

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

Before

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA No.226/Hyd/2017		
Assessment Year: 2012-13		
M/s. FMS Dental Hospitals Private Limited, Koti, Hyderabad. PAN : AAACF3014G	Vs.	The Asst. Commissioner of Income Tax, Circle - 17(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Sri B. Statyanarayana Murthy, CA
Revenue by:		Sri K.P.R.R. Murthy
Date of hearing:		29.06.2022
Date of pronouncement:		30.06.2022

ORDER

Per Laliet Kumar, J.M.

This appeal is filed by the assessee feeling aggrieved by the order of learned Commissioner of Income Tax (Appeals) - 5, Hyderabad dt.30.11.2016 for the assessment year 2012-13 on the following grounds :

- "1. The Order of the lower authorities in so far as it is against the appellant company, is contrary to the facts of the case and the provisions of law.*
- 2. The Hon'ble Commissioner of Income Tax is not justified in sustaining, the addition of Rs.50,00,000/- made on the basis of statement made by the Managing Director in the survey proceedings.*
- 3. The Hon'ble Commissioner of Income Tax is not justified in sustaining the addition of Rs.50,00,000/- even because no defects were pointed out by the Assessing Officer in the Assessment Order passed by him.*

4. *The Hon'ble Commissioner of Income Tax is not justified in relying on the Remand Report by the Assessing Officer without giving an opportunity to the appellant-company to explain the issues raised by the Assessing Officer in the Remand Report.*

5. *The Hon'ble Commissioner of Income Tax should have appreciated that the details referred to by him from the Remand Report were not put to the appellant-company either by the Commissioner of Income Tax(Appeals) or by the Assessing Officer. Therefore, the Order of the Commissioner of Income Tax(Appeals) suffers from principles of natural justice and therefore it should be set aside.*

6. *The Hon'ble Commissioner of Income Tax is not justified in sustaining the addition of Rs.50,00,000/- on the basis of amounts referred to by the Assessing Officer in his Remand Report to the Commissioner of Income Tax(Appeals). The Hon'ble Commissioner of Income Tax(Appeals) should have appreciated that the figures in the Remand Report do not warrant sustenance of an addition of Rs.50,00,000/- lakhs.*

7. *The Hon'ble Commissioner of Income Tax is not justified to hold that the appellant company's admission has stopped further investigations by the Department in the survey."*

2. The brief facts of the case are that assessee is a company who has been carrying on the profession of rendering Dental Services. Assessee filed its return of income on 29.09.2012 declaring an income of Rs.70,34,082/-. The same was processed u/s 143(1) of the Act and case was taken up for scrutiny under CASS. Notices u/s 143(2) and 142(1) of the Act were issued and served on assessee company. Meanwhile, survey operation was also conducted by the DCIT, Circle – 1(3) on 10.09.2013. During the course of survey, certain discrepancies were noticed and the statement of Managing Director of the assessee company was recorded wherein he had offered to declare total income of Rs.1.15 crores for A.Y. 2013-14. However, the assessee company has filed its return of income declaring total income Rs.97,19,020 only. Hence, the difference of Rs.17,80,980/- was added to the income returned and accordingly, completed the scrutiny assessment u/s 143(3) of the Act by the Assessing Officer.

3. Feeling aggrieved by the order of Assessing Officer, assessee has challenged the order before Id.CIT(A). Ld.CIT(A) has asked various information from the assessee as mentioned at Para 5 of the order and simultaneously, the remand report was also called for. During the course of appellate proceedings, the Id.CIT(A) has directed the Assessing Officer to furnish the detailed report with respect to three questions mentioned at Para 5 of his order. The Assessing Officer asked the assessee to furnish the reply for the three questions mentioned at Para 5 of Id.CIT(A)'s order and attend the remand proceedings. Further since the authorized Director of the company was not available in the country, a request was made before the Assessing Officer for granting time and even after granting time, none appeared in the remand proceedings and the remand report was submitted. The Id.CIT(A) in para 6 of his order has mentioned various documents which in the opinion of the Id.CIT(A) had lead to the notice of various discrepancies during the course of survey proceedings and as there is no explanation from the assessee during the verification before Assessing Officer, Id.CIT(A) has confirmed the addition relying upon the provisions of section 292C of the Act.

4. Feeling aggrieved by the order of Id.CIT(A), assessee is now in appeal before us for the grounds mentioned hereinabove.

5. Before us, at the outset, Id.AR for the assessee has submitted that the Id.CIT(A) has decided the issue on the basis of the remand report, the copy of which has not been provided to the assessee. Therefore, there is a violation of principles of natural justice. Accordingly, the order of Id.CIT(A) has to be set aside.

5.1. Secondly, it was submitted that in the assessment proceedings / appellate proceedings for A.Y 2013-14, the documents mentioned in para 6 of the ld.CIT(A) were put to the assessee and the same were duly replied / reconciled / justified by the assessee.

5.2. It was contended that the documents mentioned in Para 6 of the order of ld.CIT(A) did not pertain to the year under consideration and pertain to different assessment years.

5.3. It was submitted by the ld.AR that no addition can be made in the hands of the assessee merely on the statement recorded during the course of survey.

6. In this connection, ld.AR relied upon the judgment of Hon'ble Madras High Court in the case of CIT Vs. S. Khader Khan Son reported in (2008) 300 ITR 157 wherein it was held as under :

“dismissing the appeal, that in view of the scope and ambit of the materials collected during the course of survey action under section 133A shall not have any evidentiary value. It could not be said solely on the basis of the statement given by one of the partners of the assessee firm that the disclosed income was assessable as lawful income of the assessee.”

7. Per contra, the ld.DR for the assessee has fairly submitted that the copy of the remand report was not provided to the assessee by the ld.CIT(A) in the appellate proceedings. However, it was submitted that the additions were confirmed by the ld.CIT(A) based on the statement recorded during the course of survey and also on account of the documents found in the premises of assessee.

8. It was also the contention of the ld.DR that for A.Ys. 2013-14, 2014-15 the assessee has honoured the declaration and revised returns were filed and therefore, there was no reason for the assessee for not depositing the tax, on the basis of the statement and surrender made by the assessee during the course of survey for the year under consideration. Further, the ld.DR relied upon the decision of jurisdictional High court in the case of Kernex Micro Systems (India) Limited Vs. DCIT reported in 47 taxmann.com 375.

9. To rebut the arguments of ld.DR, the ld.AR for the assessee has submitted that the remand report was not provided to it which shows gross violation of principles of natural justice by the ld.CIT(A). Therefore, the order is required to be set aside merely on the said ground. Further, it was submitted that in view of the judgment of Hon'ble Madras High Court in the case of CIT Vs. S. Khader Khan Son (supra), which was subsequently confirmed by the Hon'ble Supreme Court, no addition can be sustained and there is no requirement of law even in the eyes of law to retract the statement given during the course of survey, as it cannot be considered as a piece of evidence.

10. We have heard the rival submissions and perused the material on record. It is clear from the perusal of the order passed by the ld.CIT(A) and also on the basis of the material available on record and more particularly, on the submissions of the ld.AR that the copy of the remand report was not given to the assessee or to its ld.AR. However, the ld.CIT(A) has relied upon the said remand report as mentioned at para 6 of his order and in our view, there is a gross violation of principles of natural justice. Therefore, in the interests of

justice, the matter may be remitted back to the file of Assessing Officer. In the present case, the additions were not confirmed by the ld.CIT(A) merely on the basis of the statement but had strongly relied upon the documents and the remand report furnished by the Assessing Officer explaining the documents. The ld.AR had submitted that the documents which are placed in the remand report does not pertain to the assessment year during the year under consideration and also filed a chart explaining the documents placed in remand report.

11. Further, the ld.AR has submitted that the assessee had explained the said documents during the course of assessment in A.Y. 2013-14 to the Assessing Officer and ld.CIT(A) and thereafter, the ld.CIT(A) had dropped additions against the assessee.

12. In light of the above, we deem it appropriate to remand back the matter to the file of the Assessing Officer with a direction to do a denovo assessment and consider the reply filed by the assessee for A.Y. 2013-14 and order passed by ld.CIT(A) on 30.6.2017. Needless to say that the Assessing Officer while passing denovo assessment order, shall afford sufficient opportunities of hearing to the assessee. Further, the Assessing Officer shall also consider the statement recorded during the course of survey for the year under consideration and the effect of non-retraction of the statement made by the assessee even after lapse of many years. In light of the above, the appeal of the assessee is allowed for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 30th June, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 30th June, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	M/s. FMS Dental Hospitals Private Limited, Ajayanagar Plaza, Bank Street, Koti, Hyderabad.
2	The Asst. Commissioner of Income Tax, Circle 17(1), Hyderabad.
3	CIT(A)-5, Hyderabad
4	PCIT – 5, Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order