

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “ई”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH ‘E’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, VP & SHRI PRASHANT MAHARISHI, AM**

**[THROUGH VIDEO CONFERENCING]**

**आयकर अपील सं. / ITA Nos.4711 & 8340/Del/2018  
निर्धारण वर्ष /Assessment Years 2014-15 & 2015-16**

DCIT,  
Circle-16(2),  
Room No.308, C.R. Building,  
I.P. Estate,  
New Delhi-110002

.....अपीलार्थी/Appellant

vs

Max Medical Services ltd.  
1, Dr. Jha Marg, Okhla,  
Phase-III,  
New Delhi-110020  
PAN-AADCM3619D

..... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos.1819 & 5477/Del/2017  
निर्धारण वर्ष /Assessment Years 2012-13 & 2013-14**

DCIT,  
Circle-16(2),  
Room No.308, C.R. Building,  
I.P. Estate,  
New Delhi-110002

.....अपीलार्थी/Appellant

vs

Max Medical Services ltd.  
1, Dr. Jha Marg, Okhla,  
Phase-III,  
New Delhi-110020  
PAN-AADCM3619D

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Ms. Rakhi Vimal, Sr. DR  
प्रत्यर्थी की ओर से / Respondent by : Sh. Atul Ninawat, C.A.

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| सुनवाई की तारीख/<br>Date of Hearing : 09.07.2020 | घोषणा की तारीख/<br>Date of Pronouncement: 31.07.2020 |
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### आदेश/ORDER

#### PER SUSHMA CHOWLA, VP

This bunch of four appeals filed by Revenue are against orders of CIT(A)-6, Delhi dated 11.01.2017, 14.06.2017, 02.04.2018 and 23.10.2018 relating to assessment years 2012-13 to 2015-16 respectively against the order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised following grounds of appeal for the Assessment Year 2012-13:-

1. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition of Rs. 4,68,45,000/- by ignoring a fact that above referred to addition was made on a valid basis taking into account rate of charging lease rental and maintenance charge agreed earlier between the assessee and Devki Devi Foundation (DDF) and providing financial assistance to DDF by reducing the rate of lease rental and maintenance charge was not the purpose of the business of the assessee?*
2. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 11,16,266/- u/s 40A(2) of the Income Tax Act (the Act) by ignoring the findings of the facts recorded by the Assessing Officer (the AO) that under unrelated party scenario no prudent business man will make supplies to another party by charging only cost and not charging incidental expenditure?*
3. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition and disallowance of Rs. 4,68,45,000/- and Rs. 11,16,266/- respectively by substituting his own estimate and by ignoring a fact that the estimate made by the AO was not arbitrary but was based on credible material and by disregarding the decision of Hon'ble Supreme Court in case of Commissioner of Sales Tax, MP vs. HM*

*Esufali HM Abdulai (1973) 90 ITR 271?*

4. *Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in holding the decision arrival at in one assessment year by his predecessor is binding on him by ignoring that the principle of Estoppels (i.e. decision arrived at in one assessment year is not binding in subsequent assessment years) has no application to the income tax proceedings?*

3. The present appeals filed by the Revenue involve similar issues; hence are being adjudicated by this consolidated order for the sake of convenience. However, we refer to the facts and issues in ITA No.1819/Del/2017 relating to Assessment year 2012-13 to adjudicate the present bunch of appeals.

4. The first issue raised in the present appeal is against the deletion of addition of Rs.4,68,45,000/- made on account of rate of charging lease rentals and maintenance charges agreed earlier between the assessee and Devki Devi Foundation (in short DDF). The case of the Revenue is that by reduction in the aforesaid rate of charging lease rental and maintenance charges, the assessee was providing financial assistance to DDF and reducing the rate of lease rentals and maintenance charges was not for the purpose of business of the assessee.

5. The second issue raised in the present appeal is against the deletion of disallowance of Rs. 11,16,266/- under section 40A(2) of the Act by ignoring the findings of the facts recorded by the Assessing Officer.

