

Court No. - 35

Case :- INCOME TAX APPEAL No. - 5 of 2008

Appellant :- Dr. Prabhu Dayal Yadav

Respondent :- Commissioner Income Tax

Counsel for Appellant :- S.K.Garg,Ashish Bansal

Counsel for Respondent :- C.S.C.,Ashish Agrawal

Hon'ble Bharati Sapru,J.

Hon'ble Saumitra Dayal Singh,J.

This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') has been filed against the order dated 10.08.2007 passed by the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad in the assessee's appeal for the Assessment Year 2003-04. The appeal was admitted on the following questions of law:-

“(i) Whether on a true and correct interpretation of the provisions of section 145, the ITAT was legally correct in upholding the rejection of books of account and estimate of income from the profession of surgery and consultancy as was carried on by the appellant?”

(iv) Whether there exist any basis for estimating the income from the medical profession as carried on by the assessee @ 50% of the receipts, as enhanced?”

Admittedly, the assessee is a practicing doctor (surgeon) who had been running a nursing home. On 18.12.2002 a survey under Section 133A of the Act was conducted at the nursing home of the assessee. During that survey, various account books and registers were examined and also seized, including the OPD register, Indoor Patient register and certain other loose papers. In his return for the A.Y. 2003-04, the assessee filed his

return disclosing total income at Rs. 2,24,600/-. Subsequently, the said assessment was taken up for scrutiny wherein the assessing officer noted that upon test check being made there some discrepancy were noted between the entries recorded in the books of account of the assessee and registers and documents seized during the survey. However, the nature and extent of such discrepancy was disclosed in the assessment order. The assessing officer then proceeded to reject the assessee's books of account under Section 145(3) of the Act on the reasoning that the entries made in the OPD and Indoor Patient register and books of account were not supported by vouchers of payments received from patients. The assessing officer thereafter estimated the income of assessee at Rs. 20,83,000/-.

Against the aforesaid assessment order, the assessee filed first appeal before the Commissioner (Appeals). It was partly allowed by order dated 23.08.2006. While the CIT (Appeals) made certain deletions, in so far as rejection of the books of account is concerned, the same was upheld.

Being aggrieved, the assessee as also the revenue appealed before Income Tax Appellate Tribunal, Allahabad. The Tribunal has vide it's order dated 10.08.2007 rejected both the appeals and confirmed the order passed by the CIT (Appeals).

We have heard Sri Ashish Bansal, learned counsel for the assessee and Sri Ashish Agrawal, learned counsel for the revenue.

Learned counsel for the assessee submits, in order to sustain the rejection of the books of account, the revenue must establish existence of the conditions prescribed under Section 145(3) of the Act. In so far as there is no dispute as to the method of accounting or computation in accordance with standards notified, in the instant case, the books of account of the assessee could have been rejected only if the same had been incomplete or incorrect. He then submits, in the instant case, admittedly at the time of survey difference between the OPD register as also Indoor Patient register were found maintained wherein details such as the names of the patients, payment received were found recorded. Merely because there were no vouchers in support of such entries or because the address of the patients from whom the assessee received payments have not been recorded, could not have been a ground to reject the books of account of the assessee as either incomplete or incorrect in absence of any evidence of assessee being in receipt of any undisclosed income.

Then, he has taken us to the order of the Tribunal. We find that the Tribunal has also confirmed the order of the lower authorities with regard to the rejection of the books of account of the assessee for reason of lack of

vouchers and because the addresses of the patients were found not mentioned. The other reasons relied upon by the Tribunal is that in the post survey period the receipt of the assessee had reduced drastically.

He therefore submits, the revenue did not find any evidence that may lead to the conclusion that the assessee's books of account were such as were not reflecting full and true income of the assessee. In absence of any evidence either documentary or oral led by the revenue such as may suggest that the receipts recorded by the assessee in the OPD register and indoor patient register were under disclosed, there did not arise any presumption that those books of account of the assessee were incomplete or incorrect.

He has further referred to paragraph 4 of the assessment order wherein the assessing officer had himself recorded that test check was made with the OPD/Indoor Patient register from the books of account of the assessee. Thereafter, it has been further recorded that in the OPD register and Indoor Patient register the assessee had made entries of admission of patients, fee charged from them operation fees bed fee etc. These entries were found recorded from 12.09.2002 to 31.03.2003. Thereafter, a mere observation had been made in the assessment order that the books of account produced in which the entries were made did not tally with the register that was seized during the course of survey

conducted under Section 133A of the Act without giving any further detail of the extent to which entries allegedly did not match and without drawing any conclusion as to how the assessee had under disclosed his income.

Further, from the assessment order it has been shown that the assessee had produced his cash book, ledger, indoor patient register from the period 19.12.2002 to 31.3.2003, OPD register and bank pass book.

It has therefore submitted that the books of account of the assessee had been rejected arbitrarily in absence of satisfaction of the statutory condition. Alternatively, learned counsel for the assessee has submitted that the enhancement made on estimate is wholly arbitrary.

Opposing the above, learned counsel for the revenue submits that burden to establish correctness and completeness of the books of account was of the assessee. In so far as the assessee did not produce the vouchers and did not disclose the address of the patient and no person was produced before the assessing officer for examination, the assessee never discharged the burden. He therefore, submits that the books of account of the assessee were rightly rejected and the estimation made being a matter of guess work, the same does not give rise to any substantial question of law.

Having considered the arguments so advanced by learned counsel for the parties, we find that in the peculiar facts of this case, the assessee had been subjected to a

survey wherein the OPD register as also Indoor Patient register had been found to have been maintained and entries of receipts of money from different patients were found recorded therein. Then as to the alleged discrepancy, the allegation made in the assessment order is wholly vague inasmuch as the assessing officer has not recorded the nature and extent of discrepancy, if any noticed between entries found recorded in various books of account produced by the assessee during the course of the survey and assessment proceedings. Besides the above the assessee had also produced his cash book, ledger as also bank pass book. No specific discrepancy or deficiency has been pointed out in the assessment order on account of other books of account.

Thus, it appears that the books of account of the assessee have been rejected merely because the assessee did not produce the vouchers. Though, such vouchers may have been maintained, however, in the entirety of the facts found in this case the assessee had maintained his accounts and recorded his professional receipts therein. No evidence exists to doubt the correctness or completeness of the books of account of the assessee. In the instant case, books of account of the assessee were rejected unfounded suspicion. Absence of vouchers, in the peculiar facts of this case did not give rise to any presumption that there was any non-disclosure of income inasmuch as there is no evidence to doubt the

correctness of the entries made in the OPD register as also Indoor Patient register.

Also, by an earlier order in this appeal a supplementary affidavit had been called for to bring on record the status of the past and later assessment order in the case of the assessee. In pursuance thereto the assessee has filed a supplementary affidavit wherein the income earned from different assessment year and assessment has been disclosed as below:-

Asst. Year	Income from profession as per return	Remarks, if any
2002-03	1,95,150	Assessed u/s 143(1)
2003-04	2,34,540	Year under appeal u/s 260A before this Hon'ble High Court
2004-05	2,24,820	Assessed u/s 143(1)
2005-06	1,89,000	Assessed u/s 143(1)
2006-07	2,51,346	Assessed u/s 143(1)
2007-08	2,07,702	Assessed u/s 143(1)
2008-09	2,64,311	Assessed u/s 143(3) by ITO, W-II, Azamgarh dated 31.12.2009.

A bare perusal of the aforesaid chart indicates that for the A.Y. 2008-09 the assessee had been assessed under Section 143(3) of the Act at a total income of Rs. 2,84,371/-. In that assessment the books of account of the assessee were also accepted. It clearly appears that the income disclosed by the assessee in the present year is similar or comparable to the income which the department assessed at the hands of the assessee five

years later. This fact itself indicates that the rejection of books of account and the consequential best judgment assessment made by the assessing officer in the present year is wholly excessive, arbitrary and unfounded.

In view of the above, we answer question no.1 in favour of the assessee and against the revenue. We have found that the rejection of books of account of the assessee was unfounded. Consequently the estimation and enhancement of income that followed also cannot be sustained. Question no.4 thus does not require to be answered. Accordingly, the appeal is **allowed**. No order as to costs.

Order Date :- 11.12.2017

A. Singh