

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C(SMC)' AT KOLKATA
[BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER &
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER]**

I.T.A. No. 79/Kol/2022
Assessment Year: 2017-18

Paharimata Medical Pvt. Ltd.....Appellant
40/1, Strand Road,
Kolkata - 700 001.
[PAN: AABCP 5528 N]

Vs

ITO, Ward-5(2), KolkataRespondent

Appearances by:

Shri K.M. Roy, AR appearing on behalf of the Assessee

Shri Biswanath Das, ACIT appearing on behalf of the Revenue:

Date of concluding the hearing : May 17, 2022

Date of pronouncing the order : May 25, 2022

ORDER

PER SONJOY SARMA, JM:

This is an appeal preferred by the assessee against the order of National Faceless Appeal Centre, Delhi dated 13.12.2021 for A.Y. 2017-18.

2. The assessee has raised the following ground of appeal:

“i. The ld. AO has wrongly treated a sum of Rs. 30,00,000/- as unaccounted money.”

3. The assessee in the present case is a company which is engaged in the business of running a nursing home. The return of income for the year under consideration was filed by it on 31.10.2017 declaring a loss of Rs. 6,16,040/-. The case of the assessee was selected for manual scrutiny and a notice u/s 143(2) was issued on 28.09.2018 after obtaining necessary approval from PCIT-2, Kolkata. Another notice u/s 142(1) of the Act was issued on 24.01.2019 upon the assessee but the assessee did not appear.

Therefore, another notice u/s 142(1) of the Act was issued upon the assessee on 02.09.2019 and in response to the notice, the assessee company furnish certain documents and details. The findings of the AO in the proceedings are that the assessee-company had made certain cash deposits during 09.11.2016 to 13.12.2016 which was during the period of demonetisation. The AO asked the assessee-company to file the cash balance as on the first day of each month starting from April, 2016 to March, 2017 and also from April, 2014 to March, 2015 & from April, 2015 to March, 2016. The Assessing Officer from the submissions made by the assessee-company observed that the assessee had withdrawn Rs. 30,00,000/- in cash during the month of April, 2016. In this regard, AO asked the assessee to explain the reasons for such withdrawal as there was an opening cash balance of Rs. 12,27,909/- as on 01.04.2016 in the hands of the assessee. In response to the contention of the AO, the assessee-company stated that the cash of Rs. 30,00,000/- was withdrawn by it during the month of April, 2016 as the assessee-company were planning for a new project somewhere in outskirts of Howrah and the money was withdrawn as there was a confirmation regarding the procurement of land but due to some reason, the deal was not finalized. In response to such reply made by the assessee, the AO again issue notice u/s 142(1) on 02.12.2019 and 06.12.2019 and asked the assessee to provide the name and address of the party from whom the procurement of land was planned. But the assessee-company failed to provide the details as asked by the Assessing Officer. As the assessee failed to provide to provide the details asked by the AO, another show cause notice was issued upon the assessee-company for compliance on or before

13.12.2019. But the assessee-company did not respond to the same and ultimately the AO passed the following order:

“All the notices were duly served upon the assessee company. All the communications were made with the assessee electronically through ‘e-proceeding’ facility.

The assess company had furnished the details of cash balance in hand as on first day of month as:

<i>Month</i>	<i>Cash balance (in Rs.)</i>
<i>April, 2016</i>	<i>12,27,909/-</i>
<i>May, 2016</i>	<i>51,72,861/-</i>
<i>June, 2016</i>	<i>55,11,833/-</i>
<i>July, 2016</i>	<i>59,57,962/-</i>
<i>August, 2016</i>	<i>61,29,324/-</i>
<i>September, 2016</i>	<i>63,51,268/-</i>
<i>October, 2016</i>	<i>67,75,722/-</i>
<i>November, 2016</i>	<i>61,89,770/-</i>
<i>December, 2016</i>	<i>26,94,256/-</i>

The cash balances as on the first day of the months from May, 2016 clearly reflect that the assessee’s intention is to show large cash in hand up to October 2016 so that the cash deposited into the Bank accounts during the demonetization period could be explained. Why a person of ordinary prudence will keep such high cash balance in hand who is having banking facility. On perusal of the details furnished by the assessee company the cash-in-hand on the first day of the months from April, 2014 to March, 2015 and April, 2015 to March, 2016, it was found that cash-in-hand on 1st day of every month never exceeded Rs. 14,00,000/- even, which means that the company’s requirement to run the day to day activities of the nursing home did not require very high cash in hand balance which is more than Rs.50,00,000/-. It is observable from the

table above that the assessee has claimed to have held cash-in-hand varying from Rs. 51,72,861/- to Rs.67,75,722/- from May 2016 to October, 2016.

The assessee failed to provide the name and address of the party from whom the procurement of land was planned and failed to answer the question whether there was any agreement executed for the deal of the said land. It is very much evident that the assessee's explanation that the cash amounting Rs.30,00,000/- withdrawn from Bank in April, 2016 was for the purpose of procurement of land is an afterthought. It can easily be inferred that the amount of Rs.30,00,000/- withdrawn by it in cash during the month of April, 2016, was utilized for some other purpose/s and exhausted.

Under the above circumstances and as the assessee's failure to explain the issue asked for through the show cause notice dated 11-12-2019, the cash amounting Rs.30,00,000/- deposited into the bank accounts during the month of November, 2016 [out of the total deposits of Rs.55,00,000/- into its bank account nos. 560131000158580 (deposited Rs.54,60,000/- in cash in this account) and 510101005356929 (deposited Rs.40,000/- in cash in this account) in the month of November, 2016] is treated as unaccounted money deposited into the bank accounts as cash credit u/s 68 of the I.T. Act, 1961 and added to the total income of the assessee company and brought to tax accordingly.

Income of the assessee is assessed u/s 143(3) of the Income Tax Act, 1961. Penalty proceedings u/s 271AAC of the Act is initiated for addition made u/s 68 of the Act. Demand Notice and copy of order are being issued to the Assessee Company."

4. Against the order passed by the AO, the assessee preferred an appeal before the National Faceless Appeal Centre (NFAC) which was dismissed on 13.12.2021.
5. Aggrieved by the said order dated 13.12.2021, the assessee is in appeal before us.
6. At the time of hearing the Id. AR submitted that during the year under consideration the appellant had deposited cash of Rs. 55,00,000/- into its bank account during the month of November, 2016 which was immediately after demonetisation on 08.11.2016.

This included a sum of Rs. 30,00,000/- which the appellant had withdrawn from its bank in the month of April, 2016 and the same was lying as cash-in-hand. The ld. AR further submitted that the appellant was withdrawn such an amount for purchase of land and was kept in hand. After demonetisation was declared, the appellant had no other option but to deposit the same in its bank. He further submitted that the ld. AO mentioned the fact that the cash deposit of Rs. 30,00,000/- as unaccounted money and the AO has wrongly treated the sum of Rs. 30,00,000/- as unaccounted money. The Ld. AR to force his contention he also relied on the decision of Hon'ble Delhi Court in the case of *Jaya Aggarwal vs ITO (ITA 315/2005)* where in the similar type of situation the Hon'ble High Court allowed the appeal of the assessee.

7. On the other hand, the ld. DR appearing on behalf of the revenue relied on the orders of ld. CIT(A) and A.O.

8. After hearing the rival submissions and on careful perusal of materials available on record, we find that the issue relate to disallowance of cash deposit of Rs. 30,00,000/- is treated as unaccounted money into bank account as cash credit u/s 68 of the Income Tax Act and added to the total income of the assessee-company which was not properly examined and considered the entire explanation and material available on record as withdrawal for the purpose and objective. From the beginning, the assessee-appellant explanation given was that withdrawal was to pay for procurement of land but due to some reason, the deal was not finalize which cannot be denied by the AO merely on suspicion. Keeping in view all the facts and circumstances of the case and material available on record, we are of the considered view that

disallowance made by the AO is not sustainable and, therefore, we set aside the impugned order passed by the Ld. CIT(A) and allow the ground raised by the assessee.

9. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 25th May, 2022.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Dated: 25/05/2022
Biswajit, Sr. PS

Copy of order forwarded to:

1. Appellant: Paharimata Medical Pvt. Ltd.
2. Respondent: ITO, Ward-5(2), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT Kolkata Benches, Kolkata