



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.1372/LKW/1997

(Assessment Year: 01/04/1986 to 25/04/1996)

Dr. Anita Mehrotra Shahmina Road, Lucknow.	v.	ACIT Circle 2(1) Lucknow.
PAN:		
(Appellant)		(Respondent)

Appellant by:	None Present for the assessee
Respondent by:	Smt Namita S. Pandey, CIT(DR)

ORDER

PER ANADEE NATH MISSHRA.:

This appeal is filed by the assessee block assessment order dated 29.09.1997, passed by the Assessing Officer for the block period from 01.04.1986 to 25.09.1996. The assessee has raised grounds of appeal as under: -

"1. "BECAUSE the appellant, "individually" speaking, could not be treated to the 'person' subjected to search under section 132(1) and, therefore, block assessment order under section 158 BC dated 29.9.1997 as made in her name, is a wholly illegal." (additional ground)

WITHOUT PREJUDICE TO THE AFORESAID

2. BECAUSE the learned Assessing Officer has erred in law and on facts in holding that -

"The assessee is found to be suppressing his receipts by about 50%" and after allowing 15% margin for free and/or concessional tests, in working out the suppressed receipts of the appellant at Rs.9,15,120/- for different years as per details given below:

Assessment Year	Amount (Rs.)
1993-94	2,00,531
1994-95	1,92,517
1995-96	2,30,076
1996-97	2,92,000
(part)	9,15,124
Say	9,15,120

and in treating the same as “undisclosed income” of the appellant for block period.

3. BECAUSE wherever the appellant had received payments for carrying out the test on prescription of Dr.(Mrs.) Laxmi Singh (now deceased) the same had been duly accounted for as professional receipts and no adverse inference should have been drawn against the appellant, on the ground that in some cases (mentioned in LP 18) no fees for carrying out ‘test had been accounted for’.

4. BECAUSE during the course of extensive assessment proceedings, the appellant had submitted detailed reconciliation of all the ‘pathological tests’ found to be entered in the technician’s hand book, with the collections from the patients and in view of the fact that no discrepancy or defect was found in such reconciliation/information submitted before the learned Assessing Officer, there was no justification for holding that the appellant was found to be suppressing his professional receipts by about a 50% and for making an ‘estimated addition’ by way of “undisclosed income”.

5. BECAUSE in any case and after giving due margin to the fact that the ‘tests’ that were found to be entered in the technicians hand-book included tests -

- a. carried out for verification of auto-analyser which is a continuous process;
- b. for quality control of reagents;
- c. for re-verification of the programme, for setting up of new tests in RA-50 Auto Analyser;
- d. for imparting indoor training to the technicians; and
- e. falling in the ‘free group’ of which a detailed list was submitted before the learned Assessing Officer.

the professional receipts as shown by the appellant should have been accepted and no addition was called for either on facts or in law.

6. BECAUSE in any case and without prejudice to the contentions raised in the foregoing grounds, the addition made by the learned Assessing Officer suffers from arbitrariness, whims, surmises and conjectures and effect of the same deserves to be deleted.

7. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.”

2. Undisclosed income of the assessee was assessed for the aforesaid block period vide aforesaid Block Assessment order dated 29.09.1997 whereby undisclosed income. The Assessee filed appeal in Income Tax Appellate Tribunal (ITAT). Vide order dated 18.09.2014, the appeal filed by the assessee was dismissed by Income Tax Appellate Tribunal. The Assessee filed appeal in

Hon'ble Allahabad High Court, under section 260A of the Income Tax Act. Vide order dated 19.02.2015 in Income Tax Appeal No.10 of 2015, following directions were given by Hon'ble Allahabad High Court to Income Tax Appellate Tribunal: -

“From the record it comes out that the Assessing Officer being satisfied with the explanation reduced the suppression of receipts from 50% to 30%. In our view opinion, the Tribunal erred in not assigning the reasons in respect of ground no. 5. The Tribunal ought to have recorded finding in respect of entitlement of concession in case of tests carried out for the in house management of Pathology. Further, the Tribunal while confirming the order of the Assessing Officer fell into error in not dealing with the issue of giving margin for free/concessional tests.

In view of the above, the appeal is allowed. The judgment and order dated 18.09.2014 is set aside and the matter is remitted to the Tribunal for recording specific finding on all the pleas raised by the appellant.”

3. It is in this background that we heard this appeal on 19.12.2024. There was no representation from the assessee's side, at the time of earlier hearings fixed on 29.07.2024, 03.09.2024 and 05.11.2024. At the time of hearing fixed on 19.12.2024, once again, there was no representation from the assessee's side. In the absence of any representation from the assessee's side, we have heard the Ld. Departmental Representative for the Revenue. She relied on the assessment order dated 29.09.1997 passed by the Assessing Officer. We have perused the aforesaid order passed by Hon'ble Allahabad High Court with utmost respect and attention. We find that the Hon'ble Allahabad High Court has observed that the Tribunal erred in not assigning the reasons in respect of ground no. 5 of appeal, and further that the Tribunal ought to have recorded the finding in respect of entitlement of concession in case of tests carried out for in house management of Pathology. The Hon'ble Allahabad High Court has also observed that the Tribunal erred in not dealing with the issue of giving margin for free/concessional tests. On perusal of the records, it is found

that all the relevant materials are not presently available on record for assigning the reasons in respect of ground no. 5 of appeal, and for recording the findings, as directed by Hon'ble Allahabad High Court; and also, for dealing with the issue of giving margin for free/concessional tests as directed by Hon'ble Allahabad High Court. In view of the foregoing, we deem it just and proper in the fitness of things, to restore the aforesaid issues to the file of the Assessing Officer for fresh order on these specific issues. Accordingly, we set aside the aforesaid issues regarding ground no. 5 of appeal, regarding entitlement of concession in case of tests carried out for in house management of Pathology and regarding the issue of giving margin for free/concessional tests to the Assessing Officer with a direction to pass fresh order in accordance with law, on these specific issues, after providing reasonable opportunity to the assessee.

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

Order pronounced in the open Court on 26/12/2024.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 26/12/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order

Assistant Registrar