

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE HON'BLE S/SHRI H.L. KARWA, PRESIDENT AND B.R.BASKARAN (AM)

सर्वश्री एच.एल. कार्वा, अध्यक्ष एवं बी.आर.बास्करन, लेखा सदस्य

आयकर अपील सं./I.T.A. No.119/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

Income Tax Officer, Ward 9(3)(4) Room No.216B, 2 nd floor, Aayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	M/s Royal Health Care Pvt.Ltd., 21, Diamond Plaza, Laxminarayan Shopping Center, Poddar Road, Malad (E), Mumbai-400097
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./जीआइआर सं./PAN/GIRNo.:AAACR2225D		

अपीलार्थी ओर से / Appellant by :	Shri Neil Philip
प्रत्यर्थी की ओर से/Respondent by	Dr.Arun Chamaria in person

सुनवाई की तारीख / Date of Hearing : 30.10.2014

घोषणा की तारीख /Date of Pronouncement : 10.12.2014.

आदेश / ORDER

Per B.R.BASKARAN, Accountant Member:

The appeal filed by the Revenue is directed against the order dated 22.10.2012 passed by Ld CIT(A)-20, Mumbai and it relates to the assessment year 2009-10.

2. The Revenue is in appeal against the decision rendered by Ld CIT(A) in respect of the following issues:

- a) Rejection of books of accounts and estimation of net profit;
- b) Assessment of security deposit at Rs.2,06,31,700/-;
- c) Assessment of investment u/s 69 of the Income Tax Act, 1961 (the Act) amounting to Rs.3,70,50,000/- and ;
- d) Assessment of Rs.20,00,000/- u/s 68 of the Act.

3. The facts relating to the case are stated in brief. The assessee company is running a dental clinic. The return of income for the year under consideration

was taken for scrutiny and the AO determined the total income at Rs.6,24,01,765/- by making various types of additions. It is pertinent to note that the AO, inter alia, rejected the books of account maintained by the assessee and accordingly estimated the income from profession. The appeal filed by the assessee before the Id. CIT(A) challenging the various additions made by the AO was partly allowed. Aggrieved by the decision of the Id. CIT(A), the revenue has filed this appeal before us.

4. We have heard both the parties and perused the record. The first issue relates to rejection of books of account and estimation of profit. The assessee is a private limited company and it has got its account audited under the provisions of Companies Act, 1956. The assessee has stated that it was following cash system of accounting. However the AO took the view that the assessee, being a private limited company, is required to follow mercantile system of accounting in accordance with Companies Act. Since the assessee had followed cash system of accounting and since the same is against the mandate of provision of Companies Act, the AO took the view that the books of accounts of the assessee are not reliable. Further, citing some more reasons, the rejected the books of account and estimated the net profit of the assessee @ 15% of the turnover of the assessee company.

5. In the appellate proceedings, the assessee submitted before the Id. CIT(A) the profit declared by it including the amount of depreciation works out to 10% of the turnover during the year under consideration and also in the immediately preceding year. It was also submitted that the assessee is following consistently cash system of accounting and since there is no change in it, the AO was not justified in rejecting the books of account maintained by the assessee, more particularly, in view of the fact that the AO did not find any defect or fault in the books of accounts. The Id.CIT(A) was convinced with the contentions of the assessee and accordingly set aside the decision of the AO relating to rejection of the books of account and consequently the estimation of income also. The relevant observations made by the Id. CIT(A) in this regard are extracted below, for the sake of convenience:

“5.3 I have considered rival submission and finding of the A.O carefully. I find that A.O. has wrongly rejected the veracity of books of accounts on the basis of his presumption which is not at all justifiable. The AO has rejected the books of accounts on the basis of five grounds and it is found that none of the ground is maintainable. Contrary to the presumption of the AO, it is found from the record itself that AO has not properly analysed the veracity of the books of accounts nor has properly appreciated the various facts. It is wrong to believe that the assessee has not shown security deposit of Rs.3,70.50,000/-. This issue shall be further discussed in respect of individual grounds of appeal based on this addition. As regards sub point No.2 of para 9 of the assessment order, it is worthwhile to mention that if there is any defect in audit report that does not mean that books of accounts of the appellant is defective. The logic of Assessing Officer is baseless, similarly interest income has been properly shown in the accounts of Mr. A.K. Chamaria, proprietor of J.P. Dental. It appears that AO has not properly scrutinized the record. Similarly an amount of Rs.1,26,90,000/-, it appears that AO has not properly scrutinized records of both the companies duly assessed by him viz. M/s Royal Dental Clinic Pvt. Ltd. and Royal Health Care Pvt. Ltd. This finding further gets support while deciding the individual grounds of appeal. Similarly, I do not find any merit in sub point 5 of para 9. Only on the basis of debit of depreciation in profit & loss account, veracity of books of accounts cannot be challenged. The arguments of AO is found to be baseless.

I have gone through the rival submissions and am of the opinion that as per Income Tax Law, assessee can maintain its books of accounts on Cash Basis or Mercantile basis. It is not the case of A.O. that assessee has maintained its books on hybrid system which has been done away with, by the Income Tax Act 1961. Further, assessee has not changed its method of accounting since inception. Therefore, this is no ground for rejection of books of account. In any event, even after rejecting of the books of accounts A.O. could not have assessed net profit @15% on turnover without any verifiable evidence in possession. There is no basis for the same. As a matter of fact, if any assessee company invests and expands its business, the depreciation would increase and if a fixed net profit is assessed, the entire provisions of allowing depreciation would become meaningless. I am therefore of the opinion that the amount of Rs.20,41,386/- added by Assessing Officer to assesses higher income, on this ground being unsubstantiated, is deleted”

6. We have carefully considered the reasoning given by the First Appellate Authority. The First Appellate Authority has held that the assessee, under the provisions of Income Tax Law, can maintain its books of accounts either on Cash Basis or Mercantile basis. He has further held that the AO has not properly analyzed the veracity of books of account nor has he properly appreciated various facts. The Ld CIT(A) has also held that the various other reasons given

by the AO in support of his decision to reject the books of account are, in fact, trivial in nature, which does not warrant such a decision. Accordingly, the Id. CIT(A) has come to the conclusion that the rejection of books of account of the assessee and consequently estimation of net profit is not justified. Thus, we notice that the Id. CIT(A) has properly analyzed the facts prevailing in the instance case and has taken conscious decision on this matter. Further, it is seen that the AO has not found any defect in the books of account. At the time of hearing, the Id. DR could not file any material to controvert the findings given by the Id. CIT(A). Hence, we do not find any reason to interfere with the decision arrived at by the Id. CIT(A) on this issue. The grounds relating to this issue are rejected.

7. The next issue relates to the assessment of security deposit received by the assessee. The facts relating to the said issue are stated in brief. The assessee had floated promotional health scheme and accordingly received deposits from the prospective patients. The Security Deposits account had a opening balance of Rs.79,41,700/-. Further, during the year under consideration, the assessee had received a sum of Rs.1,26,90,000/- under the scheme. The AO took the view that the opening balance of security deposit of Rs.79,41,700/- plus the amount received during the year amounting to Rs.1,26,90,000/- should be taxed in the hands of the assessee either as cessation of liability u/s 41 (1) of the Act or as perquisites u/s 28(iv) of the Act, since the AO took the view that the assessee has received the deposits in the course of carrying on the business. In this regard, the AO took support of the decision rendered by Hon'ble Supreme Court in the case of TVS Sundaram Iyengar & Sons, 222 ITR 344 (SC). Accordingly, the AO assessed the above said amounts as income in the hands of the assessee.

8. Before the Id. CIT(A), the assessee contended that the ratio of decision of TVS Sundaram Iyengar & Sons (supra) is not applicable, since the facts prevailing in the instant case are different, i.e., the assessee submitted that the liability has not ceased to exist in its case, where as in the case of T.V. Sundram Iyengar & Sons, the liability had ceased and the assessee therein had taken the amount to its Profit and Loss account. The assessee, on the contrary, relied

upon the following decisions and contended that the deposits cannot be assessed as its income.

- a) Liquidator, Mysore Agencies P. Ltd V/s CIT (1978) 114 ITR 853 (Karn);
- b) CIT V/s Indian Research Institute Pr. Ltd (1979) Tax LR (NOC) 66 (Cal),;
- c) K V MoosaKoya & Co V/s ITO (1989) 175 ITR 120, 124 (Ker) and
- d) Bombay Dyeing and Mfg Co.Ltd V/s State of Bombay (1958) SCR 112,1135= AIR 1958 SC 328,

Accordingly, the assessee contended that there is no cessation of liability as presumed by the AO. Further, the assessee also contended that it has not received any benefit like perquisite and hence the provisions of section 28(iv) also will not apply.

9. The Id. CIT(A) considered the entire spectrum of facts and noticed that the assessee has received the security deposit from the prospective patients under the promotional scheme floated by the assessee. The Id. CIT(A) also noticed that the ITAT in assessee's own case, vide its order dated 4.2.2004, in ITA No.3367/Mum/1998 relating to the assessment year 1998-99 and also in ITA No.880/Mum/1998, vide its order dated 14.7.2003, relating to the assessment year 1992-93 has held that the deposits received by the assessee under the promotional scheme are refundable and hence it cannot be perceived that such liability is not longer payable. The Id. CIT(A) also noticed that the assessee has given copies of all deposits, details of patients, amount received, copies of dental record to the AO. The Ld CIT(A) also noticed that the assessee has refunded some deposits during the instant year. Accordingly, the Id. CIT(A) held that the AO was wrong in presuming that there was cessation of liability within the meaning of section 41(1) of the Act and accordingly, directed the AO to deleted this addition.

10. We notice that the AO has proceeded to assess this amount under the impression that the assessee is not liable to repay the security deposit received by it. On the contrary, the Tribunal, in the assessee's own case, referred above has given findings that the security deposit are repayable as per the scheme floated by the assessee. The Id. CIT(A) has also given a finding that the assessee has refunded the security deposit to the patients. Hence, in our view,

the Id. CIT(A) was justified in holding that there is no cessation of liability in respect of the security deposits. Since the assessee is liable to repay the security deposit, the question of assessing the same u/s 28(iv) also does not arise. Under these set of facts, we are of the view that the Id. CIT(A) was justified in deleting this addition.

11. The next issue relates to the assessment of Rs.3,70,50,000/- under section 69 of the Act. The assessee is having a sister concern named M/s Royal Dental Clinic Pvt Ltd. From the balance sheet of M/s Royal Dental Clinic Pvt Ltd., the AO noticed that the assessee has paid a sum of Rs.3,70,50,000/- to M/s Royal Dental Clinic Private Limited. However, the AO noticed that the said payment was not reflected in the balance sheet of the assessee and hence the AO assessed the above said amount as unexplained investment in the hands of the assessee under section 69 of the Act.

12. The Id. CIT(A) noticed that the assessee has clubbed together the Security Deposit account and the M/s Royal Dental Clinic (P) Ltd, while preparing the Balance Sheet and accordingly the net amount only was disclosed in the balance sheet. The manner of disclosure of the Security Deposit account and the amount given to M/s Royal Dental Clinic Pvt. Ltd is extracted by Ld CIT(A) as under :

a. from banks		NIL
b.from others		7941700.00
<u>Security deposits from patients</u>		
Opening balance	32406700.00	
During the year (846 x 15000)	12690000.00	
Refund during the year (3 x 15000, 25 x 2400)	<u>(-)105000.00</u>	
	44991700.00	
<u>Royal Dental</u>		
Opening balance	(-)24465000.00	
During the year	<u>(-)12585000.00</u>	
	(-)37050000.00	
		7941700.00

.Accordingly, the Id. CIT(A) held that the assessee has in fact, accounted for the deposit of Rs.3.70 crores paid to M/s Royal Dental Clinic Pvt.Ltd in its books of account but the same was netted off against the security deposit while preparing the balance sheet. Accordingly, the Id. CIT(A) deleted the addition made by the AO with the observations that there is no justification in making this addition. Since, the Id. CIT(A) has given clear finding that the assessee has accounted for the investment made in M/s Royal Dental clinic Pvt Ltd in books of account, and since the assessee has followed a particular method for grouping the accounts and presented only the net balance in the balance sheet, in our view, it cannot be held that the assessee has not accounted for the investment of Rs.3.70 crores made with M/s Royal Dental Clinic Pvt.Ltd. Accordingly, we are of the view that the Id. CIT(A) was justified in deleting this addition.

13. The next issue relates to addition of Rs.20 lakhs made u/s 68 of the Act. The AO, on perusal of the account of M/s J P Dental Clinic (Prop.Dr.Arun Chamaria who is the director of the assessee company), noticed that Dr. Arun Chamaria has made payments of Rs.20 lakhs to the assessee company towards share application money. However, the AO found that the said receipt was not reflected in the balance sheet of assessee company. Accordingly, he assessed Rs.20 lakhs as income of the assessee u/s 68 of the Act. The Id. CIT(A) noticed that the assessee had actually accounted for the application money of Rs.20 lakhs received from Dr. Arun Chamaria. At the same time, Dr Arun Chamaria had a debit balance of an equal amount. Since the assessee company did not issue shares to him, the share application money of Rs.20 lakhs was adjusted against the debit balance by passing a journal entry in April 2008. Hence the share application account was showing nil balance and it was not reflected in the Balance sheet. It was also submitted before the Id. CIT(A) that Dr.Arun Chamaria has also maintained regular books of account and these transactions have been duly reflected in his books also. Accordingly, it was contended that the assessee has proved identity and capacity of the creditor as well as genuineness of transaction relating to share application. The Id. CIT(A) was convinced with the explanation of the assessee and accordingly deleted the addition of Rs.20 lakhs with the following observations :

“8.3 I have considered the rival submissions of the appellant and finding of the Assessing Officer, carefully. I find that Ld. Assessing Officer has wrongly made the addition u/s.68. Since the entry of Share Application money was squared off during the same year it would not appear in the balance sheet. Further, the creditor Dr. Arun Chamria, in his individual capacity had personally appeared before the A.O. in response to notice u/s.133(6) and confirmed the aforesaid entries with required evidences including the ROI, the balance sheets of the relevant year as well of the previous year etc. in my opinion, appellant had discharged its onus of proving the identity, capacity and genuineness of the transaction. Dr.Arun Chamaria has explained before me and confirmed the aforesaid transactions duly supported by the trial balance of assessee company which shows that the entry of Share Application was squared off during the same year. I am, therefore, of the opinion that the addition made by A.O. of Rs.20,00,000/- u/s.68 of I.T. Act 1961 is not sustainable, hence deleted.”

We notice that Dr.Arun Chamaria is also assessed by the same officer and upon examination of his assessment record only, the AO has come to know of the fact that the assessee has received the share application money Rs.20 lakhs from Dr.Arun Chamaria. The reasons for not disclosing the same in the balance sheet has been duly explained by the assessee before Id. CIT(A) and the same has been found to be correct by the first appellate authority also. Under these set of facts, we are of the view that there is no ground to suspect the genuineness of receipt of Rs.20 lakhs and also to suspect about the creditworthiness of Dr.Arun Chamaria. Hence, in our view, the Id. CIT(A) was justified in deleting this addition.

14. In the result, the appeal filed by revenue is dismissed.

The above order was pronounced in the open court on 10th Dec, 2014.

घोषणा खुले न्यायालय में दिनांक: 10th Dec, 2014 को की गई ।

sd

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(एच.एल. कार्वा/ H.L. KARWA)
अध्यक्ष/ **PRESIDENT**

(बी.आर. बास्करन,/ B.R. BASKARAN)
लेखा सदस्य/**Accountant Member**

मुंबई Mumbai: 10th Dec,2014.

व.नि.स./ SRL , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

true copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai