

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD
(Through Virtual Hearing)

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

	ITA No.535/Hyd/2018		
	A.Y. 2013-14		
Ravindranath Kancherla, Hyderabad. PAN: AAZPK 5186 E	VS.	ACIT, Circle-2(2), Hyderabad.	
(Appellant)		(Respondent)	

	ITA No.1087/Hyd/2018		
	A.Y. 2013-14		
Ravindranath Kancherla, Hyderabad. PAN: AAZPK 5186 E	VS.	DCIT, Circle-2(2), Hyderabad.	
(Appellant)		(Respondent)	
Assessee by	Sri S. Ramana Rao		
Revenue by	Sri Y.V.S.T. Sai, CIT-DR and Sri Sunil Gowtham, DR		
Date of hearing:	09/11/2021		
Date of pronouncement:	06/01/2022		

ORDER

PER A. MOHAN ALANKAMONY, A.M:

The above captioned two appeals are filed by the assessee for the A.Y. 2013-14. ITA No.535/Hyd/2018 is filed against the order of the Ld. CIT(A)-2, Hyderabad in appeal No.10070/CIT(A)-2/Hyd/2017-18,

dated 28th February, 2018 passed U/s. 143(3) r.w.s 250(6) of the Act. ITA No. 1087/Hyd/2018 is filed against the order of the Ld. Principal Commissioner of Income Tax-2, Hyderabad in F.No.48/CIT-2/263(6)/2017-18, passed 263 of the Act dated 22/03/2018.

2. In ITA No.535/Hyd/2018 the assessee has raised six grounds in his appeal however, the cruxes of the issues are that:

- (i) The Ld. CIT(A) has erred in confirming the disallowance made by the Ld. A.O. of Rs. 80,96,491/- towards interest.
- (ii) The Ld. CIT(A) has erred in confirming the addition made by the Ld. A.O. for Rs. 3 Crs invoking the provisions of section 68 of the Act towards loan received from M/s. Kawrat Associates and Sri Ganesh Associates of Rs. 1.5 Crs each.

3. In ITA No. 1087/Hyd/2018 the assessee has raised six grounds in his appeal however, the crux of the issue is that:

The Ld. CIT(A) has erred in directing the Ld. A.O. to examine the nature of payment received by the assessee amounting to Rs. 3 Crs.

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4. The brief facts of the case are that the assessee is an individual earning income from medical profession, house property and other sources, filed his return of income on 30/09/2013 declaring total income of Rs. 1,75,80,550/-. Thereafter, the case of the assessee was taken up for scrutiny and assessment was completed vide order dated 29/03/2016 wherein the Ld. A.O. made addition of Rs. 80,96,491/- towards disallowance of interest expenditure and further made an addition of Rs. 3 Crs U/s. 68 of the Act towards unsecured loan received from M/s. Kawrat Associates and Sri Ganesh Associates of Rs. 1.5 Crs each. On appeal, the Ld. CIT(A) confirmed the order of the Ld. A.O. by agreeing with his view aggrieved by which the assessee is in appeal before us.

5. **Ground No.(i) Disallowance of interest of Rs. 80,96,491/-**

5.1. During the course of scrutiny assessment proceedings, it was observed by the Ld.AO that the assessee had utilised his borrowed funds for making investments in shares. It was explained by the assessee that he has invested in shares in order to obtain controlling interest in the company running hospital for strategic reasons as the assessee himself was a Doctor by profession. It was further submitted that the investment was made in order to enhance the professional income of the assessee and therefore the borrowed funds were utilised for acquiring controlling

shares in the company. However, the Ld. A.O opined that the expenses incurred was not with respect to the profession of the assessee and therefore the interest income attributable to the funds borrowed has to be disallowed. Accordingly, out of the total interest expenditure incurred by the assessee amounting to Rs. 5,73,24,746/-, the Ld. A.O. disallowed the amount of Rs. 80,96,491/-. On appeal, the Ld. CIT(A) confirmed the order of the Ld. A.O by observing as under:

“5. I have carefully considered the issue and submissions made by the AR. The contentions of the AR are not acceptable for the following reasons:-

