

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.489/Coch/2010 : Asst.Year 2004-2005

Dr.Damodar Rout Plot No.1264, 4 th Street Jayalakshmi Nagar Kattupakkam Chennai 600 056. PAN : ACKPR9917K	Vs.	The Asst.Commissioner of Income-tax, Circle 1(2) Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri.Rajakannan
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 10.10.2019	Date of Pronouncement : 15.10.2019
-------------------------------------	---

ORDER

Per George George K, JM

This appeal was originally disposed of by the Tribunal vide its order dated 16.08.2013. The Tribunal in its order dated 16.08.2013, dismissed the appeal of the assessee *in limine* without condoning the delay of 439 days in filing the appeal. On further appeal by the assessee, the Hon'ble High Court vide its judgment dated 28.03.2019 in ITA No.44 of 2014 allowed the appeal filed by the assessee and directed the Tribunal to consider the issue on merits. Accordingly, this appeal was heard on merits by the Tribunal on 10.10.2019. This appeal is against the order of CIT dated 24.03.2009 passed u/s 263 of the I.T.Act. The relevant assessment year is 2004-2005.

2. Brief facts of the case are as follows:

The assessee is a Professor in the Department of Neuro Science at Sri Ramachandra Medical College and Research Institute, Chennai. Sri Ramachandra Medical College and Research Institute is a deemed university run by Sri Ramachandra Educational and Health Trust. The assessee attained superannuation with effect from 28.02.2002. The assessee was reappointed by Trust with fixed salary with no incidental benefits such as PF or DA (the details of his reappointment with the Institute is placed on record). For the assessment year 2004-2005, the return of income was filed on 30.07.2004 declaring total income of Rs.12,43,214 which comprised of salary income of Rs.2,93,200, professional income of Rs.8,02,978 and income from other sources of Rs.2,21,838. Deductions were also claimed under the respective heads while computing the total income offered for tax. The assessment u/s 143(3) of the I.T.Act was completed on 26.12.2006 by making a disallowance of Rs.30,000 claimed as standard deduction under the head salary income. The Assessing Officer treated the entire income returned as 'professional income'. Since the A.O. treated entire income as professional income, claim by the assessee towards standard deduction under the head income from salary was disallowed.

3. The CIT issued notice u/s 263 of the I.T.Act proposing to set aside the assessment order dated 26.12.2006 completed u/s 143(3) of the I.T.Act. To the notice issued u/s 263 of the I.T.Act, the assessee filed a detailed replies dated 04.06.2008

and 02.03.2009. The assessee was also given personal hearing. The CIT, however, rejected the objection raised by the assessee and set aside the assessment order dated 26.12.2006. The CIT held that the assessee was bound by the employee- employer relationship and it was not possible for him to simultaneously have relationship with the institute as an independent consultant and hence the entire income of the assessee was to be treated as salary income. He accordingly directed the assessing authority to redo the assessment after disallowing the expenses of Rs.8,94,487 claimed out of professional income and allowing standard deduction eligible under the head income from salary.

4. Aggrieved by the order of the CIT passed u/s 263 of the I.T.Act, the assessee has preferred this appeal before the Tribunal raising following grounds:-

A. Annexure F order of the Commissioner of Income Tax is opposed to the law, facts and circumstances of the case. The order, if allowed to stand, would occasion a travesty of justice and cause irreparable loss and hardship to the appellant.

B. The Commissioner ought to have found that as long as the terms of employment of the appellant as a Professor at the Institute did not contemplate any restriction as regards carrying on consultancy work at the hospital, it was perfectly in order for the appellant to have earned income under separate heads of income - salary as well as professional income - and there was no prohibition against earning income under different heads for the purposes of the IT Act.

C. The appellant would submit that, at any rate, it is the nature of the receipt that determines the classification of the income under any particular head for the purposes of taxation and accordingly, the Commissioner ought to have through professional consultancy had necessarily to be treated separately for the purposes of taxation. That apart, it was apparent from the nature of the services rendered by the appellant as a consultant that the hospital in question did not have any control over the assessee as regards the number of hours of work or the number of patients that he had to examine on any day. These were matters left to the discretion of the assessee and he could determine his hours of work and consultation fees. The fees paid by the patients consulting the assessee were collected by the hospital which, in turn, paid over the same to the assessee after deducting there from charges due to the hospital for any service availed and TDS as applicable for professional charges. The remuneration paid to the appellant for teaching services was paid to him by the Institute and not the Hospital.

D. The Commissioner ought to have found that it is not the status of the assessee but the nature of the income earned that determines the head of taxation for the purposes of the IT Act. The provisions of the Act clearly contemplate situations where an individual can earn income under different heads and hence, merely because the appellant was earning some portion of his income as "salary" it did not follow that he could not earn income under the head "Professional income" from the same source. As long as the professional income was not traceable to the obligations of the assessee under the employment contract, the income received for professional sources could only have been classified under the head of "Income from business or profession" and not under the head of "Salary".

For these and other reasons to be urged at the time of hearing, it is humbly prayed that this Hon'ble Tribunal be pleased to set aside Annexure F order of the CIT and allow this appeal with consequential reliefs to the appellant."

5. The learned AR has filed a paper book enclosing the true copies of Form No.16 and Form No.16A submitted to the assessee by Ramachandra Medical College and Research Institute (deemed university). The learned AR had also enclosed in the paper book the judicial pronouncement relied on and a brief written submission. The relevant portion of the written submission reads as follow:-

(i) The appellant was working as a Professor in the Institute, without any employee benefits, after superannuation in the year 2002, which is an admitted fact. The receipt of income from hospital is not in the nature of salary. The amounts I received from hospital varied in each month which is clearly discernible from the TDS certificate. There also, the appellant was not entitled to 'any coverage under PF, gratuity etc. Therefore, the income received from medical college was rightly shown as "salary", and income from hospital was shown as "professional income".

(ii) Under the Income Tax Act, there is no prohibition for a person to earn income under different heads of income. The appellant was never restricted from engaging himself as a consultant neuro-surgeon at the hospital, at a time when he was also working as a professor with the institute. The assumption of the lower authorities is that a person can work only on one capacity, which reasoning do not have any backing of law.

(iii) For the purposes of taxation, it is the nature of receipts that counts for classification of heads of income. The income received from teaching and income earned through rendition of professional service are receipts of different nature, 'and therefore, rightly classified under the head "salary" and "professional income" respectively.

(iv) The duty hours of the appellant and number of patients for consultation was left to the discretion of the appellant. He was not entitled to any employee benefits, unlike in the case of a resident doctor employed by the hospital. The fee paid by the patients were collected by the hospital for convenience and control, and after deducting its share and the applicable TDS, the balance portion disbursed. The appellant was being paid on account of the professional services he rendered in the capacity as a consultant neuro-surgeon.

(v) When the provisions of the Act do not prohibit the assessee to earn income under different heads, the approach of the lower authorities that since he earns salary income, he could not have earned professional income, merits interference. Further, when the deductor has classified the payment as salary and professional income, and remitted the tax applicable as TDS, and was received by the Department; the appellant cannot be asked to club both the incomes under one head.

(vi) The variation in the monthly amounts received from the hospital, nature of deduction under the Act, remittance of tax under the distinct head, independent working hours, and freedom to decide number of patients for consultation, and number of operations etc., by itself will determine the nature of income earned by the appellant from the hospital. The Department do not have a case to the contrary.

(vii) The appellant relies on the decisions in Dr.Shanti Swarup Jain v. First ITO MANU/IU/0070/1987; Ravindranath GE Medical Associates Pvt. Ltd v. Dy.CIT (MANU/IH/0376/2014); CIT v. Appollo Hospitals International Ltd. (2013) 262 CTR (Guj) 78; Asst. CIT v. Usha Mullapudi Cardiac Centre (MANU/IH/0397/2014).

6. The learned Departmental Representative strongly supported the order passed by the CIT u/s 263 of the I.T.Act.

7. We have heard the rival submissions and perused the material on record. The assessee was working as Professor and Head of the Department of Neuro-Surgery, Sri Ramachandra Medical College and Research Institute, Chennai (deemed university). He was a Director of Neuro-Care Centre of Sri Ramachandra Educational and Health Trust. He retired from service on attaining the age of superannuation on 26.02.2002. On the same day, he was reappointed on a temporary basis on a consolidate salary of Rs.20,000 per month plus Rs.3,000 as reimbursement for fuel and maintenance expense (the offer of reappointment by Sri Ramachandra Educational and Health Trust is placed on record). For the relevant period, Form No.16 and 16A issued by Sri Ramachandra Educational and Health Trust to the assessee was also placed on record in the paper book filed by the assessee. On perusal of the terms of reappointment of the assessee as a Professor at the Institute, it is clear that there is no restriction contemplated as regards carrying on consultancy work at the hospital. The assessee was never

restricted from engaging himself as a consulting Neuro-Surgeon at the hospital at the time when he was working as Professor with the Institute. The assessee has earned income under separate heads of income and there is no prohibition against earning income under different heads of income. It is the nature of the receipt that determines the classification of the income under any particular head for the purpose of taxation. The income derived through teaching and the income derived through professional consultancy had necessarily to be treated separately for the purpose of taxation. It is apparent from the nature of service rendered by the assessee as a consultant in the hospital, the hospital / trust did not have any control of the assessee as regards the number of hours of work or number of patients that he had to examine on any day. These matters were left to the discretion of the assessee and he could determine his hours of work and consultation fee. The fees paid by the patients consulting the assessee were collected by the hospital, which in turn paid over the same to the assessee after deducting there from charges due to the hospital for any service availed and the applicable TDS for professional charges was also deducted. As mentioned earlier, the provisions of the I.T.Act clearly contemplate a situation where the individual can earn income under the different heads and hence merely because the assessee was earning some portion of his income as 'salary', it did not follow that he could not earn income under the head 'professional income'. As long as the professional income was not traceable to the obligations of the assessee under the

employment contract, the income received for professional sources could only have been classified under the head 'income from business or profession' and not under the head 'salary'. In this context, it is relevant to rely on the co-ordinate Bench of the Tribunal in the case of *Dr.Shanti Sarup Jain v. First Income Tax Officer* [ITA Nos.1748 to 1750/Bom/1986 – order dated 18.02.1987]. In the above mentioned order of the co-ordinate Bench of the Tribunal, it has been clearly held that Doctor can earn salary income as well as professional income from a hospital, depending upon his terms of employment with the hospital. Similar view has been held in the following judicial pronouncements:-

- (i) Ravindranath GE Medical Associates Pvt. Ltd. v. DCIT [MANU/IH/0376/2014]
- (ii) CIT v. Appollo Hospitals International Ltd. (2013) 262 CTR (Guj) 78
- (iii) Asst.CIT v. Usha Mullapudi Cardiac Centre [MANU/IH/0397/2014]

8. In the instant case, on perusal of the letter of reappointment, Form No.16 and Form No.16A, it is clear that the assessee apart from earning salary income was also doing consultancy in the hospital for which there is no employee-employer relationship and the amount received for such consultancy was assessable as income from profession. The CIT in the impugned order had directed the A.O. to redo the assessment by disallowing the expenses of Rs.8,94,487 claimed out of the professional income. The A.O. shall examine the allowability of the said expenses under the head

`income from profession'. Therefore, we set aside the findings of the CIT in the impugned order passed u/s 263 of the I.T.Act. We direct the A.O. to reexamine the claim of deduction of Rs.8,94,487 whether it is allowable as a deduction under the head `income from business or profession'. For the above said purposes, the issue is restored to the Assessing Officer. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 15th day of October, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 15th October, 2019.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Trivandrum
4. DR, ITAT, Cochin
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin