

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.108 & 109/Alld/2024  
A.Ys. 2011-12 & 2012-13

Amresh Kumar Singh, 16G, 53G, Kazipur, ADA Colony, Allahabad, U.P.	vs.	Income Tax Officer, Ward-2(1), Allahabad
<b>PAN:CKLPS8034H</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Amresh Kumar Singh (In person)
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	30.09.2024
Date of pronouncement:	27.12.2024

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

These two appeals pertaining to the assessment years 2011-12 and 2012-13, arise out of the orders of the Id. CIT(A), NFAC, passed under section 250 of the Income Tax Act, 1961 on 16.05.2024 and 14.05.2024, respectively. The grounds of appeal preferred by the assessee are as under:-

**Grounds of appeal in ITA No.108/Alld/2024**

*"1.That in any view of the matter assessment order dated 21.12.2018 passed u/s 143(3) r.w.s. 147 of the Act is bad both on the fact and in law.*

*2. That in any view of the matter the initiation of proceeding u/s 147 of the Act against the assessee is totally incorrect and without any basis or any material hence proceeding as initiated u/s 148 hence liable to be withdrawn/cancelled in the facts and circumstances of the case.*

*3. That in any view of the matter the assessee's only source of income is from salary income and not from any other source hence addition of Rs.42,76,560/- as made in the hands of the assessee is highly unjustified.*

4. That in any view of the matter the business of M/s Elina Medi Services belong to the Dr. Bansal Group and not to the assessee. In this background, the addition of Rs.42,76,560/- is unwarranted.

5. That in any view of the matter the ld. CIT(A) decided the appeal ex-parte without considering the paper book and without considering the submission made before him hence the order of CIT(A) is bad in law.

6. That in any view of the matter when the assessing officer in para 4.2 admitted that from the "Bank statement and the information provided by the Bank, it was noticed that the most of the credit entries at come from Bandana Women Hospital & Jeevan Jyoti Hospital and debit entries has gone to Jeevan Jyoti Charitable Trust, Jyoti Medi Services, Arpit Hospital Pvt. Ltd. & Naw Jeevan Pediatrics Pvt. Ltd. Thus in such finding and observation bank account of Jammu & Kashmir as considered in the hands of the assessee is totally incorrect false and in arbitrary manner hence on such basis addition liable to be deleted.

7. That in any view of the matter no reasonable opportunity was allowed by the CIT(A) before passing the ex-parte order hence the addition made and confirmed is highly unjustified in the facts and circumstance of the case.

8. That in any view of the matter penal interest charged under different sections is highly unjustified.

9. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal.'

**Grounds of appeal in ITA No.109/Alld/2024**

"1.That in any view of the matter assessment order dated 29.12.2019 passed u/s 143(3) r.w.s. 147 of the Act is bad both on the fact and in law and both the lower authorities failed to consider the fact in proper manner.

2. That in any view of the matter the initiation of proceeding u/s 147 of the Act against the assessee is totally incorrect and without any basis or without any material hence proceeding as initiated u/s 148 hence liable to be withdrawn/cancelled in the facts and circumstances of the case.

3. That in any view of the matter the assessee's only source of income is from salary income and not from any other source hence addition of Rs.83,69,213/- and 1,08,94,145/- as made in the hands of the assessee is highly unjustified and without any valid reasons.

4. That in any view of the matter the business of M/s Elina Medi Services belong to the Dr. Bansal Group and not to the assessee. In this background, the addition of Rs.83,69,213/- and Rs.1,08,94,145/- are unwarranted in the facts and circumstances of the case.

5. That in any view of the matter the observation and finding of the assessing officer in paras 4.1 are correct but not implicated of such admission by the appellate authorities hence addition were made which is highly unjustified.

6. That in any view of the matter the bank account is Jammu & Kashmir Bank No.0332010100001291 in Chowk Branch belong to M/s Elina Medi Services which firm belong to Bansal Group etc and not to the assessee hence said bank account as considered in the hands of assessee is highly unjustified.

7. That in any view of the matter the bank account of Jammu & Kashmir bank Ltd Chowk Branch Allahabad No.0332010100001291 belong to Bansal Group and the bank statement of said firm duly filed before lower authorities showing that the deposit and credit entries belong to Bansal Group but in spite of such fact the two lower authorities failed to consider the real owner of the said bank and wrongly considered the said bank account in the hands of the assessee is highly unjustified.

8. That in any view of the matter the firm M/s Elina Medi Services belong to Bansal Group but wrongly considered the said firm in the hands of the appellant is highly unjustified.

9. That in any view of the matter addition of Rs.83,69,213/- added in the hands of the assessee in the light of assessment order dated 26.03.2015 passed u/s 144 is highly unjustified in the facts and circumstances of the case.

10. That in any view of the matter addition of Rs. 1,08,94,145/- amount added in the hands of the assessee by alleging that M/s Elina Medi Services belong to the assessee is totally incorrect, illegal hence addition is unwarranted because the assessee never did any business in the name of said firm and the said firm in real sense belong to Bansal Group and not to the assessee hence addition is unwarranted.

11. That in any view of the matter the two lower authorities acted in wrong manner and made the addition under different heads in arbitrary manner when the appellant is salaries person in Jeevan Jyoti Hospital and put his signature on registered maintained by the said firm as employee and the salary payment received by the assessee through cheque but in spite of this fact wrongly made the addition of Rs.83,69,213/- and 1,08,94,145/- in the hands of the assessee. The assessee seriously challenging the said addition as well as seriously challenging the method and manner of assessment as well as action of CIT(A) in passing the ex-parte decision.

12. That in any view of the matter no opportunity in real sense was provided to the assessee before passing the order by the CIT(A) and specially when paper book was filed before him explaining all facts but nothing was considered and passed the ex-parte order which is highly unjustified.

13. That in any view of the matter the paper book containing 169 Pg. were filed before the CIT(A) but the contents and documents of the paper book were ignored and passed the order which action is unjustified, illegal hence order of CIT(A) liable to be cancelled and relief to be allowed.

*14. That in any view of the matter the finding and observation of the two lower authorities in their order are totally incorrect and contrary to the actual facts of the case.*

*15. That in any view of the matter penal interest charged under different sections is highly unjustified.*

*16. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal.”*

3. The facts of the case are, that on the basis of information in possession of the ld. AO regarding credits to the tune of Rs.5,34,57,000/- in the assessee's bank account during the financial year 2010-11 and Rs.13,67,98,800/- during the year financial year 2011-12, at Jammu & Kashmir Bank, the case of the assessee was taken up for scrutiny under the provisions of section 148 of the Income Tax Act. In response to these notices under section 148, the assessee e-filed a return for the assessment year 2011-12 on 23.07.2018 declaring a total income of Rs.1,55,240/- and for the assessment year 2012-13, the assessee filed a return on 13.04.2019, in form ITR-1 Sahaj, declaring total income of Rs.1,68,250/-. The returns so filed by the assessee were in consonance with his earlier returns, filed by him under section 139(4), in which he had declared a similar amount of income from salary. However, in between, a revised return had been filed by the assessee on 24.05.2013( for AY 2012-13) declaring total income of Rs.6,21,994/- under the head income from business or profession in which a gross turnover of business was shown at Rs.14,42,93,800/-. That revised return was selected through CASS for scrutiny and an assessment was completed under section 144 of the Act on 26.03.2015, on a total income of Rs.83,69,213/-. The ld. AO during these assessment proceedings that the assessee was required to explain the nature and source of credit entries amounting to Rs.5,37,57,000/- (in A.Y. 2011-12) and Rs.13,67,98,800/- (in A.Y. 2012-13), in the bank A/c No.0332010100001291 at Jammu & Kashmir Bank that stood in the name of M /s Elina Medical Services, of which he was identified to be the proprietor. The assessee appeared before the ld. AO and filed written submissions and an affidavit