- (i) No nexus has been established with cogent evidence between the borrowable of funds for making equity investments and earning of professional income.*
- (ii) The contention of maintaining controlling interest in the company to enhance the professional income is farfetched and fantastic.*
- (iii) Professional income was earned by the appellant by using the skills and experience and not by having controlling interest in the company. It cannot be held that the appellant would have received similar professional fee by having only controlling interest without requisite professional skills and expertise.*
- (iv) As observed by the AO, if the argument of controlling interest in the company helped the appellant to earn the professional income has to be accepted then, the very nature of receipt of Rs.3 Cores cannot be treated as professional income but either as remuneration or income from other sources.*
- (v) In the assessment proceedings of Mis. Global Hospitals Pvt. Ltd (GHPL), the appellant submitted before the ITO Ward-2(2), Hyderabad that he paid an amount of Rs.21,42,70,000/- towards share application money for allotment of equity shares of GHPL. It was further stated that no equity shares were however allotted. Thus, the appellant's contention of taking controlling interest in the company fails on the face of it.*

The AO observed that from the balance sheet of RGEMAPL as on 31.03.2013 that the appellant holds only 29.36% equity shares whereas, M/s. Indivision India Partners, Mauritius is holding 47.60% of the shares. Therefore, the submission of the appellant that he has 65% of the controlling interest in the said company is incorrect.

- (vi) The contention that interest is allowable U/s.36(1)(iii) also does not hold any water for / the reason that the borrowed funds invested in the company were not incurred wholly and exclusively for the purpose of profession of the appellant.*
- (vii) It is interesting to note that the appellant has not claimed interest to the extent of Rs.4,92,28,255/- (out of total interest expenditure of Rs.5,73,24,746/- only Rs.80,96,491/- was claimed as interest expenditure). No rationale / basis has been furnished for only claiming a portion of interest expenditure as allowable expenditure.*
- (viii) The appellant failed to show "Commercial Expediency" for the said investment in the company and therefore, is not covered by the ratio of Hon'ble Supreme Court in the case of SA Builders Ltd (supra). On the other hand, the case laws quoted by the AO are applicable to the facts of the case.*

5.1 In view of the above, the disallowance of Rs. 80,96,491/- made by the A.O. is upheld and the ground of appeal is dismissed."

6. On perusing the facts of the case, We find that, though the Ld.AO had made an observation that the aggregate interest expenses incurred by the assessee is Rs. 5,73,24,746/-, he has not reasoned as to on what basis only to the extent of Rs. 80,96,491/- of interest expense is disallowed because he has not quantified the loan amount. Further, the Ld. A.O has not taken into consideration of the own funds available with the assessee in the form of capital before making such disallowance. It

is pertinent to mention that the assessee is entitled to withdraw his own capital from the profession, which is interest free, for any other purpose, and yet perform his professional activities utilizing his interest-bearing funds. Therefore, it is apparent that the Ld.AO and the Ld.CIT(A) has not taken into consideration of these factors while making disallowance of Rs. 80,96,491/- towards interest expenditure. In this situation, we are of the view that the addition made by the Ld. A.O which was further sustained by the Ld. CIT(A) is not appropriate. It is also evident that the assessee has interest free borrowings also to certain extent. These aspects were also not taken into consideration by the Ld. Revenue Authorities while arriving at the conclusion. Therefore, We hereby delete the addition made by the Ld. A.O for Rs. 80,96,491/- on this count which was further sustained by the Ld. CIT(A).

7. **Ground No.(ii) Addition of Rs. 3 Crs U/s. 68 of the Act:**

7.1. It was observed by the Ld. A.O. that the assessee had received loan from M/s. Kawrat Associates and Sri Ganesh Associates for Rs. 1.5 Crs each. The Ld. A.O. was of the view that the identity and creditworthiness of the loan creditors was not established because of the following reasons:

- (i) The assessee had not paid interest to M/s. Kawrat Associates and Sri Ganesh Associates.

- (ii) The assessee has also failed to explain the source of the amount generated by the loan creditors to the extent such loans is extended to the assessee.

8. Therefore, the Ld. A.O. made addition of Rs. 3 Crs in the hands of the assessee invoking the provisions of section 68 of the Act. On appeal, the Ld. CIT(A) confirmed the order of the Ld. A.O. by observing as under:

“9. I have carefully considered the issue and the submissions made by the AR. In respect of M/s. Kawrat Associates, the appellant failed to discharge the primary onus of furnishing confirmation letter from the creditor. It was contended that the appellant has repaid Rs.62,50,000/- during the year under consideration, which establishes the genuineness of the borrowing. This argument of the AR is farfetched and misplaced. The requirements under the provisions of Section 68 are to prove the identity, genuineness and credit worthiness of the creditor. subsequent repayment of loan has no relevance on discharging of the onus cast on the appellant. It is worthwhile to note that no interest has been provided by the appellant for he said loan for the reasons best known to him.

9.1 With regard to M/s. Sri Ganesh Associates, the AO has brought out clearly the deficiency/discrepancies in the confirmation letter produced before her. These are significant discrepancies which couldn't be made up by the appellant to discharge the onus cast on him u/s.8 of the Act. It is worthwhile to note that in this case also, no interest has been credited by the appellant to the account of the creditor. Furthermore, even the so called confirmation letter does not state anything about interest receivable.

9.2. The case laws relied upon by the AR are distinguishable on facts. In the present case, the appellant failed to discharge the primary onus cast on him to furnish proper confirmation letter. Even the furnished confirmation letter of M/s. Sri Ganesh Associates suffers from so many defects/deficiencies, which has raised red flag in the mind of the AO. It is furthermore worthwhile to note that the appellant failed to fulfil the obligation cast on him in spite of a number of opportunities given by the AO and even for the final show

cause notice also there was no credible response from the appellant. In view of the above, I have no hesitation in upholding the addition made u/s.68 of Rs.3 crores and therefore the Ground of appeal is dismissed.”

9. Before us, the Ld. AR vehemently argued stating that the assessee had produced the confirmation letter from Sri Ganesh Associates. It was further argued that the loan was received by RTGS. The Ld. AR further pointed out page no.39 of the paper book and submitted that with respect to M/s. Kawrat Associates the assessee had repaid the loan to the extent of Rs. 62,50,000/- by cheque. It was therefore pleaded that the identity of the loan creditors was established and the Ld. A.O. without cross examining the loan creditors or making any further enquiries had made the addition which is erroneous. It was therefore pleaded that the addition made by the Ld. A.O which was sustained by the Ld. CIT(A) may be deleted. The Ld. DR on the other hand relied on the orders of the Ld. Revenue Authorities.

10. We have heard the rival submissions and carefully perused the materials available on record. From the facts of the case, it is apparent that the assessee has furnished the particulars of the loan creditors such as name, address, PAN etc. It is also a fact that the transactions are routed through banking channels. In this situation, the Ld. Revenue Authorities ought to have made some further enquiry on this regard

before making addition in the hands of the assessee. It is also apparent that the assessee had repaid the amount of Rs. 62,50,000/- to M/s. Kawrat Associates and also obtained confirmation statement from Sri Ganesh Associates. In this situation, we are of the view that the addition made by the Ld. A.O. which was further sustained by the Ld. CIT(A) is unwarranted. Hence, We hereby set aside the order of the Ld. CIT(A) on this issue and direct the Ld. A.O to delete the addition of Rs. 3 Crs made invoking the provisions of Section 68 of the Act.

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11. The Ld Pr. CIT in his order observed that the assessee has received professional fees of Rs. 3 Crs from M/s. Ravindranath GE Medical Associates Pvt Ltd., and claimed expenditure of Rs.1,22,98,908/-. The Ld. CIT(A) opined that the amount received by the assessee is managerial remuneration and not professional fees. Hence, he was of the view that the expenditure claimed by the assessee may not be allowable as deduction. Therefore, he set aside the order of the Ld. A.O. for the limited purpose of examining the nature of payment of Rs. 3 Crs received by the assessee.

12. At the outset, We do not find any merit in the order of Ld. PCIT. It is an admitted fact that the assessee is a Doctor by profession and the assessee has got controlling interest in the Ravindranath GE Medical Associates Private Limited which is running hospital. These aspects

have been well examined by the Ld. A.O and he has held that the amount received by the assessee is professional income received for his professional service as Doctor and also granted deductions for the expenditure incurred by the assessee while disallowing certain interest expenditure. Being a Doctor the assessee is eligible to receive professional fee for the services rendered to the patients admitted in the Hospital. Further during the course of the proceedings before the Ld.PCIT the assessee had submitted various evidences including the service agreement dated 30/08/2008 and also the board resolution of the company and TDS certificate U/s.194J to justify his claim and the Ld.PCIT could not draw any negative inference from the same. Further there is also nothing on record to suggest that the assessee has received managerial remuneration. Therefore the observation of the Ld.PCIT is devoid of merit. Hence, we hereby set-aside the order of the Ld. Pr. CIT passed U/s. 263 of the Act.

13. In the result, both the appeals of the assessee are allowed.

Pronounced in the open Court on 06th January, 2021.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 06th January, 2021.

OKK
Copy to:-

- 1) Sri Ravindranath Kancherla, Plot No. 303F, Road No.25, Jubilee Hills, Hyderabad – 500 033.
- 2) Asst. Commissioner of Income Tax, Circle-2(2), Signature Towers, Kondapur, Hyderabad.
- 3) The CIT(A)-2, Hyderabad.
- 4) The Principal Commissioner of Income Tax-2, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File