

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “I” BENCH AHMEDABAD

BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER,
AND SHRI S. S. GODARA, JUDICIAL MEMBER.

ITA Nos.140 & 141/Ahd/2016
(Assessment Years: 2009-10 & 2012-13)

DCIT, Circle-1(2),
Ahmedabad

Appellant

Vs.

Shri Parthiv A Patel,
13, Nilima Park Society, B/h Rasranjan,
Vijay Char Rasta, Ahmedabad

Respondent

PAN: AIDPP3798B

राजस्व की ओर से/By Revenue : Shri Byomkesh Pandu, Sr. D.R.
आवेदक की ओर से/By Assessee : Shri Hemal Desai, A.R.
सुनवाई की तारीख/Date of Hearing : 24.01.2017
घोषणा की तारीख/Date of
Pronouncement : 31.01.2017

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

These two Revenue's appeals for assessment years 2009-10 & 2012-13 arise against the CIT(A)-10, Ahmedabad's separate orders dated 16.11.2015 & 18.11.2015 in case nos. CIT(A)-10/DCIT Cir-1(2)/605/14-15 & CIT(A)-10/DCIT Cir-1(2)/606/14-15, in proceedings under section 143(3) r.w.s. 147

of the Income Tax Act, 1961; in short “the Act” in the former assessment year and u/s.143(3) in the latter assessment year.

2. The Revenue’s sole substantive ground is identical in both the assessment years pleads that the CIT(A) has erred in deleting addition of Rs.30,92,801/- out of Rs.31,73,928/- pertaining to direct and indirect expenses in former assessment year and from Rs.45,88,255/- to Rs.45,16,589/- in latter assessment year; as made by the Assessing Officer.

3. We come to relevant facts now. This assessee derives income from playing cricket sport, sponsorship and marketing. He claimed various expenses under the head business development, office, salary, office rent, other interests, petrol expenses, repair/maintenance, telephone, travelling, vehicle, stationary and depreciation totaling to Rs.31,73,928/- in former and Rs.45,88,255/- in latter assessment year against earning of income from playing cricket sport. The Assessing Officer sought his justification so as to prove a direct nexus between the above expenses and the income in question. The assessee’s identical reply in both assessment years pleaded that he received various incomes from endorsement contract executed with BCCI, GCA, RIL as declared under the head ‘income from business & profession’. He sought to clarify that the expenditure in question was to over look his personal/professional aspect like conveyancing, legal matters, lisoning and physical fitness etc. in order to remain professionally fit to play the above cricket sport. The Assessing Officer declined to accept the same on the ground that since the assessee had been deriving match fee and retainerships from various cricket bodies, they did not involve any business or professional activity. He further reiterated that assessee’s playing cricket was not akin to a trading or manufacturing or any service activity. The Assessing Officer thereafter concluded that the expenditure in question is not attributable to any

business or profession so as to be termed as business expenditure allowable under the provisions of the Act. All this resulted in disallowance of expenses hereinabove in the two assessment years in question.

4. The assessee preferred appeal. The CIT(A) partly reverses Assessing Officer's action in both assessment years as indicated in Revenue's pleadings as under:

“3. Decision:-

Submissions made by the appellant have been considered with reference to the assessment order passed. Only effective ground of appeal is against the addition of Rs.31,73,928/- made by the AO by disallowing various expenditure claimed by the appellant. The AO stated as under in the assessment order:-

*"The reply of assessee considered carefully and found the same is not acceptable. The assessee is a cricketer and represent Indian cricket team during the **year** consideration. He was deriving income from BCCI Match fee, IPL Match Fee, Retainership Fee. etc. there income was generated from playing of cricket not from doing my any business or professional activity. Therefore, it cannot be said that the assessee is doing any business or profession. The source of income from where income derived does not fall under source of business or profession. The assessee is not doing any trading activity not any manufacturing activity nor any acquired any qualification from which it can be said that he is doing profession. Therefore he is also not deriving income from professional activities. Therefore it is very much clear that the expenditure claimed by the assessee is not attribute to any business or profession. In view of above the expenditure of Rs.31,73,928/- claimed by the assessee as business expenditure is not an allowable expenditure. Accordingly amount of Rs.31,73,928/- is added to the income of the assessee. Penalty proceedings u/s.271(l)(C) initiated for furnishing inaccurate particulars of income leading to concealment of income."*

3.1 The AO stated that as the appellant is a cricketer and therefore no expenses is required to have been made for earning this income. The AO has not considered the income of the appellant from business or profession.

3.2 On going through the reasons for making these additions and submissions of the appellant, the disallowance of all the expenses made by the AO are not found justified. The appellant is a well known cricketer and returned income of Rs.1,53,20,056/- for the year under consideration. To earn the said income, the appellant had to incur some expenditure. Playing cricket is the profession of the appellant and TDS was also deducted considering the receipts of the appellant as professional receipts. The findings of the AO that expenditure is not allowable, is not logical for the simple reason that any expenditure incurred for earning that

income, under any head of income is an allowable expenditure as per the provision of the Act.

3. *The appellant claimed the following expenses in the P & L Account as on 31.03.2009.*

Particulars	l-Apr-2008 to 31-Mar-2009	
Direct Expenses		6,15,320.00 1
CRICKET EXPENSES	2,60,200.00	
TRAINING & FITNESS EXP	3,55,120.00	
Gross Profit c/o		1,86,86,903.30
		1,93,02,223.30
Indirect Expenses		32,71,158.69
ACCOUNTING CHARGES	24,000.00	
BANK CHARGES AND INTEREST	27,014.63	
BUSINESS DEVELOPMENT EXP	4,22,296.00	
DEPRECIATION EXP	3,51,359.09	
INSURANCE EXPENSES	17,727.00	
LOAN PROCESSING CHARGES	5,183.00	
Misc Exp	23,304.00	
OFFICE EXPENSES	2,42,020.00	
OFFICE RENT	1,08,000.00	
OTHER INTEREST	2,05,733.77	
PETROL EXP	2,80,106.48	
REPAIR AND MAINTANANCE EXP	17,450.00	
SALARY EXPENSES	8,46,718.00	
STATIONARY EXP	10,248.00	
TELEPHONE EXP	95,856.24	
TRAVELLING EXP	5,13,717.48	
VEHICLE EXP	80,422.00	
Net Profit		1,56,44,289.01
Total		1,89,15,447.70

On going through the P/L account as reproduced above, the appellant claimed Rs.6,15,320/- as direct expenses and Rs.32,71,150/- as indirect expenses. The AO disallowed some of the expenses in total out these expenses. Without incurring expenditure, appellant would not have been able to earn the said income. Income of

Rs.1.53 Cr. Could not be earned without adequate support and logistics. The appellant as to maintain his office and travel across the world to earn the said income. Therefore, the expenses claimed by the appellant are found genuine looking to his income returned for the year. However, about the indirect expenditure, out of the following expenditures, personal elements cannot be ruled out:

(i)	<i>Petrol Expenses</i>	<i>Rs.2,80,106</i>
(ii)	<i>Repair & Maint. Exp</i>	<i>Rs.17,450</i>
(iii)	<i>Travelling Exp.</i>	<i>Rs.5,13,717</i>
	<i>Total</i>	<i>Rs.8,11,273</i>

*As mentioned above, out of the total expenditure of Rs.8,11,273/-, I consider 10% of the same i.e. Rs.81,127/- as incurred for personal purposes and additions to that extent are confirmed. Remaining additions of Rs.30,92,8017- (31,73,928 - 81,127) are deleted. This ground of appeal is **Partly allowed**.*

5. We have heard both the parties strongly reiterating their respective stands. There can hardly be any dispute that the assessee is a cricketer receiving match fees/retainerships from various cricket bodies as declared under the head 'income from business and profession'. The assessee has further claimed the impugned expenditure against the same in two assessment years in question. Learned counsel representing assessee clarifies that the assessing authority itself had verified correctness of the impugned expenses. The same however does not emanate from the assessment order. We further find that neither the Assessing Officer nor the CIT(A) has sought to establish a direct nexus between assessee's professional income from playing cricket along with his expenditure in question claimed u/s.37 of the Act. It is not out of place for us to refer to the above statutory provision allowing deduction of expenses which are wholly and exclusively incurred for the purpose of the business. It is evident to us that the learned CIT(A) has merely drawn his conclusions qua genuineness aspect instead of establishing the above stated nexus between each head of expenditure vis-à-vis assessee's taxable income declared. We deem it appropriate in these facts and circumstances that the issue in question requires Assessing Officer's re-adjudication in accordance with law after affording adequate opportunity of hearing to the assessee so as

to prove the above direct nexus. We thus accept Revenue's sole substantive ground for statistical purposes in both assessment years.

6. These two Revenue's appeals are allowed for statistical purposes.

[Pronounced in the open Court on this the 31st day of January, 2017.]

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER
Ahmedabad: Dated 31/01/2017

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।