

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

(E-Court Module)

ITA No. 3339/Del/2016 : Asstt. Year : 2010-11

ACIT, Circle-61(1), New Delhi-110002	Vs	Dr. Ajit Gupta, C/o Park Hospital, 12, Meera Enclave, Near Keshopur Depot, Outer Ring Road, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAHPG3320Q		

ITA No. 2916/Del/2016 : Asstt. Year : 2010-11

Dr. Ajit Gupta, C/o Park Hospital, 12, Meera Enclave, Near Keshopur Depot, Outer Ring Road, New Delhi	Vs	ACIT, Circle-61(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAHPG3320Q		

**Assessee by : Sh. Salil Kapoor, Adv.
Revenue by : Sh. Saras Kumar, Sr. DR**

Date of Hearing: 11.08.2020	Date of Pronouncement: 15.09.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the revenue and the assessee against the orders of the Id. CIT(A)-20, New Delhi dated 31.03.2016.

2. Following grounds have been raised by the revenue:

"1. In the facts and circumstances of the case, the Id. CIT (A) has erred in law in reducing the addition made by the AO on account of depreciation from Rs.67,06,506/- to Rs.24,07,000/-, without appreciating the facts of the case.

2. In the facts and circumstances of the case, the Id. CIT (A) has erred in law deleting the addition of Rs.1,61,01,000/- being unexplained source of investment in land without appreciating the facts of the case.

3. In the facts and circumstances of the case, the Id. CIT (A) has erred in law deleting the addition of Rs.1,25,47,407/- out of Rs.1,29,72,681/- on account of Courtesy Consultants expenses without appreciating the facts of the case."

3. Following grounds have been raised by the assessee:

"1. That the Id. CIT (A) has erred both in law and on facts in confirming the disallowance of Rs.42,62,284/- in respect of referral fees/commission made by the AO inspite of the fact that the expenditure of the same nature is general feature in hospital industry and the same was claimed and allowed to the assessee in past AYS except disallowance of small sum to prevent leakage of revenue."

ITA No. 3339/Del/2016:

Depreciation:

4. During the year, the assessee has purchased land for Rs.1,61,00,000/- and constructed building worth Rs.7,66,62,560/- and claimed depreciation under the head "fixed assets". Out of the amount of depreciation claimed on the building, the AO disallowed Rs.67,06,506/- on the grounds that the bills, invoices and vouchers relating to the construction activity have not been provided.

5. Before the Id. CIT (A), the assessee has submitted that he has inadvertently claimed depreciation on land @10% on the total value of the land of Rs.2,40,70,000/- and has withdrawn the claim of Rs.2,40,70,000/-. The Id. CIT (A) has accepted the contention of the assessee [page nos. 27, 28 of the CIT(A)] and reduced the depreciation claimed by Rs.24,07,000/-. Since, the action of the Id. CIT (A) cannot be faulted, no interference in the order is required.

6. For the sake of brevity, the relevant portion of the order of the Id. CIT (A) is reproduced herewith:

"7.2 Appellant's Submission:

However, we would like to place before your Honour that an error has been crept in computing the claim of depreciation on hospital building made by the assessee in its return of income. The assessee has claimed depreciation at 10% on land purchased for hospital at Najafgarh in the F. Y. 2008-09 and the same was debited in the account of Park Super Specialty Hospital in the books. During the current year, this land has been debited in the account of Hospital Building and inadvertently depreciation @10% has been claimed on the same, when finalizing the tax return. Since, no building was constructed thereon and no hospital operation was started during the year on said land, the depreciation claim on the same is not admissible under the provisions of the Act. We apologize for this inadvertent mistake committed by the assessee without any malafide intention and now propose to withdraw the said claim of depreciation amounting to Rs.24,07,000/- computed at the rate of 10% on land value of Rs.2,40,70,000/-.

7.3 I have considered the submission of the appellant and the assessment order, it has been found that during the year the appellant had bifurcated the land and building in the schedule of assets. However, it is also noticed that the appellant had claimed

depreciation on land value of Rs.2,40,70,000/- which is not allowable. The appellant has also agreed that the depreciation on land was claimed.

Accordingly, the addition on account of depreciation is reduced to Rs.24,07,000/-. Therefore, the appellant's ground of appeal on this issue is partly allowed."

7. In effect, the depreciation would be computed as under:

a.	Depreciation claimed by the assessee	"XX"
b.	Depreciation disallowed by the AO	Rs.67,06,506/-
c.	Depreciation after the assessment order	"YY" = (XX-67,06,506)
d.	Depreciation withdrawn before CIT(A) by the assessee	24,07,000
e.	Depreciation disallowable after CIT(A) order	"ZZ" = XX- (YY+24,07,000)

Appeal of the revenue on this ground is dismissed as infructuous.

Unexplained Investment:

8. The AO treated the investment of Rs.1.61 cr. in the land as unexplained as the assessee has not furnished the source of investment.

9. The Id. CIT (A) has accepted the additional evidences filed by the assessee under Rule 46A during the appellate proceedings on the grounds that such evidences are necessary for adjudication of the issue before him. The Id. CIT (A) has

given a categorical finding that the sources have been duly explained as per the paper book D at page nos. 1 to 6 and the purchase agreement for acquiring these properties were placed at pages 7 to 50. The Id. CIT (A) having examined the loans taken from the bank and availing of OD facility from Bank of Baroda for acquiring the properties accepted the contention of the assessee. Since, the Id. CIT (A) has himself examined the sources and accepted and in the absence of any evidences contra produced by the revenue, we hereby decline to interfere with the order of the Id. CIT (A).

Consultancy Expenses:

10. The AO disallowed Courtesy consultancy expenses of Rs.1.29 cr. paid to various consultants, on the grounds that the assessee has not furnished any details of these expenses.

11. The Id. CIT (A) has deleted the addition on the grounds that the details have already been submitted before the AO and the AO failed to take cognizance of the details. However, the Id. CIT (A) has again obtained a remand report from the AO and after receiving the remand report, and after examining the fact that all the payments were made to the bank account of the consultants (except Rs.4,25,274/-) has deleted addition made by the AO. Since, the Id. CIT (A) has himself examined the expenses and accepted and in the absence of any evidences contra produced by the revenue, we hereby decline to interfere with the order of the Id. CIT (A).

ITA No. 2916/Del/2016:**Commission Expenses:**

12. During the year, the assessee has incurred commission expenses of Rs.42,62,284/-. The AO has disallowed the expenses as the assessee failed to furnish any documentary evidence during the assessment proceedings.

13. Before the Id. CIT (A), it was submitted that the assessee made payment of referral charges to other persons/doctors who had referred the patients to the assessee during the year. It was argued that this is one sort of incentive payments to person for referring patient to the hospital which is a general trend in the industry. Since, they were incurred for the purpose of business, it was argued that the expenses are allowable. The Id. CIT (A) confirmed the addition on the grounds that all the payments were made in cash and no details of the person like the address, PAN number to whom such payments were made and the purpose thereof. The Id. CIT (A) held that the assessee failed to provide any reliable evidences either during assessment proceedings or during the appellate proceedings.

14. During the arguments before us, the Id. AR argued that such expenses have been allowed in the earlier assessment years 2009-10. Hence, the same should be allowed during the year also. It was argued that it is a common practice in the field of hospital industry and the assessee has been claiming the similar expenditure earlier which has been allowed by the revenue. The Id. AR argued that the same needs to be allowed based on the principle of consistency.

15. We have gone through the paper book filed before us. We find that the revenue has allowed the expenditure under the similar head in the earlier year. All the expenses incurred by the assessee have to be supported with evidences so that the claim can be allowed to the respective years. For the instant year before us, on going through the paper book, we find that the details of the recipients or the receipts given by recipients have been filed. There are certain receipts which do not appear to be complete in all respects. Hence, keeping in view the entirety of the professional operation of hospital and the evidences produced, we hereby hold that interest of justice would be well served if the assessee is allowed 50% of the expenses claimed under this head.

16. In the result, both the appeal of the revenue is dismissed and the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 15/09/2020.

Sd/-

(Sushma Chowla)
Vice President

Dated: 15/09/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR