$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 601/2019**

SUSHIL BANSAL ..... Appellant

Through: Mr.Vikas Jain with Mr.Atul Bandhu, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX -19 ..... Respondent

Through: Mr.Raghvendra Kishore Singh, Sr.Standing Counsel with Mr.Vipul Agrawal, Jr.Standing Counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **10.07.2019**

CM APPL. 30435/2019 (exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 30436/2019 (delay)

2. For the reasons explained in the application, the delay in re-filing the appeal is condoned and the applications are allowed.

ITA 601/2019 and CM APPL. 30434/2019 (stay)

3. This appeal by the Assessee is directed against an order dated 23rd October 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4441/Del/2017 for Assessment Year ('AY') 2013-14.

4. Brief facts are that for the AY in question, the Assessee did not file any

return of income. During the course of a search conducted in the Santosh Group of Institutions under Section 132 of the Act on 27th June 2013, it transpired that the Assessee had paid Rs.30.18 lacs at the time of admission of his son Dr.Jatin Bansal in the MBBS course in the Santosh Medical College, Ghaziabad on 8th August 2012. The Chairman and managing trustee of the group in his statement given before the investigation wing of the Department admitted that in addition to the regular fees of the medical college, they had also accepted capitation fees. The complete working sheets indicating the capitation fees receipts student-wise for each financial year were also filed before the investigation wing. The name of the Assessee's son Dr.Jatin Bansal was found appearing at Sl.No.72. The capitation fee was shown as Rs.23 lacs.

5. On the above basis, notice was issued to the Assessee under Section 148 of the Act on 23rd March 2015. He was also issued notices under Section 142(1) on 23rd June and 9th July 2015 but neither he nor anyone on his behalf attended the hearing of the Assessing Officer (AO) in response thereto.

6. Finally, in response to summons under Section 131 of the Act issued on 12th January 2016, the Assessee appeared before the AO and statements were recorded. According to the Assessee, the admission process was undertaken by the Assessee's father-in-law Shri Jile Ram Bhati. The Assessee claimed not to be aware of any payment of capitation fee.

7. On the above basis, summons under Section 131 of the Act were issued to Shri Bhati and his statements were recorded. According to Shri Bhati, he gave a total fees of Rs.7.18 lacs to Santosh Medical College for the

admission of Dr. Jatin Bansal. He had no recollection of payment of any capitation fee. Further, out of the abovementioned Rs.7.18 lacs, Rs.3 lacs was stated to have been given by the grandfather of the present Appellant/Assessee and the remaining Rs.4.18 lacs was withdrawn from the bank account of Shri Bhati.

8. Since no credible evidence explaining the source of Rs.23 lacs paid as capitation fee was forthcoming, the AO added it to the income of the Assessee under Section 69C of the Act.

9. The appeals filed by the Assessee both before the Commissioner of Income Tax (Appeals) ['CIT(A)'] as well as the ITAT were dismissed.

10. Counsel for the Appellant has repeated the arguments urged before the CIT(A) and ITAT. According to him, the aforementioned sum of Rs.23 lacs ought to be added to the income of Shri Bhati, who had undertaken the admission process for the Assessee's son Dr.Jatin Bansal, and not to the income of the Assessee himself. According to him, the Assessee had categorically stated that he was not even aware of the payment of capitation fees, much less its source. He submitted that the statements of his father-in-law were not considered in their true perspective.

11. This Court is unable to agree with the above submissions. The Court finds that the AO has taken pains to summon Shri Bhati, the father-in-law of the Assessee and record his statement. Unfortunately, the statement made by the Assessee's father-in-law was not helpful in explaining the source of payment of Rs.23 lacs as capitation fees. Shri Bhati only explained the

payment of Rs.7.18 lacs as regular fees. With there being no credible explanation offered by the Assessee for the payment made as capitation fee, the AO is justified in adding it to the Assessee's income.

12. The Court is unable to find any legal error committed by the ITAT in dismissing the appeal of the present Appellant. No substantial question of law arises from the impugned order of the ITAT. The appeal is accordingly dismissed. The pending application is also dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 10, 2019
tr