

आयकर अपीलिय अधिकरण , ' सी ' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्यएवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2839/Chny/2017

निर्धारण वर्ष/Assessment Year : 2009-10

M/s. Assured Best Care Hospital P Ltd.,  
No.1, Malligai Salai,  
Annamalai Nagar,  
Trichy -18.

Vs. The Assistant Commissioner of  
Income Tax,  
Central Circle 2(1),  
Investigation Wing, Room No. 122,  
1<sup>st</sup> Floor, New No. 46, M.G. Road,  
Nungambakkam, Chennai 034.

**[PAN: AAECA 1172A]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/Appellant by : Shri. S. Sridhar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri. G. Johnson, Addl. CIT  
सुनवाईकीतारीख/Date of Hearing : 21.01.2021  
घोषणाकीतारीख/Date of Pronouncement : 27.01.2021

**आदेश/ ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER :**

The assessee filed this appeal against the order of Commissioner of Income Tax (Appeals)-18, Chennai in ITA No. 369/16-17 dated 21.09.2017 for assessment year 2009-10.

2. M/s. Assured Best Care Hospital Pvt. Ltd., the assessee is engaged in hospital services. While making the assessment for assessment year 2009-10, the Assessing Officer found that the assessee has paid referral fees for consulting Doctors. After examining the assessee's claim, the AO disallowed the claim holding that the referral charges paid to Doctors is clear cut violation of the Medical council law. Aggrieved, the assessee filed an appeal before the CIT(A) and the Ld. CIT(A) dismissed the appeal. Aggrieved against the order of the Ld. CIT(A), the assessee filed this appeal.

3. The case was heard through video conferencing. The Ld. AR submitted that the Ld. CIT(A) has failed to note that the referral fees are paid to outsiders for referring the patients which is inevitable in this industry. He further submitted that the Ld. CIT(A) failed to note that the Circular No. 5/2012 (F.No. 225/142/2012-ITA.II dated 01.08.2012) imposing a prohibition on the medical practitioner and their professional associations from taking any gift, travel facility, hospitality, cash or monetary grant from the pharmaceutical and allied health sector industries is on the code of conduct of Medical council for the Medical Practitioner and not for healthcare services companies such as Assured Best Care which is a hospital. Since, the assessee is a company which

is providing medical care services for profit, the Ld. AO without examining the components of the expenditure simply disallowed which has been wrongly upheld by the Ld. CIT(A). Therefore, the Ld. AR submitted that this case may be remitted back to the AO for a proper examination as to whether the payments were made to Doctors or other agencies and whether such payments are liable under the provisions of Income Tax Act. Per contra, the Ld. DR inviting our attention to the assessment order submitted that the Ld. AO has clearly recorded a finding that the assessee has paid referral fees for consulting Doctors against which the Ld. AR inviting our attention to the order of the Ld. CIT(A) submitted that before the Ld. CIT(A) the assessee submitted that the impugned amount was being paid to various agencies who refer customers and institutions for continued relationship and successful business operations. However, this aspect has not been examined. Therefore, the Ld. AR reiterated his submissions for re-examination.

4. We heard the rival submissions and gone through the relevant material. Though, the Assessing Officer recorded a finding that the impugned amount was paid to consulting doctors, the assessee has taken a plea before the Ld. CIT(A) that the impugned amount was paid

to various agencies who refer customers and institutions for continued relationship and successful business operations. Therefore, prima facie, it is clear that the nature of expenditure has not been examined properly. Therefore, we deem it fit to remit this issue back to the AO for a fresh examination. The assessee shall lay all particulars and relevant materials before the AO in support of its contention as to whom the impugned amounts were paid and for what purposes etc. The AO shall examine such material and also examine whether such payments could be claimed legitimately by the assessee and after affording due opportunity to the assessee decide the issue in accordance with law.

5. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced on 27<sup>th</sup> January, 2021 at Chennai.

**Sd/-**

(वी दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(एस जयरामन)

**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 27<sup>th</sup> January, 2021

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF