

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No. 1188/PUN/2019

निर्धारण वर्ष / Assessment Year : 2016-17

Suhas Ratilal Karmarkar, Arti, 165/6, Railway Lines, Solapur – 413 001 Maharashtra PAN : ABGPK7159R	Vs.	ACIT, Circle-1, Solapur
Appellant		Respondent

Assessee by Shri Abhay Avchat  
Revenue by Shri M.G. Jasnani

Date of hearing 08-06-2022  
Date of pronouncement 08-06-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-7, Pune on 31-05-2019 in relation to the assessment year 2016-17.

2. The only issued raised in this appeal is against the inclusion of a sum of Rs.1,15,500/- in the total income of the assessee.

3. Briefly stated, the facts of the case are that the assessee filed his return declaring total income of Rs.96,31,510/-. During the course of assessment proceedings, the Assessing Officer (AO)

observed that the assessee received Professional fees amounting to Rs.11,55,000/- on which deduction of tax at source was made u/s.194J to the tune of Rs.1,15,500/-. Such amount of Professional fees was not included in the total income. On being called upon to explain the reasons, the assessee submitted that the said amount was offered for taxation in the hands of the firm, of which he was a partner and there was no revenue loss in such depiction. It was further contended that similar practice was being adopted since the inception of the firm, which has been accepted by the Department in earlier years. The AO held that the TDS of Rs.1,15,500/- was required to be included in the total income of the assessee, which came to be affirmed in the first appeal.

4. We have heard both the sides and perused the relevant material on record. It is seen that the assessee received a sum of Rs.11,55,000/- as Professional receipt on which deduction of tax at source of Rs.1,15,500/- was made. The assessee did not include the amount of Professional fees in his individual hands but claimed the credit for the TDS. The amount of Professional receipt was shown as income of the firm on the basis of a similar practice followed in earlier years, as accepted by the Revenue

also. The AO has not disputed the inclusion of the Professional receipt in the hands of the firm nor did he dispute the grant of the TDS credit thereon to the assessee. His only point of view is that the amount of TDS ought to have been included in the hands of the assessee. In our view, once the factum of the inclusion of the amount of Professional fees in the hands of the firm has been accepted, then there can be no question of including TDS thereon in the hands of the assessee-individual if such inclusion in the hands of the firm is on gross basis. The ld. AR could not place on record any material to demonstrate that the amount of TDS of Rs.1,15,500/- was shown by the firm as a part of its revenue receipt. We, therefore, set-aside the impugned order and remit the matter to the file of the AO for verifying if the receipt of Rs.11,55,000/- was included as income of the firm on gross basis. If the answer is in affirmative, then taxing Rs.1,15,500/- in the hands of the assessee would lead to double taxation. Only if the professional receipt included in the income of the firm is on net basis, that the inclusion of the TDS amount in the hands of the assessee will be justified. Needless to say, the assessee will be allowed reasonable opportunity of hearing.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 08<sup>th</sup> June, 2022.

Sd/-  
**(S.S.VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 08<sup>th</sup> June, 2022

*Satish*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-7, Pune
4. The Pr.CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /  
DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	08-06-2022	Sr.PS
2.	Draft placed before author	08-06-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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