

**IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI BENCH "E" COURT AT KOLKATA**

**Before Shri S.S.Godara, Judicial Member and
Dr. A.L.Saini, Accountant Member**

ITA No.228/Gau/2018 Assessment Year :2012-13
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Sudhakar Choubey Bansbari, Dibrugarh- 786001 [PAN No.AEKPC 3250 N]	V/s.	ACIT, Circle-1, Dibrugarh
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Binod Jain, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri M.C Omi Ningshen, JCIT SR-DR
सुनवाई की तारीख/Date of Hearing	09-12-2019
घोषणा की तारीख/Date of Pronouncement	13-12-2019

आदेश /ORDER

PER BENCH:-

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-Dibrugarh's order dated 13.06.2018 passed in case No. CIT(A), Dibrugarh/10040/2017-18 involving proceedings u/s 147 r.w.s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. The assessee's multiple substantive grounds raises in the instant appeal indicate that he has challenged legality of re-opening / re-assessment as well as both the lower authorities' action making addition of alleged undisclosed receipt of ₹5,59,350/- from M/s Aditya Hospital of mental. Learned counsel is fair enough in not pressing for the assessee's legal

ground. We are left with the latter issue of correctness of the impugned addition on merits only.

3. Both the learned representatives take us to CIT(A)'s detailed discussion affirming the Assessing Officer's action making the impugned addition reading as follows:-

“6. Ground No.6:

The ground is against addition of Rs.5,59,350/--

6.1 During relevant previous year, assessee was a neurological specialist having his own private practice and was also visiting doctor to some nursing homes of Dibrugarh. During the course of search and seizure conducted in case of Dr. N. Sahewala and Co. Pvt. Learned., records relating to payment of patients' fees to specialist doctors were found and seized. Seized records viz., CN-8, CN-15, CN-16, CN-10, CN-13 and CN-17, according to the AO, contained cash payments made to assessee amounting to Rs.5,59,350/-. Statement of Dr. N. Sahewealla was taken during search and post-search inquiry/. Question Nos. 14, 15, and 16 asked to him and answers given by him are extracted as under:-

‘Question. No.14. I am showing you page 2 and 2a, page 5 and 5A, 7 & 7A, 15 and 15A, 12 & 12A, 16 and 16A, 17, 19 and 19A, 21 and 21A of CN-19 which contain names of doctors and amounts written month-wise? Kindly explain?

Ans: These are meant for ascertaining consultation fees to specialist doctors, collected by hospital and patients.

Question. No.15. I am showing CN-13, CN-11, CN-16, CN-17, CN-15, CN-10, CN-09, CN-08, CN-12, CN-18 and CN-14 which are registers containing names of doctors, patients, amounts etc. Please explain?

Ans: Reply as same above.

Question No.16. I am showing you seized documents marked CN-22 to CN-26, CN-31 to CN-37, CN-43 to CN-49 and CN-51 to CN-57 which are bill books. It is seen that the specialist charges are not entered in the main bill. Kindly explain?

Ans: These specialist charges are collected on behalf of doctors. These are not incomes of the Hospital but the doctor's consultation fee collected from their patients.’

From contents of seized documents as well as above statement, the AO came to a finding that the hospital was collecting fees from patient and the same were passed on to specialist doctors.

Assessee was also summoned u/s. 131 of the Act and his statement was recorded on 22.06.2012. In his statement, assessee admitted that regular books of account were not maintained by him. He also stated the facts of him having his chamber at Aditya Hospital (A unit of Dr. N. Sahewealla & Co. Pvt. Ltd.). He further stated that all payments were received by him in cheque except for OPD consultation fees which were received in cash. He also admitted that almost all his cash income, roughly but

not exactly, was shown in his return of income. In course of assessment proceeding, the AO asked assessee to explain the receipt of Rs.5,59,350/-. It was stated before the AO that to the best of his knowledge, whatever money received by him from Sahewalla & Co. was truly shown in the return of income. However, it was admitted that discrepancy existed which could not be explained by way of document or daily record statement. According to the AO, the seized records, viz., CN-8, CN-9, CN-10, CN-13, CN-16 and CN-17 contained names of patient, doctors' name and amount paid. AO also stated that per order sheet noting dated 24.10.2017, the assessee agreed with fact of escapement of income to the tune of Rs.5,59,350/-. The same was added to assessee's income.

6.2 Submissions given to the AO were produced before me. It was stated by the AR that the AO had no proof of concealment of any income. AR stated that the sum received from Aditya Hospital was already included in return filed by him. According to AR, assessee disclosed following receipts in its return of income:

i) Intas Pharmaceuticals Ltd.	Rs. 50,000/-
ii) Aabort Pvt. Ltd.	Rs. 30,000/-
iii) Brahmaputra Diagnostics & Hospitals Ltd.	Rs. 23,000/-
iv) Dr. Sahewall & Co. Pvt. Ltd.	Rs.3,43,000/-
v) Green Valley Diagnostics & Hospital Pvt. Ltd.	Rs.6,84,200/-
vi) Sristi Hospital & Research Centre Pvt. Ltd.	Rs. 17,000/-
vii) From Private Practice	Rs.9,69,922/-

According to the AR, receipt of Rs.5,59,350/- was already included in the above sum of Rs.9,69,922/-. As such, it was argued there was no basis of any further addition.

6.3 I have carefully considered the matter. Assessee did not maintain prescribed books of account. He had stated in his statement in oath that payment from Aditya Hospital was received in cheque. He had disclosed receipt of Rs.3,43,700/- from the said hospital. But the seized records, per AO, showed payment in cash to the assessee amounting to Rs.5,59,350/-. This payment had not been properly explained by assessee. Assessee did not have any record to link the private practice income of Rs.9,69,922/-. With the cash receipt of Rs.5,59,350/- from Dr. N. Sahewalla & Co. Pvt. Ltd. Assessee himself had admitted that he had disclosed only "**almost all his receipt**" in the return of income. This clearly shows that the whole income was not disclosed by him. Since all the receipt was not disclosed by him, the argument that receipt of Rs.5,59,350/- was included in the 9,69,922/- cannot be accepted. The AO also mentioned that assessee agreed to have concealed receipt of Rs.9,59,350/-. In view of above discussion, action of the AO is **confirmed**.
Ground No. 6 is **dismissed**."

4. We have heard rival contentions against and in support of impugned addition. The assessee's only case during the course of hearing is that the Assessing Officer as well as the CIT(A) have erred in making the impugned addition despite the fact that the very sum forms part of "**private practice**" disclosure income of ₹9,69,922/- hereinabove. Learned departmental representative fails to dispute that this clinching aspect requires factual verification in view of all the corresponding details forming part of the case

record. We therefore restore the instant sole issue back to the Assessing Officer for afresh adjudication as per law within three effective opportunities of hearing. The assessee shall appear himself through his authorized representative before the Assessing Officer on or before **30.04.2020** along with a copy of the remand directions. Necessary computation to follows as per law after factual verification.

5. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open court 13/12/2019

Sd/-
(A.L.Saini)
(Accountant Member)
Kolkata,

Sd/-
(S.S.Godara)
Judicial Member)

*Dkp

दिनांक:- 13/12/2019 कोलकाता/।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Sudhakar Choubey, Bansbari, Dibrugarh-786001
2. प्रत्यर्थी /Respondent-ACIT, Cir-1, Dibrugarh
3. संबंधित आयकर आयुक्त / Concerned CIT Guahati
4. आयकर आयुक्त- अपील / CIT (A) Guahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Guahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
गूवाहाठी ।