, the total income has been claimed to be 16.23 lakhs in the case of Dharamveer Singh 14.11 lakhs in the case of Asveer Singh 12.88 lakhs in the case of Dilbagh Singh. The assessee has filed some random bills of sales of agricultural proceeds from page 38 to 43 of assessee's submissions dated 19.01.2018 which total to only Rs. 4,04,350/-. Two of them are dated March 2014. While two are dated September and December 2008 and the last two are dated April 2005 and April 2003. So none of the bills pertain to the above three years. Moreover, copies of some Khasra filed by the assessee and placed from page 33 to 37 of the same submission does not give clear idea of the total land owned by these persons. The said khasras have been taken in July 2013 and do not mention the year to which the entries there in pertain to. Moreover, the net profit of 67% from agricultural operations unrealistically high compared to the average income of farmers in India and the average income of all three brothers taken together comes to Rs. 4,80,303/- per year or Rs. 40,025/- per month which is far in excess of the returned income of assessee of Rs. 2.42 lakhs. In this background the assessee was asked to furnish certain information vide order sheet dated 23.10.2018(supra) to establish the land holding of each brother of the assessee. The evidence of crops grown and the evidence of sale proceeds besides affidavit that the donors that they do not have any bank account was also called. The family details of donors the details of fee paid for entire MBBS Course for all the four years were also called for. The assessee has chosen not to furnish this information in spite of two opportunities given."

9. Now the assessee has stated that the tax demand relating to the assessment years 2011-12, 2012-13 and 2013-14 has been paid and the only addition for the payment of Rs. 5,25,000/-. Looking to the facts, circumstances and evidences as placed on record through application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, the issue is, therefore, restored to the file of the Assessing Officer to decide after giving adequate opportunity to the assessee.

10. The appeal of the assessee is partly allowed for statistical purposes in the terms indicated hereinabove.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 22/03/2022.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI