

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'A', CHANDIGARH  
BEFORE SHRI. SANJAY GARG, JUDICIAL MEMBER AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.545/Chd/2017**  
Assessment Year: 2010-11

The ACIT  
Circle-7  
Ludhiana

Vs. IAA Hospital (P) Ltd.  
C/o Dr. B.S. Sekhon, 1881-B/22  
St. No. 05, Maharaj nagar  
Ludhiana

PAN No. AABCI2421F

(Appellant)

(Respondent)

Assessee By : Shri. Sarabjeet Garg  
Revenue By : Smt. Chandrakanta

Date of hearing : 14/08/2018  
Date of Pronouncement : 26/09/2018

**ORDER**

**PER DR. B.R.R. KUMAR, A.M.:**

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A)-4 Ludhiana dt. 09/04/2013.

2. In the present appeal Revenue has raised the following grounds:

*(i) Whether on the facts and circumstances of the case the Ld. CIT(A) was right in law in deleting the addition of Rs. 1,30,18,816/- and thereby accepting that the net profit ratio @ 1.04% declared by the assessee is correct by not taking into consideration the fact that the assessee has not produced books of accounts.*

*(ii) Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in law in restricting disallowance of interest expenses @ 10%(Rs. 31,61,606/-) against the 20% (Rs. 63,23,213/-) made by the Assessing Officer out of the total interest expenses claimed at Rs. 3,16,16,064/- by conceiving the notion that banking authorities have full control over the utilization of borrowed funds and without taking into consideration the fact that the assessee has not produced books of account from where the correctness of the claim of interest expenditure could be examined.*

3. The brief facts of the case as taken by the order of the Ld. CIT(A) are that the assessee company which is running a hospital under the name and style of M/s IAA Hospital has filed its return of income for the year under consideration on 14.10.2010 declaring therein in an income of Rs. Nil after claiming set off of

brought forward unabsorbed business loss to the extent of Rs. 17,73,054/-. The return was stated to be processed under section 143(1) of the Act at returned income. As the tax payable under normal provisions of the Act was Nil, the assessee company paid taxes under section 115JB of the Act on book profits of Rs. 17,73,054/-. As the assessee company failed to produce books of account and supporting evidences in respect of various claims for verification of the Assessing Officer, the assessment in the case of the assessee company was completed by the Assessing Officer vide order under section 144 of the Act dated 08.03.2013 at an assessed income of Rs. Nil after setting off of business loss of earlier years to the extent of Rs.2,57,74,470/- against current year's income. While completing the assessment, the Assessing Officer has made the following additions to the returned income of the assessee company:-

(i). Net profit addition after rejecting book results As the assessee failed to produce books of Account	Rs. 1,30,18,816/-
(ii). Addition on account of disallowance out of bank Interest expenses as the assessee company failed To produce books of account and the relevant bills With regard to the utilization of funds	Rs.63,23,213/-

4. The assessee company had challenged basically the action of the Assessing Officer in framing assessment in the case of the assessee without confronting the business results of comparable businesses to the assessee company and thereafter making net profit addition of Rs. 1,30,18,816/- and addition of Rs.63,23,213/- on account of disallowance out of bank interest expenses as the assessee company failed to produce books of account and the relevant bills with regard to the utilization of funds. The main reason for making the impugned additions was that the assessee company failed to produce its books of account maintained by it during the normal course of business and also failed to produce the relevant bills/vouchers for verification of the Assessing Officer.

5 Before the Ld. CIT(A) the assessee submitted that they were running, a hospital on Ferozepur Road, Ludhiana during the year under appeal. The assessee had taken huge loans from banks to meet the cost of its setting up and to meet its working capital requirements. As the hospital was newly set up, to earn goodwill in the market, appellant offered various services at most

competitive rates. Hence, its profit margins were low. Further, assessee had hired the services of best doctors, for its various activities. Due to all this, it could not meet the high costs of interest, depreciation and professional charges and started running into losses. Therefore, it was not in a position to pay the installments of its term loans and interest thereon and on working capital limits. Due to default in repayment of dues by the appellant, the bank took over the hospital under SARFAESI Act to realize its dues in April 2012 and took over all the records at the back of its promoter Director Dr. B. S. Sekhon and nothing is available with the company or its promoter Director. Rather he has started doing job at Solan in Himachal Pradesh. However, the assessee tried its best to provide required information during the course of assessment proceedings. However, it could not produce books of account and vouchers, as it did not know and still does not know their whereabouts. This resulted in framing of assessment u/s 144 of The Income Tax Act, hence this appeal.

6. Ld.CIT(A) deleted the addition on the grounds that the addition made by the Assessing Officer after comparing the net profit shown by the assessee with other comparable business does not appear to be justified.

7. Before us, the Revenue reiterated the arguments taken by the Assessing Officer and the Ld. AR supported the order of the Ld. CIT(A).

8. We have heard the arguments of both the parties. The comparative profitability statement is as under:

IAA Hospital Pvt. Ltd.

Appeal for Assessment year 2010-2011

Comparative Profitability Statement

(Rs. In Lakhs)

S.No.	Particulars	IAA Hospital	Deep Nursing Home	Naresh Bassi	Dr. Brajesh Badhan
1	Previous year ending	31.03.2010	31.03.2010	31.03.2010	31.03.2011
2	Professional receipts	1492.86	932.21	138.02	41.01
3	Sale	204.98	0.00	0.00	0.00
4	Total Receipts from business (BR)	1697.84	932.21	138.02	41.01
5	Net Profit	17.73	134.69	32.18	15.57
6	Less: Non Operating Income Rent/Interest Income	0.00	29.16	0.11	0.00
7.	Net Profit from Operations	17.73	105.53	32.07	15.57
8.	NP Ratio from Operations %	1.04	11.32	23.24	37.97
9.	Add: Depreciation	321.16	45.85	13.59	2.80
10.	Add: Interest	316.16	2.85	0	0.41
11.	Operating profit before Dep & interest	655.51	154.23	45.66	18.78

12	Operating Profit BDIT to BR Ratio	38.61	16.54	33.08	45.79
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9. It is a fact that the assessee could not produce its books of account for verification as the books are lying with other company which has acquired the assessee company. The addition made by the Assessing Officer against the net profit declared by the Company of 1.04% found to be less by the Assessing Officer by market averages and made addition of Rs. 1.3 Crores. The comparable profits taken by the Assessing Officer have not been found to have any basis keeping in view the parameters like turnover, nature of operation and the capitalization. We find only the turnover of Deep Nursing Home of Rs. 932 Lacs is closer to the turnover of the assessee which is Rs. 1492 Lacs. The turnover of the remaining two entities were of Rs. 41 Lacs and Rs. 138 Lacs, hence cannot be compared. By adding interest and depreciation to the net profits declared by the assessee with that of Deep Nursing Home then the percentage of profit varies from 38.62 to 16.54. Thus the net profit shown by the assessee is more than the comparable of Deep Nursing Home, hence the addition based on the comparative profits of the similar line of business cannot be upheld. We decline to interfere in the order of the Ld. CIT(A).

10. Regarding the ground no. 2 the Assessing Officer held that it is important to mention that as the assessee has not produced books of accounts, the depreciation and interest claimed as expenses remain unverifiable. It cannot be ascertained whether the loans raised by the banks have been used for the business purpose or not. Further the assessee has not produced the bills of assets purchased appearing in the depreciation chart as provided by the assessee and hence the depreciation claimed on these assets again remains unverifiable fact. Holding thus the Assessing Officer has disallowed the 20% of the interest claimed by the Assessee.

11. The Ld. CIT(A) restricted the addition to 10% on a reasonable basis.

12. Before us, Ld. DR argued that no proof of purchase of machinery has been given by the assessee and hence it cannot be said that the bank loan has been utilized for purchase of machinery. Ld. AR argued that since the books of accounts are in the position of another party namely Ludhiana Mediways as argued earlier the books of account could not be produced. It was argued that the addition was made by estimate basis and the Ld. Assessing Officer did not

bring anything on record to justify this addition and hence he relied on the order of the Ld. CIT(A).

13. On going through the facts on record and arguments taken by the Ld. DR and the reliance of the Ld. AR on the order of the Ld. CIT(A) confirming the interest of Rs. 31,61,606/-(10%) we hereby decline to interfere in the order of the Ld. CIT(A).

14. As a result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court.

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Dated : 26/09/2018

AG

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR