

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.3144/Chny/2017
(निर्धारण वर्ष / **Assessment Year: 2009-10**)

ACIT Central Circle-2(1), Chennai.	बनाम/ Vs.	M/s. Anjana Medicare Services P. Ltd. No.95, Pattabiraman Pillai Street, Thennur, Trichy-620 017.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAGCA-0294-F		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent/Cross Objector)

&

C.O No.36/Chny/2018
(Arising out of ITA No.3144/Chny/2017)
(निर्धारण वर्ष / **Assessment Year: 2009-10**)

M/s. Anjana Medicare Services P. Ltd. No.95, Pattabiraman Pillai Street, Thennur, Trichy-620 017.	बनाम/ Vs.	ACIT Central Circle-2(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAGCA-0294-F		
(Cross-objector)	:	(Respondent)

Assessee By	:	S/Shri G. Baskar & I. Dinesh (Advocates)-Ld. ARs
Revenue by	:	Shri M. Rajan (CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	14-06-2022
घोषणा की तारीख / Date of Pronouncement	:	13-07-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2009-10 arises out of the order of learned Commissioner of Income Tax

(Appeals)-18, Chennai [CIT(A)] dated 21-09-2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 30-12-2016. The grounds taken by the revenue read as under: -

1. The Order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts and circumstances of the case and in law.

2. The Id CIT(A) erred in directing the Assessing Officer (AO) to delete the addition of Rs.1,14,00,000/- made by the AO towards increase in share capital in the order u/s.143(3) r.w.s. 147 for the AY 2009-10.

2.1. The Id. CIT(A) failed to take cognizance of the fact that the assessee did not submit any confirmation with respect to the loan availed prior to 01.04.2008 against which the assessee has taken stand before the Id CIT(A) that the share capital amounting to Rs.1,14,00,000/- was allotted against the said loan availed prior to this assessment year. Further, no documentary evidence with respect to such shares allotment was submitted before the AO in the course of assessment proceedings.

3. The Id CIT(A) erred in directing the Assessing Officer (AO) to delete the addition of Rs. 6,15,00,000/- made by the AO towards share application money in the order u/s.143(3) r.w.s. 147 for the AY 2009-10.

3.1. The Id. CIT(A) ought to have considered the fact that the share application money is claimed to be against the fictitious asset which is not correct. Further, it can be seen from the order of the Id CIT(A) that the legal aspect of the allotment of share and realization of share application money has not been dealt with on merit except relying upon the assessee's explanation. The introduction of share application money, its source and confirmation has to be furnished in order to prove its genuineness.

3.2. The Id. CIT(A) erred in observing that the directors viz., Dr. Arun and Dr. Ananda krishnamurthy are assessed to tax with the same AO, which is not correct as only Dr. A.M. Arun is assessed to tax in this circle.

3.3. The Id. CIT(A) failed to take cognizance of the fact that the assessee did not submit any details nor offered any explanation except submitting the list showing the dates, the parties name and the amounts of share application money received. Thus the assessee has failed to prove the genuineness of share application money during the assessment proceedings or appellate proceedings.

4. The Id CIT(A) erred in directing the Assessing Officer (AO) to delete the addition of Rs.5,75,28,511/- made by the AO towards goodwill in the order u/s.143(3) r.w. sec 147 for the AY 2009-10.

4.1. The Id. CIT(A) ought to have considered the fact that the assessee did not submit any working or explanation with regards to the Goodwill as to how it was arrived at whether it was in the balance sheet of M/s. Maruthi Hospital or it was valued at the time of merger.

5. The Id CIT(A) erred in directing the Assessing Officer (AO) to delete the disallowance of Rs.1,43,82,128/- made by the AO towards depreciation on goodwill in the order u/s.143(3) r.w.s. 147 for the AY 2009-10.

5.1. The Id. CIT(A) failed to consider the fact that M/s. Maruthi Hospital Thiruchirapalli Pvt. Ltd. was merged with M/s. Anjana Medicare Pvt. Ltd. and as

claimed by the assessee that the said merger happened in the previous year relevant to the Asst. Year under consideration but no documentary evidence in support of goodwill was filed during the course of assessment proceedings. Hence, as the very existence of the goodwill itself was not proved, the claim of depreciation is not allowable.

6. The Id CIT(A) erred in directing the Assessing Officer (AO) to delete the addition of Rs.2,23,84,442/- made by the AO towards unexplained cash payment in the order u/s.143(3) r.w. sec 147 for the AY 2009-10.

6.1. The Id. CIT(A) ought to have considered the fact that the disallowance of cash payments were made by the AO on account of non-furnishing of documentary evidence in support of the sources for making such cash payments.

6.2. The Id. CIT(A) has erred in deleting the additions by holding that it is a disallowance u/s. 40A(3) whereas, in actual the disallowance was made by the AO due to the failure of the assessee to furnish the source of payment of advance of Rs.2,23,84,442/- to M/s. Vasan Health Care Pvt Ltd.

7. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

RELIEF CLAIMED IN APPEAL

The order of the learned CIT (Appeals) may be set aside and that of the Assessing Officer be restored.

The assessee has filed cross-objections wherein grounds taken by the assessee read as under: -

1. The order of the Ld. CIT(A) is right, just and fair on law and facts and is liable to be upheld.
2. The Ld. CIT(A) has appreciated the facts and the submissions made by the Respondent assessee in the proper perspective.
3. The Ld. CIT(A) has rightly deleted the additions of Rs.1,14,00,000/- and Rs.6,15,00,000/- as unexplained investment representing increase in share capital and share application money respectively.
4. The Ld. CIT(A) has fittingly allowed the claim of goodwill and the depreciation thereto amounting to Rs.5,75,28,511/- and Rs.1,43,82,128/- respectively.
5. The Ld. CIT(A) has been fair and just in deleting the addition of Rs.2,23,84,442/- made u/s.40A (3).
- 6.1 The Ld. CIT(A) erred in not advertg to the submissions made by the Respondent assessee on the re-opening u/s 147.
- 6.2 The Ld. CIT(A) ought to have quashed the re-opening u/s 147 as the same is bad in law.
- 6.3 The Ld. CIT(A) failed to consider the submissions of the assessee that the Assessing Officer has not provided the reasons for reopening despite specific request. This is not in conformity with the procedure laid down by the Apex Court and consequently vitiates the entire assessment proceedings u/s 147.

2. The Ld. CIT-DR, drawing attention to the orders of lower authorities, made elaborate arguments supporting the assessment framed by Ld. AO. The Ld. AR, on the other hand, controverted the arguments of Ld. CIT-DR and supported the impugned order. The Ld. AR also assailed the validity of reassessment proceedings which form subject matter of cross-appeal. Having heard rival submissions and after careful consideration of material facts, our adjudication to the subject matter of appeal would be as under.

Assessment Proceedings

3. The assessee being resident corporate assessee is stated to be engaged in the business of medical services. Though the original return of income was processed u/s 143(1), however, the case was reopened and notice u/s 148 was issued on 31.03.2016. In response to the same, the assessee offered original return of income filed at Rs.33.13 Lacs and demanded reasons for reopening. During the course of assessment proceeding, requisite details and explanations were called from assessee on various issues and the assessment was framed. The issues which form subject matter of appeal are as under: -

4. Source of Capital Work-in-progress

It transpired that the assessee reflected capital work-in-progress for Rs.5 Crores with corresponding increase in share application money. A survey was conducted u/s 133A in the business premises of M/s Maruthi Hospital (a unit of assessee) on 01/12/2015 wherein it transpired that an amount of Rs.5 Crores was introduced as Capital work-in-progress in assessee company during AY 2009-10 and the same was converted into fixed asset during AY 2010-11 and the depreciation was claimed on the same. However, the ledger extracts

revealed that the same was in the nature of capital work-in-progress only and not converted into fixed asset. It was also observed that the capital work-in-progress was a mere book entry without any actual receipt of funds and without carrying out any building construction. Therefore, capital expenditure was held to be bogus in nature. The same was also supported by the sworn statement recorded from Shri R. Veerangan, Accounts Manager. In the statement, it was confirmed that a single entry was passed in the accounts and there was no physical or material evidence to support this entry. Going by the same, Ld. AO added the amount of Rs.5 Crores to assessee's income as unexplained investment.

5. Increase in Share Capital

There was increase in share capital for Rs.114 Lacs and share application money was also received for Rs.615 Lacs. Both these items were added as unexplained cash credit in the absence of supporting details / evidences.

6. Addition of Goodwill and depreciation thereon

The assessee reflected goodwill of Rs.575.28 Lacs and claimed depreciation of Rs.143.82 Lacs on the same. Both these items were also added in the absence of supporting evidences / details.

7. Addition on the basis of Loose Sheets

During survey proceedings in the business premises of the assessee, certain loose sheets were impounded which, inter-alia, contained ledger of M/s Vasan Healthcare Private Ltd. (VHPL) in the books of the assessee. It reflected cash payments and cash receipts between assessee and that entity. In this year, the assessee paid Rs.223.84

Lacs and received back Rs.206.41 Lacs from that entity. This issue was put to Dr. A.M. Arun wherein he submitted as under: -

I had instructed my personal assistant Mr. Parmasivam to supervise the cash collections of the company. On my instructions, he will collect the daily cash from the cashier and under my instructions, utilize on a need basis for the payments of Vasan Healthcare and return the balance cash to M/s Anjana Medicare Services P. Ltd. All these receipts and payments are accounted under the head current assets- short term advances to M/s Vasan Healthcare P. Ltd. and M/s Anjana Medicare Service P. Ltd. The transaction depicts the collection of day's cash and return of the balance cash to the company. Effectively, the net amount only represents advances which works out to Rs.2,27,06,867/- for all the years (AY: 2009-10 to 2016-17) put together. The same will be offered in the respective years as penalty and shall be paid in the respective years.

However, in the absence of supporting evidences establishing source, the amount of Rs.223.84 Lacs was added to assessee's income as unexplained cash given.

Appellate Proceedings

8.1 During appellate proceedings, the assessee assailed the reassessment proceedings on legal grounds and submitted that the reasons for reopening were not communicated to the assessee which was in gross violation of settled legal position. The quantum addition, on merits, were also vehemently contested by way of elaborate written submissions which have already been extracted in the impugned order.

8.2 Regarding addition of capital work-in-progress, the assessee submitted that share application money includes Rs.5 Crores credited on 31.03.2009 as capital work-in-progress. It was merely a book entry without bringing in any physical asset or cash flow. The same was also accepted by Ld. AO and therefore, the same would not have any impact on computation of income from tax purpose.

The addition of share capital and share application was assailed on the ground that the addition was made in total disregard to details

furnished by the assessee. The assessee had furnished the copies of loan accounts of Dr A.M.Arun and Dr. Anandhkrishnamurthy, promoters of the assessee company, as appearing in the books of accounts of M/s Maruti Hospitals Tiruchirapalli Private Ltd. (MHTPL) for the periods prior to its takeover by the assessee company. Both had advanced Rs.115 Lacs each prior to 01-04-2008 and when the erstwhile MHTPL was taken over by the assessee the liability of Rs.230 Lacs was converted into Share Capital for Rs.114 Lacs and Share application for Rs.115 Lacs. Relevant ledger account copies as furnished to Ld. AO were produced before Ld. CIT(A).

The goodwill was stated to have arisen on takeover of MHTPL which was approved by Hon'ble High Court of Madras. Upon merger, the goodwill was valued at Rs.575.28 Lacs which was paid over by the assessee.

Regarding unexplained cash payment, the assessee submitted that these transactions were reflected in the books of both the entities and the balance due / payable were duly reflected in the Balance Sheet.

8.3 The Ld. CIT(A) concurred with assessee's submissions that it was the finding of Ld. AO that no expenditure was incurred by the assessee as capital work-in-progress. In such a case, the provisions of Sec. 69C would have no application. The capital work-in-progress was a mere journal entry with corresponding increase in share application money. The capital expenditure was bogus. Once the claim of the assessee i.e., work-in-progress was determined as bogus, no addition could be made. Further, the same amount was treated as income in the hands of Dr A.M. Arun. Therefore, the addition was deleted.

8.4 The additions of Share Capital and Share application was deleted on the ground that assessee's submissions were acceptable and no steps were taken by Ld. AO to ascertain the veracity of the claim despite the fact that both the share applicants were assessed by the same AO.

8.5 The claim of goodwill and depreciation thereon was held to be acceptable since the assessee has submitted sufficient documentary evidences in the shape of Business purchase ledger account showing the amount of goodwill arrived at during the course of merger.

8.6 The addition of cash payment was deleted by observing as under:-

During the appellate proceedings, the AR submitted the documentary evidences in the form of ledger and day book etc. wherein the transactions between the appellant and M/s Vasan Health Care P. Ltd. appears. Dr. Arun whose name appears in the Board of Directors of the appellant company is also a director in M/s Vasan Health Care P. Ltd. The pleadings of the AR seem to be acceptable in that the daily cash collection in the appellant hospital are being handed over to M/s Vasan Health Care P. Ltd. as per the instructions of Dr. Arun. This being the case, I am of the view that these are not cash payments made towards incurring any expenditure but only an internal arrangement between the two companies. Accordingly, the addition made u/s 40A(3) on account of cash payment exceeding Rs.20,000/- is directed to be deleted. Hence this ground is allowed.

Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings and Adjudication

9. Upon perusal of assessee's financial statements, we find that the share capital has increased from Rs.1 Lacs to Rs.115 Lacs i.e., there is an increase of Rs.114 Lacs. The Share application money as received during the year is Rs.615 Lacs. The assessee has shown capital work-in-progress for Rs.500 Lacs under fixed assets. It is the finding of Ld. AO in para 3.7 of the assessment order that the capital work-in-progress of Rs.500 Lacs was merely a book entry without

actual receipts of funds in the company and without any building construction. Therefore, the capital expenditure appears to be bogus. The same was also confirmed by Shri R.Veerangan, Accounts Manager in the sworn statement. In other words, capital work-in-progress for Rs.500 Lacs has been shown in the books with corresponding increase in Share Application Money to that extent. The claim is merely a bogus claim which has been reversed in subsequent year. Therefore, nullifying this entry, the increase in capital work-in-progress on asset side and increase in share application money on liability side, would have no impact on assessee's computation of income. Therefore, the adjudication of Ld. CIT(A), in that regard, could not be faulted with.

10. Proceeding further, it could be seen that MHTPL owed a sum of Rs.230 Lacs to Dr. A.M. Arun and Dr. Anand. The assessee and that entity merged under business transfer agreement. The assessee sought to settle the said amount and accordingly, the amount of Rs.114 Lacs was converted into share capital and the shares were issued. The remaining amount of Rs.115 Lacs was treated as Share application money of the two creditors. Thus, the increase in share capital or share application money does not involve outflow or inflow of money and therefore, the provisions of Sec.68 could not be applied to such transaction. This proposition has been settled by Hon'ble High Court of Madras in **V.R.Global Energy P. Ltd. V/s ITO (96 Taxmann.com 647)**. This decision has already been confirmed by Hon'ble Supreme Court which is reported at 113 Taxmann.com 31. Therefore, finding no reason to interfere in the impugned order, on this

issue, the corresponding grounds raised by the revenue stands dismissed.

11. The assessee has computed goodwill under business purchase agreement with MHTPL. This agreement has been approved by Hon'ble High Court of Madras. As per the terms, the total consideration has been fixed as Rs.1150 Lacs, which after reducing liabilities of Rs.230 Lacs, amounts to Rs.920 Lacs. After excluding the net value of assets taken over by the assessee (page nos. 27 to 30 of paper-book), the amount that remains is Rs.575.28 Lacs which would represent nothing but payment by the assessee towards goodwill on purchase of business as held by Hon'ble Delhi High Court in **Triune Energy Services (P.) Ltd. V/s DCIT (65 Taxmann.com 288)**. In this case, it was held by Hon'ble Court that where the assessee purchased business as going concern, consideration paid in excess of value of tangible assets was classifiable as goodwill eligible for depreciation. The further exercise to value goodwill was not warranted. Accordingly, the deduction of goodwill as well as consequential depreciation as granted by Ld. CIT(A) is in order. It is settled law that the goodwill is an intangible asset and is eligible for depreciation as per the decision of Hon'ble Supreme Court in the case of **CIT V/s Smifs Securities Ltd. (348 ITR 302)**. Pertinently, depreciation on goodwill has been allowed by the revenue in subsequent years also.

12. The last issue that form subject matter of appeal is addition of Rs.223.84 Lacs which has been added on the allegation that it represents unexplained cash payment. From the facts, it emerges that the Chairman of the assessee Company was the chairman of VHPL. Similarly, the vice chairman of the assessee company was executive

director in VHPL. It is the submissions of Ld. AR that the cash collection was kept in safe custody with Dr. A.M. Arun and the same would be recalled and utilized as and when required by the assessee. To support the same, the assessee has placed on record entire ledger of the transactions at page nos.35 to 43 of the paper-book. The same supports of the arguments of Ld. AR that there was regular transfer of cash between assessee and VHPL. The cash would be sent to VHPL and received back by the assessee from time to time. During this year, the assessee has paid Rs.223.84 Lacs and received back Rs.206.41 Lacs which would show that the transaction was in the nature of repository only. The assessee has not claimed any expenditure against these payments. The perusal of ledger would show that these transactions are in the nature of internal arrangement only and could not be considered as assessee's income. Therefore, we confirm the adjudication of Ld. CIT(A), in this regard. In the result, the revenue's appeal stand dismissed

13. The assessee, in its cross-objections has supported the order of Ld. CIT(A) on merits and therefore, no separate adjudication is required for these grounds. In the legal grounds, the assessee challenges the validity of reassessment proceedings. Since we have dismissed revenue's appeal, the adjudication of these grounds has been rendered academic in nature and therefore, not dealt with.

14. The revenue's appeal as well as assessee's cross-objections stands dismissed.

Order pronounced on 13th July, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 13-07-2022
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF