

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 1996/AHD/2016
(Assessment Year: 2009-10)**

DCIT, Ahmedabad	Circle-4(2),	V/S	Shri Abhay Dattatray Khandakar C/o. M/s. Siddhi Vinayak Hospital Balavtika, Maninagar, Ahmedabad
(Appellant)			(Respondent)

PAN: AEVPK4970J

**Appellant by : Smt. Apoorva Bharadwaj Sr. D.R.
Respondent by : None**

(आदेश)/ORDER

Date of hearing : 13 -08-2018

Date of Pronouncement : 31 -10-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Revenue is directed against the order of the Ld. CIT(A)-4, Ahmedabad dated 03.05.2016 pertaining to A.Y. 2009-10 and following grounds have been taken:

- 1) *"Whether the Ld. CIT(A) has erred in law and on the facts in deleting the disallowance of depreciation of Rs.11,25,000/- u/s. 32 of the Act."*
- 2) *"Whether the Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 50,00, 000/- u/s. 68 of the Act."*

2. Brief facts of the case are that the assessee is engaged in the business of Medical Profession. The return of income was filed the assessee on 30.09.2009 declaring total income of Rs. 94,89,950/- and the assessment was finalized u/s. 143(3) determining total income of Rs. 1,59,09,220/-.
3. As per A.O., assessee has claimed excess depreciation on Lithotripsy machine. According to A.O. Lithotripsy machine is not a life saving machine and it is not listed in Block II(xia) of Income Tax Rules where there is a list of machines on which higher rate of 40% depreciation has been prescribed and therefore depreciation was allowed @ 15% which is the 'general rate' of depreciation and A.O. has made addition of Rs. 11.25.000/-.
4. So far addition u/s. 68 is concerned, an amount of Rs. 50,00,000/- was passed through bank entry on 01.04.2008 had debiting a capital account crediting Smt. Patralekhaben H. Bodiwala account for amounts paid by said Smt. Patralekhaben towards purchase price of hospital building on behalf of assessee in earlier years and same was very filed from the books of accounts of the assessee that the outstanding loan in the name of Patralekhaben H. Bodiwala was of Rs. 5,02,108/-. Thus, as per A.O., it is clear that in spite of payment of Rs. 50 lakhs to Smt. Patralekhaben H. Bodiwala no liability existed for her and made an addition of Rs. 50 lakhs.
5. Against the said addition, assessee preferred first statutory appeal before ld. CIT(A) who partly allowed the appeal of the assessee.

6. We have gone through the relevant record and impugned order. So far depreciation is concerned, assessee stated that the machine was purchased in A.Y. 2008-09 i.e. the preceding year when it has entered into the block of assets and depreciation was allowed at 40% on the block of such assets in A.Y. 2008-09. In support of its contention, reliance has been placed on CBDT Circular No. 469 dated 23.09.1986 and the said machine was in the block of assets and computation of depreciation made by the A.O. is contrary to CBDT Circular. In our considered opinion, ld. CIT(A) has rightly deleted the addition of Rs. 11,25,000/-.
7. So far addition of Rs. 50 lakhs is concerned, assessee has submitted that a loan which was taken from Smt. Pratralkhaben is his mother-in-law. Further he had purchased commercial building at Maninagar from Shukan Properties Pvt. Ltd. in F.Y. 2004-05 and had paid the Shukan Properties Pvt. Ltd. towards purchase price of building and said payment was made through cheque and Smt. Pratralkhaben has purchased the property on behalf of the assessee and assessee has repaid Rs. 2 lakhs per month to Smt. Pratralkhaben during the year. The ld. CIT(A) on such facts have rightly come to the conclusion in favour of the assessee. We, therefore, do not find any merit in the appeal of the Revenue and thus we decline to interfere.
8. In the result, the appeal filed by the Revenue is partly dismissed.

Order pronounced in Open Court on 31 - 10- 2018

Sd/-

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 31/10/2018

(MAHAVIR PRASAD)
JUDICIAL MEMBER