

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ए. टी. वर्की, न्यायीक सदस्य)  
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

**I.T.A. No. 2240/Kol/2017**  
**Assessment Year: 2013-14**

Biswas Medical Centre (PAN: AAEFB8571F)	Vs.	Deputy Commissioner of Income-tax, Circle-22, Kolkata.
Appellant		Respondent

Date of Hearing	14.11.2018
Date of Pronouncement	22.11.2018
For the Appellant	Shri Manoj Dutta, FCA
For the Respondent	Shri Robin Choudhury, Addl. CIT, Sr. DR

**ORDER**

**Per Shri A.T.Varkey, JM**

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-6, Kolkata dated 20.09.2017 for AY 2013-14.

2. The grounds of appeal preferred by the assessee are as under:

*“1. That the CIT(A) totally erred in concluding that the Doctor’s salary of Rs.10,98,521/- as shown in the Reconciliation statement did not tally with the figure of Rs.19,85,691/- under the head ‘Salary’ in the P&L A/c for the year without going through the sums and substance of the case and failed to appreciate that TDS Rs.4,17,460/- was not included in the Doctor’s salary as explained in the Reconciliation Statement and came to an erroneous finding which cannot be sustained and has to be cancelled.*

*2. That the CIT(A) failed to appreciate that the gross salary figure of Rs.19,85,691/- is a consolidated figure consisting of Doctor’s salary Rs.10,98,521/- and of the regular employees/staff salary Rs.8,87,170/- and arrived at an incorrect and wrong conclusion without application of judicious mind which cannot be accepted and has to be deleted.”*

3. Briefly stated facts are that the AO during the assessment proceeding noted that the assessee has debited in its P&L Account twice an amount of Rs.4,17,460/- under the head “VAT”. According to AO, since it is the same amount of expenses under the same head, the assessee could not have debited it twice and, therefore, the AO disallowed Rs.4,17,460/- and

added it to the total income of the assessee. Aggrieved assessee preferred appeal before the Ld. CIT(A) who, confirmed the action of the AO. Aggrieved, assessee is in appeal before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that assessee runs an eye hospital namely, M/s. Silverline Eye Hospital which conducts eye treatment and surgery. The AO taking note that the assessee has claimed twice expenditure of Rs.4,17,460/- under the heads 'Sales Tax VAT' and another under the head 'VAT', so has disallowed one claim out of two i.e. Rs.4,17,460/-. On appeal before the Ld. CIT(A) the assessee contended that in the year under consideration by mistake the sums under the head 'VAT' was entered twice, but the fact remains an identical amount of Rs.4,17,460/- was debited on account of TDS. According to the assessee, one item of Rs.4,17,460/- was on account of 'VAT' and the other was the amount debited on account of TDS. According to the assessee, it was explained before the AO on 26.02.2016 that the TDS was from the doctor's fee and ought to have been clubbed with the doctor's fee by journal entry but was inadvertently shown as 'VAT' twice. It was contended before the Ld. CIT(A) that the assessee had reconciled all the TDS particulars with reference to the quarterly TDS return copies filed with the DCIT on 19.05.2015. However, according to the assessee, the AO did not give any credence to the reconciliation placed before him and made the addition. We note that the Ld. CIT(A) has confirmed the addition by holding as under:

*"6.2. I have examined the contention of the A/R of the appellant and also examined the assessment order. The A/R of the appellant has filed before me a copy of audited P&L a/c. of the appellant. In the P&L a/c. I see that clearly there are two entries of Rs.4,17,460/-, once under the head Sales Tax VAT and once again under the head VAT. The contention of the A/R is that this amount represents, Doctor's fees and should have been clubbed with Doctors' fee but was inadvertently shown as VAT. To support his contention, the A/R has filed the summary of Doctor's fee paid as per the TDS return and the states amount of Doctor's fee is Rs.66,00,746/-. However, in the P&L A/c Doctor's fee is reflected only at Rs.45,45,776/-. However, the Doctor Fee as per the TDS and as per the P&L A/c do not tally. However, the A/R of the appellant has explained as below:*

<i>Direct Doctor's Fees</i>	<i>45,45,776</i>
<i>Prof. Fees</i>	<i>5,38,989</i>
<i>Salary</i>	<i><u>10,98,521</u></i>
<i>VAT (entered twice to be corrected)</i>	<i>66,00,746</i>

*6.3. I have cross verified these figures with the P&L a/c. of the appellant and I find the claim of the appellant as not justified. In the reconciliation as given above, salary has been*

*shown at Rs.10,98,521/-, whereas the same in the P&L A/c is stated to be Rs.19,85,691/-. Therefore, if we go by the figures given in the P&L a/c, it is still not clear that VAT of Rs.4,17,460/- is included in the Doctor's Fee of Rs.45,45,776/-. I will, therefore, uphold the action of the AO and confirm addition of Rs.4,17,460/-. Ground no. 4 of the appeal is dismissed."*

5. Before us the Ld. AR contended that the Ld. CIT(A) found fault with the reconciliation submitted by the assessee because he failed to appreciate that the gross salary figure of hospital is Rs.19,85,691/- which is a consolidated figure and which sum includes Doctor's salary of Rs.10,98,521/- and that of the regular employees/staff salary of Rs.8,87,170/- and, therefore, according to Ld. AR, the Ld. CIT(A) erred in concluding that Doctor's salary was not Rs.10,98,521/- as shown in the reconciliation statement. According to the assessee, since the Ld. CIT(A) erred in concluding that the Doctor's salary of Rs.10,98,521/- as shown in the reconciliation statement since this figure did not tally with the figure of Rs.19,85,691/- under the head "salary in the P&L Account" did not accept the reconciliation submitted by the assessee to justify the claim of TDS amount deducted of Rs.4,17,460/- which, according to assessee, was not included in the doctor's salary. According to us, the Ld. CIT(A) has erred in appreciating the contention of the assessee, so the reconciliation statement as given before the Ld. CIT(A) needs to be verified with the contention/explanation given by the assessee to justify the anomaly/mistake of the claim made twice and if the assessee's claim is correct then it has to be allowed. If the assessee has entered twice the figure by mistake under the head VAT and if the assessee's explanation that the same was doctor's salary TDS and ought to have been clubbed with doctor's fee and if the reconciliation given by the assessee is correct as contended before us, then the AO may verify and may allow the claim in accordance to law. Therefore, the impugned order is set aside and the matter is remitted back to the file of AO for fresh adjudication as discussed above after hearing the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 22/11/2018

Sd/-  
(J. Sudhakar Reddy)  
Accountant Member

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated: 22nd November, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – Biswas Medical Centre, 396, Prince Anwar Shah Road, Kolkata-700 045.
- 2 Respondent – DCIT, Circle-22, Kolkata.
- 3 CIT(A)-6, Kolkata. (sent through e-mail)
- 4 CIT                   , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,  
Sr. Pvt. Secretary