

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 849/Del/2013
Assessment Year: 2009-10

Sh. Prashant Aggarwal, D-141, Sector-41, Noida	Vs.	Income Tax Officer, Ward-37(2), New Delhi
PAN : AEZPA6383D		
(Appellant)		(Respondent)

Appellant by	Sh. S.C. Agarwal, CA
Respondent by	Sh. F.R. Meena, Sr.DR

Date of hearing	08.08.2016
Date of pronouncement	05.10.2016

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 31/10/2012 passed by the learned Commissioner of Income-tax (Appeals)-XXVIII, New Delhi for assessment year 2009-10 raising following grounds:

"1. Ld. Income Tax Officer Ward 37(3) New Delhi was not justified to pass the assessment order of the appellant without having his jurisdiction. The Assessment order is absolutely illegal and is liable to set aside on the ground of assessment order passed beyond the jurisdiction of the Ld. Income Tax Officer Ward 37(3) New Delhi, the assessee resides at NOIDA, and is employed at Noida and is also doing his profession/ practice at Noida, despite of having filed the return of income stating his address of Noida, and

clearly mentioning the designation of Assessing Officer at Ward-3 Noida in the Return of Income.

Without prejudice to Ground No. 1 above, and to save otherwise the appellant further wants to give the following Grounds of Appeal also:-

2. The Ld. CIT (Appeal) was not justified not to hold a valid ground of dispute for disallowance of Rs. 1,33,376/-, as 1/6 of total expenditure Rs. 6,66,880/- merely on assumptions of Ld. A.O., the appellant has already declared net profit @ 28.429%, which is already reasonable in the profession of doctor. The appellant himself has never agreed to it, the disallowance is also highly pitched as well as arithmetically incorrect (1/6 of 6,66,880/- comes to an amount of Rs. 1,11,147/-).

3. The Ld. CIT (Appeal) was not justified to confirm the addition of Rs. 5,14,548/- (Rs. 2,27,000/- and 2,87,548/-) in two Bank Accounts made by the Ld. A.O. merely stating that the explanation is not satisfactory, the Ld. A.O. has made the additions without properly appreciating the sources, explanations and evidences furnished before him. The additions are improper, illegal, unjustified and are liable to be deleted.

4. The Ld. CIT (Appeal) was not justified to confirm the addition of Rs. 8,90,090/- in the Savings Bank Account with Standard Chartered Bank, made by the Ld. A.O. merely stating that the assessee has not given any explanation, the Ld. A.O. is erred on law and on facts to appreciate the sources, explanations and evidences furnished before him. The additions are improper, illegal, unjustified and are liable to be deleted.
The assessee craves leave to add, alter and amend any or more of the grounds of appeal before or at the time of hearing the appeal."

2. The facts in brief of the case are that the assessee is a medical doctor by profession and in the return of income filed

on 29/03/2010, declared income of Rs.1,47,960/- which consisted of salary, income from house property, profits and gains from profession. The case of the assessee was selected for scrutiny under Computerized Assisted Selection of Scrutiny (CASS) and notice under section 143(2) of the Income-tax Act, 1961 (for short 'the Act') was issued and served within the stipulated period. In the scrutiny assessment completed under section 143(3) of the Act on 29/12/2011, the Assessing Officer made following additions/disallowances to the returned income:

- (i) 1/6th disallowance out of expenses claimed against professional receipt amounting to Rs.1,33,376/-
- (ii) addition for unexplained cash deposits in ABN Amro bank accounts amounting to Rs. 5,14,548/-
- (iii) addition for unexplained cash deposits in Standard Chartered Bank Account amounting to Rs. 8,90,090/-

2.1 Aggrieved, the assessee filed appeal to the learned Commissioner of Income-tax (Appeals), however, the appeal of the assessee was dismissed and, therefore, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. The ground No. 1 of the appeal was not pressed by the learned Authorized Representative of the assessee and, therefore, being rendered infructuous, we dismiss the same.

4. In ground No. 2, the assessee challenged the disallowance of Rs.1,33,376/- out of the expenses claimed against professional receipts. The facts in respect of the disallowance are that in the computation of income filed, the assessee shown

gross receipt from profession of Rs.9,31,780/- and after deducting expenses of Rs.6,66,880/- declared profit/gains of Rs.2,64,900/- resulting into profit ratio of 28.42%. The Assessing Officer observed that the assessee had not maintained any bills/vouchers in support of the expenses of Rs.6,66,880/- and, therefore, according to him, the claim of expenses was not verified. The Assessing Officer further observed that the assessee himself had offered 1/6th of the expenses claimed for disallowances, which was worked out by the Assessing Officer at Rs.1,33,376/-. The learned Commissioner of Income-tax (Appeals) also observed that the assessee has not maintained any bills/vouchers in support of the expenses claimed and accordingly confirmed the action of the Assessing Officer in disallowing 1/6th of the expenses.

4.1 Before us, the learned Authorized Representative of the assessee submitted that books of accounts, bills and vouchers were examined and test checked by the Assessing Officer as appearing from the first para of the assessment order, and, therefore, the claim of the Assessing Officer that assessee has not maintained bills/vouchers in support of the expenses, is not correct. He further submitted that the assessee did not sign or submitted any offer letter for disallowance of 1/6th of the expenses. He also submitted that amount of 1/6th disallowance has also not been computed correctly by the Assessing Officer as this amount should have been to Rs.1,11,146/-. He further submitted that, if the Assessing Officer was not satisfied with a particular item of expenditure, he would have made

disallowances of same after verification, but the ad-hoc disallowance was not permissible under the law.

4.2 On the other hand, the learned Sr. Departmental Representative submitted that while making the disallowance for the expenses, the Assessing Officer has specifically mentioned that books of accounts in respect of expenses claimed against professional receipts have not been maintained by the assessee being the gross receipt less than Rs. 10 Lacs. The Assessing Officer has further specifically mentioned that the assessee has not maintained any bills/vouchers in support of the expenses claimed and, therefore, in absence of bills and vouchers, the genuineness of the expenses was not verifiable. Accordingly, he submitted that comments made inadvertently, in para-1 of the assessment order that books of accounts were test checked need to be ignored. He further submitted that in absence of bills/vouchers of expenses, there was no alternative left with the Assessing Officer except disallowing the expenses on proportionate basis. In view of above, the learned Senior Departmental Representative prayed that the order of the learned Commissioner of Income Tax (Appeals) on the issue in dispute might be confirmed.

4.3 We have heard the rival submissions and perused the material on record. We find that the Assessing Officer has specifically mentioned in the relevant paragraph, while disallowing the expenses claimed against professional receipt, that the assessee has not maintained books of accounts being the gross receipt from profession less than Rs. 10 lakh and the

assessee had not maintained bills and vouchers in respect of the expenses and, therefore, he was unable to verify the claim of the expenses. In our opinion, when the Assessing Officer has specifically mentioned in relevant paragraph of the assessment order the fact of non-maintenance of books of accounts and bills and vouchers for the claim of expenses against professional receipt, the general comment of the test check of books of accounts, bills and vouchers, in first paragraph of the assessment order is not relevant. Further, we find that the learned Commissioner of Income-tax (Appeals) has also observed that the assessee has not maintained books of accounts and bills and vouchers in respect of the expenses claimed. In view of above facts, the claim of the assessee that books of account in respect of expenses claimed against professional receipt were produced before the Assessing Officer is not tenable. We have observed that the assessee is a medical doctor and engaged in the providing consultancy etc. and he had not been able to produce bills and vouchers in respect of the claim of expenses of Rs.6,66,880/- against the professional receipts of Rs.9,31,780/- and in those circumstances the estimate of disallowance of 1/6th of the expenses by the Assessing Officer is reasonable irrespective of the fact whether the same was accepted by the assessee or not. However, we agree with the contention of the learned Authorized Representative that 1/6th disallowance of the Rs.6,66,880/- works out to Rs.1,11,147/- and, therefore, the disallowance should be restricted to amount of Rs.1,11,147/-.

4.4 We may like to mention here that the legislature has introduced Section 44ADA in the Act for computing profit and gains of professional on presumptive basis w.e.f. 01/04/2007, wherein if professional receipts are not exceeding Rs. 50 Lacs, the 50% of the professional receipt has been presumed as profit and gains from the profession. The relevant part of the provision is reproduced as under:

Section 44ADA (1)

"The following section 44ADA shall be inserted after section 44AD by the Finance Act, 2016, w.e.f. 1-4-2017 :

Special provision for computing profits and gains of profession on presumptive basis.

*44ADA. (1) Notwithstanding anything contained in **sections 28 to 43C**, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of **section 44AA** and whose total gross receipts do not exceed fifty lakh rupees in a previous year, **a sum equal to fifty per cent of the total gross receipts** of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, **shall be deemed to be the profits and gains of such** profession chargeable to tax under the head "Profits and gains of business or profession".*

(emphasis supplied by us)

4.5 In the case of the assessee, we find that even after incorporating the disallowances made by the Assessing Officer the profit from profession arrives at around 40.35% of the professional receipt and which is even much below the 50% threshold adopted by the legislature for computing income in case of professional on presumptive basis, therefore, in the facts and circumstances of the case, according to us the

disallowance of 1/6th of expenses made by the Assessing Officer is reasonable and no interference on our side is required, however, the same is restricted to amount of Rs. 1,11,147/- computed correctly as 1/6th of the expenses claimed. Accordingly, the ground No. 2 of the appeal is allowed partly.

5. In ground No. 3, the assessee has challenged addition of Rs.5,14,548/- made towards unexplained deposits of Rs.2,27,000/- and Rs.2,87,548/- into bank accounts maintained by the assessee. The facts in respect of issue in dispute are that the Assessing Officer called for detailed statements of two banks account bearing numbers 1044766 and 1238024 maintained with ABN Amro bank and observed that these bank accounts were not declared in the return of income or in the details furnished during assessment proceedings. He observed cash deposits of Rs.2,27,000/- and Rs.2,87,548/-, totalling to Rs.5,14,548/- in these two bank accounts. The explanation furnished by the assessee was not found to be satisfactory by the Assessing Officer in absence of any documentary evidence and accordingly he made addition for the amount of Rs.5,14,548/-. Before the learned Commissioner of Income-tax (Appeals) also the assessee did not file any explanation or documentary evidence and therefore he sustained the addition.

5.1 Before us, the learned Authorized Representative of the assessee submitted that the deposits in the two bank accounts were received from tenants towards reimbursement for mess

expenses i.e. cost of the food prepared in a common kitchen and provided to the tenants no profit no loss basis and the assessee had deposited the aforesaid sum in the bank after collection from tenants and has withdrawn and spent on fooding and other expenses of tenants during the year from time to time and the closing balance of the accounts on 31/03/2009 was Rs. 24.71 and Rs. 1 463.76 aggregating to Rs. 1,488.47 only. The Ld. authorised representative referred to the bank statements available at pages 35 and 37 of the paper book.

5.2 On the other hand, the learned Senior Departmental Representative submitted that no explanation in respect of the deposit was filed before either the assessing officer or the learned Commissioner of Income-tax (Appeals) and it is for the first time that the assessee has submitted explanation of running mess for the tenants without any documentary evidence in this regard, and therefore such explanation may not be admitted.

5.3 We have heard the rival submission and perused the material on record. The learned Sr. Departmental Representative submitted that no such explanation of running mess for the tenants was submitted before the lower authorities and it is the first time, the assessee submitted of running a mess before the Tribunal and that too without any supporting documentary evidence. He also submitted that in the statement of bank accounts under reference, the deposits made are in cash whereas the expenses have been incurred

mostly by cheque. Whereas, the learned Authorized Representative submitted that explanation of assessee of running mess was not considered by the Assessing Officer. In view of the facts, we are of the opinion that the explanation of the assessee need to be examined by the Assessing Officer and, therefore, we feel appropriate to restore the issue to the file of the Assessing Officer for examination of the assessee's claim of deposits from tenants and expenditure made in cash as well as a through cheque from the two bank accounts of the assessee and determining profitability in the venture of running mess, if any, in accordance with law after providing sufficient opportunity of hearing to the assessee. The assessee is also directed to produce all evidences in respect of its claim of running mess for the tenants. The ground of appeal is accordingly allowed for statistical purpose.

6. In ground No. 4, the assessee has challenged addition of Rs.8,90,090/- towards unexplained deposits in saving bank account with the Standard Chartered Bank. The facts in respect of issue in dispute are that as per the information received from annual information return, the assessee had deposited cash of Rs.30,58,140/- in the saving bank account bearing No. 530-1-031467-3 of the Standard Chartered bank, Noida, Uttar Pradesh. The Assessing Officer observed that the assessee explained a sum of Rs.16,36,270/- as rent received, Rs.9,31,780/- as the professional receipt, however, could not explain the balance deposit of Rs.8,90,090/- and, therefore, accordingly, he held the amount as unexplained deposit. The

learned Commissioner of Income-tax (Appeals) also observed that the assessee failed to furnish any explanation in respect of the unexplained deposits of Rs.8,90,090/- and upheld the same.

6.1 Before us, the learned Authorized Representative of the assessee submitted that cash deposit of Rs.8,90,090/- with the Standard Chartered Bank was consisting of Rs.2,75,500/- as security deposit for two months from tenants and Rs.5,98,452/- were reimbursement of expenses like electricity, water bills, cleaning and maintenance, security service charge and security deposit etc. The learned Authorized Representative submitted that this explanation was submitted before the Assessing Officer vide submission dated 28/12/2011, (a copy of which has been filed at page 50 of the paper book of the assessee), however, same was not considered by the Assessing Officer.

6.2 On the other hand, the learned Senior Departmental Representative submitted that the assessee did not file any explanation, even before the learned Commissioner of Income-tax (Appeals) and, therefore, these explanations of the assessee cannot be accepted.

6.3 We have heard the rival submission and perused the material on record, including the paper book filed by the assessee. The learned Authorized Representative of the assessee has claimed that cash deposits are from the deposit of rent for the two months and other expenses towards maintenance of the house property. We find that this claim of the assessee has not been examined by the Assessing Officer in

absence of any documentary evidences submitted by the assessee before him. In view of the facts and circumstances of the case, we feel it appropriate to restore the matter to the file of the Assessing Officer for examination of the documentary evidences in accordance with law, after providing sufficient opportunity of hearing to the assessee. The assessee is also directed to produce all the necessary evidences in support of its explanation towards deposit of cash in bank account. Accordingly, the ground No. 4 of the appeal is allowed for statistical purpose.

7. The ground No. 5 is general in nature, is not required to be adjudicated upon by us.

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

The decision is pronounced in the open court on 5th October, 2016.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER
Dated: 5th October, 2016.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Laptop/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi