

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.145/SRT/2021

(निर्धारणवर्ष / Assessment Year: (2010-11)

(Virtual Court Hearing)

Suajkishan Deokishan Thanvi, B/204, Mayuri Apartment, Amlī Road, Silvassa-396230	Vs.	Income Tax Officer Ward-2, Vapi (Camp At Silvassa), First Floor, Vee Bee Mall, Nr. Civil Court, Tokarkhada, Silvassa-396230
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACYPJ 7355 D		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Satyadev Purohit, C.A &
Shri Rajendra Joshi, AR

राजस्व की ओर से /Respondent by: Shri Vinod Kumar, Sr-D.R

सुनवाई की तारीख/ Date of Hearing : 03/04/2023

घोषणा की तारीख/ Date of Pronouncement : 18/04/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to assessment year 2010-11, is directed against the order passed by the National Faceless Appeal Centre (“NFAC/Ld. CIT(A)” for short) dated 16.07.2021, which in turn arises out of an assessment order passed by the assessing officer u/s 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) dated 26.10.2017.

2. Ground of appeal raised by the assessee are as follows:

“In the given facts and law, the learned Assessing Officer has erred in adding entire professional receipts of Rs.6,34,765/- as 100% business profit of the appellant and also erred in assessing the total of the appellant without the given benefit of Life Insurance Premium, housing loan interest and repayment of housing loan.”

3. Succinct facts are that assessee before us is an Individual and engaged in the business of professional consultancy. The assessee has not filed return of income for the assessment year 2010-11 therefore the case of assessee was

reopened after taking prior approval from Higher Authorities and a notice u/s 148 was issued on 31.03.2017 which was duly served upon the assessee. On perusal of Form No.26AS, it was noticed by the assessing officer that the assessee has received professional receipt amounting to Rs.6,34,765/- during the year under consideration. However, the assessee has neither filed his return of income nor offered the professional receipt for taxation. Vide questionnaire of assessing officer, dated 31.07.2017, the assessee was asked to submit his explanation about professional receipt. However, the assessee has not furnished any explanation in this regard. As the assessee has failed to submit any details regarding professional receipt of Rs.6,34,765/-, therefore, the professional receipt of Rs.6,34,765/- was treated by assessing officer, as unaccounted income and added back to the total income of the assessee.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A) who has confirmed the action of the Assessing Officer observing as follows:

“The assessee in his argument has stated that he had filed his income tax return and declared total income of Rs.6,10,410/-. This included net profit from professional income at Rs.4,98,925/- and bank interest of Rs.1,40,770/-. The matter was remanded to the Assessing Officer and the Assessing Officer vide his remand report dt. 21.10.2020 submitted that the ae had not filed his return of income in response to the notice u/s 148 and no return was filed till the completion of the assessment u/s 144/147 on 26.10.2017. After the passing of the asstt. Order u/s 147/148 dt. 26.10.2017, the assessee e-filed his return for the asstt. Year 2010-11 on 15.12.2017. Hence, the income tax return was filed after the passing of the asstt. Order u/s 147/148 and it is non-est and invalid. Hence, it cannot be stated that the assessee has filed his return of income for the asstt. Year 2010-11 in pursuance to notice u/s 148. Hence, the contentions of the assessee is not accepted and addition of Rs.6,34,765/- is upheld and the appeal is not allowed.”

5. Aggrieved by the order of NFAC/Ld. CIT(A), the assessee is in further appeal before us.

6. The Ld. Counsel for the assessee submits that assessee could not appear before the Assessing Officer due to ill-health, therefore the Assessing Officer has passed

ex parte order. However, before NFAC/Ld. CIT(A), the assessee has submitted documents and written submission, which were not considered in right perspective, by NFAC/Ld. CIT(A) and confirmed the addition made by Assessing Officer. The Ld. Counsel stated that assessee has earned professional income u/s 194J of the Act to the tune of Rs.6,34,765/- on which Tax Deducted at Source (TDS) has already been deducted and Assessing Officer did not give benefit of TDS deducted on the professional receipts and benefit of chapter VIA deductions. Therefore, the Ld. Counsel contended that assessee should be given benefit of TDS deducted on his professional receipts and assessee is also entitled to get benefit of Chapter-VIA deduction, such as under section 80CCC/80D of the Act. Therefore, ld Counsel contended that assessee should be given benefit of TDS deducted and deduction available in chapter VIA of the Income Tax Act.

7. On the other hand, Ld. Sr-DR for the Revenue submitted that assessee did not appear before Assessing Officer, moreover, the assessee has not filed his return of income. Although the assessee filed his return of income only in response to notice issued u/s 148 of the Act, which was very late. Therefore, assessee is not entitled to claim any benefit and hence appeal of the assessee may be dismissed.

8. We have heard both the parties and perused the materials available on record. We note that due to ill health assessee could not appear before Assessing Officer, consequently Assessing Officer passed *ex parte* order. However, on appeal before NFAC/Ld. CIT(A), the assessee has submitted his written submission and also filed required documentary evidences, however, NFAC/Ld. CIT(A) without considering the above facts has confirmed the addition made by Assessing Officer. We note that assessee has filed his return of income in compliance to notice u/s 148 and subsequently claimed the TDS deducted on his professional receipts and other TDS deducted on the interest income etc. However, the NFAC/Ld. CIT(A) did not consider assessee's case in accordance with law and confirmed the action of Assessing Officer blindly. We note that

assessee is a small professional and his gross receipts are to the tune of Rs.6,34,765/- only. Therefore, we are of the view that it is justifiable to tax income at the rate of 8% of professional receipts of Rs.6,34,765/-, which comes to Rs.50,781/- (8% of Rs.6,34,765). Therefore, we direct the Assessing Officer to consider the income of the assessee to the tune of Rs.50,781/- on account of professional receipts for the assessment year 2010-11 and frame *de novo* assessment after giving TDS benefit and deduction under Chapter-VIA of the Act.

9. In the result, appeal of the assessee is allowed in above terms.

Order is pronounced on 18/04/2023 by placing record on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 18/04/2023

Dkp Outsourcing Sr.P.S

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat