

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-II : NEW DELHI

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA No.6986/Del/2014
Assessment Year : 2010-11

Rakesh Kumar Ahlawat,
2209, Civil Lines South,
Circular Road,
Muzaffarnagar,

Vs. ITO,
Ward-2(2),
Muzaffarnagar.

PAN: ADUPA2669Q

(Appellant)

(Respondent)

Assessee By : Shri A.K. Jain, Advocate
Department By : Mrs. Rakhi Vimal, JCIT

Date of Hearing : 13. 08.2015
Date of Pronouncement : 04.11.2015

ORDER

This is an appeal by the assessee directed against the order of the CIT(A), Muzaffarnagar, dated 19.9.2014 for the assessment year 2010-11.

2. The facts in brief are that the assessee is a doctor. He has income from profession, bank interest and agricultural income. He filed his return of income on 29.3.2011 declaring total income of Rs.2,51,259/-. Assessment was completed u/s 143(3) by the AO on 22.3.2013 determining the total income at Rs.4,03,690/-. Aggrieved, the assessee carried the matter in appeal without success. Further aggrieved, the assessee is before us on the following grounds:-

“1. That the prejudicial observations contained in the body of Appellate Order U/s 250 are either unfounded or the same are not susceptible of giving rise to any adverse conclusion.

2. That the learned C.I.T.(A) has erred in confirming the addition of Rs. 22180/- for Disallowance out of actually incurred & shown professional expenses (Clinic Expenses) towards Electricity, Telephone, Conveyance visiting other Nursing Homes & Misc. Exp. Totalling to Rs. 88714/- in whole of the year, by simply mentioning possible leakage, while professional receipts remained at Rs. 841500/= against Rs.624250/- of the preceding year.

3. That the addition of Rs. 29689/- stating U/s 40A (iii) has been wrongly confirmed, in spite of capital expenditure for which payments were made at Rs.20000/- or below in a day after purchasing goods through two sales invoices & not Cash memoes.

4. That confirmation of addition made for Bank Interest paid at Rs 64563/- for clinic purposes is totally uncalled for, specially being the amount paid to Bank against loan obtained for converting ground floor of House into Nursing Home,

5. That addition confirmed at Rs.36000/- is not maintainable at all, towards house hold expenses shown at Rs. 168000/- being a small family with two minor children studying locally, living in own house, maintaining ordinary living standard & no vehicle.

6. That Appellate order is against law & facts of the case.”

3. We have heard Shri A.K. Jain, the ld. counsel for the assessee and Mrs. Rakhi Vimal, ld. DR on behalf of the Revenue. Ground No.1 is against the disallowance of Rs.22,180/- out of five different heads of expenditure, i.e., electricity, telephone, mobile, conveyance and miscellaneous expenditure. The disallowance was made on the ground that there would be possible leakages. In my view, such *ad hoc* disallowance of 25% is not called for. Thus, this disallowance is deleted.

4. The second addition is of Rs.29,689/- made u/s 40A(iii). The assessee had purchased medical instruments worth Rs.25,000/- in cash. He further purchased medical instruments, beds, etc., for Rs.1,23,445/-. As this purchases were made in cash, disallowance was made u/s 40A(iii). The assessee claims that the amounts were actually paid on

different dates in cash, below Rs.20,000/- and, hence, the provisions of section 40A(iii) will not apply.

5. As the assessee does not deny the fact of having incurred expenditure for purchases by way of cash above Rs.20,000/-, in my view, the first appellate authority was right in upholding this disallowance. The findings on page 5 of the order of the Id.CIT(A) are confirmed.

6. The next addition is disallowance of bank interest. The disallowance as made on the ground that the loan availed from bank is not for business or professional purposes. The Id.CIT(A) recorded as follows:-

“3. Addition of Rs. 64,563/= paid as Bank Interest:-

The Assessee has constructed a house up to the year 2006 and started living since then for which a house loan of Rs. 15 Lacs was obtained from PNB on 03.04.2006 A sum of Rs. 1,45,133/= was paid towards house loan interest on said loan of Rs. 15 Lac.

In the year 2007, it was decided to convert ground floor of residential house into Nursing Home/clinic so that a fresh second loan of Rs. 7 Lac was obtained in 2007 against same building from the same bank for Nursing Home purposes in vesting in to oxygen pipe line in walls, Nursing Home furniture and some alterations etc and Paid interest Rs. 64 563/= on it debiting Income & Expenditure account A copy of

loan sanction letter dated 07.02.2007 is being enclosed as.....
annexure-(B).

Since the said loan interest remained exclusively for Nursing Home/Professional purpose, it merits to be allowed completely, being exclusively incidental to professional work and income & specially when no clinic rent was paid in any way.

The facts of the case as well as submissions made by the appellant have been carefully considered. It is observed that the AO had made addition of Rs.64,563/- being disallowance of interest paid to bank on housing loan on the ground that the appellant on one hand, in the income & expenditure account had debited bank interest at Rs.64,563/- on account of housing loan interest whereas on the other hand, he had already debited the interest of Rs.1,45,133/- on account of housing loan.

On the other hand the appellant has contended loan of Rs.15,00,000/- was obtained on 03-04-2006 from Punjab National Bank for construction of house up to the year 2006 and interest of Rs.1,45,133/- was paid towards interest on housing loan. As per the appellant in the year 2007 fresh loan was raised for Nursing Home purposes and interest was paid to bank at Rs.64,563/-. The appellant has furnished copy of Loan Proposal/Sanction Letter dated 07-02-2007 issued by Punjab National Bank in support of his claim.

It is observed that the appellant has only furnished copy of Loan Proposal/Sanction Letter dated 07-02-2007 issued by Punjab National Bank in support of his claim. However, no details and evidence viz. copy of bank account establishing that loan of Rs.64,563/- was paid during the year, has been furnished. Thus in the absence of the same it is held that the AO was justified in making addition of Rs.64,563/-. The same is hereby confirmed. Ground of appeal No.4 is dismissed.”

7. The disallowance was confirmed by the Id.CIT(A) on the ground that no details and evidence was filed. In my view, the disallowance is

not sustainable for the reason that the AO has not made any such allegation. There is no basis for the Revenue to reject this claim of the assessee.

8. In the result, we allow ground No.4

9. Ground No.5 is against the of addition of Rs.36,000/- towards household expenses. The assessee submits that the total household expenses actually incurred and shown are for Rs.1,68,000/- which is very reasonable. The AO estimated the household expenses at Rs.2,04,000/- and made an addition of Rs.36,000/-. In my view, such an addition cannot be sustained as it is based on surmises and conjectures. Thus, this addition is deleted and Ground No.5 is allowed.

10. In the result, the appeal of the assessee is allowed in part.

The order pronounced in the open court on 04.11.2015.

Sd/-

[J.SUDHAKAR REDDY]
ACCOUNTANT MEMBER

Dated, 4th November, 2015.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.