

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.670/Bang/2019
Assessment Year: 2014-15

Dr. Raveendra M. Madraki 2 nd Floor, KHB Complex KHB Colony Solapur Road Bijapur 586 103 Karnataka PAN NO : ANTPM2987J	Vs.	ITO Ward-1 Bagalkot
APPELLANT		RESPONDENT

Appellant by	:	Shri Ashok A. Kulkarni, A.R.
Respondent by	:	Shri Subramanian S., D.R.

Date of Hearing	:	23.01.2024
Date of Pronouncement	:	23.01.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A), Gulbarga for the assessment year 2014-15. The assessee has raised following grounds of appeal:

- 1. The order of the Hon'ble CIT(A), Kalaburagi, is opposed to law and facts of the case.*
- 2. The Hon'ble CIT(A) erred in upholding the addition of Rs.11,55,000/- made under the head undisclosed rent.*
- 3. The Hon'ble CIT(A) Kalaburagi, erred in upholding the addition of Rs.6,61,930/- made under the head Undisclosed income from Profession.*
- 4. The Hon'ble CIT(A) failed to appreciate that no part of income under the head Property (Rent) and Profession, had accrued to the appellant during the financial year.*

5. *The Hon'ble CIT (A), Kalaburagi, ought to have appreciated that in terms of the Deed of Termination and Sale of Equipment entered between the parties, the appellant was obliged to return the sum of Rs.52,00,000/- and was not entitled to any rent or professional fees.*
6. *The appellant craves for leave to add to, delete from or amend the grounds of appeal.*

2. Originally the assessee came in appeal before this Tribunal where there was a delay of 310 days in filing the appeal before this Tribunal, which has not been condoned by the Tribunal vide order dated 10.02.2022. The assessee carried the appeal before Hon'ble jurisdictional High Court in ITA No.200002/2022. The Hon'ble High Court vide judgement dated 11.7.2022 has condoned the delay and remitted the issue back to the file of the Tribunal to decide the issue on merit. Hence, this appeal is listed for hearing today.

3. The issue on merit is that the assessee has rented the premises owned by him to Vaatsalya Health Care Solution (P) Limited and also providing professional service as Nephrologist to them. The assessee is receiving both rent from profession receipts from Vaatsalya. As per Form 26AS for the Asst. year 2014-15, the assessee has received professional receipts of Rs.8,11,930/- and rent of Rs.16,50,000/- from Vaatsalya, whereas he accounted for only Rs.1,50,000/- towards professional receipts. During the assessment proceedings, it was submitted by the assessee that he had dispute with Vaatsalya and forcefully got the premises vacated but in order to claim the right of tenancy they kept on crediting the TDS to his account without crediting corresponding professional and rental receipts except Rs.1,50,000/- which was offered to tax.. The ld. A.R. submitted that the assessee had entered into a settlement agreement with Vaatsalya on 8/4/2014 according to which he is not entitled to receive any amount

after 30/9/2012. Hence, he has not offered the balance receipts as per 26AS and requested to accept the same.

3.1 The ld. AO mentioned that the assessee is maintaining books of account on mercantile basis, Vaatsalya is in possession of the building during the dispute, nothing is mentioned in the settlement agreement about the professional and rental receipts for the FY 2013-14 and the agreement is dated after the end of the financial year relevant to the assessment year in question, thus rejected the version of the assessee and brought the difference of Rs.18,16,930/- to tax and completed the assessment.

4. The ld. CIT(A) has observed that the assessee is maintaining books of account in mercantile system. Thus, the income for the financial year 2013-14 has accrued to him and ought to have been offered to tax. It is not clear from the settlement agreement, what is the status/treatment of payments for the FY 2013-14. He observed that the assessee has purchased the equipment in the premises belonging to Vaatsalya for a lumpsum consideration, the valuation for which is not known. The possibility of fixing the price to suit the assessee cannot be ruled out. The assessee could not support his claim that the receipts were not received by him and only TDS was credited by Vaatsalya. Since, the assessee is following mercantile system of accounting, he ought to have offered the receipts to tax and the agreement dated 8/4/2014 cannot be shown as a reason for not doing so. Hence, the ld. CIT(A) upheld the addition of Rs.18,16,930/- made by the ld. AO.

5. We have heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that the rental income has not been accrued to the assessee for the assessment year under consideration though the tenant Vaatsalya

Health Care Solutions Pvt. Ltd. has deducted TDS on the rent payable to the assessee. The assessee has not offered the rental income for taxation but also not taken the credit of TDS deducted by Vaatsalya Health Care Solutions Pvt. Ltd. As such, the said income cannot be brought to tax in the assessment year under consideration in view of the termination agreement dated 8.4.2014 vide which the rental agreement has been cancelled w.e.f. 30.9.2012. According to the ld. A.R. in terms of deed of termination and sale of equipment entered between the parties, the assessee was obliged to return a sum of Rs.52 lakhs and was not entitled to pay any rent or professional fees. This was not considered by the ld. CIT(A). In our opinion, the lower authorities have to examine whether payment of rent has been claimed by the tenant in their books of accounts on mercantile system of accounting relating to the previous year 2013-14 relevant to the assessment year 2014-15 or on cash basis in any assessment year on actual payment basis. If the tenant has claimed this as an expenditure as discussed above, same to be considered as income of the assessee in this assessment year and bring to tax. On the other hand, if the tenant namely Vaatsalya Health Care Solutions Pvt. Ltd. not claimed this impugned amount as an expenditure in their books of accounts in any assessment year, this cannot be brought to tax in the hands of assessee. Hence, the ld. AO has to examine the books of accounts along with financial statements of the tenants and also if required make further enquiry as provided in the law and come to an independent conclusion whether any payment on the part of tenant towards the impugned amount and decide accordingly. Accordingly, the issue in dispute is remitted to the file of ld. AO for fresh consideration.

6. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 23rd Jan, 2024

**Sd/-
(Beena Pillai)
Judicial Member**

**Sd/-
(Chandra Poojari)
Accountant Member**

Bangalore,
Dated 23rd Jan, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**