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

BEFORE SHRI G.D. AGRAWAL, HON'BLE VICE PRESIDENT
AND
SHRI A.D. JAIN, JUDICIAL MEMBER

ITA No.5069/Del/2012
Assessment Year : 2009-10

ITO, Ward-37(3), New Delhi.	Vs.	Justice Rajiv Shakdher, D-41, Pamposh Enclave, New Delhi – 110 048. PAN : AATPS2878R
(Appellant)		(Respondent)

Assessee by : Shri Sandeep Nagar, CA
Revenue by : Shri Satpal Singh, Sr.DR

ORDER

PER A.D. JAIN, JUDICIAL MEMBER

This is Department's appeal for Assessment Year 2009-10 against the Order dated 27.7.2012 passed by the ld. CIT (A)-XXVIII, New Delhi. The following grounds have been raised:-

> 1. In the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the AO on account of arrear of processional fees of Rs. 67,86,669/- received by the assessee after he had discontinued his legal profession in utter disregard to the provisions of section 176(4) of Income-tax Act, 1961.
>
> 2. In the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by AO on account of arrear of professional fees of Rs. 67,86,669/- received by the assessee after he had discontinued his legal profession not appreciating the fact that the Hon'ble Supreme Court in the case of Nalinikant Ambalal Modi Vs. SAL Narayan Rao (61 ITR 428) had decided the appeal in favour of the assessee as per the earlier Income-tax Act, 1922 in which specific provision for taxation of such receipt

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was not available unlike provision of section 176(4) of Income-tax Act, 1961, where such receipts are specifically taxable.

3. In the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the AO on account of arrear of professional fees of Rs. 67,86,669/- received by the assessee after he had discontinued his legal profession in utter disregard to the principles laid down by the Hon'ble Supreme Court in case of Nalinikat Ambalal Modi Vs. SAL Narayan Rao stating that the fruit of professional activity is taxable irrespective of the time when it was received.

4. In the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the AO on account of arrear of professional fees of Rs. 67,86,669/- received by the assessee after he had discontinued his legal profession not appreciating the fact the departmental review petition in the case of DCIT, New Delhi Vs. Justice Swatanter Kumar Agnihotri (ITA No. 160/2000) on the same issue is pending in Hon'ble Delhi High Court.

5. In the facts and circumstances of the case, the Ld. CIT (A) erred in deleting the disallowance made by the AO on account of expenses of Rs.75,523/- claimed by the assessee in the relevant A.Y. 2009-10 whereas these expenses pertained to the period when the assessee did not carry any profession.

6. In the facts and circumstances of the case, the Ld. CIT(A) erred in admitting the additional ground of the assessee to allow credit of TDS of Rs.53,351/- which the assessee omitted to claim in his return of income and directing the AO to allow credit of TDS as per law since as per provisions of Income Tax Act 1961, the credit of TDS can be given only if the assessee has claimed TDS credit in his return of income.

7. In the facts and circumstances of the case, the Ld. CIT (A) erred in admitting the additional ground of the assessee to allow credit of TDS of Rs.53,351/- which he omitted to claim in his return of income wrongly relying on the judgment of the Hon'ble Supreme Court in the case of Goetze India Ltd Vs CIT (284 ITR 323) wherein the Hon'ble Apex Court has given observations with regard to the powers of Hon'ble ITAT. Hence the same cannot be extended to the powers of the CIT (A)."

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2. Ground Nos.1 to 4 challenge the action of the CIT (A) in deleting the addition of Rs.67,86,669/- made by the Assessing Officer on account of arrears of professional fee received by the assessee after he had discontinued his legal profession on being elevated as a Judge of the High Court.

3. As per the assessment order, the assessee was a lawyer by profession, practicing in the Supreme Court and the Delhi High Court before his elevation as a Judge of the Hon'ble Delhi High Court on 11.04.2008. During the year under consideration, he derived income from salary, profession and income from other sources, maintaining his books of account on cash basis. He claimed an amount of ₹ 67,10,362/- representing receipt of arrears of his professional fees for professional services rendered in earlier years before his elevation as Judge of High Court, as exempt from tax. As an abundant caution, though the assessee deposited advance tax in respect thereof, in the computation of income filed along with the assessee's return of income, the following note had been appended:-

> "There are various legal precedents which suggest that where before his elevation as a Judge, assessee was carrying on legal profession as an advocate, arrears of professional receipts received after discontinuation of legal profession were not assessable in his hands after he has discontinued his legal profession. Attention in this regard is drawn to the judicial decisions in the cases of Commissioner of Income Tax v. Justice R.M. Datta (1989) 180 ITR 86 and Justice Kuldip Singh v. ITO (1993) 46 ITD 251 (Chand [AT]). In Justice Kuldip Singh case (supra) a special leave petition was preferred by the Revenue, which was dismissed. In view of aforesaid legal precedents, the assessee is claiming arrear of professional receipt as exempt, though as an abundant caution, the assessee has deposited advance tax under protest in respect of such income."

4. However, the Assessing Officer was of the view that by claiming the exemption, the assessee had neither offered the amount of ₹ 67,10,362/- for taxation in the year in which the professional activity

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was carried out by him, nor in the year of receipt, nor in any other year, and so, allowing the claim of exemption would result in the receipt never being taxed. Referring to the decision of the Hon'ble Calcutta High Court in 'CIT vs. Justice R.M. Datta', 180 ITR 86 (Cal) and that of the Hon'ble Andhra Pradesh High Court in 'V. Parthasarathy vs. Addl. CIT', 103 ITR 508 (AP), the Assessing Officer observed that both these High Courts were at variance, *inter se*, on the issue. The Assessing Officer noted that in 'Nalinikant Ambalal Mody', 61 ITR 428 (SC), the Hon'ble Supreme Court had held such receipts to fall under the head of 'Profits and gains of Business or Profession'. The Assessing Officer observed that though therein, the Hon'ble Supreme Court had held such receipts to be not chargeable to tax, it had been so held due to the absence of express provision to bring such receipts to tax under the IT Act, 1922, which was the Act governing that case. The Assessing Officer stated that however, such receipts are chargeable to tax under Section 176 (4) of the IT Act, 1961, the Act applicable to the present case.

5. By virtue of the impugned order, which we shall presently discuss, the ld. CIT (A) deleted the addition made by the Assessing Officer, bringing the Department in appeal before us by way of ground Nos.1 to 4.

6. Challenging the impugned order in this regard, the Ld.DR has submitted before us that the ld. CIT(A) has erred in deleting the addition correctly made by the Assessing Officer; that while doing so, the ld. CIT (A) has erroneously disregarded the provisions of Section 176(4) of the IT Act, 1961; that the Ld. CIT(A) has failed to appreciate that in the case of 'Nalinikant Ambalal Mody vs. SAL Narayan Rao', 61 ITR 428 (SC), the Hon'ble Supreme Court had laid down that the fruits of professional activity are taxable, irrespective of the time when they

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were received; that the Ld. CIT (A) has also overlooked the fact that in 'Nalinikant Ambalal Mody' (supra), the Hon'ble Supreme Court had decided the appeal in favour of the assessee as per the Income Tax Act of 1922, which did not contain any specific provision for the taxation of such receipts, whereas in the Income Tax Act of 1961, which is the Act applicable to the present case, there does exist such a specific provision in the shape of Section 176 (4), whereunder, such receipts are specifically taxable; and that the ld. CIT (A) has further erred in failing to take into consideration the fact that a review petition in the case of 'DCIT, New Delhi vs. Justice Swatanter Kumar Agnihotri' is hitherto subjudice before the Hon'ble Delhi High Court; that as such, the order passed by the Ld. CIT (A) on this issue is an erroneous one, liable to be set aside; and that accordingly, the same may be ordered to be set aside and that passed by the Assessing Officer be restored on accepting Ground Nos.1 to 4 raised by the Department.

7. On the other hand, the ld. counsel for the assessee has strongly supported the impugned order. It has been contended that the Ld. CIT (A) has allowed the claim of the assessee by passing a speaking elaborate well-reasoned order on the issue at hand, which order requires no interference whatsoever at our hands; that the Assessing Officer had wrongly relied on the decision of the Hon'ble A.P. High Court in 'V. Parthasarathy vs. Addl. CIT', 103 ITR 508 (AP), though the facts in that case were totally different from the facts of the assessee's case; that the Assessing Officer failed to consider that the orders in the case laws relied on by the assessee had all been passed after having duly considered 'V. Parthasarathy' (supra); that the Ld. CIT (A), while rightly allowing the assessee's claim, has duly taken into consideration all these aspects and has rightly deleted the addition wrongly made by the Assessing Officer; that the Department has not been able to point out any infirmity whatsoever in the order under appeal; that the order

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under appeal is on all fours, having been passed perfectly in accordance with law and it is, therefore, entitled to be sustained, and the appeal filed by the Department is liable to be dismissed, being devoid of any merit at all, whatsoever; and that accordingly, the impugned order be confirmed and the appeal be ordered to be dismissed.

8. We have heard the parties on this issue and have perused the material on record with regard thereto. The question is as to whether the ld. CIT (A) has rightly allowed the claim of the assessee for exemption from tax, the receipt of arrears of his professional fees, such arrears having been received by the assessee after his elevation as High Court Judge.

9. The Assessing Officer brought to tax these arrears under Section 176 (4) of the Income Tax Act, 1961. This Section (relevant portion) provides as under:-

> "176 (4) Where any profession is discontinued in any year on account of the cessation of the profession by ………, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance."

10. A bare reading of Section 176(4) of the Act reveals that as per the provisions thereof, in the case of cessation of a profession by a professional, the receipt of any sum after such cessation by such professional shall be deemed to be the income of the recipient professional and it will be taxed in the year of receipt, if, had it been received prior to the cessation of the profession, it would have formed a part of the recipient professional's total income. Section 176 (4) of the Act, as also noted by the Assessing Officer at page 2 of his Order,

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was enacted in pursuance of the recommendation of the Direct Taxes Administration Enquiry Committee, to do away with the absence of provision to assess income received after, inter alia, cessation of a profession. So, the enactment of Section 176 (4) in the extant Act effectively did away with the lacuna in the erstwhile statute, i.e., the Income Tax Act, 1922.

11. However, Section 4 of the Act, which provides for the charge of Income Tax, lays down in its sub-section (1), that income tax shall be charged 'in accordance with and subject to the provisions of this Act in respect of the total income of the previous year.' So, income tax has been provided by Section 4 (1) to be chargeable subject to the provisions of the Income Tax Act, 1961. Now, Section 14 of the Act mandates that for the purposes of charge of income tax, all income shall be classified under the five heads delineated therein, if not provided otherwise by the Act. And if a particular income according to its nature and quality falls under any head, its computation should be made in accordance with the directions contained in the group of sections relating to that head, that head only, and in accordance with no other head. This is what is the purport of Section 4, the charging section, when it makes it mandatory for charge of income tax in accordance with and subject to the provisions of the Income Tax Act, 1961, as noted above.

12. Now, it is trite law that where the language employed in a Section is clear, nothing other than the words used are to be read, permitting of nothing else to be read into the Section. This is more so in the case of a charging provision contained in a taxing statute, as is the case with Section 176 (4) of the IT Act, 1961. As considered in 'CIT vs. Justice R.M. Datta' (supra), in such a case, the rule of construction adopted by Rowlett J. in 'Cape Brandy Syndicate v. IRC',(1921) 1 KB 64 would be properly applied, as per which rule, in a taxing Act, one has

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to look merely at what is clearly said, nothing is to be read in, nothing is to be implied, there being no room for any intendment, one can only look fairly at the language used.

13. And as considered in 'CIT vs. Ajax Products Ltd.', 55 ITR 741 (SC), the subject is not to be taxed unless the charging provision clearly imposes the obligation and it is also the rule of construction that if the words of a statute are precise and unambiguous, they must be accepted as declaring the express intention of the legislature. Now, it has been elaborately considered in 'Justice R.M. Datta' (supra), that the word 'accordingly' in Section 176 (4) of the Act cannot be considered as indicative of the head of charge, i.e., that the income should be deemed to be the income falling under the head "Profits and gains of Business, Profession or Vocation", even in a case where the profession is not carried on during any part of the relevant previous year. It has also been considered therein that Section 176 (4) of the Act introduces a legal fiction, which should be limited only to the purpose for which it has been created. Section 176 (4), then, by virtue of the fiction contained therein, merely treats the receipt as the income of the recipient. In the absence of any further fiction in the Section, the character of such receipt cannot be determined and no further fiction can be introduced so as to determine the head of charge under which such receipt would be made to fall. Thus, the express language of Section 176 (4) does not render the receipt to be treated as income chargeable under the head "Profits and Gains of Business, Profession or Vocation." Now, the receipt in question cannot be brought to tax as income from Profits and Gains of Profession, as above, under the computation provisions contained in Sections 28 to 44-DB of the Act and if that be so, the receipts would not be included in the total income, as defined in Section 2 (45) of the Act (i.e., the total amount of income referred to in Section 5, computed in the manner laid down in

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the Act), for the purpose of chargeability. Therefore, as held in 'Justice R.M. Datta' (supra), even in spite of introduction of Section 176 (4) in the Act, the receipts in question cannot be treated as the assessee's income falling under the head "Profits and Gains of Business, Profession or Vocation", even though they were, being the fruits of the assessee's professional activities, the profits and gains of a profession, under the very same head of "Profits and Gains of Business, Profession or Vocation." It is due to the absence of any legislative provision that these receipts cannot be treated as business income falling under the head "Profits and Gains of Business, Profession or Vocation" carried on by the assessee during the relevant year. They cannot be included in the total income of the assessee, even though the amount was received by the assessee before the discontinuance of his profession due to his elevation as High Court Judge.

14. In 'Nalinikant Ambalal Mody vs. SAL Narayan Rao' (supra) [as considered in 'Justice R.M. Datta' (supra)], when there is a case to which the computation provisions pertaining to a charging Section cannot apply at all, as in the present case, it is evident that such a case was not intended to fall within the charging Section, lest a conclusion be arrived at, that while a certain income seems to fall within the charging Section, there is no scheme of computation for quantifying it, which conclusion is not the legislative intent. In 'Justice R.M. Datta' (supra), their Lordships held that in view of this ratio in 'Nalinikant Ambalal Mody' (supra), despite the insertion of Section 176 (4) in the Act, since the assessee did not carry on any profession in the relevant previous year, the receipt cannot be taxed u/s 28 of the Act, since Section 176 (4) does not contain any deeming provision treating such receipt as income falling under the head "Profits and Gains of Business, Profession or Vocation" and also, it cannot be taxed as income from other sources u/s 56 of the Act.

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15. The facts herein being entirely in *pari materia* with 'Justice R.M. Datta' (supra), the said decision is squarely applicable here too. It has not been shown otherwise. Further, no decision to the contrary has been brought to our notice.

16. It has been stated that a Review Petition in the case of 'DCIT, New Delhi vs. Justice Swatanter Kumar Agnihotri' (ITA No.160/2000), wherein, the reliance by the Delhi Bench of the Tribunal on 'Justice R.M. Datta' (supra), under similar circumstances, was upheld by the Hon'ble Delhi High Court, is pending, as per the contents of Ground No.4. This pendency, however, has no bearing on our present order.

17. In view of the above discussion, we do not find any merit whatsoever in Ground Nos.1-4 raised by the Department and the same are hereby rejected, confirming the well reasoned findings recorded by the Ld. CIT (A) *qua* this issue.

18. As per ground No.5, the Ld. CIT (A) has erred in deleting the disallowance of ₹ 75,523/- made by the Assessing Officer on account of expenses claimed by the assessee in the year.

19. The expenditure claimed was on account of printing and stationery, conveyance, telephone and accounting, etc. The expenditure was claimed in the assessee's Income & Expenditure Account. The Assessing Officer added back the expenditure claimed without considering the assessee's reply dated 20.10.2011, containing the requisite details, holding that the expenditure was not incidental to the assessee's profession. The Ld. CIT (A) deleted the disallowance.

20. The Ld. DR has contended that the disallowance has wrongly been deleted by the Ld. CIT (A), without taking into consideration the fact that the expenses claimed pertained to the period when the assessee did not carry on any profession.

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21. The ld. counsel for the assessee has relied on the impugned order in this regard, contending that the expenditure in question was a nominal expenditure incurred on account of conveyance, accounting charges, printing and stationery, telephone, etc, laid out in order to maintain proper accounts and for recovery of outstanding fees; that the Assessing Officer did not, anywhere, challenge the bona fides of the expenses which were duly vouched and ledgerised, the details thereof having been submitted before the Assessing Officer, as required; and that the Assessing Officer had also failed to take into consideration the fact that the arrears of professional fee received by the assessee on discontinuance of his profession were not liable to tax and so, there was no question of disallowing any expenditure pertaining thereto.

22. In this regard, while dealing with ground Nos. 1 to 4, we have upheld the CIT (A)'s action in deleting the addition made on account of arrears of professional fee. Accordingly, agreeing with the Ld. CIT (A) on this issue too, we also hold that since the gross receipts are not liable to tax, the expenditure incurred for recovery of outstanding fees and for maintaining books of account cannot be disallowed and no such disallowance was called for. The Ld. CIT (A) has correctly deleted this disallowance. Ground No.5 is, accordingly, rejected.

23. So far as regards Ground Nos.6 and 7, the assessee sought credit of TDS of ₹ 53,351/-, which was inadvertently omitted from being claimed in the return of income. The Ld. CIT (A) allowed such credit to the assessee.

24. The Ld. CIT (A), it is seen, has taken into consideration the fact that it was an inadvertent error which led to the omission of claiming

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the TDS in the return of income. The CIT (A) directed to verify the claim and to allow the credit as per law. The grievance of the department is that the credit of TDS could have been given only if the assessee had made the claim of TDS credit in his return of income and that the decision in 'Goetze India Ltd. vs. CIT', 284 ITR 323 (SC) has been wrongly applied by the Ld. CIT (A) to extend the credit to the assessee, even in the absence of the claim in the return of income filed. The department maintains that the observations in 'Goetze India Ltd.' (supra) are with regard to the powers of the ITAT, which cannot be extended to the CIT (A).

25. In this regard, it is seen that undisputedly, it was an inadvertent error which led to the omission of the claim of TDS in the return of income. The department itself admits that in 'Goetze' (supra), the observations are with regard to the power of the Tribunal. So, even going by that, we find that the omission was on account of an inadvertent error. However, this aspect of the matter is directed to be verified at the hands of the Assessing Officer, to see if the matter is remitted. The Assessing Officer, on verification of the claim, may allow the credit as per law. Ground Nos.6 and 7 are, accordingly, accepted for statistical purposes.

26. In the result, the appeal filed by the Department is treated as partly allowed as indicated.

The order pronounced in the open court on 28.06.2013.

Sd/-	Sd/-
[G.D. AGRAWAL] VICE PRESIDENT	[A.D. JAIN] JUDICIAL MEMBER

Dated, 28.06.2013.

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Copy forwarded to: -

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

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By Order,

Deputy Registrar,
ITAT, Delhi Benches