

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.883/Del/2019
Assessment Year: 2012-13

Smt. Shabnam Mansoori, H-15, Gali No. 18, Block-H, Jagatpuri, Krishna Nagar, Delhi PAN DBIPM7096G	vs.	ITO Ward-2(3), Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Ankit Gupta, Advocate
For Revenue :	Shri Om Prakash, Sr DR

Date of Hearing :	19.12.2022
Date of Pronouncement :	07.03.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the assessee is directed against the order dated 30.11.2018 of the Ld. CIT(A), Ghaziabad, relating to Assessment Year 2012-13.

2. The Ld. AR submitted that except grounds no 5, 6 & 7 the assessee does not want to press other grounds therefore except grounds no. 5, 6 & 7 other grounds of assessee are dismissed.

3. The grounds no. 5, 6 & 7 of assessee read as follows:-

5. *The addition/ disallowances made by the assessing officer are illegal, unjust, highly excessive and are not based on any material on record by the assessing officer. The total income of the appellant has been wrongly and illegally computed by the assessing officer at Rs.26,89,000.00 as against declared income of NIL. The CIT(A) has erred in confirming the addition to Rs.26,89,000.00, which is highly arbitrary and unjustified.*

6. *That, the CIT(A) has erred in confirming the addition of Rs. 13,50,000,00 on account of unexplained investment of payment of caption fee to M/s Santosh Group of Institutions.*

7. *That, the CIT (A) has erred in not appreciating that the assessee appellant has not paid any caption fee to the M/s Santosh Group of Institutions.*

4. The learned counsel of the assessee pressing into service judgment of ITAT "SMC" Bench dated 04.10.2022 in the case of Shri Manjit Singh Gahlot vs. ITO in ITA 219/Del/2020 for A.Y. 2013-14 submitted that the issue is squarely covered in favour of the assessee by said order of co-ordinate bench. Therefore the addition made by the AO may kindly be deleted.

5. The Ld. AR also place reliance on the order of the co-ordinate bench of Tribunal in the case of **Shri Naresh Pamnani vs ITO, Ward-61(15), New Delhi, Shri Rajender Singh vs ITO, Ward-42(1), New Delhi & Shri Ratn Pal Kein vs ITO, Ward-2(2), Ghaziabad.**

6. Replying to the above the Ld. Senior DR supported the orders of the authorities below.

7. On careful consideration of above submissions first of all I note that the Ld. Senior DR has not controverted a very relevant fact that the fact and circumstances in the case of Shri Naresh Pamnani vs. ITO (supra) are identical to the present case of assessee. In the case of Shri Naresh Pamnani (supra) the Tribunal decided the issue in favour of the assessee with following observations and findings:-

5. *Learned Counsel for the Assessee submitted that assessee raised specific ground on merit to challenge the addition on merit, but, the Ld. CIT(A) without any reason noted in the impugned order that assessee has not raised any ground in this regard. He has submitted that Ld. CIT(A) has reproduced all the grounds in the appellate order, in which, in Ground No.6, assessee has challenged the addition of Rs.19,75,000/-. He has submitted that A.O. or the Investigation Wing have not supplied copy of the statement of Dr P Mahalingam to him for rebutting his statement and no cross-examination to his statement have been allowed at any stage, therefore, this statement cannot be read in evidence against the assessee. He has referred to the statement of assessee recorded at assessment stage, copy of which is filed on record, in which he has denied to have paid any amount to Dr P Mahalingam or the above college as capitation fees. He, therefore, submitted that since no material has been confronted to assessee, therefore, no addition could be made against the assessee.*

6. On the other hand, Ld. D.R. relied upon orders of the authorities below.

7. After considering the rival submissions, I am of the view that addition on merit is wholly unjustified. It is well settled Law that unless the incriminating documents or statement used against the assessee are confronted to assessee and assessee have been allowed to cross-examine such statements, no such material or statement, could be read in evidence against the assessee. I rely upon the decision of the Hon'ble Supreme Court in the case of Kishan Chand Chellaram 125 ITR 713 (SC). In the present case, the A.O. has relied upon the statement of Dr P Mahalingam, recorded during the course of search, under section 132(4) of the Income Tax Act against the assessee, in which he has admitted to have received capitation fees from the assessee of Rs.19,75,000/- in cash. The assessing officer recorded statement of assessee at assessment stage, in which, the statement of Dr P Mahalingam recorded under section 132(4) of the Income Tax Act, have been referred to, but, it is nowhere mentioned in which statement, if such copy of the statement was provided to assessee for explanation of assessee. The assessee denied to have made any cash payment to Dr P Mahalingam. The assessing officer in the assessment order also did not mention any fact if statement Dr P Mahalingam have been provided to the assessee for his comments or was confronted to assessee at any stage. The assessing officer did not record in the assessment order if statement of Dr. P Mahalingam recorded at the back of the assessee by the Investigation Wing, was allowed for cross examination on behalf of the assessee at any stage, therefore, statement of third party, cannot be used against the assessee unless assessee has been allowed a right to cross-examine such statement. The A.O. in the assessment order also did not mention, if any, material found during the course of search, was confronted to the assessee. Thus, assessee was justified in denying in making any cash payment to Dr. P Mahalingam at any stage. There is no material available on record to justify the addition against the assessee on merits. In the absence of any material on record against the assessee and in the absence of

cross examination to the statement of Dr P Mahalingam on behalf of the assessee, such material cannot be used against the assessee so as to make the impugned addition. I, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.19,75,000/-.

7.1. Considering the totality of the facts and circumstances of the case noted above in the light of material on record as well as Order of the Tribunal in the case of Shri Naresh Pamnani, Delhi (supra), I am of the view that no addition could be made against the assessee of the impugned amount. In view of the above, I set aside the Orders of the authorities below and delete the entire addition in the hands of the assessee. Since the addition on merit have been deleted, therefore, the issue of reopening of the assessment is left with academic discussion only and I do not propose to decide the same. In view of the above, appeal of the assessee is allowed.

8. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 07.03.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 07th March, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi