

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI A.D.JAIN, JUDICIAL MEMBER

ITA No.738/Del/2013
Assessment Year : 2009-10

Deputy Commissioner of
Income Tax,
Circle-37(1),
New Delhi.

Vs. Shri Arvinder Singh Soin,
26A-Green View Apartments,
Sector-15A, Noida,
G.B.Nagar, U.P.
PAN : APGPS4947H.
(Respondent)

Appellant by : Shri Bhim Singh, Sr.DR.
Respondent by : Shri Sachin Vasudeva, CA.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the Revenue is directed against the order of learned CIT(A)-XXVIII, New Delhi dated 14th December, 2012 for the AY 2009-10.

2. The Revenue has raised following grounds of appeal:-

"1. In the facts and circumstances of the case the ld.CIT(A) grossly erred in deleting the addition made by the A.O. of ₹69,29,500/- on account of advance received from patients as 'Lifetime Consultancy Charges' since, the assessee has failed to provide proper justification or necessary documentary evidences inspite of several opportunities given by the A.O.

2. In the facts and circumstances of the case the ld.CIT(A) grossly erred in deleting the addition made by the A.O. of ₹69,29,500/- on account of advance received from patients as 'Lifetime Consultancy Charges' since, the

assessee has not provided proper explanation how the above income is offered for taxation in subsequent year.

3. In the facts and circumstances of the case the Id.CIT(A) grossly erred in deleting the addition made by the A.O. of ₹69,29,500/- on account of advance received from patients as 'Lifetime Consultancy Charges' since, the above amounts were in the nature of Registration charges which are taxable.

4. That the grounds of appeal are without prejudice to each other.

5. The appellant craves leave to a, amend or modify any/all the ground of appeal before or during the course of the appeal.

It is prayed that the order of CIT(A) is contrary to the facts on record and the settled position of law; and the order of the A.O. deserves to be restored."

3. At the time of hearing before us, it is stated by the learned DR that the assessee is a doctor by profession and during the year under consideration, the assessee has shown the liability of ₹69,29,500/- as advance from patients. During the assessment proceedings, the assessee did not furnish the scheme which was furnished before the learned CIT(A). That the CIT(A) forwarded the scheme to the Assessing Officer and the Assessing Officer in his remand report clearly stated that the lifetime consultancy scheme is nothing but only an after-thought. The CIT(A), ignoring the above remand report, deleted the addition accepting the scheme. He stated that the assessee has deferred the payment of tax by showing part of the receipt as advance from patients. Therefore, he requested that the order of the CIT(A) should be reversed and that of the Assessing Officer may be restored.

4. The learned counsel for the assessee stated that the scheme cannot be an after-thought because the assessee received advance as

per the scheme from various persons and the amount received from them has been adjusted against the professional services rendered in the subsequent years and the income has been offered by the assessee as and when the services have been rendered. The assessee has furnished the complete details in respect of each and every patient. He further submitted that the assessee is following mercantile system of accounting but, even in mercantile system of accounting, the advance received from the patients cannot be treated as income. The income would accrue only when the services would be rendered by the assessee.

5. In the rejoinder, it is stated by the learned DR that no allocation of the receipt has been made by the assessee for the year ended on 31st March, 2009 even though all the advances were received in this year.

6. We have carefully considered the submissions of both the sides and perused the material placed before us. The facts of the case are that the assessee is a doctor by profession. He is a surgeon specialized in liver transplant. In the case of a liver transplant patient, regular consultancy and check up for several years is required. During the year under consideration, the assessee has received the sum of ₹69,29,500/- from patients which was accounted for as advance from patients. The scheme by which such advances were taken from the patients was not produced before the Assessing Officer but was produced before the learned CIT(A) and copy of which is placed at page 42 of the assessee's paper book. For ready reference, we reproduce the same herein below:-

"CONCEPT OF CONSULTATION ADVANCE"

1. Patient is eligible for free consultation for first 12 months from the date of payment. Thus, the patient

utilises the advance amount only after the expiry of first 12 months from the date of payment.

2. The advance shall be adjusted in subsequent three years as per the following:

<i>A. Personal meeting</i>	<i>1000/- Per visit</i>
<i>B. E-Mail</i>	<i>1000/-</i>
<i>C. Telephone</i>	<i>500/-</i>

3. The advance is refundable (unutilized balance) in case the patient does not find the services appropriate.

4. The minimum amount of advance is Rs.10000/-."

7. From the above scheme, it is evident that any patient who is availing of this scheme is eligible for free consultation for the first 12 months. After 12 months only, the assessee is entitled to charge the professional fee for consultation. Therefore, obviously, as per the scheme, no income would accrue to the assessee in the first 12 months. As per the scheme, it is evident that the amount received during the year under consideration is only advance and the same is adjustable against the consultancy charges which would be payable by the patient after 12 months of the deposit as per the rate prescribed in the scheme. Admittedly, subsequently, as and when consultation has been taken by the patients, the income accrued in those years has been accounted for and offered as income. A detailed chart running from pages 43 to 73 is given in this regard. Thus, as per the scheme, the advance received by the assessee during the year under consideration cannot be treated as professional fees of the assessee. Now, the only ground in the remand report for rejecting the scheme is the claim of the Assessing Officer that the scheme is an after-thought. The main reason for considering the scheme to be an after-thought is that despite specific queries during the assessment proceedings, the assessee has not submitted the copy of such scheme before the

Assessing Officer. However, merely because the scheme was not submitted before the Assessing Officer by itself cannot prove that the scheme is an after-thought. That the assessee has adjusted the amounts received from various patients in respective years as and when professional services have been rendered to those patients. Complete details in this regard have been furnished by the assessee. No adverse comment is made by the Revenue in this regard. That before the CIT(A), the assessee also furnished the confirmations from various patients and has also furnished the e-mails received from various patients. All these evidences clearly prove that the scheme is not an after-thought. The scheme was very much in existence, advance was taken as per scheme and adjustment of the fees was also made as per consultancy taken by the patients as per the scheme. The only default of the assessee was of not producing the scheme before the Assessing Officer, therefore, all these evidences including the scheme were fresh evidence before the CIT(A). However, the CIT(A) has already allowed opportunity to the Assessing Officer to examine those fresh evidences and called for his remand report. After considering his remand report, the CIT(A) allowed the relief with the following finding:-

"5. I have considered the issue raised in appeal, the arguments of the assessing officer and contentions of the appellant. The appellant is a doctor, surgeon specializing in liver transplant. It is a fact that the appellant is following mercantile system of accounting on a regular basis. The appellant has received life time consultancy fees which is accounted as advance from patients as per the principles of mercantile system of accounting. This is nothing but advance from patients to be utilized in due course as per the scheme. On verification of the evidence given during appeal proceedings which was given to Assessing Officer also for his comments, it is found that the appellant has not utilized the amount during the year. This was booked only at the time of actual consultations with

the doctor in due course. The appellant has given ample proof in order to prove his contentions. Copy of balance sheet, P & L account and Form 3CD for financial years 2009-10 & 2010-11 also are evidence that the appellant has accounted the said evidences in the subsequent years on realization of the same. The appellant has received the amount as advance in contemplation of the services to be offered in future. Unless the services are offered the said advances cannot change the nature from 'advance' to that of the 'receipt'. Once the services have been offered, the appellant has brought the amounts to his income at that time. The scheme of life time consultancy has been perused in detail. The name is only life time, whereas services are meant for a period of 48 months post surgery with a period of 12 months immediately after the surgery as free of charge, meaning there by the amount of advance would have to be exhausted with in a period of three years from surgery or else would have to be returned in case of non utilization of the same or in case of death of the patient. The appellant has done exactly the same. The appellant has accounted the said advances as and when realized. The same are accounted in the years of realization. Sufficient proof in the name of balance sheet and P & L account and Form 3CD to support the case of the appellant has been filed, which is enough proof to accept that what has been received as advance under the life time consultancy fee is only to be taxed as income when services to that effect are offered. Till then the amount remains a liability in the books of the appellant. Considering the details filed it is found that the advance need not be booked at the time of receipt nor it is a registration charge. The appellant has strictly followed the principles of mercantile system of accounting. Accordingly, I hold that the appellant has correctly followed the principles of mercantile system of accounting and the amount of advance received during the year cannot be booked as income. The disallowance to that effect is directed to be deleted. Appeal is allowed."

8. After considering the facts of the case and the arguments of both the sides, we do not find any infirmity in the above finding of learned CIT(A). The CIT(A) has recorded the above finding after considering all the evidences produced before him and the fact that the receipt has

already been booked as income at the time of accrual of income by the assessee i.e., as and when actual consultation with the doctor has taken place. The above finding recorded by the CIT(A) could not be controverted before us. After considering the arguments of both the sides and the facts of the case, we do not find any justification to interfere with the order of learned CIT(A). The same is sustained.

9. In the result, the appeal of the Revenue is dismissed.
Decision pronounced in the open Court on 20th September, 2013.

Sd/-
(A.D.JAIN)
JUDICIAL MEMBER

Sd/-
(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 20.09.2013
VK.

Copy forwarded to: -

1. Appellant : **Deputy Commissioner of Income Tax,
Circle-37(1), New Delhi.**
2. Respondent : **Shri Arvinder Singh Soin,
26A-Green View Apartments,
Sector-15A, Noida, G.B.Nagar, U.P.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar