

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘A’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.59/Chd/2021

निर्धारण वर्ष / Assessment Year : 2017-18

Sh.Krishan Gopal Singla Prop. M/s Singla Surgical Hospital, Mehal Mubark, Sangrur. स्थायी लेखा सं./PAN NO: ABNPS5996D	बनाम	The Pr. Commissioner of Income Tax, Patiala.
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Adv.

राजस्व की ओर से/ Revenue by : Smt.C.Chandrakanta, CIT

सुनवाई की तारीख/Date of Hearing : 26.08.2021

उद्घोषणा की तारीख/Date of Pronouncement : 04.10.2021

**(Hearing through webex)**

**आदेश/ORDER**

**Per Annapurna Gupta, Accountant Member:**

The present appeal has been preferred by the assessee against the order of the Learned Principal Commissioner of Income Tax, Patiala [(in short the ‘Ld. Pr. CIT dated 31.03.2021 relating to assessment year 2017-18, passed in exercise of his revisionary jurisdiction u/s 263 of the of the

Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. The brief facts relating to the case are that the assessee is a Doctor by profession. That during the impugned assessment year a survey u/s 133A of the Act was conducted on his business premises on 30.08.2016. In consequence to the discrepancies found by the survey team the assessee surrendered a total amount of Rs.50lacs as under:

Unexplained advances made	=	Rs.40,55,000/-
Unexplained cash in hand	=	Rs. 9,45,000/-
Total	=	<u>Rs.50,00,000/-</u>

3. The said amount was included as surrendered income in the Profit & Loss Account of the assessee for the year and returned to tax under the head 'income from business and profession', paying taxes at the normal rate applicable to business income. The AO, in scrutiny assessment done u/s 143(3) of the Act, accepted the same making only an addition of Rs.5,100/- to the returned income.

4. The Ld. Pr. CIT, on perusing the assessment record was of the view that the surrendered income being unexplained, ought to have been taxed at the higher tax rate

of 77.25% as prescribed u/s 115BBE of the Act for unexplained incomes. He, therefore, issued a show cause notice u/s 263 of the Act to the assessee as to why the assessment order be not held erroneous and causing prejudice to the Revenue, for having taxed the surrendered income at the normal rate as against the higher rate applicable as prescribed by section 115BBE of the Act. Due reply was filed by the assessee and after affording due opportunity of hearing to the assessee the Ld. Pr.CIT held that the AO having not made necessary enquiries about the surrendered income before determining its taxability, the order passed was erroneous as well as prejudicial to the interest of the Revenue. He accordingly set aside the order to the file of the AO for passing afresh order in accordance with law in respect of the impugned issue.

5. Aggrieved by the same, the assessee has come up in appeal before us challenging the order of the Ld.Pr.CIT on the following grounds:

- “1. *That the Worthy PCIT, Patiala has erred in assuming the jurisdiction u/s 263(1) of the Income Tax Act, 1961, and, thereby, setting aside the assessment already framed u/s 143(3) vide order dated 29<sup>th</sup> March, 2019 to the file of the Assessing Officer.*
2. *That the Worthy PCIT, Patiala has failed to appreciate*

*that the assessment was completed after due application of mind by the concerned AO and, therefore, the provision of section 263 are not applicable.*

3. *That the finding of the PCIT, about the sum of Rs. 50 lacs to the assessed u/s 69A r.w.s. 115BBE and to be charged to a special rate of tax is wholly misconceived and against the facts and circumstances of the case.*
4. *That the case laws which have been cited by the PCIT, Patiala are not applicable to the facts of the case.*
5. *That the worthy PCIT, Patiala has erred in applying the (Explanation 2) to section 263 inserted w.e.f 01.06.2015 as the concerned Assessing Officer had duly made appropriate enquiries and applied his mind and assessed the income offered during survey as business income.*
6. *That the appellant craves leave to add, amend, and alter any of the grounds of appeal or to take any additional grounds of appeal before the appeal is finally disposed off.”*

6. We have heard both the parties and have also gone through the brief synopsis filed by the Ld.Counsel for the assessee in writing before us dated 26.08.2021 and the documents referred to before us.

7. The Ld.Pr CIT has held the assessment order passed by the AO in the impugned case u/s 143(3) of the Act as erroneous and causing prejudice to the Revenue for having accepted the surrendered income of Rs.40,55,000/- as business income, as returned by the assessee, and for having accepted consequently taxes paid thereon at normal

rates, when there was nothing on record explaining their source and without conducting any inquiry regarding their source, which therefore, as per the Ld.Pr.CIT ought to have resulted in the surrendered income being treated as from unexplained sources and taxed at higher rates of 77.25%, as provided u/s 115BBE of the Act.

8. There is no dispute vis a vis the position of law that income/investments from unexplained sources are taxed at a much higher rate as prescribed under section 115BBE of the Act.

9. The primary contention of the Ld.Counsel for the assessee while challenging the findings of the Ld.Pr.CIT, was that the documents and material found during survey revealed the source of the surrender made as being from the medical profession of the assessee itself and the AO having applied his mind to it and also to the submissions of the assessee before him, had rightly formed the view that the surrendered income related to the profession of the assessee and assessed it as such. That the AO had also noted that the assessee had paid advance tax at normal tax rates. That therefore the order of the AO was not erroneous on account of having accepted the treatment of the surrendered income

as business income of the assessee paying therefore taxes on the same at normal rates applicable.

10. We have carefully gone through all the documents and even the case laws referred to by the Ld.Counsel for the assessee and after going through the same we are unable to agree with the Ld.Counsel for the assessee that the source of the surrendered income, as being from the assessee's profession of medical practitioner, stood disclosed to the AO. For that matter, we find that the source has not been disclosed satisfactorily to the Ld. Pr.CIT also during revisionary proceedings.

11. The documents referred to by the Ld.Counsel for the assessee were filed before us Paper Book page Nos.47 to 53 and on going through the same we find that the contention of the Ld.Counsel for the assessee that the said documents, found during survey ,themselves revealed the source of the surrender made as being on account of the medical profession carried out by the assessee, falls flat. A perusal of these documents reveals that page Nos.47 to 49 contains names of persons with the amounts noted against them totaling in all to Rs.40,55,000/- which the assessee had surrendered as unaccounted advances. The contents of the

pages are as under:

Page no.47)	Rajesh Kumar	=	Rs.12.01 L
Page no.48)	Baljinder Singh	=	Rs.9,50,000/-
Page no 49)	Vishal Gupta	=	Rs.8,40,000/-
Page no 49)	Sahil Jindal	=	Rs.10,64,000/-
	Total	=	Rs.40,55,00,000/-

12. The rest of the pages from 51 to 53 list certain card numbers with names of persons. The Ld.Counsel for the assessee has stated on the basis of these documents that the amount of Rs.40,55,000/-surrendered, relates to names of patients mentioned against their card numbers at pages 51 to 53. He has repeatedly asserted there being correlation between this alleged list of patients and the amount of Rs.40,55,000/- as mentioned above. But there is nothing to suggest even the slightest of interconnection or interrelation between the two. The documents allegedly listing the card numbers and names of patients has no figures or amounts mentioned to suggest any amount having been collected from them, what to say of Rs.40,55,000/- They appear to be just two different sets of documents, one admittedly listing the advances given by the assessee to various persons and the other being only a list of patients with their card numbers. There is nothing to suggest any amount allegedly collected from the patients so listed in the documents what to say of

Rs.40.55lacs collected. The view of the AO formed from these documents that the surrender related to the business or profession of the assessee, as argued by the Ld.Counsel for the assessee, we hold cannot be a plausible view. The AO could not have formed such view in the facts and circumstances as were there before him.

13. Moreover, we find that before the AO the assessee had not offered any such explanation, nor did he offer any such explanation before the Ld. Pr.CIT. It is only before us that the Ld.Counsel for the assessee has offered this explanation that too, which we have found to be devoid of any substance/merits. Therefore, the contention of the Ld.Counsel for the assessee that the documents/material found during survey itself revealed the source of the income and the AO had accordingly formed a plausible view to tax the same as business income of the assessee, is we hold not acceptable and is accordingly rejected.

14. The Ld.Counsel for the assessee has also relied upon the statement made by the assessee during survey to contend that the source of the surrendered income stood explained as being from his business/profession. The statement was placed before us at Paper Book page No.20 as under:



3  
current financial year relevant to AY 2017-18. (20)

46

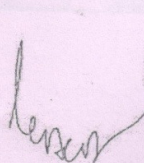
As per Annexure-A, there is a notebook impounded during survey, there are some amounts as follows:-

1. Rajesh Kumar 12,01,000/-
  2. Balinder Singh 9,50,000/-
  3. Vishal Gupta 8,40,000/-
  4. Sahil Jindal 10,64,000/-
- 40,55,000/-

Please explain the above amounts.

Ans. At the moment, I am not able to explain the same. However, these are advances given to above persons out of my undisclosed income. To avoid any litigation, I hereby disclose an additional income of Rs.40,55,000/- over and above my normal income for the current FY.

I have read over the statement from 1 to 6 pages given by me. I certify that the contents of the statement are true and correct to the best of my knowledge & belief. I have given the statement without any pressure or undue statement.

 Lax  
21/8/18

15. The Ld.Counsel for the assessee has tried to drive home his arguments from the reply of the assessee to the question asked as above to him to explain the amount of Rs.40,55,000/- noted in a notebook found during survey ,as being surrendered as additional income of the assessee, as a pointer to the fact that it had been surrendered as a business income.

16. We are not convinced with the same. What transpires from a bare reading of the statement of the assessee is that he had merely made a surrender of Rs.40,55,000/- over and above his normal income for the year. Nothing more can be read into the statement more particularly to the effect, as canvassed by the Ld.Counsel for the assessee, that the surrender specifically was stated to be on account of his business or profession. Further for the sake of arguments, even if it is accepted so, the assessee cannot derive any benefit from a mere oral submission/statement made by him as the same is not sufficient to explain the source of advance. Therefore, this contention of the Ld.Counsel for the assessee is also rejected.

17. The other contention of the Ld.Counsel for the assessee that the assessee had paid advance taxes on the surrendered income at the normal rate is also of no relevance, in our view, since merely paying taxes at the normal rates on a particular income will not determine its character as being from explained sources.

18. In view of the above, we are in agreement with the Ld. Pr.CIT that the AO had accepted the surrendered income of the assessee as being from the business or profession without making any enquiries regarding the same despite the fact that the documents/material found during search did not reveal the nature of the income at all and no explanation was offered by the assessee during assessment proceedings, nor in the statement recorded during search. Even before the Ld. Pr.CIT during revisionary proceedings when asked to explain the source the assessee, we find, was unable to prove the source as being business and profession. Therefore, the findings of the Ld. Pr.CIT that the order passed by the AO in the light of the above facts and circumstances was erroneous and prejudicial to the interest of the Revenue, we hold is correct. The order of the Ld. Pr.CIT passed u/s 263 of the Act is, therefore, upheld.

19. In the result, the appeal of the assessee is dismissed.

Order pronounced on 4<sup>th</sup> October, 2021.

Sd/-

**संजय गर्ग**

**(SANJAY GARG)**

**न्यायकि सदस्य/Judicial Member**

**दिनांक /Dated: 4<sup>th</sup> October, 2021**

**\*रती\***

Sd/-

**अन्नपूर्णा गुप्ता**

**(ANNAPURNA GUPTA)**

**लेखा सदस्य/Accountant Member**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar