Court No. - 35

Case :- INCOME TAX APPEAL No. - 398 of 2005

Appellant :- Dr. R.A. Verma, Medical Officer, Primary Healthcentre, Bansi
Respondent :- Commissioner Of Income Tax, Allahabad
Counsel for Appellant :- Suyash Agrawal,R.R. Kapoor
Counsel for Respondent :- Ashish Agarwal

Hon'ble Bharati Sapru,J.
Hon'ble Saumitra Dayal Singh,J.

Heard Shri Suyash Agrawal, learned counsel for the appellant and Shri Ashish Agrawal, learned counsel for the respondent.

This appeal under Section 260-A of the Income Tax, 1961(hereinafter referred to as the 'Act') has been filed by the assessee against the order of the Income Tax Appellate Tribunal dated 08.06.2005 for the assessment year 1998-99 raising following questions of law:

"(i) Whether on the facts and circumstances of the case, the Tribunal was legally justified to ignore the evidences filed and submissions made as mentioned in para no.5 of the impugned order and sustaining additions on account of alleged income from private practice relying on the report of the Inspector?

(iv) Whether on the facts and circumstances of the case, the Tribunal was legally justified in holding that the appellant has made a false claim of agricultural income and investment in movable properties including bank balance and cash in hand was made from alleged private practice?

(v) Whether the Tribunal was justified in not

considering that inquiry conducted by department in A.Y.2000-01 will not have any binding effect for previous assessment years, in view of settled proposition of law that res judicata has not application in tax matters?

The appeal pertains to the assessment year 1998-99. The assessee had disclosed income from salary of Rs.1,61,100/- and agricultural income of Rs.1 lac. Admittedly, on 22.08.2000 the Income Tax Inspector visited the Gomti Hospital being run by a partnership firm of Smt. Pallavi Verma and Smt. Geeta Pandey spouses of the appellant and one Dr. P.P. Pandey respectively. Based on the observations made by the Income Tax Inspector in that survey, he submitted a report stating that at that time the assessee had been found to be engaged in private practice at the said medical establishment.

By the assessment order dated 12.02.2001 the Assessing Officer made addition to the undisclosed income of the assessee from such private practice at Rs.6,67,616/-. Also while making addition the Assessing Officer also disallowed the agricultural income of the assessee of Rs.84,000/- and added the same to the assessee's undisclosed income from private practice. The assessee's first appeal was dismissed by the CIT (Appeals). A further appeal of the assessee to the Tribunal was partly allowed. It reduced the undisclosed income of the asseesse from private practice to Rs. 5 lacs. While doing so the Tribunal has recorded its findings as below:-

> *"The enquiry of the Inspector clearly established that the assessee was having regular consultations chamber at Gomti Hospital and examining the patients on all the week days. The assessee has not also denied that he was examining the patients on all the week days. The assessment has not also denied that he was examining the patients at Gomti Hospital and visiting his native village on Sundays. He has wrongly claimed that these visits were as honourary consultant and was going charitable works. The Inspector himself has noticed that fee of Rs.60/- per patient was charged by the assessee for examining the patients at Gomti Hospital. The very fact that the firm in the name of Gomti Hospital was constituted by wives of two Doctors and the partners themselves had no professional qualification or skill to run the hospital made it clear that in order to overcome the departmental prohibition on private practice the Doctor started hospital in the name of the spouse and carried on private practice. The income from undisclosed sources utilised for making household expenses, making a false claim of agricultural income and investment in moveable properites including bank balance and cash in hand was clearly from private practice. It is observed that the income-tax proceedings are required to be decided on balance of probabilities and preponderance of facts the criteria of ordinary intelligence and reasonable prudence is to be applied while examining the evidence for deciding the issue. Besides, the direct evidence being in the possession of the assessee, the assessee cannot be expected to reveal true facts prejudicial to his interest. The totality of facts and circumstances, therefore, prove that the assessee was doing private practice. The fact that the private practice was against departmental rules and he was drawing non-practicising allowance cannot*

adversally affect the claim of the revenue because even income derived from illegitimate or irregular practice is liable to tax. Since there cannot be assets or expenditure without any source or income to support the same, the findings of the lower authorities that in view of claim of agricultural income, low household withdrawals and investment in moveable properties, the assessee was liable to be assesseed for his income from private practice is considered well founded. The total of wrong claim of agricultural income of Rs.84,000/- cash in bank balance of Rs.2,20,615/- investment in moveable property to the extent of Rs.1,94,626/- and household withdrawal Rs.72,000/- (Rs.1,20,000 minus Rs.48,000/-) works out to Rs.5,71,591/- as against the declared salary income of Rs.1,61,090/- which was subject to TDS and other such deductions. Considering the finding of the ld. CIT (A) that the entire claim for agricultural income was false because there was no agricultural land in the name of the assessee and the fact that the A.O. has estimated the household expenses at Rs.10,000/- per annum on a very conservative figure, the total of the above expenditure and investments from unexplained sources even after giving allowance of Rs.1 lakh for not salary after tax will be around Rs. 5 lakh for the accounting period relevant to A.Y. 1998-99, which is the subject matter of this appeal. In all fairness, we, therefore, confirm an addition of Rs.5 lakh on account of income from private practice, including of undisclosed income declared as agricultural income by the assessee in its relevant return of income. The addition of Rs.1,67,660/- is therefore deleted. The addition of Rs.5 lakh is confirmed. The grounds of appeal to that extent are partly allowed."

Learned counsel for the assessee Shri Suyash Agrawal submits that the entire material that had been relied upon by the revenue to make an addition on account of undisclosed income from private practice is referable solely to the period 22.08.2000 the survey itself having been conducted on 22.08.2000, i.e. during previous year referable to Assessment Year 2001-02 and not to the Assessment Year with 1998-99.

Elaborating the submissions further learned counsel for the assessee submits that other than the survey report, there is no material that as may indicate that the assessee had indulged in private practice in the previous year relevant to the assessment year 1998-99 or that he was in possession of the receipt of Rs.5 lacs (from that source) as has been estimated by the Tribunal. He therefore, submits that the assessment had been made in absence of any evidence of the assessee having indulged in private practice during the previous year relevant to the assessment year 1998-99.

Opposing the aforesaid submissions Shri Ashish Agrawal, learned counsel for the revenue submits that in response to the notice issued to the assessee during the course of the assessment proceedings, he did not deny the fact that even during the assessment year 1998-99 the assessee had indulged in private practice at the medical establishment, Gomti Hospital.

He, therefore, submits that the nature of the activity being same, the revenue authorities and the Tribunal have not committed any error in upholding the estimation of undisclosed income from private practice. He further submits that sufficient relief has already been granted by the Tribunal and therefore, the appeal deserves to be dismissed.

Having considered the arguments so made by the learned counsel for the parties we find that vide his reply dated 12.09.2000 in response to the notice dated 17.08.2000, the assessee had specifically disputed the fact of having indulged in private practice during the previous year relevant to the assessment year 1998-99. In this regard vide para 5 of the aforesaid reply the assessee had stated that being a government servant he could not have indulged in private practice and that he had only examined certain patients on charitable consideration. He also disclosed that in the relevant year he had indulged in charitable activities with certain other organisations.

Then, it is an undisputed fact between the parties that other than the survey report dated 11.09.2000 which refers to survey dated 22.08.2000, there is no material or evidence brought on record by the revenue authorities that may support their case of the assessee having indulged in private practice or having derived income as estimated.

In the first place a perusal of the survey report dated 22.08.2000 reveals that the fact discovered therein were only with reference to the previous year 2000-01. Further, there is no material referred in that report that may be considered adverse to the assessee for the Assessment Year 1998-99. Even from the finding of the Tribunal it is seen, the Tribunal did not find existing, any material on record from which it could be inferred that the assessee had engaged in private practice during the relevant period. The inference of the Tribunal to that extent is a presumptive inference drawn on basis of fact discovered two years later which fact was irrelevant for Assessment Year 1998-99.

Each assessment year comprises a separate unit of assessment. We find that in the facts of the present case the assessment has been made for the Assessment Year 1998-99 purely on the basis guess work and is not supported by any evidence and material on record. The evidence relied upon by the learned counsel for the revenue in the shape of reply as filed by the assessee cannot constitute an admission on the part of the assessee having indulged in private practice for the Assessment Year 1998-99 inasmuch as he specifically stated that in that year the assessee had only indulged in charitable work. Thus, we find that the assessment made against the assessee for the Assessment Year 1998-99 is not based on any material or evidence but on pure guess work unsupported with evidence.

Then it is noted, the assessing officer himself allowed agricultural income Rs. 36,000/-. That head of income having been found present in the present case, and there being absence of any proof of assessee having engaged in private practice, disallowance of agricultural income also could not have been made in absence of any cogent material or evidence in that regard.

The questions of law are, therefore, answered in favour of the assessee and against the revenue.

Accordingly the addition made to the income of the assessee for the Assessment Year 1998-99 in respect of undisclosed income for private practice of Rs.5 lacs is deleted.

The appeal is accordingly **allowed**.

Order Date :-05.12.2017
pks