6. Briefly in the facts of the case, the assessee company is engaged in the business of construction of hospital, leasing and sale of medical and other

equipment to customers and to deal in all kinds of pharmaceuticals, chemicals, medicines and drugs. The assessee has filed return of income declaring loss of Rs.12,15,22,410/-. The case of the assessee was taken up for scrutiny. The assessee during the course of assessment proceedings, filed copy of supplementary agreement dated 21.02.2009 with M/s Devki Devi Foundation. The assessee company agreed to receive 8% of the share of revenue earned by Devki Devi Foundation towards leasing of medical & other equipment. Earlier this percentage was fixed at 10% vide agreement dated 10.12.2001. Similarly, vide separate agreement dated 21.02.2009, the assessee agreed to receive 5% of the share of revenue earned by M/s Devki Devi Foundation for maintenance and healthcare facilities provided by the assessee company. Earlier this percentage was 6% as per Agreement dated 10.12.2001. The assessee was asked to explain as to why the expenses equal to the amount by which the income from lease and income from maintenance has been reduced, due to downward re-adjustment of percentage of profit as per the agreement dated 21.02.2009, be not disallowed. The reply of the assessee is reproduced at pages 2 to 11 of the assessment order. The Assessing Officer vide para 2.1 at page-12 of the assessment order noticed that the explanation of the assessee was similar to earlier submission made during the assessment proceedings for Assessment Year 2011-12. Reference was made to the extract of the order for Assessment Year 2011-12 and following the same stand as in the earlier year the expenditure incurred by the assessee during the year equal to the reduction of percentage in the revenue i.e. Rs.4,68,45,000/- was disallowed.

7. The CIT(A) vide para 3.2.3 at pages 12 onwards after looking at the factual aspects and referring to the decision of the CIT(A) in Assessment Years 2010-11 and 2011-12 deleted the disallowance made by the Assessing Officer. Coming to the second aspect of disallowance of 5% being expenditure attributable to goods sold on cost to cost basis to the sister concern, the said addition was also deleted by the CIT(A) following the findings in the earlier order.

8. The Revenue is in appeal against the order of the CIT(A).

9. The Ld. DR for the Revenue relying on the order of the Assessing Officer, fairly admitted that the CIT(A) had decided the issue relying on the findings of the earlier year.

10. The Ld. AR for the assessee pointed out that the issue stands covered by the decision of the Tribunal in ITA Nos.4050 & 4051/Del/2014, relating to Assessment Years 2010-11 and 2011-12, order dated 13.09.2017. He also stressed that the Hon'ble jurisdictional High Court has not admitted the appeal of the Revenue on the aforesaid issue and dismissed the appeal vide order dated 14.05.2019 in ITA No.1480/2018 and ITA No.1487/2018. He also stated that the issue which was raised before the Hon'ble High Court was the first issue.

11. We have heard the rival contentions and perused the record. The issue which is raised in the present appeal is against the disallowance made by the

AO on account of rate of charging lease rental and maintenance charges agreed earlier between the assessee and Devki Devi Foundation. The assessee had entered into agreement for leasing of equipment and construction/maintenance of hospital building with DDF for consideration of 10% and 6% of the annual turnover of the hospital. The aforesaid agreements were revised during assessment year 2011-12, wherein the percentage of fee agreed was revised downward from 10% to 8% and 6% to 5%, respectively. The revision of the aforesaid agreement, in accordance with the terms of supplementary agreement dated 21.02.2009 has been contended to be on account of financial difficulties being faced by DDF. The AO had doubted the reasonableness of the aforesaid downward revision in the fee receivable by the assessee from DDF and on the basis has disallowed expenses incurred by the assessee during the year on ad-hoc basis. We find that the similar issue arose before the Tribunal in assessee's own case and the Tribunal has deleted the addition and concluded vide paras 12 and 13 as under:-

*“12. As regard to the ad-hoc disallowance made by the AO, the assessee submitted to the ld. CIT(A) that the AO made the arbitrary disallowance without pointing out, any defect in the books of accounts maintained or any specific vouchers of disallowable nature. The said action of the AO was purely based on suspicion and surmises without bringing any evidence on record in support of the disallowance. The reliance was placed on the following case laws:*

- *Dwarka Prasad Agarwal Vs ITO 52 ITD 239 (Cal)*
- *Rattah Mechanical Works Ltd. Vs ITO 87 Taxman 288 (Chd.)*
- *Shriram Pistons and Rings Ltd. Vs IAC 39 TTJ 132 (Del.)*

- *Roger Enterprises Pvt. Ltd. Vs ITA 52 TTJ 198 (Del.)*
- *Ramji Das Modi Vs DCIT 110 Taxman 107 (JP)*
- *ACIT Vs Bateli Tea Co. Ltd. (2003) SOT 72*
- *Continental Seeds & Chemicals Ltd. Vs ACIT (2003) SOT 393*

13. The ld. CIT(A) after considering the submissions of the assessee observed that the assessee had entered into an agreement for leasing of equipment and construction/ maintenance of hospital building with Devki Devi Foundation for consideration of 10% and 6% of annual turnover of the hospital respectively. The said agreements were revised during the relevant assessment year whereby the percentage of fee agreed was revised downward from 10% to 8% and 6% to 5% respectively, in accordance with the terms of supplementary agreement dated 21.02.2009. He further observed that the nexus drawn by the AO between the expenses incurred by the assessee during the year for the purposes of business and downward revision in the fee receivable from M/s Devki Devi Foundation was not supported by any material fact. He further observed that the legal position had been emphasized by the Hon'ble Delhi High Court in the case of CIT Vs B. Dalmia Cement Ltd. (supra) wherein it was held that once it was established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the revenue cannot justifiably claim to put itself in the shoes of the businessman to decide the reasonableness of any expenditure having regards to the circumstances of the case and that the expenses had been incurred by the assessee for the purposes of business and there was no iota nor any single voucher/expense had been pointed out, suggesting that the expenditure had not been incurred for the purposes of business or was excessive having regard to the fair market, therefore, in the absence of any such finding, there was no provision in law which mandates an AO to disallow part of an expenditure on ad-hoc basis. The ld. CIT(A) also discussed in para 5.3.4 of the impugned order, the ratio laid down by various Hon'ble Courts and the ITAT and further observed that there was no decline in the gross revenue earned by the assessee from M/s Devki Devi Foundation which had increased in absolute terms vis-à-vis the preceding year and that it was only the percentage of fees agreed between the parties originally was revised downward, on grounds of commercial expediency which could not be disputed/dictated by the AO. The ld. CIT(A) deleted the ad-hoc disallowance made by the AO."

12. The question raised before the Hon'ble High Court was as under:-

*“Whether the ITAT is justified in deleting the disallowance made by the Assessing Officer (‘AO’) on account of the change in percentage of profit of the Assessee and M/s Devki Devi Foundation from 10% to 8%?”*

13. The Hon’ble High Court held as under:-

*“3. The admitted facts are that the Assessee is engaged in a business of constructions of hospitals, leasing and sale of medical equipments and deals in chemicals, medicines and drugs. The returns filed for the AYs in question were picked up for scrutiny. One of the issues that arose was the agreement entered into between the Assessee and the aforementioned M/s Devki Devi Foundation on 10th December 2011, where the profit sharing percentage for the period of 30 years was 10%. The Assessee pointed out that for the AYs in question on account of the business exigencies the profit sharing percentage had been reduced from 10% to 8%. Although, the AO did not accept the explanation offered by the Assessee, it has been found to be acceptable both by Commissioner of Income Tax – CIT (A) in the order dated 22nd April 2014 and the ITAT in the impugned order.”*

14. The issue raised before us is squarely covered by the order of the Tribunal in assessee’s own case which in turn has been confirmed by the Hon’ble Jurisdictional High Court and following the same parity of reasoning, we find no merit in the ground of appeal no.1 raised by the Revenue before us, hence the same is dismissed.

15. Now, coming to the next issue of disallowance of expenditure attributable to goods sold on cost to cost basis. Similar issue was before the Tribunal in earlier year also. Both the Assessing Officer and CIT(A) have relied upon the respective orders of the Assessing Officer and the CIT(A) in earlier year. For the sake of convenience, we refer to the observations of the Tribunal vide paras 14 to 17 which read as under:-

*“14. As regards to the disallowance on account of expenditure attributable to goods sold on cost to cost basis. The ld. CIT(A) observed that it had not*

*been established by the AO that any undisclosed income was earned by the assessee nor any tangible material was available on record for the same, consequently no addition to income was to be made in the assessment order. According to the ld. CIT(A) if the expenditure was found to have been incurred for the purposes of business, no part thereof can be disallowed on ad-hoc basis. The ld. CIT(A) was held that there was no valid basis to disallow expenses incurred during the relevant year, admittedly, for the purposes of business, without there being any single expenditure/voucher suggesting no business nexus. Accordingly, the disallowance made by the AO was disallowed.*

*15. Now the department is in appeal. The ld. CIT DR strongly supported the order passed by the AO and reiterated the observations made in the assessment order dated 06.02.2013.*

*16. In his rival submissions the ld. Counsel for the assessee reiterated the submissions made before the authorities below and strongly supported the impugned order passed by the ld. CIT(A). He further submitted that the sharing of the revenue was reduced due to the computation and the business exigency, so there was no reason to make the ad-hoc disallowance out of the expenses, particularly when no defect was pointed out in the books of accounts maintained by the assessee.*

*17. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the AO made the disallowance of the expenses only on this basis that there was reduction in the sharing of the revenue in comparison to the earlier years, no other reasons has been given. In the instant case, it is also noticed that there was increase in the income earned by the assessee in comparison to the earlier year i.e. 53% more than the preceding year as is evident from the chart furnished by the assessee before the ld. CIT(A), which shows that even after reduction in the percentage of share, the assessee earned more revenue in comparison to the earlier year. In the present case, the AO did not point out any defect in the books of account maintained by the assessee in the regular course of business, it was also not brought on record that any of the expenses was not incurred wholly and exclusively for the purpose of the business. The AO made the disallowance only on the basis of surmises and conjecture which is not tenable in the eyes of law. Moreover, the AO did not bring anything on record to substantiate that by reducing the percentage of share of fee, the assessee was looser in terms of earning the revenue and that the extra expenses were incurred by the assessee in the same ratio in which the revenue sharing was reduced. The contention of the assessee that the reduction in the fees from leasing of equipments/maintenance of the office*

*building was on account of business exigency, had not been rebutted at any stage. We, therefore, by considering the totality of the facts of the present case, are of the view that no interference is called for in the well reasoned order passed by the ld. CIT(A). Accordingly, we do not see any infirmity in the impugned order.*

17. The issue being settled in favour of the assessee on identical ground, thus needs to be allowed in favour of the assessee and we find no merit in the ground of appeal of the Revenue in this regard. It may be pointed out that the Revenue did not raise any issue before the Hon'ble High Court with regard to the second issue raised by the assessee. Consequently, this ground is also decided in favour of the assessee.

18. The issue raised in Assessment Years 2013-14 to 2015-16 are identical to the issue in Assessment Year 2012-13 and following the same parity of reasoning, our decision in Assessment Year 2012-13 would apply *mutatis mutandis*.

19. In the result, all appeals of the Revenue are dismissed.

Order pronounced in the open court on 31<sup>st</sup> July, 2020.

**Sd/-**  
**(PRASHANT MAHARISHI)**  
लेखासदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**  
**(SUSHMA CHOWLA)**  
उपाध्यक्ष / **VICE PRESIDENT**

दिल्ली / दिनांक Dated : 31<sup>st</sup> July, 2020  
Shekhar, Sr. P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली/ DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति//True Copy//

सहायकरजिस्ट्रार, आयकर अपीलीय अधिकरण , दिल्ली  
**Assistant Registrar, ITAT, Delhi**