

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RANCHI BENCH, RANCHI**

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND  
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No.250/Ran/2014**

Assessment Year: 2010-2011

Dr. Jaya Narayan Naik, 126, Bagmari Road, Top Floor, Kankurgachi, Kolkata	Vs.	JCIT, Range-1, Dhanbad
PAN/GIR No.ACMPN 4664 R		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Taraknath Jaiswal Adv & Akshaya Ringasia, Adv  
Revenue by : Shri P.K.Mondal, Addl. CIT(DR)

**Date of Hearing : 29/08/2019  
Date of Pronouncement : /10/2019**

## **ORDER**

### Per Bench

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-Dhanbad dated 7.3.2014 for the assessment year 2010-2011.

2. Ground No.1(A) & (B) reads as under:

“(A)That on fact and under the circumstances of the case, the CIT(A) was clearly wrong in holding that the assessee was not entitled exemption of Rs.29 lacs u/s.54 of the Act by rejecting the claim of the assessee to have deposited Rs.26 lacs in capital gain deposit account and Rs.3 lacs with West Bengal Housing Board.”

(B) That the CIT(A) was not justified while ignoring the direct



evidence of the capital gain deposit account and application money with West Bengal Housing Board.”

3. Apropos this ground, Id A.R. submitted that the Assessing Officer has made addition on account of disallowance of Rs.26,00,000/- u/s.54 of the Act by observing that the amount was transferred to STDR A/c and no evidence was there that the amount was invested in capital gains account. The CIT(A) confirmed the addition without any basis and discarding the sustainable evidence filed by the assessee i.e. certified issued from the bank. Ld counsel for the assessee submitted that the very addition made by the AO and confirmed by the CIT(A) may kindly be deleted.

4. Ld A.R. also submitted that the Assessing Officer has made addition of Rs.3,00,000/- u/s.54 of the Act by observing that this amount was advanced to West Bengal Housing Board and no evidence was filed that this amount was invested in capital gains account. Ld counsel vehemently pointed out that merely because no allotment was made to the assessee, the Assessing officer denied the exemption u/s.54 of the Act and the CIT(A) also confirmed the same without any basis.

5. Replying to above, Id D.R. drew our attention towards paragraph 3 & 3.1 of the first appellate order and submitted that no copy of capital gains account or STDR was filed by the assessee showing that the fixed deposit was made by the assessee in the capital gains account scheme and certificate was dubious and, therefore, the authorities below were right in



denying the exemption of Rs.26 lakhs u/s.54 of the Act. Ld D.R. referred to the decision of Cochin Bench of the Tribunal in the case of R Vidhyadharan vs DCIT, 131 ITCL 378, wherein, it was held that the deposit of money in fixed deposit does not fulfil the requirements of capital gains scheme. The deposits should be made in the specific capital gains scheme. Therefore, the AO was right in denying exemption u/s.54 of the Act and the CIT(A) was right in confirming the same.

6. On careful consideration of rival submissions, we are of the considered view that for making claim of exemption u/s.54 of the Act, the assessee is required to deposit before furnishing the return of income, in any bank or institution as may be specified by the Central Government in Official Gazette in the capital gains account. From the certified issued by Branch Manager, State Bank of India, it is discernible that the assessee on 27.3.2010, deposited Rs.26 lakhs in capital gains but the same was transferred to fixed deposit STDR account No.31110760825. The CIT(A) specifically asked the assessee to submit copy of STDR account but the same was not filed which could establish that the fixed deposit was in the capital gains account. The certificate issued by the Bank and reproduced verbatim by the CIT(A) at page 3 is self-contradictory, which reveals that the amount was deposited in SB A/c and then it was transferred to fixed deposit account No.31117783705 but no proof or account detail or statement of account was filed by the assessee before the authorities



showing that fixed deposit was in the capital gain scheme, which could enable the assessee for making the claim of exemption u/s.54 of the Act. However, it is not disputed that the amount was initially parked in the capital gains account and later on the same was transferred to fixed deposit account. No details of the same were furnished before us at the time of hearing. Hence, we set aside the addition of Rs.26 lakhs to the file of the Assessing Officer to verify once again whether the deposit of money of Rs.26 lakhs in bank account fulfil the requirement of section 54 of the Act. Accordingly, this part of ground is restored to the file of the AO for verification and decision afresh about claim of exemption u/s.54 of the Act. Hence, Ground No.1(A) is allowed for statistical purposes.

7. So far as remaining amount of Rs.3 lakhs is concerned, undisputedly, the assessee issued a cheque to West Bengal Housing Board alongwith application for allotment of house, but the same was not allowed and no allotment was made to the assessee. In our humble understanding, the provisions of section 54 of the Act making an application for allotment of a house with West Bengal Housing Board or any other Housing Board is not sufficient to claim exemption u/s.54 of the Act. Therefore, the authorities below are right in dismissing the claim of exemption u/s.54 of the Act pertaining to claim of Rs.3 lakhs. Hence, Ground No.1(B) is dismissed.

8. Ground No.3 of appeal reads as under:



“ That on the facts and circumstances of the case, the CIT(A) is unjustified and unlawful in confirming the order of the AO in making addition of Rs.5 lakhs on account of foreign trip.”

9. Ld A.R. of the assessee submitted that the Assessing Officer as well as the CIT(A) was not right in confirming the addition of Rs.5 lakhs on account of foreign trip. Ld counsel submitted that the assessee made foreign trip to Vietnam on the invitation of Vietnam National Heart Association and to M/s. Diagnosearch Life Sciences Pvt Ltd., UAE, respectively and foreign trips were made during the year were not personal in nature and, therefore, there was no question of disclosing any expenditure of such tour. Therefore, the AO was not justified in disallowing the same which is liable to be deleted.

10 Replying to above, ld D.R. took us through the relevant part of the assessment order para 4.2 and first appellate order and submitted that on the inspection of passports by the DDIT (Inv.), Kolkata, it was revealed that the assessee visited on the invitation of Vietnam National Heart Association and another trip to UAE on the invitation of Diagnosearch Life Sciences Pvt Ltd., and the invitation letter does not mention that expenses for travel and stay would be paid for by the invitee. Ld D.R. vehemently pointed out that another certified by one Gajendra Sharma, Controller, Finance & Account of M/s. Diagnosearch Life Sciences Pvt Ltd., has no authority to issue and verify that the expenses for travel, visa and hotel accommodation were borne by Cardiaokine Inc. Ld D.R. strenuously



submitted that the appellant does not have any evidence in his possession to show that expenses were borne by somebody else and the expenses were incurred in the foreign trip for pleasure of the family members and not disclosing the expenses in the books of account clearly establish that the same is undisclosed income which is taxable u/s. 69C of the Act. Ld D.R. submitted that section 37(1) of the Act clearly provide that the business expenditure or personal expenses are inadmissible in providing freebees to medical practitioner by Pharmaceutical and allied health sector industry. He also referred to CBDT Circular No.4/.2012 dated 1.8.2012. Lastly, Id D.R. submitted that the claim may kindly be dismissed.

11. On careful consideration of rival submissions, we are of the considered view that neither before the lower authorities nor before this Bench, the assessee has filed any cogent and reliable evidence to show that the expenses incurred in Vietnam and UAE tour were borne by the host. The CBDT Circular No.5 /2012 dated 1.8.2012 clearly provides that the expenses incurred in providing freebees to medical practitioner by Pharmaceutical and allied health sector industries and inadmissible expenses. In the present case, admittedly, the assessee made foreign tour to Vietnam and UAE during the relevant financial period and do not show or procure any expenses incurred towards such foreign trips. Therefore, the authorities below were right in making addition u/s.69C of the Act treating



the same as undisclosed expenditure of the assessee during the relevant financial period. Accordingly, Ground No.2 of appeal is dismissed.

12. Ground No.3 of appeal reads as under:

"That on the facts and circumstances of the case, the CIT(A) is unjustified and unlawful in confirming the order of the AO in making the addition of Rs.14,50,000 of share of agricultural income. Though the addition made by the AO is based on highly dubious and flimsy ground which does not carry any merit in the eye of law."

13. Ld counsel for the assessee submitted that the AO as well as the CIT(A) are not justified in disallowing the agricultural income. He submitted that in the previous assessment years i.e. 2005-06 to 2007-08, 2010-2011 and subsequent assessment year 2016-17, the agricultural income has been accepted by the department in the case of the assessee. He also submitted that in the assessment year 2016-17, the Assessing Officer after verifying the paternal agriculture income has accepted the claim of the assessee in his order dated 4.12.2018. He also produced an order u/s.154 r.w.s. 143(3) of the Act dated 11.4.2019 for the assessment year 2016-17 in the case of the assessee and submitted that after considering the contract notes related to future and option, details of paternal agriculture income received from the father and details regarding loans received, sundry creditors and fee receivable observed that the claim of the assessee is found to be correct and no addition is called for in regard to agricultural income. Therefore, rule of consistency should be followed. For this



proposition, he relied on the decision of Hon'ble Supreme Court in the case of RADHASOAMI SATSANG vs. COMMISSIONER OF INCOME TAX, 193 ITR 321 (SC).

14. Replying to above, Id D.R. submitted that after thorough enquiry, the Assessing Officer has made the addition and Id CIT(A) was justified in confirming the same. He submitted that as against the agricultural income claimed by the assessee, the assessee could not evidence the deposits in the bank with regards to sale proceeds of agricultural income. Hence, the addition deserves to be confirmed.

15. On careful consideration of the rival submissions, we find that similar agricultural income has been accepted by the department in assessment years 2005-06 to 2007-08, 2010-2011 and subsequent assessment year 2016-17. The departmental authorities have also not doubted the holding of agricultural land of 45 acres in the name of the father of the assessee and only disbelieved the income of Rs.14,50,000/- towards agricultural income as the same was not reflected in the bank account of the assessee. There may be various reasons to park the fund out of agricultural income in the bank or in hand to meet further expenditure for this purpose. It is not the case of the revenue that similar amount of agricultural income should be reflected in the bank account to prove the agricultural income. There was no evidence to establish that the assessee has sold the agricultural land or that the assessee has stopped the agricultural operations. The Revenue





has not placed on record any positive material to disbelieve the agricultural income claimed by the assessee, therefore the addition of Rs.14,50,000/- cannot be sustained. Hence, we set aside the orders of lower authorities and direct the Assessing officer to delete the addition of Rs.14,50,000/- and allow this ground of the assessee.

16. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 30 / 10/2019.

Sd/-

**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

sd/-

**(Chandra Mohan Garg)**  
**JUDICIALMEMBER**

Ranchi; Dated 30/10/2019  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Dr. Jaya Narayan Naik, 126,  
Bagmari Road, Top Floor, Kankurgachi, Kolkata
2. The Respondent. JCIT, Range-1, Dhanbad
3. The CIT(A)- Dhanbad
4. Pr.CIT- Dhanbad
5. DR, ITAT, Ranchi
6. Guard file.  
//True Copy//

**By order**

Sr. Pvt. Secretary,  
ITAT, Cuttack