IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.- 6997 /Del/ 2018
(Assessment Year: 2010-11)

Dr Vinod Sharma, B 147, Mt Kailash, East of Kailash New Delhi.	**Vs.**	ACIT, circle-61 (1), New Delhi.

PAN No. AACCA3104G

Appellant	**Respondent**

Assessee by Sh. Sunil Garg, CA
Revenue by Ms. Nidhi Srivastava, CIT DR

Date of hearing: 6/4/2021
Pronouncement on 15/6/2021

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 30/08/2018 passed by the learned Commissioner of Income Tax (Appeals)-20, New Delhi ("Ld. CIT(A)"), in the case of Sh. Vinod Sharma ("the assessee"), for the assessment year 2010-11, the assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a Doctor by profession and derived income from business/profession and income from other sources. Pursuant to the survey conducted in the case of M/s

Cardio Technovention, and information received there from the case of the assessee was reopened for the assessment year 2010-11 by issuance of notice under section 148 of the Income Tax Act, 1961 (for short "the Act"). Assessee filed the return of income on 29 1999-2000 10 declaring a total income of Rs. 64, 18, 010/-. Assessment order reads that during the course of survey in the case of M/s Cardio Technoventionand dealing in the supply of medical equipment like Coronarystents ext.several handwritten notebooks in pencil containing detail of case transaction for FY 2008-09 to 2012-13 were impounded; that such an notebook contained several entries in coded form which was subsequently deciphered to be in the format of

> "Hospital name/Doctors initial/product name/date/bill number commission amount paid".

From the perusal and cross-referring of all the available information, it transpired that M/s Cardio Technoventionhad paid commission to doctors in cash for the use of stents supplied to various hospitals; and that the Regulationsof Medical Council of India debarred the medical professionals from receiving any form of commission payment or other favours and so those doctors would obviously not show the receipts as their income. Learned Assessing Officer recorded that the above information received was confirmed in the assessment order of M/s Cardio Technoventionand for the assessment year 2014-15. According to such information the assessee received a sum of Rs. 11, 05, 000/-for the financial year 2009-10. Learned Assessing Officer, accordingly while rejecting the explanation offered by the assessee on this aspect, added such sum to the income of the assessee.

3. Aggrieved by such an addition, assessee preferred an appeal before the Ld. CIT(A) who confirmed the addition and dismissed the appeal. Assessee is therefore, before us in this appeal contending that the authorities below failed to consider the supporting documents and plea submitted on behalf of the assessee and therefore, the addition cannot be sustained.

4. It is the argument on behalf of the assessee that the code that was attempted to be deciphered by the Revenue reads, for example, "NHI/VS/CO/548 15000" and the Revenue interpreted it as representing "Hospital name/Doctors initial/product name/date/bill number commission amount paid" to say that a sum of Rs. 15,000 was paid to VS (Vinod Sharma) in respect of the product with code CO, where the NHI represents National heart Institute. Ld. AR argues that except the surmises and conjectures of the learned Assessing Officer, there is no concrete material to connect this code with the assessee and there are any number of possibilities disturbing this interpretation. He submitted that there is no corroborating evidence from any quarter to pinpoint this interpretation adopted by the Revenue. Ld. AR submitted that there are possibilities that any cash was actually given to some other person who may be the partner of the firm M/s Cardio Technoventionand for siphoning of profits of the form, the hospital; National Heart Institute as discount on purchases; the purchase manager at the hospital for placing the order, the accounts personnel at the hospital for releasing payments, in a trustee of the hospital, a new employee at the hospital, the patient who was operated upon, the vendor from home stands were purchased, any other facilitator or mediator so on and so forth. He therefore submits

that it would be unreasonable to conclude that the amount to reach the assessee, without any foolproof evidence.

5. He further submitted that according to the RevenueM/s Cardio Technoventionhad shown certain commissions to have been paid to the agents through banking channels but having received the same back in cash, such amounts were paid to the doctors and it was the plea taken by the Revenue in the case of M/s Cardio Technovention. In the case of M/s Cardio Technoventionit was negatived by the Ld. CIT(A) in appeal. Further in the case of the assessee himself for the subsequent years such a proportion was given up by the Revenue and no addition was made on this score. He submits that there is approbation and reprobation by Revenue in respect of the very same receipt in the hands of the assessee and such a course is not acceptable.

6. Per contra, Ld. DR placed reliance on the orders of the authorities below and submitted that the noting is in the diary were confirmed by M/s Cardio Technoventionadditions and it was not denied by the assessee. She further argued that during the course of assessment proceedings the assessee simply denied the allegations without any submission of supporting papers and the conduct of the assessee is fraught with suspicious circumstances and therefore while following the addition of the Hon'ble Supreme Court in the case of Durga Prasad More 82 ITR 540, the addition in the hands of the assessee is justifiable.

7. We have gone through the record in the light of the submissions made on either side. As submitted by the Revenue, in the diaries the relevant notings read in a cryptic form like "NHI/PS/CO/548 15000" and

the Revenue read it as "Hospital name/Doctors initial/product name/date/bill number commission amount paid". While reading so, Revenue stopped at the second position, namely, "Doctors initial" to fasten the liability. Even if we go by the decoding of the code as done by the Revenue, as argued by the Ld. AR and rightly also, there is no reason as to why we should stop at our select the 2nd position to fasten the liability or to conclude that the doctor received the amount. It could equally be possible that the hospital might have received such amount in respect of a particular patient attended by such Doctor to use such instrument. This possibility cannot be ruled out. When there are more possibilities than one, and many of such possibilities exclude the involvement of a particular person suggesting the involvement of somebody else also, in our considered opinion it would be unreasonable to conclude that such person who also been exonerated by one of the possibilities, to have received the commission. As rightly argued on behalf of the assessee, this code could also be indicative of a transaction and for the purpose of identification of transaction, the name of the hospital/name of the doctor/name of the instrument so on and so forth could have been noted in respect of the commission paid. Without any supporting material supplying a direction to this entry towards the doctor and doctor alone, is unreasonable and such an entry does not take us anywhere more particularly to point out the doctor to have received the commission.

8. Apart from this, it could be seen from the record and the orders in case of M/s Cardio Technovention that the plea of the Revenue was that the commission that was paid to the agent through banking channels was

received back by M/s Cardio Technovention in cash to pay the same to the doctors. In the order for the assessment year 2014-15 in the case of M/s Cardio Technovention, in appeal, Ld. CIT(A) on a consideration of the entire material reached the conclusion that in respect of the commission paid to the agent, the same was confirmed by the agents, by cogent record and supported by the denial of the hospitals and the facts and circumstances did not prove that there was any withdrawal in cash by the commission agent from their bank accounts nor any evidence to show that it was paid to the doctors. It was further observed that such commission paid to the agents was accepted in the earlier assessment years by the Department. It was the specific finding of the Ld. CIT(A) in such order that the rough noting in the notebook referred to by the Revenue does not confirm the fact that commission was not paid to the agents or that it was received back from the agents.

9. It is, therefore, amply clear that the plea of the Revenue that though the commission was initially paid to the agents through banking channels, it was received back in cash to be paid to the doctors, falls to ground. There is no material before us to disturb this finding returned by the learned Commissioner of Income Tax (Appeals) in the case of M/s Cardio Technovention. Apart from that there is no denial of the fact that in the subsequent assessment year of a 2011-12 the addition of Rs. 14, 10, 000/-under section 68 of the Act was deleted by the learned Commissioner of Income Tax (Appeals) by invalidating the reopening whereas for the assessment year 2012-13, the proposed addition of Rs. 5.7 Lacs on account of the alleged cash commission was dropped and the learned Assessing Officer accepted the return filed by the assessee.

10. All these things cumulatively go to show that M/s Cardio Technovention was given a clean chit from the accusation of receiving the commission paid to agent through banking channels, in cash and paid to the doctors, which the doctors could not show as the receipt due to the prohibition of the regulations of the Medical Council of India. It further establishes that, when once the very allegation of cash commission is ruled out, no further inference could be drawn against the doctors to say that they have received such non-est commission. We, therefore, do not find any merit in the argument of the Revenue and accordingly, hold that the addition cannot be sustained. Consequently, we direct the learned Assessing Officer to delete the addition.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 15th day of June, 2021.

Sd/-	Sd/-
(O.P.KANT)	**(K. NARSIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 15/6/2021