

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.1134/Ahd/2018
Assessment Year : 2013-14

Dr.Kuldeep Geharilal Nahar A-901, Anand Milan Tower Ghoda Camp Road Shahibaug Ahmedabad 380 004. PAN : AATPON 8110 B	Comm.Income Tax-4 Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri O.T. Bajaj, AR
Revenue by :	Shri Jamesh Kurian, CIT-DR

सुनवाई की तारीख/Date of Hearing : 05/09/2022
घोषणा की तारीख /Date of Pronouncement: 07/09/2022

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income-Tax-4, Ahmedabad [hereinafter referred to as "Id.CIT"] dated 5.3.2018 passed under section 263 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Asst.Year 2013-14.

2. As transpires from orders of the authorities below, the Id.CIT had found the assessment order passed by the Assessing Officer (AO)in the present case to be erroneous on account of the fact that he had allowed the claim of expenses of the assessee pertaining to medical dispensary without examining the same, the assessee

being a doctor, despite the facts demonstrating that the assessee had returned no income from the said dispensary and on the contrary had claimed huge expenses amounting to Rs.29,82,279/- on account of the same. The entire claim of the assessee therefore was allowed by the AO, as per the Ld.CIT, without examining this issue despite glaring facts raising doubts with respect to the said claim of the assessee. As per the ld.CIT the assessment order was erroneous causing prejudice to the Revenue. This aspect was confronted to the assessee during the revisionary proceedings, but he submitted a brief reply stating that no income on account of dispensary being run by the assessee is accounted for, since he is running free service there. The ld.CIT found no merit in this contention, noting that no evidence had been filed by the assessee in support of the same. Therefore, taking note of the fact that return of the assessee was selected for complete scrutiny for the reason that large amount had not been credited to the profit & loss account and the AO having not examined the issue of no income being shown by the assessee from a dispensary run by him, and on the contrary, claimed huge expenses for the same, he held the assessment order to be erroneous causing prejudice to the Revenue .The Ld.CIT set aside the assessment order directing him to make a fresh assessment on the issue after making proper inquiries and verification .The relevant finding of the ld.CIT at para 4 to 7 and 10 of the order is as under:

"4. I have considered the matter and the submissions of the Ld. A.R. for the assessee carefully. The brief facts of the case are that the assessee had filed its return of income on 20.09.2013 thereby declaring his total income at Rs. 14,09,090/-. The return was selected for "Complete scrutiny" under CASS with the following reasons :-

i) Large amount not credited to Profit & loss account as per schedule A-OI

5. The Assessing Officer (A.O.) completed the assessment by passing an order u/s.143(3) of the Act on 31.12.2015, assessing total income at

returned income of the assessee as such without inquiring into the issue of claim of dispensary expenses.

4. The ld.DR on the other hand relied on the finding of the ld.CIT.

5. We have heard both the parties, and we do not find any merit in the contention of the ld.counsel for the assessee. The contention of the Ld.Counsel for the assessee that the assessment order was not erroneous since the claim of dispensary expenses was examined during the assessment proceedings, we find, is only substantiated before us with some notices issued to the assessee during assessment proceedings, which were placed before us at paper book page no.114 to 118. The ld.counsel for the assessee only referred to these notices before us without pointing out where exactly the queries regarding the claim of expenses relating to the dispensary expenses were raised in the said notices. Further, he has not pointed out any reply filed by the assessee in response to query, if any, with regard to the expenditure claimed relating to the dispensary run by the assessee. Therefore, this contention of the ld.counsel for the assessee that issue was examined during the assessment proceedings, we find, it without any basis at all and is therefore rejected.

6. As for the other contention of the ld.counsel for the assessee that there was no illegality in the order of the AO since the assessee had been consistently returning such 28% of net profit from his medical profession including dispensary income, we find is neither here nor there. The ld.counsel for the assessee has made this claim for the first time before us. This claim was not made before the ld.CIT. Further, no evidence has been filed to support his contentions that the assessee had been returning profit at a

consistent rate in all the years. Therefore, this claim of the assessee, we also find, is baseless and is also rejected.

7. In view of the above, we do not find any infirmity in the order of the Ld.CIT holding the assessment order passed by the AO, allowing claim of dispensary expenses without conducting any inquiry despite the facts demonstrating no income being earned by the assessee from the same, as erroneous and prejudicial to the Revenue.

The ld.CIT, we hold, has rightly restored the issue to the AO to examine afresh. The assessee is at liberty to make whatever contentions and arguments he wishes to rely upon in support of his claim before the AO.

8. In view of the above, appeal of the assessee is dismissed.

Order pronounced in the Court on 7th September, 2022 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 07/09/2022
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