

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

(THROUGH VIRTUAL HEARING)

ITA No.319/Hyd/2019 (A.Y.: 2015-16)		
C.O. No.18/H/2019(In ITA No.319/H/2019) (A.Y.: 2015-16)		
Deputy Commissioner of income Tax, Circle-1, Nellore.	Vs.	Dr. Chilukoti Veeramma, Propx: Lotus Hospitals, D.No.16-4-44, Raghava Cine Complex Street, Pogathoga, Nellore-524001.
(Appellant)		(Respondent / Cross Objector)

Assessee by:	Sri K. Pandu Rangaiah
Revenue by:	Sri Sunil Kumar Pandey, DR
Date of hearing:	30/07/2020
Date of pronouncement:	04/08/2020

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the Revenue aggrieved by the order of the Ld. CIT (A), Tirupati in ITA No.10205/2016-17/CIT(A)/TPT, dated 3/1/2019 for the AY 2015-16. The assessee has also filed a cross-objection in support of the order of the Ld. CIT (A) with delay of 75 days. The assessee has filed a condonation petition and an affidavit stating that the delay had occurred due to misplacement of files by his Counsel. On perusing the condonation petition filed by the assessee we find that the delay in filing the Cross-objection is not due to the fault of the assessee, therefore we hereby condone the delay and proceed to hear the appeal on merits. Further, since both the appeals are on identical issues, they are heard together and disposed off by this common order.

2. The Revenue has raised five grounds in its appeal and they are briefly stated herein below for adjudication.

- (i) The Ld. CIT (A) has erred in deleting the addition made by the Ld. AO for Rs. 1,09,19,900/- U/s. 68 of the Act.
- (ii) The Ld. CIT (A) has erred in deleting the addition made by the Ld. AO for Rs. 61,42,389/-, towards the amount received from sundry creditors U/s. 68 of the Act, without obtaining remand report from the Ld. AO

with respect to the additional evidence filed by the assessee.

3. The brief facts of the case are that the assessee is an individual engaged in medical profession as Gynaecological Doctor and proprietrix of Lotus Hospitals, filed her return of income for the relevant AY on 30/09/2015 declaring a loss of Rs. 41 lakhs. Subsequently, the case of the assessee was taken up for scrutiny under CASS and the assessment was completed by the Ld. AO vide order dated 30/12/2017 U/s. 143(3) of the Act wherein the L. AO made addition of Rs. 1,09,19,900/- and Rs. 61,42,389/- aggregating to Rs. 1,70,62,289/- U/s. 68 of the Act.

Ground No.(i): Addition of Rs. 1,09,19,900/- U/s. 68 of the Act.

4. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee had obtained loan from the bank of India, Nellore Branch, which was disbursed by the Bank to Mr. Sabzan, a building mistry by way of a pay order dated 1/7/2014. It was further observed by the Ld. AO that the assessee had not recorded the loan transaction in her books of

accounts. However, the assessee in her cash book had recorded that cash was brought in for Rs. 1,09,19,900/- on 1/7/2014. However, as per the Axis Bank Statement the amount was stated to be withdrawn on 2/7/2014. The Ld. AO opined that there is discrepancy in the transactions which could not be explained by the assessee satisfactorily, therefore she treated the amount of Rs. 1,09,19,900/- as unexplained income and accordingly made addition U/s. 68 of the Act. Before the Ld. CIT (A), the assessee had submitted that the loan was obtained from The Bank of India which was directly paid to Mr. Sabzan who is the construction mistry for constructing the Hospital of the assessee. It was further submitted that the assessee in her books of accounts had wrongly recorded as cash brought in. The assessee had also submitted the books of accounts, the details of the loan transaction from The Bank of India and the Axis Bank Statement of Mr. Sabzan before the Ld.CIT (A). The Ld. CIT (A) after verifying the details furnished by the assessee arrived at the conclusion that the entries were wrongly passed by the assessee in her books of accounts which led to the confusion whereby the Ld. AO had erroneously treated the amount of Rs. 1,09,19,900/- as the undisclosed income of the

assessee. Therefore, he deleted the addition made by the Ld. AO for Rs. 1,09,19,900/- U/s. 68 of the Act.

Ground No.(ii): Addition of Rs. 61,42,389/- U/s. 68 of the Act.

5. It was further observed by the Ld. AO that during the relevant AY the assessee has received cash on various dates from various parties aggregating to Rs. 61,42,389/-. On query, it was explained that the assessee had extended loan to various parties aggregating to Rs. 1,01,50,000/- and the same was partially returned during the relevant AY. Since the assessee could not explain the source of the loan extended to various parties and the genuineness of the sundry debtors, the Ld. AO made the addition of Rs. 61,42,389/- in the hands of the assessee U/s. 68 of the Act. The Ld. CIT (A) after verifying the submission of the assessee deleted the addition.

6. At the outset, the Ld. DR submitted before us that the Ld. CIT (A) has deleted the addition made by the Ld. AO by examining the additional evidence submitted by the assessee which was never produced before the Ld. AO. The Ld. DR further argued by stating that the Ld. CIT (A) had granted relief to the assessee without obtaining remand report from the Ld. AO which is not in accordance with the provisions of the Act. It was therefore pleaded

that the matter may be remanded back to the file of the Ld.AO in order to provide an opportunity to the Ld. AO to examine the additional evidence submitted by the assessee and thereafter decide the matter in accordance with law and merits. The Ld. AR though vehemently argued in support of the Order of the Ld. CIT(A) could not raise any serious objection against the submission of the Ld. DR.

7. After hearing both the parties and after considering the facts and circumstances of the case, We are of the considered view that the entire matter is required to be examined by the Ld. AO afresh after taking into account of the additional evidences filed by the assessee before the Ld. CIT (A), because it appears that the Ld. CIT(A) had decided the matter based on the additional evidence filed by assessee without obtaining remand report from Ld.AO which is not in accordance with rule 47A of the Rules. **Therefore, in the interest of justice, We hereby remit the matter back to the file of the Ld. AO with directions to admit and examine any evidence filed by the assessee in support of her claim even if it is for the first time and thereafter decide the matter in accordance with law and merits after affording proper opportunity to the assessee of being heard.** We also hereby

direct the assessee to promptly co-operate before the Ld. Revenue Authorities in their proceedings and also explain the transactions vividly in order to avoid further inconvenience as it appears that on the earlier occasion the facts of the issues were not properly presented before the Ld. AO. We also hereby direct the Ld. AO to examine the actual transactions made by the assessee with an open mind ignoring the silly mistakes committed in the books of accounts of the assessee, as it appears from the facts of the case that the additions made by the Ld. AO for Rs. 1,09,19,900/- U/s. 68 of the Act may not be warranted because the cash brought into the books of the assessee appears to be the amount paid to Mr. Sabzan who is the construction mistry for constructing the Hospital of the assessee, sourced from the bank loan obtained by the assessee. As far as the addition U/s. 68 for Rs. 61,42,389/- is concerned, the issue requires proper verification.

8. Since we have remitted the appeal of the Revenue back to the file of the Ld. AO for de novo consideration, the Cross-objection raised by the assessee does not survive.

9. In the result, appeal of the Revenue is allowed for statistical purposes as indicated hereinabove and the Cross-objection of the assessee is dismissed.

Pronounced in the open Court on the 04th Aug, 2020.

Sd/-
(SMT. P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 04th Aug, 2020.
OKK

Copy to: -

- 1) Deputy Commissioner of Income Tax, Circle-1, D.No.24-2-438, 1st Floor, Upstair of Syndicate Bank, GNT Road, Dargamitta, Nellore.
- 2) Dr. Chilukoti Veeramma, Propx: Lotus Hospitals, D.No.16-4-44, Raghava Cine Complex Street, Pogathota, Nellore.
- 3) The CIT(A)-Tirupathi, Hyderabad
- 4) The Pr. CIT, Tirupathi, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File