

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1930 OF 2011

Commissioner of Income Tax - 13

.. Appellant

Vs.

Shri S. Ganesh

.. Respondent

Mrs.S.V.Bharucha for the Appellant.

Mr.P.J. Pardiwalla, Sr. Counsel with Ms.Beena Pillai i/b Niraj Punmiya for the Respondent.

**CORAM : S.C.DHARMADHIKARI &
G.S.KULKARNI, JJ.****DATED : 18th MARCH, 2014.**

P.C. :

1 Having heard Ms.Bharucha, learned counsel appearing on behalf of the Revenue and perusing the order passed by the Income Tax Appellate Tribunal, we are of the opinion that the Tribunal did not commit any error of law or perversity in partly allowing the appeal of the respondent assessee.

2 The assessee in regard to grounds 1 to 7 challenged the order of the Commissioner of Income Tax in confirming the addition of Rs.47,37,000/- made by Assessing Officer on account of non-conciliation of professional receipts with TDS certificates. Insofar as that aspect is concerned, the Tribunal considered this submission of both sides and found that the assessee was engaged as an Advocate to argue the

matters by what is popularly known as Advocates on record or instructing Advocates method, meaning thereby the client does not engage the assessee directly but a professional or the Advocate engaged by the client requests the assessee to argue the case. The brief is then taken as the counsel brief. That being the practice, the assessee gave an explanation that the break-up as desired cannot be given and with regard to all payments. It is pointed out that at times, assessee receives fees directly from the clients or from the instructing Advocates or Chartered Accountants if such professionals have collected the amounts from the clients.

3 Under these circumstances, the break-up as desired cannot be placed on record. An explanation which has been given by the assessee and accepted in the past has been now accepted by the Tribunal once again. Since it is accepted for the Assessment Year 2006-07, in the peculiar facts, in relation to the present assessee, we are of the view that this Appeal does not deserve to be entertained. It does not give rise to any substantial question of law.

4 Appeal is accordingly dismissed.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'E' MUMBAI****BEFORE SHRI D K AGARWAL, JM & SHRI R K PANDA, AM****ITA No. 527/Mum/2010
(Assessment Year 2006-07)**

Shri S Ganesh 10 Fairfield 2 nd Floor J S Malani Road, Churchgate Mumbai	Vs	The Asst Commr of Income Tax 11(2), Mumbai
(Appellant)		(Respondent)

PAN AAGPS5047MAssessee by: Shri S Ganesh
Revenue by: Shri D Sangate**ORDER****PER R K PANDA:**

This appal filed by the assessee is directed against the order dated 23.11.2009 of the CIT(A)-3, Mumbai relating to Assessment Year 2006-07.

2 Facts of the case, in brief, are that the assessee is an Advocate by profession and filed his return of income on 8.12.2006 declaring total income of ₹ 4,96,57,940/-. The Assessing Officer during the course of assessment proceedings asked the assessee to explain the sources of investments made in various mutual funds and reconcile the same with the AIR information as well as co-relate the payments with the assessee's bank account. The Assessing Officer noted that the assessee has failed to explain the source of investment in respect of the following mutual funds totalling to ₹ 4.75 crores:

Name of the mutual fund	Date	Amount
HSBC	9.5.2005	50,00,000
DSP	30.5.2005	50,00,000
SBI	14.2.26	25,00,000
HDFC	6.4.2005	1,00,00,000
TATA	5.4.2005	2,00,00,000
HDFC	6.4.25	50,00,000
TOTAL		4,75,00,000

2.1 In absence of any satisfactory explanation by the assessee with supporting evidences, the Assessing Officer made the addition of ₹ 4.75 crores as unexplained

2.2 The Assessing Officer asked the assessee to furnish party-wise details of professional fees received during the year under consideration and reconcile the same with TDS certificates. He also requested the assessee to reconcile the professional fees received by the assessee as per AIR information. The assessee, vide letter dated 8.10.2008 submitted that all professional fees are received by way of cheques and all such cheques received are deposited in his HDFC account. It was further submitted that professional receipts disclosed by the assessee are more than the receipts shown in AIR information and accordingly, there is no discrepancy. The assessee also expressed his inability to furnish party-wise details of professional fees received during the year under consideration. The Assessing Officer noted that 40 items amounting to ₹ 47,37,000/- as per page 3 & 4 of the assessment order has not been disclosed as professional fees receipts in respect of the said parties. Since the assessee could not furnish party-wise details of professional fees received during the year and also could not reconcile with the AIR information, except by giving vague reply stating that the professional receipts disclosed by him are much more than the professional receipts shown in the AIR information and in the absence of any

satisfactory explanation, the Assessing Officer made an addition of ₹ 47,37,000/- being professional fee not disclosed by the assessee as per AIR information.

2.3 The Assessing Officer further noted that the assessee has disclosed dividend income of ₹ 6.39 crores as exempt from tax. The Assessing Officer asked the assessee to compute the disallowance u/s 14A as per Rule 8D. It was submitted by the assessee that the expenditure claimed by him as deduction relates purely to professional activities and no part of the expenditure relates to his dividend income which is not taxable and therefore, provisions of sec. 14A and Rules 8D have no application. However, the Assessing Officer was not satisfied with the explanations given by the assessee. Following the decision of the Hon'ble Supreme Court in the case of Distributors Baroda Pvt Ltd reported in 155 ITR 120 and the decision of the Tribunal in the case of Gherzi Eastern Ltd in ITA No.6562/Bom/94 dated 23.9.2002, the Assessing Officer disallowed an amount of ₹ 50,000/- on estimate basis u/s 14A of the I T Act as expense attributable to exempt income.

3 Before the CIT(A), it was submitted that the confirmations/relevant statements etc., were subsequently obtained from various mutual funds which the assessee intended to use as evidences in appeal proceedings. Since this evidence was not presented before Assessing Officer due to lack of sufficient opportunity, the CIT(A) remanded the matter to the file of the Assessing Officer under Rule 46A along with a set of documents submitted by the assessee and the Assessing Officer was directed to make further enquires or ask for records and evidences as deemed necessary.

3.1 So far as the issue relating to non-reconciliation of professional fee with the AIR information, it was submitted that there was some error in AIR information and the assessee has only one bank account i.e. HDFC for mutual fund and Oriental Bank of Commerce for professional receipts for such parties. It was submitted that the assessee requested for more time as the time allowed was far too short for compliance. The assessee also stated that the addition would lead to mismatch in TDS position, if assessee's income is increased by the amount of addition and that other than the mutual fund transactions, all professional transactions were only routed through OBC. Based on the arguments advanced by the assessee, the CIT(A) remanded this issue also back to the file of the Assessing Officer under Rule 46A with the direction to examine the submissions of the assessee and make further enquiries as deemed fit and to send the remand report.

3.2 As regards the disallowance of ₹. 50,000/- on account of expenses attributable to earning of tax free dividend income, it was submitted that no disallowance under the said head was made by the Assessing Officer u/s14A in the previous Assessment Year although similar dividend income was earned by the assessee and similar expenditure was incurred by the assessee. It was submitted that entire expenditure claimed was purely towards professional receipts.

3.3 After obtaining the remand report from Assessing Officer, the CIT(A) confronted the same to the assessee. In the remand report, against the addition of ₹ 4.75 crores on account of unexplained investments in mutual funds, the Assessing Officer accepted ₹. 4 crores as explained and submitted that the following two amounts i.e. investment in DSP Black Rock on 30.5.2005 for Rs. 50 lacs and SBI Mutual fund on 14.2.2006 for Rs. 25 lacs remained unexplained.

3.4 As regards non reconciliation of professional fee with Annual Information Report (AIR), the Assessing Officer, on verification of TDS and AIR information observed that the assessee has not disclosed the income of ₹ 47,37,000/-. Since this could not be reconciled even during the remand proceedings, he stated in the remand report that the addition needs to be confirmed.

4 Rejecting the various arguments advanced by the assessee and on the basis of the remand report of the Assessing Officer, the CIT(A) sustained the addition of Rs. 47,37,000/- made by the Assessing Officer on account of non reconciliation of professional fee with AIR information and Rs. 50,000/- disallowed u/s 14A. He, however, sustained the addition of Rs. 75 lacs out of ₹ 4,75,00,000 made by the Assessing Officer as undisclosed investment in mutual funds.

5 Aggrieved with such order of the CIT(A), the assessee is in appeal here before us.

6 In the grounds of appeal nos.1 to 7, the assessee has challenged the order of the CIT(A) in confirming the addition of Rs. 47,37,000/- made by the AO on account of non-reconciliation of professional fee receipts with TDS certificate.

7 The assessee personally appeared before the Tribunal. Referring to the letter dated 8.10.2008 addressed to the Assessing Office , which is placed at page 1 of the paper book, he submitted that the entire fees received by him are by cheques, which may come from the clients or from instructing advocates or Chartered Accountants in case they have collected the amounts from the clients; therefore, it is not practically possible for him to give a detailed party wise breakup of fees received. He submitted that similar explanations were given in earlier scrutiny assessments and was accepted by the Assessing Officers. Moreover, the total fees received by him during the year, less TDS, if compared with the details as per TDS certificate submitted by him, they almost tally except in a few small cases because of non receipt of TDS certificate from the clients. He submitted that his total professional fees far exceed the fees as per AIR information. He submitted that since he has deposited all his professional fee receipts in one bank account only and there is no information with the department that he has received any other amount which has not been disclosed and/or deposited in some other bank account; therefore, the addition made by the Assessing Officer and sustained by the CIT(A) is uncalled for.

7.1 The Id DR, on the other hand, while supporting the order of the authorities below submitted that since the assessee failed to reconcile the professional fees declared along with receipts appearing in the AIR information; therefore, notwithstanding the fact that the assessee's total receipt is more than the figure disclosed in the AIR information, the Assessing Officer was justified in making the addition and CIT(A) was justified in sustaining the same.

8 We have considered the rival submissions made by both the parties, perused the orders of the authorities below and the paper book filed on behalf of the assessee. There is no dispute to the fact that the Assessing Officer made an addition of ₹. 47,37,000/- on account of non furnishing of party-wise details of professional fees receipt during the year and non reconciliation of professional fees receipts with the AIR information. We find the CIT(A) sustained the addition made by the Assessing Officer since the assessee failed to reconcile each and every entry of the accounts with the assessee's return and records. According to the CIT(A), it is immaterial that the income returned by the assessee is higher than the figure as per AIR information.

8.1 It is the submission of the assessee that since he has deposited all his professional receipts in one bank account only and since all the fees are received by cheques which came from the clients directly or from the Instructing advocates or CAs, if they have collected the amounts from the clients and since no other bank account is maintained by him wherein professional fees are

deposited and since the amount returned in the audited accounts is more than the fees as per the AIR information; therefore, no addition is called for.

8.2 We find sufficient force in the above submissions of the assessee. Admittedly, the revenue has not controverted the submissions of the assessee before the Assessing Officer during the assessment proceedings as well as remand proceedings that all professional fees received are by way of cheques and all such cheques have been deposited in his Oriental Bank of Commerce Account, South Extension Branch, New Delhi (vide letter addressed to Assessing Officer on 8.10.208). Therefore, in absence of any contrary material brought by the revenue authorities that the assessee has received amount more than the professional fees than what has been declared by him, no addition should have been made. It is also a fact that the professional income declared by the assessee far exceeds the professional fees as per AIR information. There may be so many reasons such as low deduction of tax, non-deduction of tax, deduction on account of reimbursement of expenses etc., for which the figure as per the AIR may not tally with the income declared by the assessee on account of professional fees from various clients. Further, it has categorically been explained by the assessee that it is not practically possible to give detailed party wise breakup of fees receipts since the assessee received his fees either directly from the clients or from the instructing advocates or CAs, if they have collected the amounts from the clients. Similar explanation have been accepted in the past in scrutiny assessment and no addition has been made, a fact already brought on record. In this view of the matter, we find sufficient force in the submissions made by the assessee that no addition is called for on this account.

Accordingly, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition.

9 The grounds of appeals 8 to 12 relate to the order of the CIT(A) in sustaining the addition of Rs. 75 lacs on account of investment for mutual funds.

10 The assessee at the time of hearing before us, referred to the paper book page 28 and submitted that the investment in DSP Black Rock mutual fund was purchased by his father Mr K R Srinivasan and his name was appearing as joint holder. Referring to page 29 of the paper book, he submitted that investment of Rs. 25 lacs in SBI Blue chip mutual fund stands in the name of Smt S Rajalakshmi, his mother and he is the second holder. Referring to the order of the CIT(A), he drew the attention of the Bench to para 4.2.1 of the order and submitted that the Assessing Officer vide letter dated 17.11.2009 has informed the Assessing Officer of Shri K R Srinivasan and Smt S Rajalakshmi for necessary action at their end. The Assessing Officer in the said letter also informed them that the assessee was only a second joint holder

10.1 . Referring to para 4.3.2 he submitted that although the CIT(A) has sustained the addition, at the same time he has mentioned that this addition is subject to the decisions taken in respect of these investments by the concerned Income Tax Authorities in the case of Shri K R Srinivasan and Smt S Rajalakshmi. He submitted that since Shri K R Srinivasan and Smt S Rajalakshmi are separately assessed to income tax and since the money has gone through

their bank account and since the investments are made by them and their names appears as 1st holder and he is only the 2nd holder, therefore, no addition should have been made.

10.2 On the other hand, the Id DR relied on the order of the CIT(A) and submitted that since the assessee failed to explain the source of the investments, therefore, the addition sustained by the CIT(A) is justified.

11 We have considered the rival submissions made by both the parties, perused the orders of the authorities below and the paper book filed on behalf of the assessee. From the copy of the certificate of DSP Black Rock Mutual fund, we find an amount of Rs. 50 lacs invested on 30.5 2005 stands in the name of Shri K S Srinivasan and the assessee's name appears only as a joint holder. Further, Mr Srinivasan is assessed to income tax vide PAN no.AALPS67541 and assessed to tax under the jurisdiction of the Assessing Officer ward 12(3)(1).

11.1 Similarly, from the copy of the certificate issued by SBI mutual fund, we find the amount of Rs. 25 lacs invested on 12.2.2006 stands in the name of Smt S Rajalakshmi and the assessee's name appears as 2nd holder. There is also no dispute to the fact that Mrs S Rajalakshmi is assessed to income tax under the ITO ward 12(2)(3) as per copy of the remand report incorporated in the order of the CIT(A) in para 4.2.1. Since the identity of these person are established and they are assessed to income tax; therefore, addition, if any could have been made in their hands only on account of unexplained investments and not in the

hands of the assessee. It is also a fact that the Assessing Officer has already informed the Assessing Officer having jurisdiction of the above two persons as per his letter dated 17.11.2009 to take necessary action at their end. Therefore, in our considered opinion, the addition is uncalled for on this account in the hands of the assessee. In this view of the matter, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition of ₹. 75 lacs.

12 In the grounds of appeal nos 13 to 16 the assessee has challenged the order of the CIT(A) in confirming the addition of ₹ 50,000/- made by the Assessing Officer u/s 14A.

13 After hearing both the parties, we find that against the tax free dividend income of Rs. 6.39 crores, the assessee has not disallowed any amount on account of expenditure u/s 14A of I T Act r.w.r 8D. We find, the Assessing Officer disallowed an amount of Rs. 50,000/- on estimate basis u/s 14A being expenses attributable to exempt income, which has been sustained by the CIT(A). It is the submission of the assessee that the entire expenditure relates to professional income and no part of expenditure relates to earning of tax free dividend income. However, we are unable to accept the above contention of the assessee. The total dividend income received by the assessee and claimed to be exempt is 6.39 crores. Although the dividend income may be directly credited to his bank account still, some time is devoted by the assessee for monitoring the accounts tracking the investment as well as reinvestments during the year. Therefore, it cannot be said that no part of the expenditure is attributable to such dividend

income. Further, the expenditure disallowed by the Assessing Officer at ₹. 50,000/- appears to be very reasonable considering the volume of dividend income. In this view of the matter, we do not find any infirmity in the order of the CIT(A) sustaining the disallowance of ₹. 50,000/- made by the Assessing Officer. The ground raised by the assessee is accordingly dismissed.

14 In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on the 8th, day of Dec 2010.

Sd/-

Sd/-

(D K AGARWAL) Judicial Member	(R K PANDA) Accountant Member
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Place: Mumbai : Dated: 8th, Dec 2010
Raj*

Copy forwarded to:

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

/TRUE COPY/
BY ORDER

Dy /AR, ITAT, Mumbai