

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI G.S.PANNU, (AM)

**ITA No. 7695/MUM/2014
Assessment Year: 2010-11**

Shri. Jaspinder Singh Kang, 16, Sumukh, 3 rd Floor, Off Guru Nanak Road, V.P. Varde Marg, Bandra (W), Mumbai- 400 050. PAN- AAAPK0500D	Vs.	The DCIT- 26(2), Mumbai
(Appellant)		(Respondent)

Appellant by : Shri. Vijay Mehta & Anuj Kisnadwala
Respondent by : Shri. Santosh Mankoskar

Date of Hearing: 21/06/2016
Date of Pronouncement: 30/06/2016

ORDER

PER G.S.PANNU, AM

This appeal has been filed by the assessee against order dated 01/10/2014 passed by the Ld CIT(Appeals)-28, Mumbai for the assessment year 2010-11.

2. The assessee challenging the order of the CIT(A), had raised the following ground of appeal:-

The Learned CIT(A) has erred in confirming the addition of Rs. 5,00,000/- made by the A.O. u/s 28 of the Income Tax Act, 1961.

2.1 The facts of the case are that the assessee had filed his 'Return of income' on 28/07/2010 declaring net taxable income of Rs. 24,94,970/-, which thereafter was revised by him as on 06/09/2011 at an income of Rs. 29,73,913/-. The case of the assessee was taken up for scrutiny assessment u/s 143(2) of the Income Tax Act, 1961 (herein after referred to as 'the Act'). That during the course of the assessment proceedings, the assessee on being confronted by the A.O as regards the fact that neither the 'Interest income' of Rs. 57,100/-, nor income under the head 'Short Term Capital Gain' of Rs. 2,92,752/- arising from the share transactions of the assessee were found reflected in either his original or the revised return of income, therein admitted the lapse on his part and offered the aforesaid respective amounts for taxes.

2.2 The A.O further on the basis of the AIR information received by him, therein observed that professional fees of Rs. 5,00,000/- received by the assessee from M/s. Cinergy Pictures (P) Ltd., on 31/03/2010, was also not found to be reflected in the 'Return of income' filed for the year under consideration. The assessee on being called upon by the A.O to put forth an explanation as to why the aforesaid amount of Rs. 5,00,000/-(supra) had not been shown by him in the return of income for the year under consideration, therein submitted that the said amount had been offered to tax in the subsequent year, on cash basis. The Assessing Officer not satisfied with the explanation of the assessee, and being of the view that as the said professional income was earned by the assessee during the year under consideration, and even the TDS on the said income was found to be deducted in the same year, coupled with the fact that there was nothing from where it could be gathered that the assessee was maintaining his accounts on 'Cash basis', therefore held the aforesaid amount of Rs. 5,00,000/-(supra), as the income of the assessee for the year under consideration and made an addition of the said amount to the returned income of the assessee. The A.O in light of the aforesaid facts

therein proceeded with and assessed the income of the assessee at Rs. 38,23,770/-

3. The assessee being aggrieved with the addition of Rs. 5 lac made by the A.O, therein carried the matter in appeal before the CIT(A). During the course of the appellate proceedings it was submitted by the assessee that during the year he was engaged as an employee with M/s Cinergy Productions Private Limited under a contract of employment w.e.f 02.03.2010, and the salary income received there from during the year under consideration was duly reflected in the 'Return of income'. It was further submitted by the assessee that he was also professionally engaged by another company M/s Cinergy Pictures Private Limited, from which a lump sum professional fee of Rs. 5 lac was to be received by him for the month of March, 2010, and subsequently, on certain mutually agreed basis. The assessee submitted before the CIT(A) that though services were rendered to M/s Cinergy Pictures Private Limited (supra), however nothing was paid by the company during the year under consideration, and an amount of Rs. 4,50,000/- (net of TDS of Rs. 50,000/-) was received by him only as on 13.04.2010, which was deposited by him in his Bank A/c No. 06530030007201 with Kotak Mahindra Bank Ltd. It was submitted by the assessee that he on receipt of the aforesaid amount, after claiming net of professional expenses of Rs. 2,68,056/-, as against the professional fees of Rs. 5 lac (supra), offered the 'Net professional income' of Rs. 2,31,944/- for taxes, on "Cash basis", in the year of receipt, i.e the period relevant to A.Y: 2011-12. The assessee in his attempt to fortify his claim that he was maintaining his accounts on "Cash basis", therein referred to the ITR form for A.Y. 2011-12, wherein the 'Method of accounting' for profession was reported as "Cash" at Col. A-01 of the uploaded ITR form for the said year. The assessee in light of the aforesaid facts as they so remained, therein submitted before the CIT(A) that as the 'Professional income' of Rs. 5 lac had duly been accounted for and reflected by him in his 'Return of income' for A.Y: 2011-12,

i.e the year of receipt, therefore the A.O had gravely erred in again assessing the said income in the hands of the assessee in A.Y. 2010-11. The assessee thus submitted before the CIT(A) that now when the 'Professional receipt' of Rs. 5 lac (supra) had duly been reflected by him on 'Cash basis' during the A.Y. 2011-12, therefore assessing of the same amount by the A.O in the hands of the assessee during the A.Y. 2010-11 could not be sustained and therefore be vacated.

3.1. The Ld. CIT(A) after perusing the facts of the case and the contentions raised by the assessee, taking cognizance of the fact that except for the hollow claim of the assessee that he was following the "Cash system" of accountancy, therein observed that there was no material or evidence which could go to substantiate the said contention of the assessee. Rather the CIT(A) drew adverse inferences as regards the genuineness and veracity of the claim of the assessee that he was maintaining his accounts on "Cash basis", by referring to the conduct of the assessee, wherein the latter on one hand had failed to account for the 'Salary income' of Rs. 4,78,944/- in his original 'Return of income' of A.Y. 2010-11, despite the fact that the same was received during the year under consideration itself, and had offered the same for taxes only by way of filing a 'Revised return', while for on the other hand he had gone a step further and pathetically failed to show both in his original as well as the revised return of income for A.Y. 2010-11, the 'Interest income' of Rs. 57,100/-, as well as income under the head 'Short Term Capital Gain' of Rs. 2,92,752/- arising from certain share transactions carried out by him, which only on being confronted by the A.O, were therein offered for taxes by the assessee. The CIT(A) further referred to a similar conduct of the assessee in A.Y. 2011-12, wherein too the assessee had failed to account for the 'Interest income' of Rs. 14,118/-, as well as income under the head 'Short Term Capital Gain' of Rs. 65,990/- in his original 'Return of income', and had reflected the same only in the 'Revised return'. The CIT(A) further observed that the assessee had also

failed to account for the 'Professional receipt' of Rs. 5 lac (supra) in his original 'Return of income' for A.Y. 2011-12 filed as on 17.01.2012, and had accounted for the same only in his 'Revised return' which was filed only as on 12.01.2013. It was thus concluded by the CIT(A) that in case the assessee would had been maintaining his accounts on "Cash basis", then the aforesaid amounts which had been received by the assessee in the aforesaid respective years, therein would had duly been reflected in the 'Returns of income' of the assessee for the aforesaid respective years. The CIT(A) in light of his aforesaid observations, as well as not finding favor with the contention of the assessee that the aforesaid discrepancy at the time of filing of the 'Return of income' had crept in for the reason that his Delhi based tax advisor had filed the 'Return of income' of the assessee on the basis of 'Form 16', without taking cognizance of the 'Books of accounts', thus concluded that the claim of the assessee that he was consistently maintaining 'Books of accounts' on cash basis, could not be established. The CIT(A) thus rejecting the claim of the assessee, therein proceeded with and taking cognizance of the fact that as the 'Professional fees' of Rs. 5 lac (supra) pertained to the services rendered by the assessee in A.Y. 2010-11, therefore the income had accrued in the hands of the assessee in the said year, and thus had rightly been brought to taxes by the A.O while framing the assessment for A.Y, 2010-11, upheld the order of the A.O and dismissed the appeal of the assessee.

4. During the course of hearing of the appeal the A.R for the assessee repeated the submissions as were raised before the CIT(A) and thus submitted that as the 'Professional receipt' of Rs. 5 lac had been accounted for by the assessee on "Cash basis", in the year of receipt, i.e the period relevant to A.Y: 2011-12, therefore the CIT(A) had erred in sustaining the addition of Rs. 5 lac (supra) in the hands of the assessee during the year under consideration. It was further submitted by the A.R that the CIT(A) had misconceived the facts as regards the method of accounting which was consistently being followed by the

assessee, and thus had erred in upholding the assessment framed by the A.O. It was further submitted by the A.R that the CIT(A) had failed to appreciate that now when the 'Professional fee' of Rs. 5 lac had duly been accounted for by the assessee in his 'Return of income' for A.Y. 2011-12, therefore sustaining of the assessment of the said 'Professional fee' by the A.O in A.Y. 2010-11, had led to taxing of the same income twice. Thus it was prayed by the assessee that the order of the CIT(A) sustaining the addition of 'Professional fee' of Rs. 5 lac (supra) in the hands of the assessee, in A.Y. 2010-11, may therein be vacated.

5. That on the contrary the D.R submitted that a conjoint study of the conduct of the assessee while filing the Original/Revised 'Returns of income', both for A.Y. 2010-11 and A.Y. 2011-12, therein glaringly revealed beyond any scope of doubt that the assessee had intentionally omitted to account for the 'Professional fee' of Rs. 5 lac in the year under consideration, i.e A.Y. 2010-11, and in the absence of any material which could go to substantiate that the assessee was maintaining his accounts on "Cash basis", the contention of the assessee claiming as such, was nothing but a hollow alibi accorded by him on finding himself cornered during the course of the assessment proceedings. The D.R further submitted that the claim of the assessee that the 'Professional fee' of Rs. 5 lac had been accounted for by him in his 'Return of income' for A.Y. 2011-12, was in itself nothing better than an after thought resorted to by the assessee, in order to wriggle out of his intentional failure to account for the 'Professional fee' during the year under consideration. The D.R supporting his contention, therein submitted that the claim of the assessee that the 'Professional fee' of Rs. 5 lac (supra) had duly been accounted for by him in his 'Return of income' for A.Y. 2011-12, was in itself blatantly disproved, as the same was not found reflected in the original 'Return of income' for A.Y 2011-12, as had been filed by the assessee as on 17.01.2012, and rather most interestingly was for the first time reflected in the revised 'Return of income' for A.Y. 2011-12, which was filed only as on 12.01.2013, i.e much after the

culmination and framing of assessment for A.Y. 2010-11 by the A.O as on 11.03.2012. The D.R further submitted that the assessee only for the purpose of justifying his conduct and fortifying his contention that the 'Professional fee' of Rs. 5 lac (supra) was duly accounted for in his 'Return of income' of A.Y. 2011-12, thus only with the said ulterior motive, had therein filed a revised 'Return of Income', apparently with the attempt to build up a case before the CIT(A). It was thus submitted by the D.R that the CIT(A) had rightly upheld the order of the A.O, and therefore prayed that the appeal of the assessee be dismissed.

6. I have carefully perused the facts of the case and have considered the rival submissions and relevant materials on record, including the orders of the authorities below, and find myself to be in agreement with the observation of the CIT(A) that neither the conduct of the assessee inspires any confidence, nor any material had been made available on record from which it could be safely and inescapably gathered that the assessee was consistently maintaining his accounts on "Cash basis". Rather the conduct of the assessee, who for the A.Y. 2010-11, despite being in receipt of 'Salary income' of Rs. 4,78,944/-, accounted for the same only in the 'Revised return', failed to show both in his original as well as the revised return of income for A.Y. 2010-11, the 'Interest income' of Rs. 57,100/-, as well as income under the head 'Short Term Capital Gain' of Rs. 2,92,752/- arising from certain share transactions carried out by him, and rather offered the said respective amounts for taxes, only on being confronted by the A.O during the course of the assessment proceedings, and still further in A.Y. 2011-12, once again failed to account for the 'Interest income' of Rs. 14,118/-, income under the head 'Short Term Capital Gain' of Rs. 65,990/- and 'Professional receipt' of Rs. 5 lac (supra) in his original 'Return of income', and rather reflected the same only in the 'Revised return' filed by him, therein in itself speaks for the fact that the assessee was not maintaining his accounts on "Cash basis", because if that would had been so,

then the aforesaid amounts as had been received by the assessee during the aforesaid respective years, would had duly been reflected by the assessee in his aforesaid respective 'Returns of income'. Thus in light of the aforesaid facts, I am convinced that as the assessee was not maintaining his accounts on "Cash basis", therefore now when the 'Professional fees' of Rs. 5 lac (supra) is found to be pertaining to the services rendered by the assessee during the period relevant to A.Y. 2010-11, coupled with the fact that even the TDS on the said professional receipt was deducted in the said year, therefore the said 'Professional fees' having been accrued to the assessee in A.Y. 2010-11, was therefore statutorily liable to be assessed as the income of the assessee for A.Y. 2010-11. Thus to the said extent, I find myself to be in agreement with the observation of the CIT(A) that the aforesaid 'Professional fees' was liable to be assessed in A.Y. 2010-11, and thus uphold the order of the CIT(A), to the said extent.

6.1. That during the course of hearing the A.R had further submitted that without prejudice to his contention that the 'Professional fee' having been offered for taxes in the year of receipt, i.e A.Y. 2011-12, the A.O had erred in assessing the same in the hands of the assessee in A.Y. 2010-11, even otherwise only the 'Net professional receipts' of Rs. 2,31,944/- (i.e 'Professional fess' : Rs. 5,00,000/- (minus) Expenses: Rs. 2,68,056/-), as had been reflected by him in his 'Income & Expenditure statement' filed alongwith his revised 'Return of income' of A.Y. 2011-12, could only be brought to taxes, and the A.O even on the said count had gravely erred in assessing the entire amount of 'Professional fees' of Rs. 5 lac, as the income of the assessee.

6.2. I have carefully considered the aforesaid contention of the A.R and before proceeding further, it would be relevant to advert to the facts relevant to the issue under consideration. That the A.R had claimed that in case the 'Professional fee' was to be brought to taxes in the hands of the assessee in A.Y.

2010-11, then the same was liable to be restricted upto the amount of the 'Net professional receipts' of Rs. 2,31,944/-(supra), as reflected by the assessee on the basis of the 'Income & Expenditure statement' filed alongwith his 'Return of income' of A.Y. 2011-12. That as regards the revised 'Return of income' filed by the assessee as on 12.01.2013, though technically speaking, in light of the fact that as the original 'Return of income' for A.Y. 2011-12 in itself had been filed by the assessee only as on 17.01.2012, and thus not being in the nature of a 'Return of income' filed u/s 139(1) of the 'Act', the assessee therefore stood divested and precluded of his right to file a revised 'Return of income' u/s 139(4) of the 'Act', as a result whereof the *impugned* revised 'Return of income' filed by the assessee as on 12.01.2013, wherein the assessee for the first time had accounted for the 'Professional fee' of Rs. 5 lac (supra) and offered the 'Net professional receipts' of Rs. 2,31,944/- for taxes, thus cannot be taken cognizance of, as such. However independent of the aforesaid facts as they so remain, I am convinced with the contention of the assessee that the entire 'Professional fee' of Rs. 5 lac (supra) could not be assessed as the income of the assessee, in *toto*, as such, as incurring of expenses incidental to earning of the said 'Professional fee' cannot be ruled out and thus are liable to be considered for the purpose of deducing the 'true income' of the assessee. At the time of hearing, it was put across to the parties that in the normal course the matter would be remanded to the file of the A.O for determining the appropriate amount of 'Net professional income' liable to be taxed. So however, the amount involved in the present case being of a small value, the learned representative for the assessee submitted that such income be determined at Rs.2,31,944/- as determined by the assessee, though for A.Y 2011-12. The ld. DR, however, submitted that the estimation of such income be made on a higher amount. Having considered the rival stands as well as the peculiar facts of the case, I hold it expedient to restrict the addition as regards the suppressed 'Professional fee' to the extent of Rs.2,50,000/- being the 'Net professional income'. As a consequence, the A.O shall reduce the addition to Rs.2,50,000/-

as against Rs. 5,00,000/- made in the assessment order. Thus, on this aspect assessee partly succeeds.

6.3. That before parting, in light of the fact that the 'Professional income' as observed by me hereinabove, is liable to be assessed in the hands of the assessee in A.Y. 2010-11, therefore to the extent the same had on *suo motto* basis been included by the assessee in the *impugned* revised 'Return of income' filed for A.Y. 2011-12 (which though as observed hereinabove is *void ab initio*), the A.O shall exclude the same from the income of the assessee for A.Y. 2011-12, and allow the credit as regards the corresponding taxes paid by the assessee pertaining to the said income in A.Y. 2011-12, while framing the assessment for the year under consideration in the course of the 'Set aside' proceedings.

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

Order pronounced in the open court on 30th June, 2016

Sd/-
(G.S.PANNU)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30/06/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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Pramila