

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai  
Before Shri B.R. Baskaran (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 2865/Mum/2012  
(Assessment Year 2008-2009)

Asian Heart Institute & Research Centre Pvt. Ltd., GN Block, Bandra Kurla Complex, Bandra (E), Mumbai 400 051.	Vs.	ACIT-10(1), Mumbai
(Appellant)	..	(Respondent)

I.T.A. No. 2257/Mum/2012  
(Assessment Year 2008-2009)

ACIT-10(1), Mumbai	Vs.	Asian Heart Institute & Research Centre Pvt. Ltd., GN Block, Bandra Kurla Complex, Bandra (E), Mumbai 400 051.
(Appellant)	..	(Respondent)

PAN No.AAACC8811C

Assessee by :	Shri Vimal Punmiya
Department by :	Shri Manoj Kumar
Date of Hearing :	07.01.2016
Date of Pronouncement :	02.03.2016

ORDER

Per B.R. Baskaran, AM :-

These cross appeals are directed against the order dated 16.01.2012 passed by Ld CIT(A)-21, Mumbai for assessment year 2008-09.

2. The assessee herein is engaged in healthcare services and is running a super speciality hospital & diagnostic centre. The assessing officer completed the assessment by making various types of additions and the appeal filed by the assessee before Ld CIT(A) was partly allowed. Hence both the parties are in appeal before us challenging the order of Ld CIT(A) on certain issues.

3. The assessee is in appeal in respect of the following two issues:-

(a) Disallowance of depreciation claimed on leasehold land.

(b) Disallowance made u/s 14A of the Act.

4. The facts relating to the first issue are that the assessee has taken a plot on lease for a period of 70 years from Mumbai Metropolitan Region development authority by paying a lump sum of Rs.9.00 crores in lieu of lease rent of 70 years, vide agreement dated 02-05-2001. The assessee amortised the lease premium referred above over a period of 70 years and accordingly claimed a sum of Rs.12,82,874/- as deduction for the year under consideration. The AO noticed that an identical claim made by the assessee in the earlier year has been disallowed and further no depreciation is admissible on land. Accordingly he disallowed the claim of the assessee. The Ld CIT(A) also confirmed the same by following the decision rendered by the Special bench of Mumbai Tribunal Mukund Ltd (13 SOT 558) and by the Hon'ble Supreme Court in the case of Enterprising Enterprises Vs. DCIT (293 ITR 437).

5. Before us, the Ld A.R placed his reliance on the Accounting Standards issued by the Institute of Chartered Accountants of India and also certain other decision to contend that the premium amount paid by the assessee should be treated as advance rentals and hence the proportionate amount should be allowed as deduction.

6. We also heard Ld D.R on this issue. We notice that an identical issue was considered by Hon'ble Delhi High Court in the case of Gail India Ltd Vs. JCIT (ITA 956/2011 and 957/2011 dated 05-11-2012) and the Hon'ble Delhi, by following the decision rendered by Hon'ble Supreme Court in the case of Panbari Tea Corporation Ltd (57 ITR 422)(SC), has held that the assessee is not entitled to claim amortisation of proportionate amount of lease premium paid for taking the land on lease for a longer period. In view

of the above, we do not find any infirmity in the order of Ld CIT(A) on this issue.

7. The next issue urged by the assessee relates to the disallowance made u/s 14A of the Act. The tax authorities have computed the disallowance as per Rule 8D of the IT Rules. The Ld A.R submitted that the tax authorities did not consider the fact that the own funds available with the assessee is far excess than the investments made and hence no interest disallowance is called for. With regard to the administrative expenses also, the Ld A.R submitted that the disallowance of 0.5% of the investments works out to a higher figure.

8. We heard Ld D.R on this issue and perused the record. The provisions of sec. 14A mandates that the assessing officer shall have regard to the accounts of the assessee before rejecting the claim of the assessee and if he is not satisfied with the claim of the assessee by having regard to the accounts, he shall compute the disallowance as per Rule 8D of IT rules. In the instant case, the claim put forth by the assessee on the basis of its accounts have not been examined by the tax authorities. Accordingly, we are of the view that this issue requires fresh examination. Accordingly, we set aside the order of Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine this issue afresh by duly considering the information and explanations that may be furnished by the assessee and take appropriate decision in accordance with the law.

9. We shall now take up the appeal filed by the revenue. We notice that the tax effect involved in this appeal is less than Rs.10.00 lakhs. Hence, in view of the Circular No.21/2015 dated 10-12-2015 issued by the CBDT, the revenue is precluded from pursuing this appeal. Accordingly we dismiss the appeal of the revenue in limine.

10. In the result, the appeal filed by the assessee is treated as partly allowed and the appeal of the revenue is dismissed.

Order has been pronounced in the Open Court on 02.03.2016.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 02/03/2016

Sr. P.S SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

( Dy./Asstt. Registrar)  
ITAT, Mumbai