

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "B" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.4542/Del./2014  
Assessment Year 2010-2011

East West Medical Centre Pvt. Ltd., 38-Golk Links, New Delhi – 110 003. PAN AACCE0339H (Appellant)	vs	The DCIT, Circle – 3 (1), New Delhi. (Respondent)
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For Assessee :	Shri M.K. Juneja, FCA
For Revenue :	Ms. Ashima Neb, Sr. D.R.

Date of Hearing :	05.12.2019
Date of Pronouncement :	16.12.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-XXVIII, New Delhi, Dated 10.06.2014, for the A.Y. 2010-2011, on the following grounds :

1. *“That the Learned Commissioner of Income Tax (Appeal) has erred in fact & in law while confirming*

*the addition of Rs.23,44,900/- towards professional fee payable to Doctors, which is not claimed as expense, after the same is recovered from patients or agencies concerned, for non-deduction of TDS, when the appellant deducts TDS at the time of realization and before payment of the same to doctors.*

*2. That the Learned Commissioner of Income Tax (Appeal) has erred in fact & in law while confirming disallowance of Rs.3,30,281/- applying section 14A of the Income Tax Act, 1961 and Rule 8D of the Income Tax Rules.*

*3. That the Learned Commissioner of Income Tax (Appeal) has erred in fact & in law while confirming the disallowance of deduction of Profit on Sale of Investments for computing book-profit for the purpose of MAT u/s.115JB of the Income Tax Act, 1961, which is allowable as per section 10(38) of the Income Tax Act, 1961.”*

2. On Ground No.1, Learned Counsel for the Assessee contended that assessee has not claimed the

amount of Rs.23,44,900/- as expenditure incurred in the Profit & Loss Account, copy of the same is filed at pages 35 and 41 of the paper book. He has referred to Order of Ld. CIT(A) for the A.Y. 2012-2013, Dated 18<sup>th</sup> April, 2016, in which the Ld. CIT(A) has decided the same issue on merit in favour of the assessee and deleted the addition. He has submitted that no Departmental Appeal have been filed by the Revenue against the Order of Ld. CIT(A) for the A.Y. 2012-2013 (supra).

3. On the other hand, the Ld. D.R. submitted that these facts requires verification.

4. Considering the submission of the parties in the light of material on record, we are the view that the matter requires reconsideration at the level of A.O. In case assessee has not claimed any expenditure in the Profit & Loss Account, there was no need to make any disallowance against the assessee. Further assessee's case have been decided in A.Y. 2012-2013 by the Ld. CIT(A) on merits giving relief to the assessee. The A.O. should also take into

consideration the findings of the Ld. CIT(A) and also verify if any Departmental appeal have been filed before the Tribunal or not. In this view of the matter, we set aside the Orders of the authorities below and restore the matter in issue to the file of A.O. with a direction to re-decide the issue as per Law, after verifying the facts as contended by the Learned Counsel for the Assessee, by giving reasonable and sufficient opportunity of being heard to the assessee. Ground No.1 of the appeal of the Assessee is allowed for statistical purposes.

5. On Ground No.2, Learned Counsel for the Assessee submitted that no borrowings have been used by the assessee and that one of the Director was doing the activity of making investment for earning exempt income who was not getting any salary. Therefore, no expenses have been incurred by assessee and that there is no nexus proved by the A.O. if assessee incurred any expenditure.

6. The Ld. D.R. contended that A.O. has not made any addition on account of interest. However, the Ld. D.R.

suggested that the matter could be remanded to the file of A.O. for verification.

7. In this view of the matter, we set aside the Orders of the authorities below and restore the matter in issue to the file of A.O. with a direction to verify the fact whether assessee has incurred any expenditure for incurring exempt income and may pass Order in accordance with Law, by giving reasonable, sufficient opportunity of being heard to the assessee.

8. Learned Counsel for the Assessee, did not argue Ground No.3. Therefore, this ground is dismissed being not pressed.

9. In the result, appeal of assessee is partly allowed statistical process.

Order pronounced in the open Court.

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

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 06<sup>th</sup> December, 2019  
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.