

(2015) 08 JH CK 0050
In the Jharkhand High Court
Case No : Tax Appeal No. 24 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Pratima Prasad

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(4A), 158B(b), 69C

Citation : (2016) 1 AJR 70 : (2015) 4 JLJR 576

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Deepak Roshan, Advocate, for the Appellant; Mahendra Choudhary and Amrita Sinha, Advocates, for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—This appeal has been preferred by the Commissioner of Income Tax, Ranchi, against the judgment and order dated 13th April, 2006, passed by the Income Tax Appellate Tribunal, Ranchi Circuit Bench, Ranchi in I.T. (SS) No. 13/Pat/2004 for the block assessment year running from 1st April, 1987 to 27th October, 1997, whereby, the order passed by the Commissioner of Income Tax (Appeals), Jamshedpur, dated 30th October, 2003, has been upheld by the learned Tribunal.

FACTUAL MATRIX:

"? Search was carried out by the appellant at the Nursing Home of the respondent on 21st October, 1997. During search, several books of account and loose papers were seized. Narration of the seized documents reveals that few registers, which are marked as TKS-51, 52, 53 and 56 as also TKS 2, 5 & 4 were seized, which were pertaining to assessment year 1989-90 for which addition of Rs. 56800/- was made by the Assessing Officer. Similarly, for the assessment year 1990-91 addition of Rs. 28826/- was made on the basis of cash memos, which were seized and marked as TKS-53, 54, 55, 56, 57, 59 and 60. Likewise, details of other years and the period are mentioned in para 6 of the order, passed by the Assessing Officer dated 29th October, 1999.

? It further appears from the facts of the case that on the basis of the registers, which were seized from the Nursing Home being TKS- 1 to 12, it has been pleaded by the appellant that medical treatment was given to several patients at the nursing home of the respondent and the registers reveal only the registration fees, but, the actual bill amount must have been paid in cash and, therefore, per patient of Rs. 2000/- has been calculated and, this amount of Rs. 2000/- was multiplied by number of patients, mentioned in registers and this is how huge income has been added, which is at Rs. 1,14,86,000/-. This is a total amount calculated by Assessing Officer and the net profit is taken at the rate of 20%, which comes to Rs. 22,97,200/-. This amount is added back to the total income of the assessee as an undisclosed income for the block period running from 1988-89 to 1997-98 and for broken period running from 1st April, 1997 to 21st October, 1997.

? Against these additions made by the Assessing Officer vide order dated 29th October, 1999, appeal was preferred by respondent-assessee before the CIT(Appeals). The said appeal bearing No. 205/JSR/2001-02 was allowed by the CIT (Appeals), Jamshedpur vide order dated 30th October, 2003, and the additions were deleted, mainly on the ground that the whole calculation was made on the basis of presumption and surmises and so far as cash-memos and registers etc. are concerned, the said amount was inclusive of other payments and also the payments towards the medicine.

? Against the aforesaid order passed by the CIT (Appeal), an appeal was preferred by this appellant before the Income Tax Appellate Tribunal. This appeal was dismissed by ITAT vide order dated 13th April, 2006 and, therefore, the present appeal has been preferred by the appellant in which the following substantive questions of law have been raised.

"(i) Whether, on the facts and in circumstances of the case, the Hon"ble ITAT was justified in upholding the order of the learned CIT(A) who has decided an addition of Rs. 22,97,200/- added as undisclosed income by the A.O. Based on seized materials marked as TKS-1 to TKS-12 and T.K.S.-33, and whether the upholding of the order of the CIT(A) by the ITAT was on proper appreciation of evidence found during the course of search under Section 132 of the Income Tax Act, 1961?

(ii) Whether, on the facts and in circumstances of the case, the deletion of other additions amounting to Rs. 2,39,967/- was based on proper appreciation of evidence?

(iii) Whether, on the facts and in circumstances of the case, the Hon"ble ITAT was justified in restoring the matter back to the file of A.O. Regarding addition of Rs. 6,49,200/- made under Section 69C of the Income Tax Act, 1961, as unexplained expenditure based on seized materials as per provisions contained under Section 132 of the Income Tax Act, 1961?

(iv) Whether, on the facts and in circumstances of the case, the Hon"ble ITAT

while deleting the additions made properly appreciated the meaning of "undisclosed income" as defined under Section 158B(b) of the Income Tax Act, 1961?

(v) Whether, on the facts and in circumstances of the case, the Hon''ble ITAT failed to consider that all the additions made by A.O. are based on the materials and evidences seized during the search as such has failed to consider the provisions of Section 132(4A) of the Income Tax Act, 1961?

(vi) Whether, on the facts and in circumstances of the case, the observation made by the ITAT to the effect that the additions are not based on seized materials is correct in view of the fact that the ITAT failed to apply its mind nor perused the seized materials which is the basis of the assessment order?

(vii) Whether, on the facts and in circumstances of the case, the ITAT before passing the impugned order ought to have relied upon the judgment of Hon''ble Supreme Court decided in the case of The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, ?"

While admitting the appeal by a Division Bench of this Court, vide order dated 19th November, 2013 the following substantial questions of law were formulated:

"Whether on the facts and circumstances of the case, the Hon''ble ITAT failed to consider that all the additions made by A.O. are based on the materials and evidences seized during the search as such failed to consider the provisions of Section 132(4A) of the Income Tax Act, 1961?"

Arguments canvassed on behalf of the appellant:

"? Learned counsel appearing for the appellant submitted that looking to the seized registers TKS 1 to TKS 12 only registration fees are being reflected, but, it appears that on the date of the discharge of the patients, the total bill amount was paid in cash. These details have been mentioned in para 6 of the order passed by the Assessing Officer. No register was found for the assessment year 1995-96 and 1996-97 and, therefore, for those two years estimated patients were considered as 1000 per annum, as per the order of Assessing Officer. Thus, figure of the total patients came to 5743 and looking to the total receipt of Rs. 10,20,600/- on the basis of cash memo seized for the broken period from 1st April, 1997 to 21st October, 1997 i.e. for the period of six months and 21 days and for 541 cases recorded in the register, average per patient approximately Rs. 2000/- must have been received by the respondent and this is how the calculation is made for the patients of the block period and the total receipt calculated by Assessing Officer for the block period as well as for the broken period is at Rs. 1,14,86,000/- and profit is considered at the rate of 20%, which comes to Rs. 22,97,200/- and this amount is added back to the income of the assessee.

? It is submitted that for the assessment year 1989-90 the total receipt from the seized documents comes to Rs. 1,55,445/- and, the assessee has shown Rs.

19565/- in her income-tax return. Thus, from the seized registers and from the income tax return, the difference comes to Rs. 56,880/-. This amount is added to the income of the assessee as an undisclosed income of the assessee.

? Likewise for the assessment year 1990-91 from the seized cash memo/bills, the total receipt comes to Rs. 1,29,436/- whereas in the income-tax return, the disclosed income is at Rs. 1,00,610/- and, therefore, the difference comes to Rs. 28,826/-. This amount is added to the income of the assessee, as the same is undisclosed income of the assessee.

? Similarly, for the assessment year 1992-93, the difference comes to Rs. 74,341/- which is added back to the total income of the assessee as an undisclosed income.

? It is submitted that these additions were, on the basis of the documents and the records, but, these aspects of the matter have not been properly appreciated either by the CIT(Appeals) or by the ITAT. The calculation of the addition is absolutely logical, true, correct and scientific in nature and in consonance with the provisions of the Income Tax Act, 1961. Hence the orders passed by CIT(Appeals) and ITAT deserve to be quashed and set aside and the aforesaid additions which are deleted by the orders of the CIT(Appeals) and ITAT, as per the order made by Assessing Officer, may be declared to be true and correct."

Argument canvassed on behalf of the respondent:

"? Learned counsel appearing for the respondent submitted that the calculation made by the Assessing Officer for undisclosed income, on the basis of the seized registers TKS-1 to TKS-12 is absolutely baseless. There is a presumption on the part of this appellant that there is cash payment of the amount of treatment by the patients. Secondly, the number of patients calculated by appellant is also on the basis of presumption and surmises. Moreover, the multiplication of Rs. 2000/- per patient is also baseless and, the same is not supported by any evidence. It is submitted that when any assessment is made for a block period, the said addition should be on the basis of the evidence on record and on the basis of the documents seized, but, in the facts of the present case, from the seized documents, these additions, which are made by Assessing Officer, have not been proved at all. The said additions have been made by presuming certain facts, for which there is no evidences on record at all. These aspects of the matter have been properly appreciated by the CIT(Appeals) and ITAT.

? It is further submitted that so far as addition of Rs. 56800/- for the assessment year 1989-90 is concerned, it has been rightly appreciated by the CIT(Appeals) and ITAT that the amount paid by the patients is inclusive of the payment made to others for medicines etc. Whatever is paid by the patients is not an income of the respondent-assessee. Same is the logic regarding the addition for assessment year 1990-91 at Rs. 28826/- as well as for addition at Rs. 74341/- for assessment year 1992-93.

? It is thus, submitted that this appeal may not be entertained by this Court, because additions cannot be made by the Assessing Officer on the basis of presumption and surmises and without any basis of facts, for which there ought to have been evidence before the Assessing Officer."

REASONS:

2. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this appeal, mainly for the following facts and reasons:

"(i) It appears that the Assessing Officer has committed an error in calculation of income of the respondent and the additions have been made on the basis of presumption and surmises and without any evidences on record. In the registers, which were seized bearing No. TKS-1 to TKS-12, some amount has been mentioned, which is received by the respondent assessee. The Assessing Officer has presumed that still further amount must have been paid by the patients, in cash. There is no evidence taken by the Assessing Officer, by examining any of the patients that he has paid any amount, in cash, over and above what is stated in the register. Not a single patient has been examined by the appellant for any of the block years or for the broken period. Moreover, the Assessing Officer has presumed the number of patients also for two assessment years i.e. 1995-96 and 1996-97 as 1000. The Assessing Officer has also presumed the average rate of Rs. 2000/- per case, on the basis of cash memo seized for broken period running from 1st April, 1997 to 21st October, 1997. For this broken period the total receipt comes to Rs. 10,20,600/- and the total number of cases were 541 and, therefore, average comes to Rs. 2000/- per patient. Thus, the rate which was found out by the Assessing Officer in the year, 1997 has also been made applicable in the year 1988-89 and, that too, on the presumed number of patients. This is not permissible in the eyes of law. The total calculation of receipts of the respondent-assessee, which worked out at Rs. 11,48,600/- is absolutely a baseless calculation.

(ii) It further appears that no error has been committed by CIT(Appeals) and ITAT in deleting these additions. Such type of additions cannot be permitted, because it is absolutely a baseless calculation and without any evidence.

(iii) It is further appears that the Assessing Officer has made addition of Rs. 56,800/- for the assessment year 1989-90. Similarly, for the assessment year 1990-91 an addition was made at Rs. 28,826/- and for the assessment year 1992-93 addition was made at Rs. 74,341/-. It appears that these additions also could not have been made by the Assessing Officer, because the amount mentioned is inclusive of payment to be made to the others for medicines etc. This is not a gross receipt of the respondent. These aspects of the matter have been properly appreciated by the CIT(Appeals) and ITAT. The amount received by the respondent for the aforesaid assessment years cannot be added to the income of the assessee, because the same is inclusive of the payment to be

made to the others and for other purposes like medicines etc."

3. Thus, we see no reason to entertain this Tax Appeal and no substantive question of law is involved in this Tax Appeal. In fact, this Tax Appeal is based upon the facts of the case and as stated herein above, the additions made by Assessing Officer is absolutely baseless and without any evidence and rightly, therefore, they have been deleted by the CIT(Appeals) and ITAT vide order dated 30th October, 2003 and 13th April, 2006, respectively.

4. Hence, this Tax Appeal is hereby dismissed.