disowning the bank account of M/s Elina Medi Services in his proprietary capacity or in any other capacity. The ld. AO recorded the statement of the assessee during the assessment proceedings for the assessment year 2011-12. After recording the statement, the ld. AO also issued summons to the introducer of the said account Shri Shafat Ullah Khan, but he did not appear. Rather his elder brother Shri Nafees Ullah Khan attended and his statement was recorded on oath. The ld. AO does not disclose in his order as to what Shri. Nafees Ullah Khan stated in the said statement. The ld. AO also wrote to Jammu & Kashmir Bank and asked it to furnish the source of credit entries to the bank account of M/s Elina Medi Services. In response, the bank gave the names of parties from whom amounts were transferred by RTGS/Transfer/Clearing. These parties were identified by the ld. AO to be Vandana Women's Hospital and Jeevan Jyoti Hospital. The ld. AO issued notices under section 133(6) to all such parties requiring them to explain the nature and source of the transactions with M/s Elina Medi Services and the nature and purpose of transfer of funds to the said bank account. Dr. Vandana Bansal submitted a reply in response to these notices under section 133(6) on behalf of Vandana Women's Hospital and Jeevan Jyoti Hospital. It was submitted that the accounts of the group were being looked after by her husband Dr. A.K. Bansal, who had been murdered on 12.01.2017 and after his death, she had no clue about the transactions mentioned in the notice. In his statement recorded by the ld. AO, the assessee stated that during the year under consideration, he was a salaried staff of Jeevan Jyoti Hospital working there as an O.T. technician. He further submitted that he had maintained only one bank account i.e. A/c No.30451246551 with SBI, Bai Ka Bagh Branch, Allahabad and he had no concern with the bank account in the name of M/s Elina Medical Services in Jammu & Kashmir Bank Ltd. He further stated that he had neither opened the said current account in Jammu & Kashmir Bank nor signed the account opening form. He further submitted that he had never done any business prior to or later to the year under consideration. The ld. AO observed that, while the assessee in his statement disowned the said the account and furnished an affidavit in this regard, the fact was

that the said bank account was in the name of proprietary concern. He observed that the nature of the said account was a current account and the occupation of the account holder in the account opening form, was business. He further observed that the bank authority had ascertained / certified the said account for business purposes. The ld. AO observed that the parties transferring funds in the said account had not given any plausible reply and even issuing summons to the introducer of the said account appeared to be of no use. He therefore, held that the nature and source of credits appearing in the bank account of M/s Elina Medi Services proprietor Amresh Kumar Singh were unexplained but the entire credits amounting to Rs.5,37,57,000/- could not be treated as the income of the assessee as the bank statement shows withdrawals and transfers to different parties. Therefore, he treated the amount of Rs.5,37,57,000/- (in the A.Y. 2011-12) as the turnover of the assessee's business and adopted a rate of 8% net profit, taking cue from the provisions of section 44AD. Accordingly, he worked out the income of the assessee for the A.Y. 2011-12 at Rs.42,76,560/- and initiated penalty proceedings for concealment of income against the assessee. For the A.Y. 2012-13, the ld. AO noted that the assessee had alleged to have made an FIR against the Branch Manager of Jammu & Kashmir Bank and eight others. He, therefore, issued a notice on 15.12.2019, to the Station Officer of Thana Kydganj, Allahabad for verification of any FIR lodged by the assessee. However, information from Kydganj S.O., was still awaited at the time of completion of assessment. But from the documents placed on record, the ld. AO came to a conclusion that any FIR against the employer of the assessee and the Branch Manager of the Jammu & Kashmir Bank Limited had not been lodged at any police station. He concluded by perusing the statement and other document before him i.e. the account opening form, the identity and address details and proof provided by the bank that the holder of the bank account no.0332010100001291 of Jammu & Kashmir Bank was Amresh Kumar Singh, proprietor of M/s Elina Medi Services. He did not give much credence to the denial of the assessee that the said bank account did not belong to him. Following his order

in the previous assessment year, he asked the assessee to show cause as to why the amounts credited to the said bank account may not be treated as his business turnover and why his income may not be determined at 8% of the same. The assessee again denied having anything to do with the bank account. The ld. AO observed that the nature and source of the credits appearing in the said bank account in the name of M/s Elina Medi Services were not verifiable from the documents placed on record and therefore not explained, but the entire credits could not be the income of the assessee because there were withdrawals and transfer debits in the said bank accounts. Therefore, observing that the bank authorities had identified the account to be the business account, he applied a net profit of 8% on total credits of Rs.13,61,17,810/- and made an addition of Rs.1,08,94,145/-. Thereafter, the income of the assessee was computed at Rs.1,94,31,608/- after adding back the income assessed vide order under section 144 dated 26.03.2015 and this amount that was determined by the ld. AO during the course of proceedings under section 143(3) r.w.s. 147. Penalty proceedings for concealment of income were initiated against the assessee.

4. Aggrieved with these assessment orders, the assessee went in appeal before the ld. CIT(A). Both these appeals were transferred to the NFAC and were apparently heard together by the ld. CIT(A), NFAC. The ld. CIT(A) records in the course of his orders, that the appellant had sought a facility of video conferencing during the appellate proceedings and accordingly notices for video conferencing were issued to the assessee. However, the assessee failed to reply to the notice of V.C. and therefore, the V.C. could not be scheduled. The ld. CIT(A) held that the failure to reply to the notice showed that the assessee did not wish to avail the facility of video conferencing and he therefore proceeded to decide the appeal on the basis of written submissions filed by the assessee. The ld. CIT(A) observed, that during the appellate proceedings, the appellant had claimed that his name was fraudulently used to open the impugned bank account maintained with Jammu &

Kashmir Bank and that furthermore, it was utilized by his employer (Dr. A.K. Bansal) to deposit his unaccounted money into it. The Id. CIT(A) noted that during the appellate proceedings, the assessee did not make any claims of having filed an FIR against his employer or the Branch Manager, as he had made before the assessment proceedings. Thus, he held that the stand of the appellant was contradictory which proved that the impugned bank account and the credit entries made therein pertained to none other than the assessee himself and he was only covering it up with some colourable device of fraud and misuse of his name. Accordingly, the Id. CIT(A) confirmed the additions of Rs.42,76,560/- and Rs.1,08,94,145/- made by the Id. AO in the assessment years 2011-12 and 2012-13, dismissing all the grounds of appeal.

5. The assessee is aggrieved at this summary disposal of his appeal by the Id. CIT(A) and has accordingly come in appeal before us. The assessee, Shri. Amresh Kumar Singh, represented his own case before us. It was submitted that in the year 2008, he completed his diploma from Jeevan Jyoti Institute of Para Medical Services and after completing his diploma he was employed by Jeevan Jyoti Hospital. At the time of appointment of the applicant, he submitted signed copies of High School Mark-sheet, photographs, PAN card, Aadhar Card, Bank Passbook and other documents as required. It was submitted that the said institute and the hospital was being run by Late Dr. Ashok Kumar Bansal and his family. It was submitted that using these documents, Dr. A.K. Bansal and his associates had opened a fake account in the name of Elina Medi Services Co., in which the assessee was shown to be the registered owner, at Jammu & Kashmir Branch, Chowk, District Prayagraj and transactions worth crores of rupees were done from the said account to different shell companies owned by Dr. A.K. Bansal and his family members. It was submitted that the only bank account of the assessee was in State Bank of India, Bai Ka Bagh Branch, Prayagraj which bore the A/c No.30451246551. It was submitted that in the year 2015, he received information that this account had been seized by the income

tax department due to income tax liabilities upon the assessee. It was at this instance that the assessee came to know about the existence of the said company, M/s Elina Medi Services and that he was a proprietor of the said company. It was submitted that the assessee was in no manner associated with the company. He was a salaried employee of Jeevan Jyoti Hospital and was drawing a salary of only Rs.17,000/- per month. It was further submitted that the assessee, after gaining knowledge of the said forgery, contacted the late Dr. A.K. Bansal and asked him about the company. It was then told to him that the said company had been formed by Dr. A.K. Bansal and all the tax liability of the same would be borne by him. The assessee further submitted that on 28.12.2015, the assessee sent his resignation letter, on account of fraud and treachery committed against him, by means of registered post. It was also submitted that he had informed the Manager of the Branch and the Police and the Income tax Department of the said fraud vide his letters dated 12.01.2016. Thereafter, on 16.01.2016, the late Dr. A.K. Bansal had called the applicant and accepted the responsibility of forming the forged company, pointing out that any tax liability as borne by the company would be borne by him. It was submitted that the late Dr. A.K. Bansal issued a letter on 16.01.2016 along with a signed blank cheque. It was further submitted that even after informing the bank, police and income tax officials regarding the said fraud, they did not do any enquiry into the matter. It was submitted that the income tax department had seized a hard disk as well as documents of the hospital during a search operation and in the said hard disk, the details with regard to the transaction with the company called M/s Elina Medi Services were also present, but the same had not been inquired into. It was also submitted that the assessee had filed his returns for the assessment years 2011-12 and 2012-13, but the late Dr. A.K. Bansal and his associates had filed a revised return for the assessee, by using a forged digital signature and a forged audit report. The assessee also submitted that on 14.01.2019 he had gone to Jammu & Kashmir Bank, Chowk, Prayagraj requesting them to provide him the bank statement, KYC forms, address proof, thank you form and the name and address of

the identifier. However, the said documents had not been provided to the applicant. Since, there was no enquiry that was done by the police, the assessee submitted a complaint to the Magistrate under section 156(3) Cr.PC bearing Application No.520/12/2019, and on the basis of his application, the Id. Magistrate directed the investigating agency to investigate the matter and submit a report before the Court. It was submitted that the investigating agency submitted its report on 29.12.2019, in which it held that the allegations made by the assessee against Dr. A.K. Bansal and his associates were not substantiated and that the said complaint had been filed only with a view to absolve himself of responsibility, in view of income tax proceedings being initiated against him and also with ulterior motive of extorting money from Dr. Vandana Bansal and others. The police report had also questioned the fact that the assessee was a regular employee of M/s Jeevan Jyoti Hospital and therefore, stated that there was no question of deposit of documents with them that could be misused by Dr. A.K. Bansal and associates to open the said bank account. The police investigation had also revealed that the bank authorities had submitted that no irregularity was there in the opening of the bank account. On the basis of the said report, the Id. Magistrate rejected the application of the assessee and held that there was no evidence filed by the assessee showing that his documents such as Aadhar, PAN etc, had been submitted to Dr. A.K. Bansal and his associates. The Id. Magistrate had also recorded a finding, that to register a company the signature of the applicant was must, however the assessee submitted that he failed to consider the fact that a false signature had been used to register the company and to open the bank account. The assessee submitted that while investigating the matter, the Id. Magistrate should have sent the signature of the applicant for forensic verification and only then could it be said whether the assessee had signed the said documents or not. The assessee also drew reference to the order of the Id. Magistrate under section 156(3) where the Magistrate had observed from the police report that since notices had been sent to the assessee under various sections of the Income Tax Act, the assessee was aware of the proceedings against him and it could not be said that

he first came to know about the existence of the said bank account in the year 2015, when the income tax authorities took action to seize the said bank account. In response, it was submitted that the address on which the notices were sent were not the assessee's address and therefore, they were never sent to the assessee and the police had failed to consider this matter before filing their report. As regards, the issue that he was not a permanent employee of the said hospital, the assessee submitted that examination of the credit entries of his bank account would reveal that the salary of the applicant was being credited by the Jeevan Jyoti Hospital. Upon being queried by the Bench, regarding the fate of the blank cheque that was purported to be given by Dr. A.K. Bansal, the assessee submitted that the police investigations and the Magistrate's order dated had recorded that the said account had been closed on 21.05.2012 so there was no question of with Dr. A.K. Bansal giving a cheque on 16.06.2016 of a closed bank account. However, it was submitted that neither the police nor the Magistrate had applied their judicial mind to question as to how that cheque came into the possession of the assessee. Further, it was submitted that neither of them had denied the fact that the signature on the said cheque and the admission letter was that of Dr. A.K. Bansal. Therefore, it was submitted that the admission letter and the cheque issued by Dr. A.K. Bansal, which corroborated each other should have been considered by the police and the Magistrate before holding that he was not the victim of a fraud. Accordingly, it was submitted that in view of these anomalies in the police investigations and the Magistrate's order, the assessee had moved a revision application before the Additional District Judge, Prayagraj bearing Revision No.622 of 2021. The assessee submitted that in such review application, he had pointed out that the Magistrates' order had been passed without application of judicial mind, by blindly accepting the police report, which in itself was defective. It was submitted that some of the defects in the police report were that, on 10.04.2019, the police had submitted a report in which it had recognized him as a permanent employee of M/s Jeevan Jyoti Hospital but in the report dated 29.12.2019 it had said that he was not a permanent

employee. However, it was submitted that despite these kind of defects being pointed out to the Magistrate and the Id. Additional District Judge, the Id. ADJ, Prayagraj had rejected the Revision Application of the assessee and therefore, the assessee had moved a criminal misc. application before the Hon'ble High Court of Judicature At Allahabad under section 482 of the Cr.PC ,for quashing the orders of the Id. Chief Judicial Magistrate Prayagraj and the revision orders passed by the Additional District Judge, Prayagraj and to register an FIR against all the persons alleged to be conspirators in this fraud. This matter was still pending before the Hon'ble High Court. The assessee submitted that the fact of him being victim of a fraud had been duly intimated to the Id. AO at the time of assessment. He had denied ever having been the proprietor of M/s Elina Medi Services and ever opening any bank account at Jammu & Kashmir Bank, Chowk Bazar, Prayagraj. He submitted that the examination of his bank account would have showed that the deposits in the said bank accounts were from M/s Jeevan Jyoti Hospital and Vandana Women's Hospital, while the transfers from the said account were to M/s Arpit Hospital Limited, Navjeevan Pediatrics Pvt. Ltd., Jyoti Medi Services Private Limited and Jeevan Jyoti Charitable Trust and that all these entities were controlled by Dr. A.K. Bansal group. The assessee therefore, submitted that the examination of the bank account would itself reveal that it was used to transfer money from one set of entities of Dr. A.K. Bansal group to another set of entities and therefore, the Id. AO should have examined this aspect before holding that the said bank account belonged him. The assessee further submitted that the said entities, when issued notice by the Id. AO had not furnished anything to him and yet the Id. AO chose to proceed against the assessee, without insisting on any explanation from the entities that were transferring money to the said bank account or receiving money from it. It was further submitted that the police investigation was highly skewed, flawed and compromised and he had pointed all this out. Therefore, the assessee prayed that proper investigations may be carried out with regard to the beneficiaries of the said bank account before fastening the responsibility upon him, as neither the said

company M/s Elina Medi Services belonged to him nor was the said account being operated by him. In support of his arguments, the assessee furnished two paper books. While paper book 1 was furnished by him on 26.09.2024, containing various correspondences made with the income tax authorities, the resignation letter submitted by him to the Managing Director of Jeevan Jyoti Hospital, the response of Shri. A.K. Bansal, the impugned bank account at Jammu & Kashmir Bank, the complaints made by the assessee on 12.01.2016 to the police and the income tax department and copies of his bank passbook at SBI, Bai Ka Bagh Branch showing credit entries purported to be salary received from Jeevan Jyoti Hospital and copies of his previous income tax returns and orders and the Criminal Misc. Application moved by him before the Hon'ble High Court, the second paper book was filed on the directions of the Bench containing the applications moved by him before the Hon'ble Magistrate and the investigation reports and various orders of the police and the Magistrates and the Additional Sessions Judge. As all these documents are held to be essential for arriving at the facts of the case and some these documents have not been presented before the Id. AO or the Id. CIT(A). Therefore, such documents which are in the nature of additional evidences are admitted for consideration under Rule 29 of ITAT, Rules, 1963.

6. On the other hand, the Revenue represented by Shri. A.K. Singh, Sr. DR (hereinafter referred to as the 'Id. Sr. DR') after going through the documents submitted by the assessee during the course of appeal, submitted that as per the police investigations, the assessee was very much in the know of the existence of M/s Elina Medi Services and of the bank account being operated in the name of that agency. The police had raised doubts as to whether he was a regular employee of M/s Jeevan Jyoti Hospital, and pointed out that he was merely a liaison officer for the same and therefore, was not required to submit his documents to the said agency. Even the so called letter and cheque produced by him had been called into doubt because the cheque was seem to be issued on a bank account that had already

closed down. From the overall circumstances, as had emerged through the police investigations, it appears that the assessee was involved in the running of M/s Elina Medi Services and obtaining some profit from the same. Whether he was acting on his own, or on behalf of the Dr. A.K. Bansal could not be stated with certainty from the documents on record. But the necessity of the income of M/s Elina Medi Services being brought to tax could not be denied. The ld. AO had adopted an extremely reasonable approach in treating the credits as the business turnover of the assessee and therefore, no interference was called for in the assessment orders.

7. We have duly considered the facts and circumstances of the case and the documents that have been placed before us. We observe that right from the very outset, the assessee has denied being the proprietor of M/s Elina Medi Services or the account holder of the impugned bank account at Jammu & Kashmir Bank, Chowk, Prayagraj. We observe that the ld. AO has not acted upon the said denials made by the assessee by way of making enquiries with the authorities who are required to register such establishments or the bank authorities to determine whether the applications for the opening of the said Elina Medi Services or the said bank account, had been signed by the assessee himself or forged using his documents. We also observe that the ld. AO did not collect any positive material in the form of confirmations or statements from the persons who transacted with the said bank account, to determine the nature and source of the credit and debit entries in the said bank account, that may have thrown light on the activities of M/s Elina Medi Services and confirmed or rebutted the contention of the assessee that he was not in any way involved with the said company. In fact the Ld AO simply records the lack of proper compliance and expressed his helplessness. We observe that the introducer of the said bank account has not been examined to determine the truth, rather his brother has been examined, which has no relevance to the matter. Finally, we observe that the ld. AO has not conducted any analysis of these credit and debit entries to determine whether or not the defence presented by the

assessee has any substance in it. It is true that, in normal circumstances, if a bank account is found to be existing in the name of a person, then it is for the person concerned to explain the entries therein. However, in a situation where the concerned person completely denies the fact of opening or operation of that bank account, it is for the Id. AO to bring proof to disprove his denial, either by way of forensic examination of the signatures used in the account opening form or withdrawal slips or by way of an examination of entries in such bank accounts to show that the beneficiary of the said account is the assessee. However, it appears that in this case, this has not been done. We have also gone through the police report and we observe that these two aspects of investigation i.e. the forensic examination of the account opening form/withdrawal slips/cheques/RTGS forms and the investigations to determine as to who is the beneficiary of the said account, appear not to have been conducted or at least have not been highlighted in their report. We also observe that the authenticity of the signatures on the letter and cheque issued by Dr AK Bansal have not been disproved in these investigations. While it is unclear, at this point of time, as to whether the assessee was unaware about the existence of the said company or bank account or whether was a willing participant in the entire affair as concluded by the police, we feel that for the purposes of determination of whether the income arising from the business operations conducted in that bank account could be assessed in the hands of the assessee, it is necessary to determine whether he actually opened the said bank account and whether or not he was the beneficiary of the said bank account. Accordingly, we restore both these cases to the file of the Id. AO with a direction to first determine as to whether the assessee opened the said bank account and thereafter to examine as to whether he was the beneficiary of the same. If the investigations so reveal that the assessee opened , operated and was the beneficiary of the said bank account, then the income from the same may be assessed in his hands, as per law. If however, the Id. AO's investigations reveal that the assessee was not the person who opened the account nor was he the person who was operating the account or benefiting from it, then

action to bring the escaped income to tax may be taken by the ld. AO in the hands of such person who is identified to be the beneficiary and operator of the said account. As the matter has been restored back to the file of the ld. AO, for a fresh assessment after consideration of all the evidences presented before us and after making of such enquiries as are deemed necessary to establish the true operator / beneficiary of the said bank account, both appeals of the assessee are held to be allowed for statistical purposes.

8. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 27.12.2024 at Allahabad, U.P.

***Sd/-***  
**[UDAYAN DASGUPTA]**  
**JUDICIAL MEMBER**

***Sd/-***  
**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

DATED: 27/12/2024

Sh

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order  
Sr. P.S.