

**In the Income-Tax Appellate Tribunal,
Agra Bench, Agra**

**Before : Shri Laliet Kumar, Judicial Member And
Dr. Mitha Lal Meena, Accountant Member**

**ITA No. 147/Agra/2017
Assessment Year: 2012-13**

DCIT (Exemption), Circle, Bhopal (Appellant)	vs.	Birla Nagar Jan Sewa Trust, Surya Mandir Road, Residency, Gwalior (M.P.) PAN AABTB5364M (Respondent)
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Appellant by	Shri Sunil Bajpai, CIT Dr
Respondent by	Shri Pankaj Gargh, Advocate

Date of Hearing	08.08.2019
Date of Pronouncement	20.09.2019

ORDER

Per Laliet Kumar, J.M:

This appeal is filed by the Revenue against the order dated 22.02.2017 passed by the Id. CIT(A), Gwalior for the assessment year 2012-13. The sole ground raised in this appeal is as under:

“1. Whether the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 7,34,12,020/- made by the Assessing Officer and allowing the benefits of exemption u/s 11 of the I.T. Act to the assessee, as the payments in excess of reasonable limits as supported by comparative instances quoted by Assessing officer, were made and

treated by h benefits to the persons referred to in section 13(3) of the Act and especially when the trust was being run on the commercial lines by sharing of receipts with prohibited persons on lump sum or percentage basis?"

2. The assessee is a charitable trust registered since 21.11.1977 and is running medical institution (hospital) and also in the imparting of education. The assessee trust besides have registered u/s 12AA of the Act was also approved u/s 10(23C)(via) of the Act. The assessee trust is running the hospital in the name of BIMR Hospital and BIMR Heart Centre. The assessee had filed return of income declaring the NIL income for the AY 2012-13. However, the assessment was completed by the AO by assessing the income of the assessee to the tune of Rs.7,34,12,020/- by not allowing the exemption u/s 10(23C) (viia) viz-a-viz Section 11 of the Income Tax Act, 1961.

3. The AO records in the assessment order that the payments were made to the prohibit person u/s 13(3) of the Act at unreasonable rate. At Page 5 of the AO mentioned as under:

S.No.	Name	Qualification	Designation	Relation	Amount Paid
1.	Dr. Ravi Shankar Dalmia	M.D. (Medicine)Gold Medal 1st D.M. Cardiology	Director BIMR Heart Centre	Son of Shri B.D. Dalmia President/ Executive Trustee	Salary Rs. 54,00,000/-

02	Dr. Prathistha Dalmia	M.D. (Obs-Gynae)	Visiting Consultant	Daughter-in-law of Shri B.D. Dalmia President /executive Trustee	Visiting Fee Rs. 10,45,507/-
3.	Dr. Sunil Agrawal	Orthopedic Surgeon	Visiting Consultant	Son of Shri S.K. Agrawal Trustee	Visiting Fee Rs. 29,27,418/-
4.	Smt. Kusum Agarwal	N.A	N.A	Wife of Shri S.K. Agrawal Trustee	C-Arm Machine
5.	Sunil Dalmia	B.COM	Sr. Executive (Commercial)	Nephew of Shri B.D. Dalmia President/executive Director	Salary Rs.4,56,000/-

4. In paragraph 5, it was mentioned by the AO that these persons are relative of the trustees and therefore, the payment made by these persons is prohibit u/s 13(2c) of the Act. The AO had given the show cause notice to the assessee trust and in the reply the assessee trust has submitted a reply on 12.03.2015 which was reproduced by the AO in the assessment order Page 51 to 54 as under:

BIRLA NAGAR JANA SEVA TRUST

Surya Mandir Road, Residency, Gwalior 474005
Phone No. 2405612, 2405626, 2405631

Justification of the payments made to persons referred in section 13 (3) of
Income tax Act 1961 12.3.2015

Name	Designation	Amount
1.Dr.Ravi Shankar Dalmia	Director BIMR Heart Center	5400000/-
2.Dr.Pratishtha Dalmia	Visiting Consultant	1045507/-
3.Dr.Sunil Kumar Agrawal	Visiting Consultant	2927418/-
4.Smt. Kusum Agrawal		415676/-
5.Mr. Sunil Kumar Dalmia	Sr.Executive (Commercial)	456000/-

1. Dr.Ravi Shanker Dalmia, Amount paid as Salary Rs. 54.00 lac. during Financial year 2011-12.

Dr. Ravi Shanker Dalmia, M.D. Medicine (Gold Medalist) D.M. Cardiology is presently director of BIMR Heart Centre (BIMR Hospitals), Gwalior and Chief Interventional Cardiologist.

Worked as consultant interventional cardiology in Escort Heart Institute and Research centre, New Delhi till 2007.

Started Cardiology Programme at Gwalior in the year 2007 after that he has performed more than 5000 cases of Angiography, Angioplasty, and Permanent Pacemaker Implantation.

In association with Escort Heart Institute & Research Centre, New Delhi started Bypass Surgery & Valve Replacement in Gwalior in the year 2009. More than 325 cases have been done till date.

Awarded with :-

- "Doctor of the year" in 2009. ✓
- "Gwalior Ratna" in 2009. ✓
- Top Young personality at national level. ✓

Chairperson at various nation & international conferences

BIMR Heart Center with following facilities

- Cath Lab:- Equipped with German equipments for Angiography, Angioplasty, Pacemaker Implantation and devices including AICD and Cardiac Resynchronization Therapy.
- Cardiac Surgery:- Coronary Bypass Surgery, Single Valve replacement, Double Valve replacement.



(52)

Facilities Available :**OPD Speciality**

1. Executive Cardiac Checkup.
2. Complete Cardiac Checkup.
3. Pacemaker Clinic.
4. Hypertension Clinic.
5. Pacemaker Interogation.
6. Post Angioplasty Rehabilitation.
7. Post Bypass Rehabilitation.

Non Invasive Cardiology

- | | |
|---|------------------------------|
| 1. Electrocardiography (ECG) | 2. Tread Mill Test (TMT) |
| 3. Echocardiography (Adult / Pediatric) | 4. Stress Echocardiography |
| 5. Peripheral Arterial Doppler | 6. Peripheral Venous Doppler |
| 7. Renal Doppler | 8. Carotid Doppler |
| 9. Advanced Pathology (24 Hrs) | |

Cardio Thoracic Unit

1. Open-Heart Surgery
2. ByPass Surgery
3. Valves Replacement

Cardio Thoracic Operation Theatre

1. State of the art Cardiac Surgical Operation Theatre.
2. Fully equipped Cardiac Recovery.
3. Highly skilled and fully trained Cardiac Operation Theatre & Recovery Personnel.
4. Facilities for all kinds of Open-Heart Surgeries (CABGS - on beating heart, Valve Replacement Repair) as well as Vascular Surgeries.

The trust is paying Rs 5400000 (fifty four lacs) as a salary during the assessment year 2012-13 which is reasonable and justifiable copy of form no 16 is enclosed

2. **Dr.Pratishtha Dalmia . Amount paid Rs.1045507/- as Visiting Fee and operation Charges during the financial year 2011-12.**

Dr. Pratistha Dalmia M.S. (Gynaec & Obst.) is over all incharge of IVF center.

Department of IVF Centre:

Infertility:- Two trained and experienced consultants are available daily for consultation and treatment, Ultra modern equipments and facilities for specialized investigations available for infertile couple.



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(S3) (1)

Facilities Available -

- OPD Consultation daily 10:00 AM to 03:00 PM.
- Ovulation Induction. (अण्डे बनाने की प्रक्रिया)
- IUI (कृत्रिम गर्भाधान)
- Laproscopy (दूरबीन द्वारा पेट की जाँच)
- Hysteroscopy (अल्ट्रासाउण्ड द्वारा बच्चेदानी की जाँच)
- Follicular Study (अल्ट्रासाउण्ड द्वारा अण्डों की जाँच)
- Fertility Enhancing Surgeries
- IVF - ET (टेस्ट ट्यूब बेबी)
- IVF - ICSI
- Cryopreservation Programme (एम्ब्रियो बैंक)
- 24 Hours NABL accredited Pathology Lab for Harmonal assays.
- Fully equipped NICU

She is providing full time support to hospital and payments are made for his consultancy charges according to her visit and operation charges .

We are enclosing here with Bills and patients wise Monthly payments details made to him along with form no 16A for your reference

The trust has paid Rs 1045507/- as Visiting Fees and Operation Charges during the assessment year 2012-13 which is reasonable and justifiable.

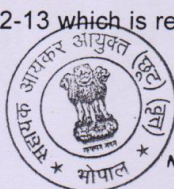
3. Dr.Sunil Kumar Agrawal :- Amount paid Rs.2927418/- as Visiting Fee and operation Charges during the financial year 2011-12.

Dr sunil agarwal is a qualified Orthopedic surgeon and Complex Fracture Fixations. A leading surgeon practicing for the last 20 years under his working and guidance

He is providing full time support to hospital and payments are made for his consultancy charges according to her visit and operation charges.

We are enclosing here with Bills and patients wise Monthly payments details made to him along with form no 16A for your reference.

The trust has paid Rs 2927418/- as Visiting Fees and Operation Charges during the assessment year 2012-13 which is reasonable and justifiable.



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[Handwritten notes: MBBS, D (Arthro)]

4. **Dr.Sunil Kumar Agrawal :- Amount paid Rs.415676/- as C.Arm Machine Charges during the financial year 2011-12.**

Smt kusum Agarwal is providing C Arm machine to the hospital it is Used by the hospital for Orthopedic Surgery and other Surgery. Hospital is providing her a fixed percentage of income earned from carm machine

We are enclosing here with Bills and patients wise Monthly payments details made to him along with form no 16A for your reference.

The trust has paid Rs 415676/- as C.Arm Machine Charges during the assessment year 2012-13 which is reasonable and justifiable.

5. **Mr.Sunil Kumar Dalmia :- Amount paid Rs.456000/- as Salary during the financial year 2011-12.**

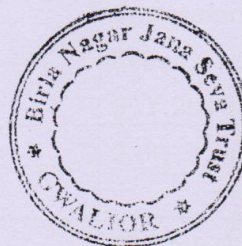
Mr. Sunil Kumar Dalmia is a Sr. Executive (Commercial) She is providing full time support to hospital. He look after Administration, Purchases, and development of the hospital .He has joined the hospital on 7.11.2011. on salary of 95000/- per month.

We are enclosing here form no 16A for your reference.

The trust has paid Rs 456000/- as Salary during the assessment year 2012-13 which is reasonable and justifiable.

In the light of above facts and supporting documents attached here with the payments made to persons referred in section 13 (3) of income tax Act 1961 are reasonable and justifiable

Thanking You,



Yours faithfully,

Rajendra Khandelwal
(Manager Finance)



5. The AO has mentioned in the assessment order that the salary paid to Dr. Ravi Shankar Dalmia was to the tune of Rs.54.00 lakh during the financial year was excessive and was not in the tune with the salary paid to other professional namely D.M. (Cardiology) working in Gwalior and for that purposes the AO had mentioned the salary given in GajrajachikitsaMahavidhyalay, Gwalior. Dr. Punit Rastogi and Dr. Ram Kumar Gupta and they were only paid the salary of Rs.15,43,568/-PA. Similarly the AO had also brought on record the comparable instances of salary paid to Chirayu Medical College and Hospital where the salary paid to Doctors Vikas Goyal was mentioned as Rs.7,20,000/- and Rs.5,76,240/- and Rs.9,39,430/- paid to Dr. R.K. Singh and Dr. Devashish Chakrawati respectively (at page 12 of the assessment order). The AO has mentioned that the AO has gathered the information from the market and compare the salary / professional charges paid to Doctors. It was mentioned that beside minimum salary of Rs.50,000/- per annum. The Doctors are paid professional charges, which read as under:

1. For Angioplasty 30% of the charges claimed from patient.
2. Angiography 20% of the charges claimed from patient.
3. Color dopler about Rs.300/- per person.
4. TMT about Rs.300/- per person.

6. It was concluded by the AO that for the purposes of putting Rs.54.00 lakh salary and professional charges to the Dr. Ravi Shakar Dalmia he should have

brought work of about Rs.2.00 crore to the Hospital. This information collected by the AO and was put across to the assessee and the assessee had filed the reply to AO after receiving this information. However, the AO was not convinced with the reply given by the assessee and had therefore, disallowed the benefit arising to the assessee u/s 11 of the Act. As the AO come to the conclusion that the salary/visiting fees paid to the Doctors were excessive and unreasonable having regard to the market rate and thus, the AO has forfeited exemption u/s 11 of the Act and computed the income at Rs.7,34,12,020/-.

7. Feeling aggrieved by the order passed by the AO, the assessee filed an appeal before the CIT(A). The CIT(A) has examined the reasoning given by the AO and recorded the finding in Para 5.1.1 and 5.2.1 as under:

“5.1.1 Decision: I have carefully considered the submissions put forward alongwith the judgments of the cases relied upon & argument advanced on behalf of the appellant, perused the facts of the case and other material available on record and the issue is decided as under;-

(i) It is not in dispute that appellant has made payment to the persons who referred to in section 13(3) of the Act, The AO has made the disallowance because he was of the opinion that excessive payment has been made by the appellant to these persons.

(ii) Payment to Dr. Ravishankar Dalmia- Dr. Dalmia is DM Cardiology and HOD of DMBIMR Heart Center. The gross receipts of this heart center in the financial year 2010-11 was Rs.2,39,60,000/- and the appellant has paid as salary Rs. 36.15 lacs to Dr. Ravi Shankar Dalmia. In the financial year 2011-12 the gross receipts of heart center has increased to Rs. 3,37,14,000/- and the remuneration paid to Ravishankar Dalmia was increased to Rs. 54 lacs.

In the assessment order the AO has given the detail of remuneration paid by the different medical institutes of Gwalior to the doctors who are

DM Cardiologist. However during the assessment proceeding the AO has not informed about this inquiry to the appellant. The AO has also not mentioned in the assessment order the amount of fees collected by these medical institutes by availing the service of DM Cardiology and has also not stated whether these cardiologist are doing private practice also. During the appellate proceeding the Id AR has submitted the agreement of Dr. Naveen Bamri of Max Super Specialty Hospital New Delhi and submitted that the remuneration paid by the appellant to Ravi Shankar Dalmia is reasonable.

On page J_3_ of the assessment order the AO has observed that the hospitals in India are giving minimum of salary of Rs.50,000/- per month to DM (Cardiology) and in addition to this minimum salary the hospitals are also paying certain percentage/ amount of fees collected from the patient to them. However it is not the case of the AO that if the remuneration of Dr. RavishankarDalmia is calculated at as per the rates given "By the AO on page 13 of the _assessment order then the amount of remuneration will be less than Rs. 54 lac. The AO has further observed on page 13 of assessment order that since the appellant has paid Rs. 54 lacs to Dr. Ravi Shankar Dalmia hence he must have given work of about Rs. 2 crores of the hospital. In the case of the appellant the gross receipt of the appellant from cardiac center is more than Rs. 2 crore hence even as per the logic of AO the remuneration paid by the appellant to Dr. RavishankarDaimia is reasonable. .

Section 13(2) provides the exception in which payment can be made to the person covered under section 13(3) of the Act. Sub-section (c) of section 13(2) provides that if the person covered under section 13(3) is paid remuneration for services rendered by him at reasonable rate then the provision of section 13(3) will not apply.

In the present case I am of the view that the remuneration paid to Dr. Ravi Shankar Dalmia who is full time looking after the Cardiac Center of the appellant and is attending emergencies and is not doing any private practice is reasonable and accordingly the benefit of section 11 cannot be denied to appellant for paying remuneration of Rs 54,00,000/- to Dr. Ravi Shankar Dalmia.

(iii) Payment to Dr Sunil Agrawal Orthopedic- The appellant is making payment to Doctors on the basis of fees collected by the appellant on surgery done by them. In the case of Dr. Abhishek Bohre the appellant

has paid nearly 41.3% of fees collected on work done by him as his remuneration. Similarly in the case of Dr. Sunil Shrivastav the appellant has paid as remuneration nearly 40% of fees collected on work done by him.

In the case of the Dr. Sunil Agrawal the appellant has paid as remuneration 40.36% of fees collected on the surgery done by him. As per the Id AR the appellant has made payment to DrAgrawalin similar manner in earlier assessment years. The Id AR further submitted that Shri S.K. Agrawalrelative of Dr. Sunil Agrawal was the trustee during the period from 13.02.2015 to 07.04.2015 i.e. Shri SK Agrawal was not the trustee of the appellant in the previous relevant to assessment year 2012-13 or earlier assessment year .

Considering the totality of the fact, I am of the view that the remuneration paid to Dr. Sunil Agrawal is reasonable and the benefit of section 11 cannot be denied due to the payment of remuneration to Dr. Sunil Agrawal by the appellant.

(iv) Payment to Dr PratishthaDalmia - As per the Id AR the appellant has paid a part of fees collected on the work of Doctors in Gaynic Department as remuneration to doctors. In the case of MohiniShrivastav the appellant has paid as remuneration 29.56% of fees collected on the surgery etc done by her. Similarly in the case of Dr, Sangeeta Singh the appellant has paid as remuneration 26.77% of fees collected on surgery etc done by her.

In the case of DrPratishthaDalmia the appellant paid her as remuneration 28.47% of fees collected on surgery etc done by her. Looking to totality of the fact I am of the view that remuneration paid by the appellant to Dr. PratisthaDalmia is reasonable and for the reason of payment of remuneration to Dr. PratishthaDalmia the exemption under section 11 cannot be denied.

(v) Payment to Kusum Agrawal-The appellant does not have C arm Machine which is used orthopedic operation . The appellant has entered into an agreement with KusumAgrawal in earlier year to provide this machine. As per the Id AR at the time of agreement the relative of Smt. KusumAgrawal was not trustee of the appellant. As per the Id AR the payment at similar rate has been made in earlier, year also.

Since the payment made to KusumAgrawal in earlier year.has been accepted as reasonable hence in view of principle of consistency I am of the

view that the benefit of exemption under section 11 cannot be denied to the appellant on account of payment of C Arm machine charges received from patient to Smt. KusumAgrawal.

(vi) Payment to Sunil Dalmia - Shri Sunil Dalmia is looking after general administration of hospital and educational institutions run by the appellant. As per the Id AR the remuneration was paid to him in earlier assessment years also and in order passed under section 143(3) these payment has been accepted as reasonable.

Since the payment made to Shri Sunil Dalmia in earlier year has been accepted as reasonable hence in view of principle of consistency I am of the view that the benefit of exemption under section 11 cannot be denied to the appellant on account of payment of remuneration to Shri Sunil Dalmia.

5.2.1 Decision: After carefully considering the argument advanced on behalf of the appellant and perusing the facts of the case and other material available on record , this issue is decided as under:-

As stated by the AO the appellant has not claimed exemption under section 10(23C)(via) of the Act and during the appellate proceeding no specific submission in support of this ground has been advanced hence this ground is dismissed as not pressed."

8. The Revenue feeling aggrieved by the decision filed the appeal before us on the above said ground.

9. The Id. CIT DR had submitted that the decision of the CIT(A) was based on the written submission filed by the AO where the assessee had relied upon the agreement of Dr. Navin Bhamari of MAX Super specialty Hospital and on the basis of that it was concluded by the Id. CIT(A) that the remuneration paid to Dr. Ravi Shankar Dalmia was a reasonable composition. It was submitted that the finding of the Id. CIT(A) is against the principle of natural justice and there is clear cut violation of Rule 46A by the Id. CIT(A) as report of AO was not called upon on the agreement of Dr Bhamri , during the appellate proceeding.

9.1 In rebuttal, it was submitted by the Id. AR that the Revenue has not filed any ground urging violation of principle of natural justice or challenging the consideration of the agreement by the CIT(A) in violation of Rule 46A.

9.2 Besides that it was submitted by AR that the AO at Page 13 had mentioned that for making the payments of salary of Rs.54.00 lakh there should be revenue earned by the hospital should Rs.2.00 crores. It was submitted that revenue received by the assessee for the assessment year under consideration was Rs.3,37,14,000/- (Rs 3.37 crore). It was submitted that the remuneration of salary paid to Doctors were not only based on revenue collected by the hospital but is also dependent upon specialization, expertise, able to satisfy and give results to patient etc.

9.3 The Bench during the course of argument had directed the assessee to file a comparative statement for the F.Ys. 2009-10 and 2010-11 showing the revenue collected and amount paid to Doctors. The table showing the revenue collected and amount paid to F.Ys. 2009-10, 2010-11 and 2011-12 are as under:

S.No.	Name	Qualification	Designation	Relation	Amount paid
1.	Dr. Ravi Shankar Dalmia	M.D. (Medicine) Gold Medalist D.M. Cardiology	Director BIMR Heart Center	Son of Shri B.D. Dalmia President/Executive Trustee	Salary Rs.54,00,000
2.	Dr. Prathistha Dalmia	M.D. (Obs- Gynae)	Visiting Consultant	Daughter in law of Sh. B.D. Dalmia President/Executive Trustee	Visiting Fee Rs.10,45,507/-
3.	Dr. Sunil Agarwal	Orthopedic Surgeon	Visiting Consultant	Son of Shri S.K. Aagrwal Trustee	Visiting Fee Rs.29,27,418/-
4.	Smt. Kusum Agarwal	N.A.	N.A.	Wife of Sh. S.K. Agrwal Trustee	C-Arm Machine Rs.4,15,676
5.	Mr. Sunil Dalmia	B.Com	Sr. Executive (Commercial)	Nephew of Sh. B.D. Dalmia President/Executive Trustee	Salary Rs.4,56,000/-

10. It was further submitted by AR that in all the previous assessment year the case of the assessee was examined and the payment made by the assessee to the Doctors have been accepted by the AO. Our attention was also drawn to the assessment order based for the A.Y. 2010-11 where the similar payment of Rs.36.15 lakh was allowed by the revenue collected for an amount of Rs.2,39,60,000/-. It was submitted that the present appeal filed by the Revenue without any basis and the ld. AR relied upon the following judgment:

1. CIT(Exemption vs. Bhol Ram Educational Society , (SC) 2019 ITL 59
2. Pratap Wahini Samaj Kalyan vs. Dept. of Income Tax, ITA No. 301/Agra/2012
3. Pratap Wahini Samaj Kalyan vs. Dept. of Income Tax, ITA No. 242/Agra/2011
4. PNR Society for Society for Relief & Rehabilitation of the Disabled Trust vs. The DDIT (Exemption), ITA No.2729/Ahd/2010
5. Indicula Trust Society vs. CIT (Exemption) ITA No.1216/Del/2013
6. Modern School Society vs. CIT (Exemption) ITA No.1118/JP/2016
7. CIT Exemption (Pune) vs. Sh. Balaji Society (High Court Mumbai)
8. Rock Church Ministries vs. DDIT (E) II, ITAT Hyd. ITA No.463/Hyd/2010
9. ACIT vs. Mahima Shiksha Samiti, ITL 346: (2017) 185 TTJ 425
10. CIT vs. 21st Society of Immaculate Conception (Mad. H.C.)
11. Lokmanya Tilak Jankalyan Shikshan Sanstha Vs. ACIT, Nagpur, 2017 ITL 2688
12. ITO vs. Virendra Singh Memorial Shiksha Samiti (Luck Trib) (2009) 121 TTJ 829
13. CIT vs. Working Women's Forum (LAWS (Mad) 2014-2-222
14. DIT vs. Sheth Mafatlal Gagalbhai, 2001 249 ITR 533 Bom.

11. We have heard the rival contentions of the parties and have perused the record of the case. It is undisputed fact before the Tribunal is that the assessee running hospital after getting it registered u/s 12AA of the Act. It is also undisputed that the assessee was having approval u/s 10(23)(c) of the Act. The case of the AO in the present case is that the assessee has been making the payment to Doctors by way of salary and professional fees which is in excess of what may be reasonably paid for such services by the comparable doctors in the Gwalior and for that purposes the AO has brought on record the comparable instances of Doctors working in GajrajaChikitsaMahavidhyalay and Chirayu Medical College.

11.1 Before we deciding this issue, we would like to bring on record certain important fact with respect to medical profession;

- I. There is no rules or regulation which governs the charging of fees by the medical professional.
- II. There ethicfor one Doctor varies by the circumstances and person to person and place to place.
- III. The professionals are paid for their work done.
- IV. In fact , many patient believes that, more Doctors charges more competent he or she would be.
- V. Further the Doctors and associate professional services are result oriented and

- VI. Health has been marketed as commodity by the doctors and hospital. Even the relatives spent on health of near and dear with a view to fulfill their obligation towards the ailing patient.
 - VII. We may mention that the medical profession is also full of unethical practices, kickbacks and under the table fees. Kickbacks are ultimately recovered from the patient which would form the part of the medical fees.
 - VIII. The kickbacks are given by the consultants, pathologist's, laboratories, nursing home, general practitioner and others.
 - IX. The medical practitioner also gets lot of unethical fees from the medicine companies in the form of parties, air tickets and conferences.
 - X. Un-ethical situation of medical profession further aggravates if it is learned that patient bill taken care of the medical insurance or by employer of the patient and bills of patient. The patient connivance and conclusion with the doctors, inflate the bills and share the bill on the inflated amount.
12. In our view, the fees of the doctor is not only determined by the college from which he had passed out but also dependent upon
- a. with whom Dr. has done the internship
 - b. his seniority
 - c. competence
 - d. Expertise

- e. qualification and
- f. Ability to give results in complicated and difficult cases
- g. Further, the fees is also determined based on the establishment and equipment on which the doctors is working
- h. The time involved in the procedure/surgery
- i. locality where the hospital and working center is situated.

12.1 In the present case, the AO has brought on record the comparable instances of the GajrajaChikitsaMahavidhyalay and Chirayu Medical College on record but failed to bring on record expertise , qualification any other factors like seniority competence ,experience, qualification etc.

12.2 The AO has further failed to bring on record the revenue collected by these hospital or a period of three years and what was a salary paid to these doctors. Further AO failed to bring on record whether salary paid to these doctors as mentioned in order were in which proportion to revenue collected by the hospital or not.

12.3 The Government medical college or salary paid to the government hospital cannot be compared with the salary paid by the private hospital to the private doctors. In the absence of necessary information with respect to that establishment of the hospital, the revenue collected by the hospital, the competence, experience

and their ability to give result, it would not be safe use these as comparable instances with that of the assessee.

12.4 In our considered opinion, doctors who had passed out with the same degree in cardiology DM cannot be compared with experience doctor working in the field for the last ten years.

12.5 Reply of the assessee had been reproduced by the AO in Paragraph 7 mentioned above which clearly mentioned that Dr. Ravi Shakar Dalmia was gold medalist and prior to working with the assessee hospital, he was working as consultant interventional cardiology in Escort heart Institute and Research Centre, New Delhi upto the year 2007 and thereafter the doctor had started by cardio intervention / valve replacement in the Gwalior in the year 2009 and since 2009 he had done more than 325 cases with respect bypass surgery & valve replacement . No such fact and figure were brought on record by the AO in his order with respect to Dr. Viaks Goyal, Dr. R.K. Singh and Dr. Puneet Rastogi and Dr. Ram Kumar. In our view , intervention in heart by way angiography and surgical bypass and valve replacement needs different skills and expertise in the medical field. To day we are having specialists, super specialist and organ specialist in India and outside India with the same educational qualification.

12.6 In our view, Dr. Ravi Shankar Dalmia having sufficient expertise in the field it is clear from the fact that from 2007 he was working with escort hospital Delhi and

thereafter working with the assessee hospital with effect from F.Y. 2009-10. The contribution of doctor is clear from the fact that revenue collected from the A.Y. 2009-10 was 183.26 lakh whereas the revenue collected from the F.Y. 2011-12 was 337.14. The revenue has increased two times in from 2009-10 to 2011-12 and same with the same ration it increased for Dr. Ravi Shankar Dalmia.

12.6 Further we are of the opinion that the finding recorded by the AO based on the comparable instances is wholly incorrect. In our view, the comparable instances brought on by the AO are not at all comparable as the services rendered by the professional like Dr. Ravi Shankar Dalmia cannot be compared with the other DM (Cardiologists) or assistant professional or professor in some medical college or working in other hospital. It is expected from the AO to bring on record the comparable only after bringing on record the comparison between two doctors not only on the basis of the medical degree but also on the basis of expertise etc as mentioned hereinabove.

12.7 In view of above and we also on account of comparable instance of Dr. Navin Bhamar of MAX Hospital , which have not been seriously disputed by the revenue by raising the specific ground in the appeal the appeal of the revenue deserves to be dismissed . Further the Tribunal is bound to adjudicate and decide the ground

raised by the Revenue and is bound to decide the ground which has not been urged or stood to be urged by the Revenue.

13. Lastly, we may also like point out that in the earlier F.Y. 2010-11, where the order u/s 143(3) was passed by the AO the services rendered by the same set of doctors and payment made to them have not been disputed by AO and same has been accepted by the revenue. In our considered view, the consistency is required to be maintained not only by the assessee but also by the Revenue.

14. In the present case, there is no change of facts in the present AY and facts continued to be same for the earlier Assessment year when similar payment were allowed by the AO without invoking violation of Section 13 of the Act. In our thereof we do not find any error in the order passed by the Id. CIT(A) and accordingly appeal filed by the Revenue is dismissed.

15. In the result, appeal filed by the Revenue is dismissed.

(Order pronounced in the open court on 20/09/2019)

Sd/-
(Dr. Mitha Lal Meena)
Accountant Member

Sd/-
(Laliet Kumar)
Judicial member

Dated: 20/09/2019
Aks