

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6188/Del./2014
(ASSESSMENT YEAR : 2010-11)**

DCIT, Circle 14 (1), vs. M/s. QRG Central Hospital & Research
New Delhi. Centre Limited,
1, Raj Narain Marg, Civil Lines,
Delhi – 110 017.

(PAN : AAACQ1682M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V.P. Bansal, CA

REVENUE BY : Shri Deepak Garg, Senior DR

Date of Hearing : 28.09.2017

Date of Order : 13.10.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Deputy Commissioner of Income-tax, Circle 14 (1), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal, sought to set aside the impugned order dated 06.08.2014 passed by the Commissioner of Income-tax (Appeals)-XVII, New Delhi qua the assessment year 2010-11 on the grounds inter alia that :-

“(1) On the facts and under the circumstances of the case, the ld. CIT(A) has erred in deleting

the addition of Rs.65,516/- made by the AO holding as capital in nature ignoring the facts that the assessee itself admitted the expenditure incurred on replacement of old furniture.

(2) On the facts and under the circumstances of the case, the ld. CIT(A) has erred in deleting the addition of Rs.1,05,000/- ignoring the facts of the case that the assessee has failed to explain the purpose of increasing the working capital over draft facility on which the fees in question paid to the bank.

(3) On the facts and under circumstances of the case, the ld. CIT(A) has erred in law in deleting the addition of Rs.3,35,780/- ignoring the facts that the assessee has not established that the said expenditure was income for the business of the assessee and failed to provide the identity and confirmation of the persons the whom the gifts were given which were purchased in cash in contravention of provisions of section 40A(3) read with Rule 6DD of the IT rules.

(4) In the facts and circumstances of the case, the ld. CIT(A) erred in deleting to addition of Rs.69,874/- made by the AO on account of the bad debts on the basis of letter produced by the assessee without referring the same to the AO for its verification.

(5) On the facts and under the circumstances of the case, the ld. CIT (A) has erred in deleting the addition of Rs.1,00,00,000/- ignoring the facts that the assessee company is required to show the closing stock as per 12 of the MOU, which was not shown in the balance sheet as on 31.03.2010.

(6) In the facts and circumstances, the ld. CIT(A) erred in deleting the addition of Rs.2,52,000/- made on account of rent treated as unverifiable by the AO on the basis of letter

produced by the assessee without referring the same to the AO for its verification.

(7) On the facts and under the circumstances of the case the ld. CIT (A) has erred in deleting the addition of Rs.1,24,44,143/- made by the AO on account of bogus purchases ignoring the facts of the case that the parties from whom the purchases were made were found not existing and the assessee failed to establish the identity of persons from whom the purchases were made by the assessee.

(8) In the facts and the circumstances of the case the ld. CIT(A) erred in deleting the addition of Rs.1,24,44,143/- made by the AO on account of bogus purchases made by the AO on the basis of letter produced by the assessee without referring the same to the AO for its verification.

(9) In the facts and circumstances, the Ld. CIT(A) erred in deleting the addition of Rs.10,07,441/- out of Rs.16,43,824/- made by the A.O. on account of consultancy charges on the basis of a letter produced by the assessee without referring to the A.O. for its verification.

(10) In the facts and circumstances, the Ld. CIT(A) erred in deleting the addition of Rs.7,00,000/-- made by the A.O. on account of sundry creditors on the basis of a letter produced by the assessee without referring to the A.O. for its verification.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : during scrutiny proceeding, Assessing Officer has disallowed an amount of Rs.65,516/- and Rs.1,05,000/- on account of repair expenses and cost of change room cabinet and on account of processing fee paid to IDBI Bank Ltd. for

sanctioning of the working capital overdraft facility respectively by treating the same as capital expenditure. AO further disallowed an amount of Rs.3,35,780/- claimed to have been incurred by the assessee on gifts on Diwali on the ground that the assessee has failed to produce the evidence for distributing the said gifts nor filed details of the parties and confirmation from them. AO further disallowed an amount of Rs.69,874/- on account of bad debts on the ground that no efforts to effect the recovery has been made by the assessee. AO further made an addition of Rs.1,00,00,000/- on account of closing stock of consumables and medicines on the ground that an average stock amounting to Rs.1,00,00,000/- needs to be maintained but the assessee has failed to show such stock in order to escalate the losses. AO also disallowed an amount of Rs.2,52,000/- paid to Jagmohan Garg (HUF) on the ground that the notice sent u/s 133 (6) of the Income-tax Act, 1961 (for short 'the Act') to Jagmohan Garg (HUF) at the address given by the assessee received back unserved and as such, payment of the rent has not been proved. AO further disallowed an amount of Rs.1,24,44,143/- on the ground that no confirmation has been received from the parties in response to the notice issue u/s 133 (6) of the Act dated 15.01.2013. AO further disallowed an amount of Rs.16,43,824/- paid to Dr. Shuchi Dingra, Dr. Manish, Dr.

Swatantra Mishra and Dr. Seema Jain again for lack of confirmation made by them in compliance to the notices issued u/s 133 (6) of the Act. AO further disallowed an amount of Rs.7,00,000/- being an amount payable to the sundry creditors on the ground that names of such sundry creditors are not there in the balance sheet.

3. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has deleted the additions and allowed the appeal . Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

5. When it is not in dispute that the expenditure of Rs.65,516/- has been incurred by assessee on repair of room cabinet, qua which all the necessary documents have been perused by the AO, we are of the considered view that the Id. CIT (A) has rightly taken the view that no new asset has been created of enduring benefit and as such, the expenditure is in the nature of revenue expenditure. So,

we confirm the findings returned by Id. CIT (A). Consequently, Ground no.1 is determined against the Revenue.

GROUND NO.2

6. Assessee claimed expenditure of Rs.1,05,000/- incurred on account of processing fees paid to IDBI Bank Ltd. for increase in working capital overdraft facilities as revenue expenditure. When admittedly there is no capital creation with the loan facilities availed of by the assessee, the working capital overdraft facility cannot be kept under the category of capital expenses, rather working capital overdraft facility "*is oftenly used to run day-to-day business*". Hence, the Id. CIT (A) has rightly deleted the addition of Rs.1,05,000/- by treating the same as revenue expenditure. So, Ground no.2 is determined against the Revenue.

GROUND NO.3

7. Assessee claimed expenditure of Rs.3,35,780/- incurred on Diwali gifts and sweets given to the outsourced Doctors. Ld. CIT (A) deleted the addition on the ground that she has perused the documents which were also shown to the AO. But the Id. AR has failed to bring on record any such documents to prove the hiring of services of the Doctors nor it is proved on record if the Doctors to whom the gifts are given are on the roll of the assessee or are

rendering services since long. No doubt confirmation from the Doctors to whom the gifts are claimed to have been given by the assessee cannot be obtained but the assessee is required to bring on record the evidence to prove that such and such services have been rendered by the said Doctors. So, we are of the considered view that this issue is required to be remanded back to the AO to decide afresh after conducting verification of the fact that such and such services were actually rendered by the said Doctors and their services were necessary to run the day-to-day business of the assessee. In case this is proved then these expenses are certainly to be treated as revenue expenses. So, ground no.3 is determined in favour of the Revenue for statistical purposes.

GROUND NO.4

8. AO disallowed an amount of Rs.69,874/- claimed by the assessee on account of bad debts on the sole ground that no efforts for recovery of such bad debts have been made by the assessee. When the assessee has proved on record that the debts incurred were on revenue account and this fact has not been disputed by the AO that the debts have become bad and some have been written off and taken into account in computing the income in previous year, we find no ground to interfere into the findings returned by Id. CIT

(A) deleting the addition of Rs.69,874/-. Hence, ground no.4 is determined against the Revenue.

GROUND NO.5

9. AO made an addition of Rs.1,00,00,000/- on account of closing stock of consumables and medicines which has been deleted by the Id. CIT (A). AO has made disallowance only on the ground that the assessee was not disclosing any stock and was showing only fictitious losses. When the assessee has proved on record that services of pharmacy and path lab were outsourced and remaining items were brought as and when required, there used to be no stock as consumables on physical verification. So, again, we find no ground to interfere with the findings returned by Id. CIT (A). Hence, ground no.5 is also determined against the Revenue.

GROUND NO.6

10. AO disallowed an amount of Rs.2,52,000/- paid to Jagmohan Garg (HUF) on account of rent paid. Since Id. CIT (A) deleted the addition after verifying the fact that the payment has been made as per Agreement, available at pages 63 to 65 and 66 to 77 of the paper book, and the fact that the payment has been made through banking channel to the landlords directly and as such, there was no need to confirm these facts from landlords. Again, we find no

ground to interfere in the findings returned by ld. CIT (A), hence ground no.6 is determined against the Revenue.

GROUND NOS.7 & 8

11. AO disallowed the amount of Rs.1,24,44,143/- on account of purchases of consumables for lack of confirmation made by the parties from whom such consumables were purchased even after issuance of notice u/s 133 (6) of the Act. However, ld. CIT (A) deleted the addition by observing that all the copies of bills were produced before the AO and all the books of accounts and records were shown. Ld. CIT (A) also relied on para 1 of the assessment order wherein it is mentioned by the AO that detailed documents were submitted.

12. However, we are of the considered view that first of all, AO has written in para 1 of the assessment order that "*the ld. AR appeared from time to time and submitted details and documents*" but nowhere stated that the detailed documents were submitted. On the other hand, AO has categorically mentioned in the assessment order that no confirmation received as to the purchase of the consumables from the parties even after the issuance of the notice u/s 133 (6) of the Act. In these circumstances, the findings returned by the ld. CIT (A) deleting the addition of

Rs.1,24,44,143/- are cryptic and non-speaking one. So, we remand this issue back to the Id. CIT (A) to decide afresh after providing an opportunity of being heard to the parties. Consequently, grounds no.7 & 8 are determined in favour of the Revenue for statistical purposes.

GROUND NO.9

12. Ld. CIT (A) deleted the addition of Rs.16,43,824/- made by the AO on account of payment to various consultant Doctors on the ground that copies of ITR and computation of income was filed before AO and she has also verified the details. On the other hand, when we examine the assessment order, no such documents have been brought before AO nor the concerned Doctors have filed any confirmation despite issuance of the notice u/s 133 (6) of the Act nor the Id. CIT (A) has called upon any remand report from the AO. So, in these circumstances, we remand this issue back to the file of Id. CIT (A) to decide afresh after providing an opportunity of being heard to the parties. Consequently, ground no.9 is determined in favour of the Revenue for statistical purposes.

GROUND NO.10

13. Ld. CIT (A) deleted the addition of Rs.7,00,000/- on account of sundry creditors made by the AO on the ground that no sundry

creditors have been shown in the balance sheet. Ld. AR for the assessee submitted that the list of sundry creditors is there at pages 88 & 89 of the paper book and the amount of Rs.7,00,000/- has been claimed against Shri Sanjiv Gupta mentioned at Sl.No.6 of the sundry creditors. However, we are of the considered view that this fact is required to be verified by the AO in the light of the balance sheet. So, this issue is also remanded back to the AO to decide afresh after providing an opportunity of being heard to the parties. Consequently, ground no.10 is determined in favour of the Revenue for statistical purposes.

14. Resultantly, appeal filed by the Revenue is hereby partly allowed for statistical purposes.

Order pronounced in open court on this 13th day of October, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 13th day of October, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-XVII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**