

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-2" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER
ITA.No.6700/Del./2019
Assessment Year 2007-2008

Shri Sulekh Chand Singhal, Delhi – 110 053. PAN AGRPS8969H C/o. Raj Kumar & Associates, C.As. L-7A(LGF), South Extension Part-II, New Delhi - 110 049	vs.	The ACIT, Circle – 57(1), Room No.D-9, Vikas Bhawan, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Raj Kumar Gupta, CA Shri Sumit Goel, C.A.
For Revenue :	Shri Rakesh Gupta, Sr.D.R.

Date of Hearing :	23.07.2020
Date of Pronouncement :	23.07.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-37, New Delhi, Dated 27.06.2019, for the A.Y. 2007-2008.

2. Briefly the facts of the case are that the assessee filed return of income on 24.07.2008 declaring income of Rs.78,263/-. The return was processed under section 141(1) of the I.T. Act, 1961. Later on information was received from Investigation Wing that search was conducted under section 132 of the I.T. Act, 1961 on 27.06.2013 in Santosh Group of Institutions and Dr. P. Mahalingam. During the search, certain documents/books of account were seized from their premises and Administrative Block at Ghaziabad which reveal receipt of donation/capitation fees over and above the regular course fees paid in cash by parents of the students for taking admission in various medical courses. During the course of recording statement under section 132(4) relevant seized document were confronted to Dr. P. Mahalingam, Chairman of the Trust in which he has categorically admitted of accepting donation/capitation fees in cash and offered these unaccounted money for taxation in relevant assessment years. The A.O. on the basis of such information found that assessee has already paid cash of Rs.27 lakhs for admission of his son to MBBS course. The

A.O. on the basis of this information reopened the assessment under section 147/148 of the I.T. Act. The statement of assessee was recorded under section 131 of the I.T. Act, but, he failed to explain correctly that he had not given the donation. The assessee, however, denied giving any cash for admission of his son. The A.O. was not satisfied with the explanation of assessee and made the addition of Rs.27 lakhs.

2.1. The assessee challenged the reopening of the assessment under section 147/148 and addition of Rs.27 lakhs before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee briefly explained that no adverse material was confronted to him and that Dr. P. Mahalingam was never produced for cross-examination on his behalf and even his statement was not adverse in nature against the assessee because he denied of receipt of any capitation fees. The Ld. CIT(A) confirmed the reopening of the assessment in the matter and has also recorded in the impugned order that at the appellate stage he has directed the A.O. to arrange

meeting with Dr. P. Mahalingam and allow an opportunity to the assessee for cross-examination of Dr. P. Mahalingam. The A.O. in response thereto issued summons, but, Dr. P. Mahalingam did not appear before A.O. for cross-examination on behalf of the assessee. The Ld. CIT(A), however, noted that right of cross-examination is not absolute right of the assessee. The Ld. CIT(A) even on merit confirmed the addition and dismissed the appeal of assessee.

3. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

4. The assessee in the present appeal has challenged the reopening of the assessment under section 147/148 of the I.T. Act, 1961 and addition of Rs.27 lakhs on merits.

4.1. The Learned Counsel for the Assessee submitted that no right of cross-examination have been allowed to the

statement of Dr. P. Mahalingam, therefore, addition on merit is wholly unjustified.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. We have considered the rival submissions. It is a fact that the entire addition is based on the statement made by Dr. P. Mahalingam which were recorded under section 132(4) of the I.T. Act, in which, he has admitted to have received donation/capitation fees in cash which was surrendered for taxation. The assessee, however, denied to have paid any amount in cash on account of donation/capitation fees to Dr. P. Mahalingam or the College in which his son was admitted for MBBS Course. Since the Revenue Department alleged that assessee has paid cash of Rs.27 lakhs as donation/capitation fees, therefore, onus is upon A.O. to prove through cogent and reliable evidence that assessee has in fact paid cash by way of donation of capitation fees to the Medical College and Dr. P. Mahalingam. In the present case, the entire case is set-up on the basis of statement of Dr. P. Mahalingam recorded

during the course of search under section 132(4) of the I.T. Act, 1961, in which, he has admitted to have received donation/capitation fees in cash. However, the assessment order is silent if any right of cross-examination have been allowed on behalf of the assessee at the assessment stage. It is also a fact that the Ld. CIT(A) at the appellate stage asked the A.O. for production of Dr. P. Mahalingam and allow an opportunity to the assessee for cross-examination. The A.O. issued summons to Dr. P. Mahalingam at the appellate stage for providing an opportunity to the assessee to cross-examine his statement, but, Dr. P. Mahalingam did not appear at the appellate stage, therefore, the fact remained that assessee has been denied right to make cross-examination to the statement of Dr. P. Mahalingam. It is well settled Law that any adverse material collected at the back of the assessee when not confronted and that if any statement is recorded by the A.O./Revenue Department at the back of the assessee and such statement is not allowed for cross-examination on behalf of the assessee, such material cannot be considered against the assessee in the

Income Tax proceedings and such material/statement cannot be read in evidence against the assessee. We rely upon Judgments of the Hon'ble Supreme Court in the case of Kishanchand Chellaram 125 ITR 713 (SC) and Andaman Timber Industries 281 CTR 214 (SC). Thus, the statement of Dr. P. Mahalingam cannot be relied upon against the assessee. There is no other material available on record so as to make any addition against the assessee. Thus, onus upon the Revenue Department to prove that assessee paid cash to Dr. P. Mahalingam or the Medical College is not discharged in the present case. In view of the above discussion, we set aside the Orders of the authorities below and delete the addition. The assessee in this appeal also challenged the reopening of the assessment. However, this issue is now left with academic discussion only because we have already deleted the addition on merit. Accordingly, appeal of the assessee is allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

(B.R.R. KUMAR)
ACCOUNTANT MEMBER

(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 23rd July, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.