

. IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI R.S. SYAL, AM & MS. SUCHITRA KAMBLE, JM

ITA No.1000/Del/2013
Assessment Year : 2005-06

DCIT,
Circle 37(1),
New Delhi.

Vs. Mr. Rajneesh Chopra,
101, Nilgiri Apartments,
9, Barakhamba Road,
New Delhi – 110 001.

PAN: AAPPC2128J

ITA No.1232/Del/2013
Assessment Year : 2005-06

Mr. Rajneesh Chopra,
101, Nilgiri Apartments,
9, Barakhamba Road,
New Delhi – 110 001.

Vs. DCIT,
Circle 37(1),
New Delhi.

PAN: AAPPC2128J

(Appellant)

(Respondent)

Assessee By : Shri Salil Aggarwal, Advocate &
Shri Shailesh Gupta, CA
Department By : Shri Rajesh Kumar Ketia, Sr. DR

Date of Hearing : 01.10.2015
Date of Pronouncement : 06.10.2015

ORDER

PER R.S. SYAL, AM:

These two cross appeals – one by the assessee and the other by the Revenue – arise out of the order passed by the CIT(A) on 26.12.2012 in relation to the assessment year 2005-06. This is a recalled matter.

2. First two grounds of the Revenue's appeal are against reducing the 'Income from profession' from Rs.54,00,899/- as determined by the Assessing Officer (AO) to Rs.40,17,517/-.

3. Briefly stated, the facts of the case are that the assessee is an Advocate by profession, who filed his original return declaring a total income of Rs.3,43,550/-. Such return was processed on 6.12.2010. A survey operation was conducted on 1.12.2010 u/s 133A of the Income-tax Act, 1961 (hereinafter also called 'the Act') at the business premises of the assessee at 101, Nilgiri Apartments, Barakhamba Road, New Delhi. During the course of survey operations, it was noticed that the

assessee received professional receipts through cheques as well as in cash, but, had declared in his return of income only the amounts received by cheques. During the course of survey operations, certain diaries, registers, loose papers, data from computer copied in hard disk etc. were impounded. These documents were marked as Annexure A-1 to A-27. Entries in these registers were confronted to the assessee during the course of recording of his statement at the time of survey on 1.2.2010. Vide question no. 10, the assessee was required to produce his books of account for the assessment year 2005-06 to 2009-10, in response to which it was stated that the same will be produced, but were never produced. The assessee was confronted with the registers incorporating the entries of receipts of fee. On being called upon to identify whether such entries in the registers pertained to him, the assessee replied that the same pertained to M/s C&C Associates, being the professional firm, in which he was a partner for some period of the year under consideration. He, however, submitted no explanation as to how these cash entries were made in this register. The assessee's office

prepared details of cash receipts from these registers which were not declared in the income for the assessment years 2005-06 to 2010-11. Although the assessee admitted that these entries were reflected in the register, but, showed ignorance about their non-reflection in the returns of income. On a further query as to whether these entries represented any other receipts such as loan, gift, etc., the assessee replied in negative. After examining the entire impounded material, it was observed by the AO that professional receipts were not properly reflected in the returns of income for the years including the assessment year under consideration. Notice u/s 148 was issued. In response to such notice, the assessee filed a return on 29.9.2010 declaring income of Rs.22,58,500/-. The assessee raised objections against the notice u/s 148, which have been incorporated on pages 4 and 5 of the assessment order. The AO dismissed such objections vide his separate order dated 15.10.2010, which has been incorporated on pages 5 and 6 of the assessment order. On appreciation of the entire material before him, the AO noticed that only cheque receipts were offered for taxation by the

assessee and the fee collected in cash was not shown as income. The assessee was given ample opportunity to produce his books of account, bills and vouchers for the expenses during the course of assessment proceedings. No such details were furnished. The AO noticed that the impounded register transpired that the assessee had not only recorded all receipts in it but also the expenses incurred. He, therefore, observed that a rough estimation of income to the tune of 50% of receipts recorded in the register made while recording reasons for re-opening, was not appropriate. It was further noticed from the register that the assessee had calculated net profit at the end of each month in this register itself, after deducting all the expenses incurred in cash or through cheques from the total receipts received during the month in cash or through cheques. Month-wise working of profit from 1.4.2004 to 31.3.2005 as recorded in the register A-7 has been tabulated by the AO on page 9 of assessment order as under:-

S. No.	Month	Name of annexure of impounded material	Receipts recorded from pages (in Rs.)	Total amount of receipts during the month (in Rs.)	Expenses of cheque	Expenses of cash (by other name)	Net profit for the month	Page No.
1	April, 2004	A-7	77-74	4,94,580	50,583	76,711	3,67,286	74
2	May,, 2004	-do-	73-70	5,27,390	47913	81288	3,98,189/-	70
3	June, 2004	-do-	69-65	4,16,680/-	99,308	79,755/-	2,37,617/-	65
4	July, 2004	-do-	64-61	6,05,259/-	96,382	96,708/-	4,12,169/-	61
5	Aug, 2004	-do-	60-53	16,99,797/-	1,22,529/-	3,41,329/-	12,35,939	53
6	Sept., 2004	-do-	52-48	8,61,399/-	1,04,008/-	1,24,470/-	6,32,921	48
7	Oct, 2004	-do-	47-43	4,91,775/-	86,302/-	60,250/-	3,45,223	43
8	Nov, 2004	-do-	42-36	5,93,113/-	73,987/-	54,195/-	4,64,931	36
9	Dec, 2004	-do-	35-30	7,14,291/-	1,02,836/-	75,649/-	5,35,806	30
10	Jan, 2005	-do-	29-23	7,87,609/-	2,03,546/-	1,13,949/-	4,70,114	23
11	Feb., 2005	-do-	22-17	6,16,706/-	1,56,924/-	88,700/-	3,71,082	17
12	March, 2005	-do-	16-10	10,05,307/-	1,89,077/-	1,21,143/-	6,95,087	10
	Total			88,13,906/-	13,33,395/-	13,14,147/-	61,66,364	

4. The AO noticed that the above calculation of net profit from the register maintained by the assessee for the period relevant to the assessment year under consideration divulged income of Rs.61,66,364/-, which was much higher than the net profit declared by the assessee in his original return filed on 31.10.2005 at Rs.3,40,057/- and in the revised return filed on 29.9.2010 at Rs.22,58,500/- in response to notice u/s 148.

One more opportunity was granted to the assessee to explain the basis of showing undisclosed income in the revised return. The assessee submitted that there were certain errors in the calculation made by the AO. The assessee also filed a letter dated 6.12.2010 contending that the registers impounded during the course of survey were not properly maintained. The assessee filed a chart to reflect the effect of discrepancies in the register as under:-

Month	As per AO	Brought forward difference	Cash difference	Other differences	Balance Amount
June, 2004	416680	9425	55800		351455
July, 2004	605259	3045	114546		487668
Aug, 2004	1699797		341329		1358468
Sept., 2004	861399		158687		702712
Oct, 2004	491775	7000	169515		315260
Nov, 2004	593113		176860		416253
Dec, 2004	714291	50000	88649		575642
Jan, 2005	787609	12556	134366		640687
Feb., 2005	616706	65959	376196		174551
March, 2005	1005307	12997	131830		860480
Total	7791936	160982	1747778		5883176

5. The AO considered the so-called discrepancies pointed out by the assessee in the month-wise receipts due to carry forward of last month's cash and the brought forward difference and held that the income was not affected by these adjustments. He, however, concurred with the assessee's submission about the exclusion of income offered for two months, namely, April and May, 2004 because this was earned by the partnership firm in which the assessee was a partner at the material time. After deducting net profit of April and May, 2004 amounting to Rs.3,67,286/- and Rs.3,98,189/- respectively, from the total net profit as per Register A-7 amounting to Rs.61.66 lac as reproduced above, the AO determined the amount of professional income at Rs.54,00,889/-. Since this was the amount of month-wise net profit as per the assessee's own register found during the course of survey, after exclusion of expenses, the AO held that no separate 50% deduction of gross receipts on the basis of rough estimation was warranted since the amount of actual expenses was deducted. He, therefore, treated the net profit from profession at Rs.54,00,889/- as per the impounded registers as opposed

to a sum of Rs.22,58,500/- which was declared by the assessee in the revised return of income. During the course of the first appellate proceedings, the assessee filed, *inter alia*, a summary of recordings in the impounded register containing infirmities in the calculation of income as made by the AO. The same was sent by the Id. CIT(A) to the AO for comments. The AO vide his letter dated 15.10.2012 concurred with the view of his predecessor and did not mention anything further refuting the claims/objections made by the assessee. The assessee was also given an opportunity to file his comments against the AO's remand report, which were submitted and have been recorded in the impugned order. The Id. CIT(A) noticed that the objections raised by the assessee in relation to the wrong calculation of income from the impounded registers were not disproved by the AO. The Id. CIT(A), on the basis of summary of recordings in the impounded registers showing month-wise income and expenses, computed total income of the assessee at Rs.40,17,517/- as against Rs.54,00,889/- worked out by the AO. This resulted into a relief to the extent of Rs.13,83,372/-. The Revenue is

contesting such relief allowed by the ld. first appellate authority and the assessee is assailing the confirmation of addition made in the first appeal.

6. We have heard the rival submissions and perused the relevant material available on record. It is an undisputed position that certain registers incorporating month-wise professional receipts and expenses in cash and cheques along with month-wise profit were impounded during the course of survey. Such registers pertained to various years. In so far as the assessment year under consideration is concerned, total income was computed by the AO from such registers to the tune of Rs.54.00 lac. In the absence of any worthwhile objection from the AO during the remand proceedings, the ld. CIT(A) accepted the assessee's working of month-wise profit from such register at Rs.40.17 lac for the year in question. The ld. DR could not point out any discrepancy in such working of net profit submitted by the assessee with any cogent material. When the position is such, we fail to appreciate as to how a different view can be taken from the one canvassed by the ld. CIT(A). It

is palpable that when the assessee pointed out mistakes to the AO in his calculation of professional receipts and expenses for the year in question but the AO chose not to adversely comment the same, the natural presumption is that the assessee's calculation was correct. Under these circumstances, we are of the considered opinion that the ld. CIT(A) was justified in sustaining the addition at Rs.40,17,517/-. We are unable to comprehend the rationale behind the assessee's assailing the addition to the extent sustained in the first appeal, because the same is based only on the working of net professional receipts submitted by the assessee himself. We, therefore, dismiss these two grounds taken by the Revenue and the challenge made by the assessee to the sustenance of this addition in his ground of appeal.

7. Ground no. 3 is against restricting the addition of income from undisclosed sources from Rs.4,99,266/- to Rs.2,82,838/-. The assessee has also challenged the sustenance of addition.

8. Succinctly, the facts of this ground are that the assessee also maintained a savings bank account No.702611 with ABN Amro Bank

(Now RBS) during the year under consideration, which was not disclosed for income-tax purpose. The AO extracted deposits in the said savings account from 1.4.2004 to 31.3.2005 totaling to Rs.5,35,560.52. On being called upon to explain the nature of the above deposit entries in the bank account, the assessee submitted the narration and also accepted a sum of Rs.2,82,838/- as undisclosed income emanating from this savings bank account. Entry-wise narration given by the assessee against the deposits in the bank has been reproduced on pages 15-16 of the assessment order. The AO got convinced with the assessee's contention to the extent of four entries representing deposits in this bank account to the tune of Rs.36,295/-. He further observed that the assessee was a partner in Costa & Chopra, Advocates in April, 2004 and drew a salary of Rs.7,500/- for each month, which was not separately shown as taxable. In the absence of submitting any proof about the claim of transfer entries from another bank account to this bank account, the AO held that the entire amount of Rs.4,99,266/- (Rs.5,35,560 – Rs.36,295/-) was undisclosed income for the year. This addition was made as against

the assessee's letter dated 15.12.2010 offering additional income on this score amounting to Rs.2,82,838/-. That is how, a sum of Rs.4.99 lac was added to the assessee's total income. The assessee contended before the Id. CIT(A) that only a sum of Rs.2,82,838/- was income from the deposits made in the above bank account. As regards the remaining amounts, it was stated that the same were withdrawals and re-deposits from one account to another. The Id. CIT(A) found correct the assessee's contention about the transfer of money from current account to savings bank account. The Revenue is not happy with the deletion of addition to this extent and the assessee is opposing the sustenance of *pro tanto* addition.

9. Having heard both the sides on the point and perused the relevant material on record, it is observed that the assessee categorically stated before the AO that certain deposits in saving bank account no. 702611 maintained with ABN Amro Bank, were transfer entries from one account to another. Even entry-wise details were also furnished which the AO refused to accept for want of any further corroboration. When

the current account and savings bank account were available with him, the AO was obliged to cross check the entries. The ld. CIT(A) has examined this aspect and found the assessee's contention correct. The ld. DR failed to controvert the position ascertained by the ld. CIT(A) in this regard. We, therefore, hold that the ld. CIT(A) was justified in reducing the addition to Rs.2,82,838/-, being the same amount as was offered by the assessee himself. Again, we do not find any logic behind the assessee's contention for allowing further relief because the assessee himself admitted undisclosed income from this bank account amounting to Rs.2,82,838/-. We, therefore, countenance the view taken by the ld. CIT(A) on this score.

10. Last effective ground of the Revenue's appeal is against the deletion of addition of Rs.15,490/-. The AO included bank interest of Rs.15,490/- in the total income of the assessee. The ld. CIT(A) deleted this addition by observing that the bank interest representing interest income of Rs.15,490/- already stood added by the AO in the assessee's

total income as a part of total credits appearing in the savings bank account.

11. Having heard the rival submissions and perused the relevant material on record, it is noticed that bank interest of Rs.15,490/- emanating from the savings bank account which was not disclosed by the assessee and other credit entries in this bank account, except the transfer entries, have been separately added, for which we have sustained an addition of Rs.2,82,838/-. Since the bank interest of Rs.15,490/- is part of such addition sustained in the first appeal, any further addition for the bank interest would amount to double taxation of same income. We, therefore, approve the view taken by the Id. CIT(A) in deleting this addition. This ground fails.

12. The only other issue taken by the assessee in his appeal is against re-opening of assessment. The Id. AR was fair enough and, in our considered opinion rightly so, not to press this ground of appeal. The same is, therefore, dismissed.

13. In the result, both the appeals are dismissed.

The order pronounced in the open court on 06.10.2015.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 06th October, 2015.

dk

Copy forwarded to:

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

AR, ITAT, NEW DELHI.