Dr. D. P. Bhattacharjee Vs. Assistant Commissioner of Income-tax.

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SooperKanoon Citation : sooperkanoon.com/880194

Court : Kolkata

Decided On : May-19-1997

Reported in : (1998)60TTJ(Cal)260

Appeal No. : ITA Nos. 3761 & 3762/Cal/1992; Asst. yrs. 1988-89 & 1989-90

Appellant : Dr. D. P. Bhattacharjee

Respondent : Assistant Commissioner of Income-tax.

Judgement :
ORDER

S. C. TIWARI, A.M. :

As there are common facts in these two appeals, the same are being decided together for the sake of convenience.

2. The dispute in these appeals is in respect of the learned CIT(A) by and large confirming the additions made by the AO to the declared professional receipts of the assessee. The additions thus made by the AO were Rs. 46,250 for the asst. yr. 1989-90 and Rs. 56,100 for the asst. yr. 1988-89.

3. The facts of the case as stated in the orders of the authorities below are that the assessee is a reputed practising orthopaedic surgeon. The Department conducted a search under s. 132 at the premises of the assessee on 12th September, 1988 which, however, did not result in any seizure of money or any other valuable

articles or things. Thereafter, the AO collected the details of operations carried out by the assessee during the previous years relevant to asst. yrs. 1988-89 and 1989-90 - from the hospitals and nursing homes with which the assessee was connected. After collecting these details, the AO also asked the assessee to furnish the lists of patients operated upon and other details. On comparison of the information collected by the AO with the lists furnished by the assessee, the AO noticed that in the assessees list a number of operations had not been mentioned. The AO, therefore, asked for explanation of the assessee and the assessee stated that the patients/operations not included in his lists were the cases where the doctor had not charged any fees at all either due to personal relations or on compassionate grounds. The authorities below have accepted this explanation of the assessee only partly. According to them, the number of patients/operations not appearing in the assessees lists was too large to be true. The assessee insisted upon the correctness of his version and pointed out that there was no basis to hold otherwise. Thereafter, the AO considered it reasonable to give allowance for free operations conducted by the assessee only to the extent of 20 per cent of the total cases. For the remaining cases he estimated professional receipts not disclosed by the assessee resulting into the impugned additions. During the course of proceedings before the learned CIT(A) the assessee reiterated his case as given during the course of assessment proceedings. It was argued that unless the AO could establish that the assessee had received any fees from any one of these patients, he could not add any notional amount to the income declared by the assessee as per the books of account maintained by the assessee. The learned CIT(A) did not find merits in the contentions of the assessee because according to him, it was unbelievable that a practising surgeon will operate upon more free patients than paying ones. Further, the learned CIT(A) could have appreciated the stand of the assessee, if he had disclosed the free cases also in his books of account or otherwise adduced evidence to prove that the assessee had conducted free operations. He, however, thought it fit to give the assessee allowance for free operations at 25 per cent of the total cases instead of 20 per cent as had been done by the AO.

4. During the course of hearing before us, the learned counsel of the assessee stated that the assessee is a very benevolent doctor who believed in looking after

the people of smaller means. Money was not the criteria for the assessee. In such circumstances, it was but natural that a large number of patients who cannot otherwise afford to hire services of a doctor of such eminence to flock around the assessee. The assessee being a kindhearted person accommodated as many such patients as was practicable. No wonder, therefore, that the number of free cases exceeded the paying ones. The learned counsel further emphasised that there was no iota of evidence with the AO that the assessee had charged any fees from any of the patients whom he claimed to have treated free of charges. The particulars of such patients were available with the AO and he could have cross-verified the truth of the assessees contention by making enquiries of such patients.

5. The learned counsel of the assessee further argued that the authorities below have accepted that the assessee did carry free operations. Their objection is about high number of free operations which the AO has restricted to 20 per cent and the learned CIT(A) raised the same to 25 per cent. There should have been some material to suggest that the number of free of charge operations carried out by the assessee could not have exceeded 25 per cent of the total cases. There was no justification for the CIT(A) laying burden of proof on the assessee. The assessee was required of keeping proper record of the income earned by him. There was no requirement to keep record of even of the cases where no professional income was generated. As these were totally free cases as far as the assessee was concerned, no documentation of the same was considered necessary. It was not expected of the assessee to request such patients to give a certificate that they were freely treated.

6. Learned Departmental Representative read extensively from the assessment order and argued that in this case the AO carried out enquiries and he has based his assessment on the material thus gathered. When the total number of operations carried out by the assessee for exceeded the total number of cases where professional charges were accounted far, it was for the assessee to establish that the other cases were done free of charges. In the absence of any such material the learned CIT(A) found the explanation of the assessee as unbelievable.

7. We have carefully considered the rival submissions and perused the orders of the authorities below. We do not agree with the contentions of the authorities below that the very fact that the assessee did more cases free of charge than for consideration is unbelievable. In the medical profession, as almost in all vogues of human life, there can be instances ranging from totally mercenary approach to almost complete altruism. Though the instances of benevolence and kind heartedness might not constitute majority, there do exist such instances. We do not find any thing against probability, much less against possibility, in the explanation given by the assessee. The case of the Department is based on suspicion. Merely because the number of patients from whom fees were charged is less than the number of patients treated freely a conclusion of suppression or concealment of professional receipts cannot be reached. Suspicion, howsoever strong, cannot be given status of evidence or material fact. We also do not share the views of the learned CIT(A) that the burden of proof of establishing non-charging of fees was on the assessee. That an assessee may be required to establish the facts relating to income earned or the expenditure claimed against such income is understandable but to require a taxpayer to establish that he did not earn more income does not appear to be legally tenable. In our considered view, the burden of proof that there is understatement of income is generally on the Revenue except under the provisions where by legal fiction such burden of proof is placed on the assessee, e.g., ss. 68 to 69D. None of such provisions are applicable here.

8. In view of the discussions in the foregoing paragraphs, we do not approve the additions to the returned income in this behalf as confirmed by the learned CIT(A). The same are directed to be deleted and both the appeals are allowed.