

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.4608/Mum./2022
(Assessment Year : 2008-09)

ITA no.4607/Mum./2022
(Assessment Year : 2011-12)

Ganesh Srinivasan

10 Fair Field, 112, Road No 4
Churchgate, Mumbai-400020
PAN – AAGPS5047M

..... Appellant

v/s

Asstt. Commissioner of Income Tax

Range-11(2),

Aayakar Bhawan,
Marine Line, Mumbai

..... Respondent

Assessee by : Shri Ganesh Srinivasan
Revenue by : Shri Dinesh A Chourasia

Date of Hearing – 27/05/2024

Date of Order – 03/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders dated 24/11/2023 and 21/11/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment years 2008-09 and 2011-12, respectively.

2. Since both appeals pertain to the same assessee involving similar issues arising out of a similar factual matrix, therefore, as a matter of convenience, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2008-09 is taken up as a lead case. In both appeals, the assessee has raised similar grounds. For reference, the grounds raised by the assessee in the appeal for the assessment year 2008-09 are reproduced as under:-

"(1) The C.I.T (A) failed to appreciate that both the additions made by the A.C.I.T in the assessment order passed by him for Asst. Year 2008-09 were directly contrary to binding judicial orders of the Appellate Tribunal and the Hon'ble Court passed in the Appellant's own case which unequivocally held that no addition could be made to the Appellant's income either on the ground of non-reconciliation of the Appellant's fees with the Form 26 AS (Tax Deduction Certificates) , nor under section 14A read with Rule 8D. The said judicial orders of the High Court and Tribunal in the Appellant's own case are as under: -

(a) Order of Appellate Tribunal dated 3.12.2020 in A.Ys 2008-09, 2009-10, 2010-11, 2012-13, 2013-14 holding that no addition can be made to the Appellant's income u/s 14A read with Rule 8D.

(b) Order of High Court 18.3.2014 ITA No 1930 of 2011 upholding order of Appellate Tribunal for Asst.Year 2006-07 ITA NO.527/mum/2010 dated 8.12.2010. holding that no addition can be made to the Appellant's income on the ground of non-reconciliation of the Appellant's fees with the Form 26 AS.

Copies of the abovementioned three orders are annexed hereto as Annexure ('A') collectively.

It is, therefore , respectfully submitted that as the present Appeal is fully and squarely covered by the above-mentioned three judicial orders , it should be expedited and fixed for hearing out of turn and heard and disposed of on the basis of the said orders.

(2) The order passed by the ACIT is illegal and bad in law and directly contrary to the fundamental principles of precedents and judicial propriety."

3. The first issue, which arises for consideration, pertains to addition on account of non-reconciliation of assessee's professional receipts with AIR information/Form 26AS.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and is a designated Senior Advocate by profession. The assessee's source of income consists of income from profession and income from other sources. For the year under consideration, the assessee filed its return of income on 08/10/2008 declaring a total income of Rs.8,65,89,589. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. As per the AIR information received during the assessment proceedings, it was noticed that the assessee has received aggregate professional receipts amounting to Rs.7,82,82,633. Accordingly, the assessee was asked to reconcile the above professional receipts with reference to his books of accounts and supporting evidence. Though, the assessee reconciled the major portion of the AIR information with reference to his books of accounts, however, receipts total amounting to Rs.1,87,57,470 remained to be reconciled. Accordingly, the Assessing Officer ("AO") vide order dated 23/12/2010 passed under section 143(3) of the Act treated the unreconciled receipts amounting to Rs.1,87,57,470 as unexplained and added the same to the total income of the assessee treating it as concealed income of the assessee.

5. The learned CIT(A), vide impugned order, granted partial relief to the assessee in respect of reconciliation of professional fees amounting to Rs.16,10,000 and upheld the addition of the balance unreconciled receipts of Rs.1,71,47,470. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the assessee, appearing in-person, submitted that all the professional fees of the assessee are received by way of cheque and are deposited only in one bank account. It was further submitted that there is no allegation that the assessee has received any professional fees in cash. The assessee submitted that similar addition was deleted by the Tribunal in assessee's own case for the assessment year 2006-07. It was further submitted that the professional income declared by the assessee in its return of income in both years is far in excess of the professional fees as per the AIR information.

7. On the other hand, the learned Departmental Representative vehemently relied upon the order of the lower authorities.

8. We have considered the submissions of both sides and perused the material available on record. As per the assessee, since he is a Senior Advocate, he can appear before the Courts/Tribunals/other judicial authorities only if instructed by an Advocate or a Chartered Accountant. Further, the assessee claimed that he send his memo of fees only to the instructing Advocate/Chartered Accountant. However, the assessee receives his fees sometimes from instructing Advocate/Chartered Accountant, sometimes directly from the client, and sometimes partly both, by cheque. As per the assessee, often the payments are delayed, subjected to unilateral deduction, combined with payment for the other matter and sometimes postponed to the next accounting year. It is further the claim of the assessee that there are a large number of clients who directly transfer the payment into his bank account without the payer giving any information at all, much less the details

of the payments to the assessee. Therefore, in the circumstances, it is absolutely impossible for the assessee to make any item-by-item reconciliation of each item of his fees received with the AIR information. In the present case, it is undisputed that during the assessment year 2008-09, the professional fees shown in the return of income is Rs.8,79,07,752, which is much more than the professional receipts of Rs.7,82,82,623 as per the AIR information. It is also evident from the record that there is no allegation by the Revenue that the assessee received his professional fees by way of cash.

9. While considering the similar submissions in respect of addition made on similar basis, the coordinate bench of the Tribunal in assessee's own case in Shri S. Ganesh v/s ACIT, in ITA No. 527/Mum/2010, for the assessment year 2006-07, deleted the addition by observing as under:-

"8 We have considered the rival submissions made by both the parties, perused the orders of the authorities below and the paper book filed on behalf of the assessee. There is no dispute to the fact that the Assessing Officer made an addition of Rs. 47,37,000/- on account of non furnishing of party-wise details of professional fees receipt during the year and non reconciliation of professional fees receipts with the AIR information. We find the CIT(A) sustained the addition made by the Assessing Officer since the assessee failed to reconcile each and every entry of the accounts with the assessee's return and records. According to the CIT(A), it is immaterial that the income returned by the assessee is higher than the figure as per AIR information.

8.1 It is the submission of the assessee that since he has deposited all his professional receipts in one bank account only and since all the fees are received by cheques which came from the clients directly or from the Instructing advocates or CAs, if they have collected the amounts from the clients and since no other bank account is maintained by him wherein professional fees are deposited and since the amount returned in the audited accounts is more than the fees as per the AIR information; therefore, no addition is called for.

8.2 We find sufficient force in the above submissions of the assessee. Admittedly, the revenue has not controverted the submissions of the assessee before the Assessing Officer during the assessment proceedings as well as remand proceedings that all professional fees received are by way of cheques and all such cheques have been deposited in his Oriental Bank of Commerce

Account, South Extension Branch, New Delhi (vide letter addressed to Assessing Officer on 8.10.208). Therefore, in absence of any contrary material brought by the revenue authorities that the assessee has received amount more than the professional fees than what has been declared by him, no addition should have been made. It is also a fact that the professional income declared by the assessee far exceeds the professional fees as per AIR information. There may be so many reasons such as low deduction of tax, non-deduction of tax, deduction on account of reimbursement of expenses etc., for which the figure as per the AIR may not tally with the income declared by the assessee on account of professional fees from various clients. Further, it has categorically been explained by the assessee that it is not practically possible to give detailed party wise breakup of fees receipts since the assessee received his fees either directly from the clients or from the instructing advocates or CAs, if they have collected the amounts from the clients. Similar explanation have been accepted in the past in scrutiny assessment and no addition has been made, a fact already brought on record. In this view of the matter, we find sufficient force in the submissions made by the assessee that no addition is called for on this account. Accordingly, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition."

10. We further find that the Hon'ble jurisdictional High Court vide order dated 18/03/2014 dismissed the appeal filed by the Revenue, being ITA No. 1930 of 2011, against the aforesaid decision of the Tribunal, by observing as under:-

"2. The assessee in regard to grounds 1 to 7 challenged the order of the Commissioner of Income Tax in confirming the addition of Rs.47,37,000/-made by Assessing Officer on account of non-conciliation of professional receipts with TDS certificates. Insofar as that aspect is concerned, the Tribunal considered this submission of both sides and found that the assessee was engaged as an Advocate to argue the matters by what is popularly known as Advocates on record or/ instructing Advocates method, meaning thereby the client does ad engage the assessee directly but a professional or the Advocate engaged by the client requests the assessee to argue the case. The brief is then taken as the counsel brief. That being the practice, the assessee gave an explanation that the break-up as desired cannot be with regard to all payments. It is pointed out that at a receives fees directly from the clients or from the instructing Advocates Chartered Accountants if such professionals collected the amounts from the clients.

3 Under these circumstances, the break-up as desired cannot be placed on record. And explanation which has been given by the assessee and accepted in the past has been now accepted by the Tribunal once again. Since it is accepted for the Assessment Year 2006-07, in the peculiar facts, in relation to the present assessee, we are of the view that this appeal does not deserve to be entertained. It does not give rise to any substantial question of law."

11. The learned Departmental Representative could not show any reason to deviate from the aforesaid order and no change in facts and law was alleged in the relevant assessment year. The issue arising in the present appeal is recurring in nature and has been decided in favour of the assessee by the coordinate bench of the Tribunal in the preceding assessment year. It is evident from the record that the learned CIT(A) though took note of the aforesaid decisions rendered in assessee's own case, however decided not to follow the same without pointing out any change in facts vis-à-vis the year under consideration. Since in the year under consideration, the impugned addition is made only due to non-reconciliation of professional receipts as per the AIR information with reference to assessee's books of accounts and bank statement, therefore, respectfully following the aforesaid decisions rendered in assessee's own case, we direct the AO to delete the balance addition of Rs.1,71,47,470.

12. The second issue, which arises for consideration, pertains to disallowance under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (*"the Rules"*).

13. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that during the year under consideration, the assessee earned dividend income which was claimed as exempt while filing his return of income. Accordingly, during the assessment proceedings, the assessee was asked to explain as to why the provisions of section 14A of the Act read with Rule 8D of the Rules be not applied as the assessee has earned exempt income. In

response thereto, the assessee submitted that disallowance under section 14A of the Act should not be made as he has not incurred any expenditure whatsoever to earn the exempt income. The assessee submitted that all the investments are looked after by his father to whom he had not made any payment at any time and the dividends are mostly transferred directly to his bank account without incurring any expenditure. The AO vide order passed under section 143(3) of the Act, following the approach adopted in the assessment year 2007-08, made an addition of Rs.50,000 under section 14A read with Rule 8D of the Rules.

14. Before proceeding further, it is pertinent to note certain relevant provisions of the Act, which are necessary for adjudication of the issue at hand. Section 10 of the Act deals with income which does not form part of the total income of the assessee. Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. Further, section 14A(2) of the Act, reads as under:

"(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does in form part of the total income under this Act".

(emphasis supplied)

15. Thus, if the AO is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the total income, after having regard to the accounts of the assessee, the AO can determine the amount of such expenditure. The Hon'ble

Supreme Court in Godrej & Boyce Manufacturing Company Ltd. Vs DCIT:

[2017] 394 ITR 449 (SC), observed as under:

"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."

(emphasis supplied)

16. Therefore, the satisfaction as required to be recorded under the provisions of section 14A of the Act is not limited to merely disagreeing with the submission of the assessee and requires that the AO should also provide the basis for reaching such a conclusion, after having regard to the accounts of the assessee. However, as noted above, in the present case the AO merely proceeded to compute the disallowance of Rs.50,000 under section 14A of the Act read with Rule 8D of the Rules on an *ad-hoc* basis without examining the correctness of the claim of the assessee.

17. Since, in the present case, no proper satisfaction has been recorded by the AO in terms of the provisions of section 14A(2) of the Act, having regard to the accounts of the assessee, about the correctness of the claim of the assessee in respect of expenditure incurred in relation to exempt income, respectfully following the aforesaid decision, we do not find any reason to

uphold the disallowance made by the AO under section 14A of the Act read with Rule 8D of the Rules. Accordingly, the same is directed to be deleted.

18. In view of our aforesaid findings, the impugned order for the assessment year 2008-09 is set aside and the grounds raised by the assessee are allowed.

19. In the result, the appeal by the assessee for the assessment year 2008-09 is allowed.

20. Since similar issues arising out of similar factual matrix have been raised in the appeal for the assessment year 2011-12, therefore, our aforesaid findings/conclusion shall apply *mutatis mutandis*. Accordingly, in the assessment year 2011-12 also the AO is directed to delete the addition on account of non-reconciliation of professional receipts as per the AIR information and the disallowance made under section 14A of the Act read with Rule 8D of the Rules. Hence, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2011-12. As a result, grounds raised by the assessee are allowed.

21. In the result, appeals filed by the assessee for the assessment years 2008-09 and 2011-12 are allowed.

Order pronounced in the open Court on 03/06/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/06/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Mumbai