

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. SANJAY GARG, JM & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 515/Chd/2023
निर्धारण वर्ष / Assessment Year : 2019-20

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| Aniljit Singh Arora House No. 153, Ajit Nagar Patiala, Punjab - 147001 | बनाम | DCIT Central Circle Patiala |
| स्थायी लेखा सं./PAN NO: ADCPA4614M | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : Shri Rakesh Cajla, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 19/12/2023
उद्घोषणा की तारीख/Date of Pronouncement : 15/02/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the assessee against the order of the Ld. CIT(A) - 5, Ludhiana dt. 20/07/2023 pertaining to A.Y 2019-20.

2. In the present appeal, the assessee has raised the following grounds of appeal:

"1. That the order of the Ld. CIT(A) is bad in law and against the facts of the case.

2. That the Ld. CIT(A) is not justified in upholding the order of the assessing authority, wherein the surrendered amount on account of construction of building was treated as deemed income and the provisions of section 115BBE was applied on the surrendered amount.

3. That the Ld. CIT(A) is erred in upholding the order of the Ld. Assessing Officer, wherein the source of the surrendered amount was fully explained at the time of survey.

4. That the Ld. CIT(A) is failed to appreciate the fact that amount was surrendered out of professional receipts of the assessee.

5. *That the Ld. CIT(A) is erred in ignoring the statement of the assessee recorded at the time of survey and the submissions/documents submitted before him during the appellate proceedings.*

6. *That the Ld. CIT(A) is not justified in following the judgments relied upon/submitted during the appellate proceedings and he failed to appreciate the fact that the ratio of the judgments relied upon by him are not applicable in the case of the assessee.*

7. *That the assessee craves leave to add, amend or delete any of the ground(s) of appeal before it is finally heard."*

3. Briefly the facts of the case are that the assessee is a practicing physician and a child specialist running his professional practice under the name and style of Dr. Aniljit's childcare. A survey operation under section 133A was carried out at the official premises of the assessee on 28/02/2019, two days before the close of the financial year 2018-19 relevant to the impugned assessment year 2019-20 wherein the assessee surrendered a sum of Rs 30 lacs for the assessment year 2015-16 and Rs. 1.75 Crores for the impugned assessment year 2019-20. Thereafter, the assessee filed his return of income for the impugned assessment year 2019-20 on 29/10/2019 disclosing the income so surrendered of Rs 1.75 Crores as business income. The return of income was selected for scrutiny and notice under section 143(2) and 142(1) were issued and necessary submissions were filed by the assessee.

4. In the assessment order so passed u/s 143(3) dated 03/03/2022, the AO has stated that during the course of survey, it was observed that the assessee has carried out construction of the hospital building situated at plot no. 3, Min Vaka Cantonment road, opposite old Leela Bhawan Palace, Patiala and the matter was referred to the Valuation Officer under Section 142A during the course of assessment proceedings for determining the value of investment in the construction of the said building. The Valuation officer thereafter carried out the inspection of the hospital building and calculated the value of the investment at Rs. 1,61,66,000/-. The AO compared the said value with the value as per the balance sheet of the assessee as on 31/03/2019 wherein the assessee has

declared value of building at Rs. 1,55,52,238/- and held that there was a short fall of Rs. 6,13,762/- in the value of investment in the building declared by the assessee and a show cause vide notice dated 12/02/2022 was issued to the assessee as to why the investment in building not declared/accounted for amounting to Rs. 6,13,762/- may not be treated as unexplained investment under section 69 of the Act.

5. In response, the assessee submitted that the difference in value of building reflected in the balance sheet and declared by him, and that determined by the valuation officer is negligible and same may be ignored. However, the AO went ahead and made the addition of Rs. 6,13,762/- under Section 69 of the Act.

6. The AO issued another show cause to the assessee, referring to the surrender letter dt. 28/02/2019 wherein the assessee surrendered a sum of Rs. 1,20,00,000/- on account of understated expenditure involved in construction of the aforesaid hospital building, as to why the unexplained investment in building amounting to Rs 1,20,00,000/- may not be charged to tax under section 69 r.w.s 115BBE of the Act.

7. The assessee in his submission submitted that the source of investment is out of his unaccounted professional receipts mainly for the financial year 2018-19, which was again not found acceptable to the AO. As per the AO, the unaccounted investment carried out by the assessee came to light only as a result of survey action. Further the assessee has carried out investment in purchase of plot of land and even the said investment has not been recorded in his regular books of account as the assessee has not declared building / land asset in balance sheet filed with ITR for A.Y 2018-19 which was filed on 30/09/2018 well before the date of survey wherein the plot of land was purchased by him on 22/07/2014 and 04/12/2014. It was further held by the AO that the assessee has surrendered additional business receipts amounting to Rs.

55,00,000/- during the course of survey. Hence the said surrendered business receipt cannot be deemed to be part and parcel of the income surrendered on account of investment in building amounting to Rs. 1,20,00,000/- which remain unexplained and same was treated as unexplained investment under Section 69 of the Act as against business income shown by the assessee. As far as additional business receipts amounting to Rs. 55,00,000/- surrendered during the course of survey and which was offered as business income by the assessee in his return of income, the same was duly accepted by the AO without recording any adverse findings.

8. Being aggrieved with the adverse findings of the AO relating to hospital building, the assessee carried the matter in appeal before the Ld. CIT(A) and necessary submissions were made and which were considered by the Id CIT(A).

9. Firstly, regarding difference in valuation of the hospital building and addition of Rs 6,13,762/- so made by the AO u/s 69, the Ld. CIT(A) found merit in the submissions of the assessee that the difference in valuation is only 3.50% and held that the valuation process involves some degree of assumption/estimation and there is bound to be difference between report of different valuers and one cannot ignore the factors such as self-supervision, application of CPWD/PWD rates, etc, which have a bearing on the valuation. Accordingly, the addition made by the AO on account of difference in valuation of building amounting to Rs. 6,13,762/- was deleted and the same has since attained finality in absence of any further appeal by the Revenue. The value of the investment in the hospital building shall therefore be taken as declared by the assessee in its books of accounts as on 31/03/2019 at Rs. 1,55,52,238/-.

10. Regarding the applicability of Section 69 r.w.s 115BBE on the surrendered amount of Rs. 1.20 Crores in relation to investment in construction of the hospital building, the findings of the AO were however upheld by the Id CIT(A).

11. Against the said findings and directions of the Id CIT(A), the assessee is now in appeal before us.

12. The limited dispute therefore before us relates to applicability of Section 69 r.w.s 115BBE on the surrendered amount of Rs. 1.20 Crores in relation to investment in construction of the hospital building as against business income offered by the assessee in his return of income.

13. During the course of hearing, the Ld. AR drawn our reference to the statement of the assessee recorded during the course of survey wherein in response to Question No. 15 wherein the assessee was asked to explain the source of investment in the construction of building, the assessee explained that the expenditure for investment has been made from his business receipts mainly in the F.Y 2018-19 and the same will be shown in the return to be filed for A.Y 2019-20. Further referring to Question No. 20 wherein the assessee was asked about the non disclosure of the capital asset in the books of account and the fact that the construction of the property was started in April 2018 and civil construction was completed in December 2018, the assessee submitted that he had about Rs. 18,56,000/- as cash in hand as on 31/03/2018 which has been used for the purpose of construction of building. Further, to cover up the discrepancies, he has offered a sum of Rs. 1.20 Crores over and above his normal business income. It was accordingly submitted by the Id AR that in the statement, the assessee has categorical stated that investment in construction of building was made out of his professional receipts wherein part of withdrawal amounting to Rs. 35,52,238/- was made for construction of property from the books of accounts and the remaining amount of Rs. 1.20 Crores was out of his unaccounted profession receipts for the year under consideration. It was submitted that the factual position therefore is that the assessee has constructed the building and the construction / building is appearing in the books of accounts of the assessee and certain amount was spent by the

assessee on the construction of the building by withdrawal from the books of accounts and the balance amount was out of unaccounted professional receipts and which was surrendered during the course of survey and the nature and source of such investment was out of his professional income which was unaccounted and invested in the construction of the hospital building.

14. It was further submitted that the department during the course of survey had not found any other activity or source of income except the activity of running of a child care clinic and receipts arising therefrom and other than that, there is no other finding recorded by the Survey team as to any other source of income. All the income surrendered was subsequently reflected in the books of account and in the return of income and due taxes have been paid thereon. It was submitted that once a specific surrender is made which has been accepted by the Department and tax has been realized, the department cannot take a different position while finalizing the assessment by taxing the same under the head "income from other sources" under section 69 of the Act.

15. It was further submitted that no evidence was found during the course of survey that assessee had made any investment for which no explanation was offered regarding source of the said investment. It was submitted that the investment made for the construction of building was from the day to day professional receipts though unaccounted and as such the amount surrendered of Rs. 1.20 Crores ought to be treated as business/professional income.

16. It was further submitted that the observation of the AO that the assessee has not declared any building / land asset in the balance sheet filed with ITR for A.Y 2018-19 is factually not correct as the assessee has duly declared the value of the plot / land in the balance sheet as on 31/03/2018 as well as 31/03/2019 under the head plot amounting to Rs. 42,24,100/- and copy thereof has been placed on record.

17. It was further submitted that the similar matter has been decided in number of judicial decisions wherein the amount surrendered on account of stock, advances / debtors/ investment in building has been treated as income from business and profession. Referring to the decision of Hon'ble Punjab & Haryana High Court in case of M/s Kim Pharma 250 CTR 454, it was submitted that the surrender made on account of sundry credits, repairs to building and advances to staff have been held to be relatable to business whereas in respect of cash, it was held to be not assessable under "income from business".

18. Further referring to the Coordinate Chandigarh Bench decision in case of M/s Gaurish Steels Pvt. Ltd. Vs. ACIT (*ITA No. 1080/Chd/2014*), the Ld. AR submitted that in that case, the surrender made by the assessee was on account of cash, discrepancy in cost of construction of building, discrepancy in stock, and discrepancy in advances and receivable and it was held that by no stretch of imagination, any of these incomes apart from cash can be considered as income under any head other than the business income.

19. Referring to the decision of Coordinate Chandigarh Bench in case of DCIT Vs. Marshal Machines Pvt. Ltd. (*ITA No. 57/Chd/2017*) wherein there was surrender on account of discrepancy in stock, cost of construction of factory plot and factory building, creditors and cash, the Coordinate Bench dismissed the appeal of the Revenue holding that the surrendered income except for cash portion has to be assessed under the head "business income" as pertained to business of the assessee and which was allowed to be set off against the business losses.

20. Similarly, in case of M/s Arora Alloys Ltd. Vs. DCIT (*ITA No. 1481/Chd/2017*) wherein there was surrender on account of cash and unexplained expenditure in building, the contention of the assessee that the expenditure incurred for construction of the building was from routine business and addition of Rs. 32 Lacs ought to be treated as business income was accepted by the Coordinate

Bench for the reason that the expenditure incurred for creating business asset must have been generated through the business carried out by the assessee, the assessee might have earned from the business which has not been accounted for and used for constructing the business asset and no evidence has been found in this regard during the course of survey and the admission on account of unexplained expenditure on construction of building has been accepted by the Revenue. Therefore, to the extent of expenditure incurred for construction of building out of unexplained source is concerned, it is to be construed from business and it will take character of the business income.

21. Further reliance was placed on the decisions of Chandigarh Benches in case of *Gandhi Ram, Prop. Gandhi General Store Vs. The Pr. CIT (ITA No. 121/Chd/2021 dt. 04/08/2022)* wherein it was held that it is like laying a general rule which is beyond the mandate of law that wherever there is a survey and some income is detected or surrendered by the assessee, the deeming provisions are attracted by default and by virtue of the same, provisions of section 115BBE are attracted. The Id PCIT has to record his specific findings as to the applicability of the relevant provisions and how the explanation called for and offered by the assessee is not acceptable in the facts of the present case and the relevant findings read as under:

"8. Firstly, how the Id PCIT has arrived at a conclusive finding that the discrepancies found, confronted and accepted by the assessee during the course of survey attract the deeming provisions of section 68, 69, 69A, 69B & 69C is not apparent from the impugned order. Merely stating that excess cash is clearly covered u/s 68 or 69A, excess stock is covered u/s 69 or 69B, construction of Shed/Godown is covered u/s 69B or 69C and advances made to Sundry Parties is covered u/s 69, 69B or 69D is like an open ended hypothesis which is not supported by any specific finding that the matter shall fall under which of the specific sections and how the conditions stated therein are satisfied before the said provisions are invoked. It is like laying a general rule, which to our mind is beyond the mandate of law, that wherever there is a survey and some income is detected or surrendered by the assessee, the deeming provisions are attracted by default and by virtue of the same, provisions of section 115BBE are attracted. The Id PCIT has to record his specific findings as to the applicability of the relevant provisions and how the explanation

called for and offered by the assessee is not acceptable in the facts of the present case which is clearly absent in the instant case. Therefore, where the Id PCIT himself is not clear about the applicability of relevant provisions and in the same breath holding the Assessing officer to task by not invoking the said provisions is clearly shooting in the dark which cannot be sustained in the eyes of law and the order so passed therefore cannot be held as erroneous in the eyes of law."

22. Further, reliance was placed on the Coordinate Chandigarh Benches decision in case of Shri Parmod Singla Vs. ACIT (ITA No. 516/Chd/2022 dt. 24/07/2022) and Shri Jasjot Singh Garcha Vs. The PCIT (ITA No. 378/Chd/2022 dt. 17/08/2023). It was submitted that in the latter decision, the assessee was again a medical practitioner running Orthopaedics & Dental Clinic under the name and style of M/s Garcha Orthopedic & Dental Care and had surrendered certain amount on account of Furniture, Fixture and Equipment, etc and which were held by the AO as related to the medical profession being carried on by the said assessee and deeming provisions were held not applicable and which was upheld by the Coordinate Bench setting aside the revisionary order passed u/s 263 of the Act.

23. It was accordingly submitted by the Id AR that the source of investment in the construction of hospital buildings is out of the assessee's professional receipt and the said amount has been spent over a period of time during the financial year in a phased manner and the same therefore be treated as earned from medical profession and it will take the color of professional income as against income from other sources and the provisions of section 69 r/w 115BBE cannot be invoked.

24. Per contra, the Ld. DR relied on the order of the lower authorities. It was submitted that there can be no presumption to treat the value representing investment in building as application of business income in absence of any evidence of earning that income or details as to when, how and from whom such income was derived which has been invested in investment in building. It was submitted that the assessee has not been able to establish nexus between

the investment in building and normal business income. Further the assessee has not been able to produce any documentary evidence, bills, vouchers, purchase & sale documents to justify the additional income of Rs. 1,20,00,000/- which has been surrendered as investment in building.

25. Further referring to the surrender letter, it was submitted by the Id DR that it is apparent that the assessee has disclosed additional turnover of Rs. 55 lacs and which was actually undisclosed business receipt and which has been rightly treated by the AO as business income. However the investment in construction of building has been separately shown which shows that the said amount is in addition to undisclosed business receipt.

26. It was further submitted that merely because asset has been used for business purposes, it cannot be said that undisclosed investment in that asset is business income. It was accordingly submitted that the contention of the Ld. AR that the surrender income is to be treated as business income cannot be accepted and the AO has rightly treated the said investment as deemed income under section 69 which is to be taxed as per provision of Section 115BBE of the Act and which has been confirmed by the Id CIT(A).

27. We have heard the rival contentions and perused the material available on the record. For the provisions of Section 69 to be invoked in the instant case, there has to be a finding by the AO basis material on record that the assessee has made investment in the hospital building during the financial year and such investment is not recorded in the books of accounts so maintained by the assessee. Further, the assessee offers no explanation about the nature and source of the investments or the explanation so offered is not found satisfactory in the opinion of the AO, the latter can proceed and the value of the investment may be deemed as income of the assessee for such financial year. Therefore, once a finding has been recorded by the Assessing officer regarding investments in the hospital building not recorded in the books of accounts, the

explanation of the assessee has to be sought and the explanation so offered by the assessee explaining the nature and source of such undisclosed income and the reasonability of the explanation so offered by the assessee needs to be analysed and examined to draw necessary conclusions and discretion so vested in the AO for invocation of the deeming fiction so envisaged in the statute can be exercised.

28. In the instant case, we find that survey operation was carried out at the official premises of the assessee on 28/02/2019. In the statement so recorded of the assessee during the course of survey conducted under Section 133A, in response to Question No. 3 wherein the assessee was asked to explain his source of income, the assessee submitted that he was proprietor of Dr. Aniljit Child Care, Ajit Nagar, Patiala since December 2010 and besides that, he had no other source of income. In Question No. 4, the assessee was asked where he was maintaining the proprietary concern's books of account. In response, he had submitted that he is regularly maintaining proprietorship concern books of accounts which are maintained in the computer kept at his room in his business premises and further, he had maintained OPD fee receipts, vaccination fees receipts of current years. Further, he stated that last six year books of accounts have been lying with his Counsel. In response to Question No. 5 wherein he was asked to explain what has been maintained manually at his business concern, the assessee submitted that he had maintained manually the OPD Register, Vaccination Register and Slip Diaries / Note Pad for Indoor Patients. In Question No. 7, the assessee was asked to provide bill vouchers & purchase vouchers of his proprietorship concern for the current year, in response he submitted that he has few bill vouchers and purchase vouchers for A.Y 2016-17 & 2017-18 and 2018-19 and same will be produced lateron. In response to Question No. 9 wherein he was asked to submit the immovable properties held by him and his family members, he interalia stated that the plot measuring 8 x 72 sq. ft was purchased on 04/12/2014 for Rs. 41,85,600/- and payment have been made

through pay order on 02/12/2014 through Corporation Bank, Leela Bhawan, Patiala. In response to Question No. 11 wherein he was asked to explain when he started the construction on the plot at Leela Bhawan, opposite Income Tax Office, Patiala, the assessee has submitted that the construction on the plot was started in April 2018 and thereafter in response to Question No. 12, he has stated that the civil work has been completed in December 2018 and four floors have been completed including basement and finishing work was in progress. In response to Question No. 14 wherein he was asked to specify source of investment in the construction of building and also the estimated expenditure year wise, the assessee has submitted that the total expenditure incurred on the construction of building including interiors work like false ceiling, flooring and light from basement to fourth floor is around Rs 1.20 crores. In response to Question no. 15 wherein he was further asked to explain source of investment in the construction of building, the assessee has submitted the expenditure for investment in the construction of building has been made from his business receipts mainly in the F.Y 2018-19 and the same will be shown in the return of income to be filed for A.Y 2019-20. In response to Question No. 17 wherein he was asked to provide the documentary evidence for the expenditure incurred during the F.Y. 2018-19 in the form of bills & vouchers, the assessee has submitted that presently he was unable to produce the same and will be provided later on. In response to Question No. 20 wherein he was asked to explain that since the construction of property situated at Leela Bhawan, Patiala was started in April, 2018 and civil construction work was completed in December 2018, however, he has not disclosed said capital asset i.e, building in books of accounts, the assessee had submitted that he had Rs.18,56,000/- as cash in hand on 31/03/2018 and which has been used for the purpose of construction of building. Further to cover up the discrepancies with respect to remaining amount, he had offered additional amount of Rs. 1,20,00,000/- over and above

his normal business income as expenditure incurred towards construction of said building for the A.Y. 2018-19 relevant to A.Y 2019-20.

29. From the above, it is clear that the construction of the hospital building was started at the beginning of the current financial year in month of April 2018 and the civil work got completed in December 2018 wherein four floors were built including basement and finishing work was in progress at the time of survey which was carried out on 28/03/2019. As such physical structure was found at the time of survey, however, as far as the quantum of expenditure on construction was concerned, no material/documentation was found during the course of survey and the estimated amount of expenditure has been taken basis the statement of the assessee recorded at the time of survey. The same is evident from the fact that the AO has referred the matter to the Valuation officer during the course of assessment proceeding to determine the value of the investment in the hospital building.

30. It is equally relevant to note that at the time of survey carried out on 28/03/2019, no expenditure has been booked on construction of the hospital building, however, subsequently, after the close of the financial year and as part of finalization of his accounts and the financial statements for the period 2018-19, the assessee has shown investment by way of construction of the hospital building at Rs 1,55,52,238/- as on 31/03/2019 which has been duly taken cognizance of and accepted by the AO.

31. As far as nature and source of investment in construction of the hospital building is concerned, we find that the assessee has been asked specific question during the course of survey and the assessee in his statement recorded during the course of survey has clearly stated that the investment in construction of the building has been made out from his professional receipts mainly during the financial year 2018-19 except for an amount of Rs.18,56,000/- out of opening cash in hand as on 01/04/2018. The said submissions have been reiterated by

the assessee during the course of assessment proceedings. Further, from reading of the survey statement in its entirety, which has, in fact, form the basis for the action by the AO and in absence of anything contrary on record, a picture which is clearly emerging from the record is that the assessee was engaged in running his child care medical practice and the same was the only source of his income as evident from and corroborated by the computerized books of accounts and manual records in terms of OPD register, OPD fee receipts, vaccination register, vaccination fee receipts and other related medical records maintained by him and found during the course of survey. There is no finding by the survey team that the assessee has any other source of income other than receipts from running his medical practice and operating the child care clinic. Further, nothing has been brought on record during the course of assessment proceedings contrary to the findings of the survey team during the course of survey.

32. We therefore find that the nature and source of such unaccounted investment in the hospital building is arising out of assessee's unaccounted professional receipts for the year under consideration. No doubt, these transactions were not fully recorded in the books of accounts at the time of survey thus qualify as unrecorded transactions satisfying one of the essential conditions, at the same time, we find that based on appreciation of assessee's statement, the corroborative material and other attending circumstances available on record, the assessee has provided a reasonable and acceptable explanation about the nature and source of such unrecorded transactions as that of professional receipts and the necessary nexus with assessee's profession has been established, it cannot be said that these are unexplained transactions, thus, doesn't satisfy the second condition for invoking the deeming provisions of Section 69 of the Act. Therefore, we are of the considered view that there was no justifiable basis on the part of the AO in applying the provisions of Section 69 r/w Section 115BBE of the Act to the surrendered business income of the

assessee which has been duly offered in the return of income. The various authorities quoted at the Bar though rendered in the context of relevant facts but carry a similar proposition in law and thus, support the case of the assessee. Accordingly, the order of the Id CIT(A) is set-aside and the AO is directed to tax the surrendered income at normal rates as applicable to the business income.

33. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 15/02/2024.

Sd/-

संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 15/02/2024

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar