IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” : HYDERABAD
(THROUGH VIDEO CONFERENCE)

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

I.T.A. No. 423/HYD/2019
Assessment Year: 2010-11

Ganapathi Dyavath NIRMAL [PAN: AFIPD0325E]	Vs	Income Tax Officer, Ward-1 NIRMAL
(Appellant)		(Respondent)

For Assessee	:	Ms.S.L.Tharangini, AR
For Revenue	:	Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing	:	06-04-2021
Date of Pronouncement	:	28-05-2021

O R D E R

PER S.S.GODARA, J.M. :

This assessee’s appeal for AY.2010-11 arises from the CIT(A)-1, Hyderabad’s order dated 28-01-2019 passed in appeal No. 0298 / 17-18 / ITO, Ward-1, Nirmal / CIT(A)-1 / Hyd / 2018-19, involving proceedings u/s.153C of the Income Tax Act, 1961 [in short, ‘the Act’].

Heard both the parties. Case file perused.

2. We notice at the outset that the assessee’s sole substantive grievance raised in the instant appeal challenges correctness of the learned lower authorities’ action adding alleged un-explained expenditure amount of Rs.5 lakhs in the

course of assessment famed on 26-12-2017 and upheld in the CIT(A)'s detailed discussion as under:

"5. Ground No.2 to 4 is with regard to addition of Rs.5,00,000/- towards unexplained expenditure.

5.1 During the assessment proceedings, the Assessing Officer observed that:

"As per information received from DCIT, Central Circle-2(2), Hyderabad that a search & Seizure operation u/s.132 was conducted in the case of M/s.Arihant Educational Society on 25.07.2013. During the search operation, it was noticed thai the appellant hac! paid Rs.20,00,000/- to M/s.Arihant Educational Society prescribed by government and additional amount of Rs.15,00,000/- for the purpose of admission of his son D.Srujan Samrat. Since it is the material available from search & seizure proceedings, the Assessing Officer issued notices u/s.153C to the appellant. During the year, the assessee paid Rs.10,00,000/- towards tuition fee out of total amount of Rs.35,00,000/-. The assessee explained that he worked as school teacher and the sources for payment of fee are out of salary savings & loan amounts.

The Assessing Officer asked the assessee to explain as to why the payment and sources of capitation fee of Rs.5,00,000/- should not be treated as unexplained expenditure. In response, the assessee submitted that he had paid Rs.30,00,000/- but not Rs.35,00,000/-. However, as per documentary supplied by DCIT, Central Circle total fees paid was Rs.35,00,000/- whereas the assessee could explain the sources to the extent of Rs.30,00,000/- only. Hence a show cause was issued to the assessee asking him to explain as to why the payment and capitation fee of Rs.5,00,000/- paid in excess of Rs.30 lakhs shall not be treated as unexplained expenditure. In response, the assessee has explained that no such payment was paid by him and once again reiterated that he paid Rs.30,00,000/- only.

The Assessing Officer relying on the evidences during search and seizure, made addition of Rs. 5,00,000/- as unexplained expenditure. "

5.2 During the course of appeal proceedings, the appellant submits that

a) "the total fees was Rs.30,00,000/ - for the entire medical course. Out of which Rs.20,00,000/- was prescribed by Government as fee for entire course and Rs.10,00,000/- was paid as capitation fee.

b) The appellant had paid the medical course fee of Rs.30,00,000/- (including capitation fee) in different years of the course period for which the appellant has submitted the cash flow statements for the respective years.

c) The ld.AO called for information with respect to payment of fees and sources for the same. In response, the appellant submitted all the information and explanations relating to the payment of fees along with all documentary evidence including cash flow statements.

d) The Ld.AO clearly mentioned that he is in receipt of information from DIT that the appellant has paid a medical course fee of Rs.30,00,000/ - as prescribed by Government and cash capitation fee and accordingly called for information.

e) In contradictory to the said notice amount of Rs.30,00,000/- the Ld.AO has taken the amount of Rs.35,00,000/ - as course fee and added Rs.5,00,000/ - as unexplained expenditure and completed the assessment based on such dumped and unsigned documents found from the premises of M/s.Arihant Educational Society, without bringing any corroborated material on record.

j) The appellant relied in the judgments in the case of Addl.CIT Vs. Miss Lata Mangeshkar reported in 74 ITR 696 (Bam), Hon'ble Delhi high Court in the case of Pr.CIT Vs. Meenakshi Oversees pvt ltd (ITA No.692/2016 dated 26.05.2017) and W.P.(C) No.9659 of 2015 (Rajiv Agarwal Vs. CIT) gated 16.03.2016 and Radhasoami Satsang Vs. CIT 193 ITR 321 (SC)."

5.3 With regard to the above submissions as submitted by the appellant, a remand report was called for from the Assessing Officer on 10.05.2018.

Accordingly, the Assessing Officer submitted his remand report on 25.05.2018, which is as under:

> *"Keeping in view the facts of the case and considering the failure on part of the assessee in furnishing the sources for the payment of Rs.15,00,000/- as capitation fee despite the opportunities accorded, the objections raised by the assessee through the written submissions filed before the Appellate Authority in support of the non-payment of fee over and above explained fee of Rs.30,00,000/- may not be considered. "*

5.4 The remand report was given to the appellant on 31.07.2018. In response, the appellant submitted written submissions dated 28.01.2019, which is as follows:

"The appellant submitted that the Ld. ITO mentioned that he has initially received information from DCIT, Central Circle-2(2) on 29.08.2016, where in it was mentioned that the assessee has paid Rs.30,00,000/ - and subsequently further information received from same office through Email, wherein the assessee paid Rs.35,00,000/-. The extract of fee details of both the notices received by the Ld.ITO, which is as follows .-

Information received through notice dated 11.08.2016 (recd. on 29.08.2016) based on which notice u/s.142(1) dated 06.09.2017 was issued for Rs.30,00,000 :

Student's Name and Father name	Prescribed fee paid	Address and contact no.	Amount paid in cash over and above prescribed fee	Date of payment of donation/capitation fee	Seized material reference
D.Srujan Samrat S/o.D.Ganapathi	20,00,000	#1-2-28/D3/1, Vidya Nagar, Nirmal, Adilabad Ph.9966930588	2,00,000	19.07.2012	Page 94 of A/CAIMS/04
			4,00,000	14.03.2012	Page 95 of A/CAIMS/06
			4,00,000	13.03.2012	Page 129 of A/CAIMS/07
Total			10,00,000		

Information received through email dated 18.12.2017 at 6.30 PM based on which information called for through notice dated 18.12.2017 :

Name	Date of payment	Amount paid by student	Seized material reference	Prescribed fee paid	Collection in excess of prescribed fee	Total fee collected
D.Srujan Samrat	19.07.2012	2,00,000	A/CAIMS/04 page 94	20,00,000	15,00,000	35,00,000
	14.03.2012	4,00,000	A/CAIMS/06 Page 95			
	13.03.2012	4,00,000	A/CAIMS/07 Page 129			

It is very clear from the above table that the date wise payment of capitation fee in both the notices received from DCIT, Central Circle2(2) was Rs.10,00,000/- only (2,00,000 + 4,00,000+4,00,000). However, in the second notice in total column titled as "Collection in excess of prescribed fee" it was wrongly mentioned as Rs. 15,00,000/-. The amount mentioned as Rs.15,00,000 in the total *column would be a typographical error and therefore requesting to consider the factual information in the above two tables.*

Further the AO received the subsequent information on 18.12.2017 at 6.13 pm through official email id from DCIT, Central Circle-2(2). He called the AR of the assessee in the late hours (around 7.00 PM) and issued a Notice dated 18.12.2017 for which the AR has acknowledged. Further the Ld. ITO has asked for the explanation for differential amount of Rs. 5,00,000/- which found by him from the wrongly mentioned total amount without considering the date-wise payments (which was Rs.10,00,000/- only.) The AR clearly submitted that the assessee paid only Rs.10,00,000/- as capitation fee. But the Ld.ITO without considering the AR statements and also without verifying the total of the date wise payments, within a short period of late hours on 18.12.2017, recorded order sheet and completed assessment with a wrong addition of Rs. 5,00,000/-.

5.5 With regard to the above submissions of the appellant, once again a remand report was called for from the Assessing Officer on 27.08.2018. In response the Assessing Officer submitted his remand report on 17.09.2018, which is as under:

"A search & Seizure operation u/s.132 was conducted in the M/s.Arihant Educational Society on 25,07.2013. It was noticed from the seized material that Sri D.Ganapathi had paid Rs.20,00,000/- as prescribed fees and Rs.15,00,000/- as capitation fees (collection in excess of prescribed fees) for getting admission of his son Sri D. Srujan Samrat in MBBS for the academic year 2009-10 in Chalimeda Ananda Rao Institute of Medical Science (CAIMS). The assessee has paid Rs.20,00,000/- as prescribed fees and Rs.1 0,00,000/ - (as part of capitation fees of Rs.15,00,000). The part of capitation fees of Rs.10,00,000 was paid as under:

Student's Name and Father name	Father's Name	Amount paid under capitation fees	Date of payment of donation / capitation fee	Seized material reference
D.Srujan Samrat	D.Ganapati	2,00,000	19.07.2012	Page 94 of A/CAIMS/ 04
		4,00,000	14.03.2012	Page 95 of A/CAIMS/ 06
		4,00,000	13.03.2012	Page 129 of A/CAIMS/ 07

The assessee has supported with documentary evidences for Rs.30,00,000/- (ie., Rs.20,00,000 prescribed fee and Rs.10,00,000/- as capitation fees) as under:

Date	Source Head	Amount (Rs.)
26.07.2009	Mortgage loan	3,40,000
16.07.2012	Educational loan	8,00,000
30.09.2012	HDFC Gold loan	1,80,000
30.07.2012	HDFC Personal loan	2,50,000
10.07.2013	LIC Policy loan	1,52,229
09.01.2015	PLI withdrawal	1,19,950
	Accumulated salary savings	4,00,000
	Gift from Father-in-law	2,60,000
	Total	30,02,179

As seen from the above, the assessee has not disclosed sources for payment of balance capitation fees of Rs. 5,00,000/- and hence the same was disallowed as unexplained expenditure. As per Annexure-I enclosed to this letter which was part of enclosures received from DCIT, Central Circle-2(2), Hyderabad it was clearly mentioned that the Assessee Sri D. Ganapati had paid prescribed fees of Rs.20,00,000/- and Capitation fees of Rs.15,00,000/- and when the same was put forth before the AR during the assessment proceedings he had orally mentioned that it was a mistake of college authorities and confirmed that the assessee had paid only Rs.30,00,000/- to the college authorities.

As per Annexure-II (enclosed to this letter) being one of the enclosures received from DCIT, Central Circle-2 (2), Hyderabad, in the list of students for Batch-2009-1 0, the agreed amount as against Shri D.Srujan Samrat at S.No.17 is Rs.35 and it also shows that the amount paid by the student is Rs.17.5 and the balance to be paid is Rs.1 7. 5. As per Annexure-! & II which are part of seized material, the amount paid by Shri D. Ganapati towards prescribed fee and capitation fees is Rs. 35,00,000/- and assessee contention that he has paid only Rs.30,00,000/- towards both the fees is incorrect.

However, as per the assessee's submissions dated 20.08.2018 before the CIT(A) it is to submit that the assessee was requested to furnish the prescribed fee and amount paid in cash over and above prescribed fee details basing on the letter of DCIT, Central Circle-2(2), Hyderabad's letter dated 11.08.2016 vide notice uls.142(2) dated 06.09.2017 and show cause letter dated 23.11.2017. As per the search material the fee payment details were available in part only and since the assessee also has not fully furnished the receipts for prescribed fee and donations for verification, letters dated 12.10.2017 and 22.11.2017 were written to DCIT, Central Circle-2(2), Hyderabad requesting for copy of appraisal report so as to enable this office to compile the information and complete the assessment proceedings in the instant case.

Meanwhile, a letter dated 07.11.2017 was also addressed to the AR, M/s.Arihant Educational Society, Himayat Nagar, Hyderabad *requesting to furnish. the details pertaining to fee receipts of capitation fee/donation over and above regular fee paid along with ledger extract of payments of the candidates, etc. However, M/s. Arihanr Educational Society vide letter dated nil received in this office on 24.11.2017 confirmed that Shri D.Srujan Samrat has been admitted in MBBS course under management quota for the academic year 2009-10 on 07.09.2009 and submitted documentary evidence for payment of tuition fee to the tune of Rs.13,00,000/- only and mentioned that since most of their records were with income tax department, they could furnish the information available with them as on that date.*

In response to the show cause letter dated 23.11.2017, the assessee's AR attended on 28.11.2017, 12.12.2017 and 18.12.201-7 and submitted evidences for Rs.30,00,0001- (i.e., Rs.20,00,000 prescribed fee and Rs.10,00,000/- as capitation fees). However, basing on the mail received from DCIT, Central Circle-2(2), Hyderabad on 18.12.2017 i.e, Annexure I wherein it was mentioned that the assessee has paid Rs.20,00,000/- towards prescribed fee and Rs.15,00,000/- towards capitation fees, the assessee was asked to explain the sources for remaining amount of Rs.5,00,000/- and requested to submit the details by 19.12.2017 and assessment was completed on 26.12.2017. Annexure-II was also taken into consideration before asking sources for payment of balance amount of Rs.5,00,000/-.

5.6 The remand report was given to the appellant, in response, the appellant submitted written submissions dated 13.11.2018, which is as follows:

> *1."Information received through notice dated 11.08.2016 from DCIT, Central Circle-2(2), based on which notice u/s.142(1)) dated 06.09.2017 was issued and in which it is clearly mentioned that the prescribed fee and capitation fees was Rs.30,00,000/- only (i.e., 20,00,000 + 10,00,000).*
>
> *2. As per the information received through email dated 18.12.2017 at 6.13 PM from same DCIT, Central Circle-2(2), based on which the assessment was completed and in details of capitation column it is clearly mentioned that the capitation fees was Rs.10,00,000 only. However, there was a typographical/total mistake in total column and based on which completion of assessment in unjustified."*

5.7 With regard to the above ground, I have carefully considered the facts of the case, assessment order, remand report dated 25.05.2018 & 17.09.2018 and submissions of the appellant. As per annexures enclosed in remand report dated 17.09.2018, it is seen that Rs.35 lakhs was agreed by the appellant for his son Sri, D.Srujan Samrat and has paid Rs.17.5 lakhs. The balance of Rs.17.5 lakhs is yet to be *paid. Since the detailed reasons mentioned by the Assessing Officer in the remand reports, it is seen that the appellant had explained sources forRs.30 lakhs, however failed to explain the sources for difference amount of Rs.5 lakhs. Hence the submissions of the appellant are not accepted and the addition made by the Assessing Officer on account of non-explanation of sources for the difference amount of Rs.5 lakhs made, is confirmed".*

3. We have given our thoughtful consideration to rival pleadings against and in support of the impugned addition. The same admittedly has arisen about the alleged seized material found in the course of search action dt.25-07-2013 in case of M/s.Arihant Educational Society indicating the assessee to have paid capitation fee of Rs.5 lakhs over and above that declared of Rs.30 lakhs. The Assessing Officer as well as the CIT(A) hold that the assessee has failed to explain source of the said Rs.5 lakhs and therefore, the same deserves to be treated as 'un-explained expenditure' only.

3.1. Learned departmental representative first of all has filed the Assessing Officer's satisfaction note u/s.153C based on seized material that the assessee had paid the impugned capitation fee of Rs.5 lakhs. We make it clear that the assessee's grounds nowhere challenge validity of impugned assessment framed u/s.153C of the Act.

3.3. Coming to merits, we notice that although this assessee draws salary income all along, neither the Assessing Officer nor the CIT(A) have considered his cash in hand in AY.2010-11 so as to give credit thereof before making the impugned addition.

Faced with this situation, we deem it appropriate that keeping in mind the assessee's social, economic status, his salary income drawn in the earlier assessment years and past savings, a lumpsum addition of Rs.2.5 lakhs only would be just and proper with a rider that the same shall not be treated as a precedent in any other case. The assessee gets relief of Rs.2.5 lakhs in other words. Necessary computation to follow as per law.

4. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 28th May, 2021

Sd/-	Sd/-
(LAXMI PRASAD SAHU)	**(S.S.GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad,
Dated: 28-05-2021

TNMM

Copy to :

1.Shri Ganapathi Dyavath, H.No.1-2-28, Near Prtu Bhavan, Vidya Nagar, Nirmal.

2.The Income Tax Officer, Ward-1, Nirmal.

3.CIT(Appeals)-1, Hyderabad.

4.Pr.CIT-1, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.