

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.852/DEL/2021
[Assessment Year: 2016-17**

Dr. Dinesh Singh, H-54, Phase-1, Ashok Vihar, New Delhi-110052	Vs	ACIT, Circle63(1) now changed to ACIT, Circle-61(1), Civic Centre, Minto Road, New Delhi-110002
PAN-AAXPS4304A		
Assessee		Revenue

Assessee by	Sh. S.K.Goyal, CA
Revenue by	Sh. R.S. Yadav, Sr. DR

Date of Hearing	23.08.2022
Date of Pronouncement	26.08.2022

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. CIT(A)-33, New Delhi, dated 18.09.2020 pertaining to Assessment Year 2016-17.

2. The grounds of appeal reads as under:-

- 1) *On the facts and circumstances of the case the order passed by the CIT (A) is bad both in eye of law and on facts and assessee deny his liability to pay tax on the addition of Rs. 10.27,478 / Rs.3,45,978 which is totally wrong and bad in law and needs to be quashed.*
- 2) *On the facts and circumstances of the case, the order passed by the Ld. CIT (A) is bad both in eye of law and on facts as the same has been passed without application of mind.*

- 3) *The order of the Ld. CIT (A) in confirming addition of Rs. 10,22,250 / Rs.3,40.750 by restricting expenditure towards business promotion amounting to Rs. 6,12,740/- and entertainment expenses Rs.7,25,260/- respectively to 25%. It is not clear whether the CIT (A) wants to make addition of 25% of above mentioned two expenditures i.e. business promotion and entertainment or 75% of the above two expenditure. The order of the CIT (A), is confusing hence the appeal order passed by the CIT (A) is illegal, invalid, bad in law and needs to be quashed.*
- 4) *The above addition of Rs. 10,22,250 / Rs.3,40,7750 out of business promotion and entertainment expenses have not been made in the original assessment order passed by ACIT. Hence, the addition on separate ground which has not been raised by the assessee in the grounds of appeal filed before the CIT (A) without giving opportunity of being heard has no value in eye of law as the same has been made on presumption, assumption, surmises and conjectures and hence the order passed is totally wrong, bad in' law and needs to be quashed.*
- 5) *The above addition of Rs. 10,22,250 / Rs.3,40,7750 out of business promotion and entertainment expenses amounts to enhancement in income which cannot be made as no specific notice has been issued to the assessee by the CIT (A) that he proposed to make the said addition out of business promotion and entertainment expenses, hence the order passed is totally invalid on legal grounds. The addition of Rs. 10,22,250 / Rs. 3,40.750 has been made on estimated bases in violation of principle of natural justice and without bringing any adverse evidence on record and thus the order has been passed totally without application of mind and contrary to various CBDT instructions / guidelines and various decided judgments passed by the higher appellate authorities.*
- 6) *The ACIT as well as CIT (A) has ignored the fact that all evidences in the form of bills / vouchers were placed before the ACIT. Both the authorities have failed to consider the fact of lost report dated 19.10.2016 filed by the assessee with the Assessing Officer. The CIT (A) also made addition of Rs.10,22,250 /*

Rs.3,40,750 on estimated basis without bringing any evidence on record as to why he is going to make addition. Hence, the addition of Rs. 10,22,250 / Rs.3,40,750 is totally wrong, bad in law and needs to be quashed as the same has been made on estimated basis which has no place in the eye of law.

7) That the order of the Ld. CIT (A) in confirming addition of Rs. 5,228/- being the amount of depreciation disallowed by the ACIT in the assessment order is totally wrong, bad in law and needs to be quashed. The ACIT as well as CIT (A) has ignored the fact of document lost report dated 19.10.2016 filed by the assessee during assessment as well as during appellate proceedings. Moreover, no section has been mentioned by the assessing officer and CIT (A) under which addition is made / confirmed.”

3. The assessee in this case is a doctor by profession. During the course of assessment proceeding, the Assessing Officer noted that the appellant claimed total expenses amounting to Rs.1,19,43,537/- and income from clinic amounting to Rs.2,16,100/-. The remaining income is derived from visiting hospitals amounting to Rs.2,05,27,631/-. He also noted that it was not justifiable to have such huge expense against the income from hospital receipts, as the hospital (in which the assessee works) claim most of the expenses, in its P & L A/c. Accordingly, it was held that expense of Rs.1,19,45,537/- was not justified. Further, it has also been claimed that many other expenses as claimed by the assessee may not be related to professional receipts earned from the hospital. In addition to that the assessee has shown clinic income of Rs.2,16,100/- only, which is significantly low in comparison to the expenses claimed by the assessee. The Assessing Officer has divided the expenses shown in the P & L account by the nature of expenditure, which is described hereunder:-

Particulars	Amount (Rs.)	Nature
To Accounting Charges	72,000	Business
To Advertisement Exp.	10,000	Business
To Audit Fees	30,000	Business.
To Bank Charges	2,879.65	Business
To Books & Periodicals	5,05,309	Business
To Bonus	90,500	Business
To Business Promotion	6,12,740	Business
To Car Insurance	4,869	Business/Personal
To Conveyance	5,45,150	Business/Personal
To Clinic Exp.	7,50,880	Business
To Conference Exp.	9,81,463	Business
To Depreciation	4,36,079	Business/Personal
To Electricity Exp.	3,10,440	Business/Personal
To Entertainment	7,50,260	Business/Personal
To Festival Exp.	2,82,280	Business/Personal
To Legal Fees	40,000	Business
To Magazine Sub	2,45,880	Business
To Medicine	8,01,975	Business
To Medical equipments	1,96,180	Business
To Misc. Exp.	96,215	Business
To Petrol & Maints.	8,50,850	Business/Personal
To Printing & Stationery	4,94,430	Business
To Professional Exp.	80,500	Business
To Rent	1,62,000	Business
To Repair & Maints.	7,24,728	Business
To Staff Welfare	4,15,260	Business
To Salary	10,86,000	Business
To Telephone Exp.	2,45,810	Business/Personal
To Travelling Exp.	6,25,860	Business/Personal
To Water Exp.	60,180	Business/Personal

4. Based on the above, the A.O was of the opinion that the P&L account of the appellant for the relevant A.Y 2015-16 i.e. the preceding A.Y was analyzed which showed the gross receipts were shown at Rs.1,10,83,513/- and expenses were shown at: Ifs.57,94,23S/-. The A.O was of the opinion that the assessee was earning 99% of his:, income from hospital, and the hospital must be separately claiming expenditure for running the hospital business. Hence, the increase in expenses over previous year, in proportion to increase in revenue cannot be held

justified, without bills and voucher. The assessee had submitted only bill/vouchers for Rs.19,73,836/-. Further, the appellant during the course of assessment proceedings submitted Lost Information Report dated 19.10,2016 stating; that important documents and bills were lost due to theft. The A.O was of the opinion that the claim of the assessee remains unjustified due to the lack of supporting bills and voucher. Accordingly, expenses of the assessee has been restricted to 50% of the total income from clinic and hospital receipts (i.e. 50% of 2,07,43,731/- = 1,03,71,865/-). Hence the disallowance of Rs.15,71,671/- was made which is (1,19,43,537/- (-) 1,03,71,865/-) i.e. what was claimed by the assessee and what was allowed by the Assessing Officer.

5. Against the above order, the assessee appealed before the Ld. CIT(A).

6. The Ld. CIT(A) accepted the assessee's plea that the vouchers and records have been lost and accepted the lost information report which was rejected by the Assessing Officer. However, with respect to two items of expenditure, Ld. CIT(A) sustained 75% of the addition as under:-

"7.6 Further, it is also to be noted that there has been substantial increase in the total receipts which gone up from Rs. 1,10,83,513/- in the A.Y 2015-16 to Rs.2,07,43,731/- in the A.Y 2016-17. The Net profit has also correspondingly gone up from Rs.52,89,278/- to Rs.90,16,913/-. This shows a quantum and substantial jump. Therefore, the A.O's decision to disallow an amount of Rs. 15,71,671/- cannot be sustained on empirical and factual grounds, especially when the books Of account have been accepted by the AO. Further, the AO has not specifically pointed out the expenditure against which the appellant failed to produce bills / vouchers.

7.7 However, perusal of various expenses claimed by the appellant as enumerated hi the tabular form by the AO at Page 2 and 3 of the assessment order shows that the

appellant has incurred expenditure Rs.6,12,740/- and Rs.7,50,260/- towards business promotion and entertainment respectively. Taking into consideration the nature of the profession and nature of work of the appellant, the said expenditure towards business promotion and entertainment may not be relevant. How die nature of-such expenditure is wholly and exclusively connected with the business and profession of the appellant is not decipherable from the facts on record, Therefore, die said expenditure towards business promotion shown at Rs.6,12,740/- is restricted to 25%, Similarly, with respect to the entertainment expense of Rs.7,50,260/- the same is restricted to 25%. As the A.O has not pointed out any specific expenditure which was of doubtful nature, limiting the above expenditure has been undertaken with, reference to the nature of profession of the assessee.

7.8 Moreover, the observations of the A.O that the expenditure was not justified in the light of the fact that receipts are mostly derived from his engagement in hospital and against which hospital would be claiming expenditure has no material bearing on the facts of the case.”

7. Against the above order, the Assessee has filed appeal before us.

8. We have heard both the parties and perused the records. The Ld. Counsel for the assessee submitted that the Ld. CIT(A)'s order is wrong in as much as he has done enhancement without giving notice to the assessee. Further, though he agreed that overall the Ld. CIT(A) has granted relief but still the Ld. Counsel for the assessee agitated that the addition sustained by the Ld. CIT(A) was without giving an opportunity of hearing is not sustainable. In this regard, the Ld. counsel for the assessee further placed reliance upon the decision of ITAT in the case of M/s Ginni Gold Limited in ITA No.673/Del/2015. In the alternative, ld. counsel submitted that the disallowance may be limited to 25% of those two claims of expenditure, which the Ld. CIT(A) have sustained @ 75% disallowance. .

9. Per contra, the Ld. Departmental Representative submitted that there is no enhancement in this case and hence no notice was required and the assessee's ground is not sustainable.

10. Upon careful consideration, we find that actually there is no enhancement in this case. The Ld. CIT(A) has granted substantial relief to the assessee and has sustained a small amount of disallowance. Hence, ground raised by the Ld. Counsel for the assessee that there is an enhancement and addition without giving any notice is not sustainable. The case law referred by the Ld. counsel for the assessee doesn't fully support the case of the assessee as in one place the ITAT in that order has remitted that matter to the file of the Assessing Officer to consider the issue afresh. Be as it may, we are of the considered opinion that interest of justice will be served in this case if the alternative plea of the ld. counsel for the assessee is accepted and the disallowance out of those two expenditures i.e. business promotion and entertainment expenses is limited to 25% thereof. We direct accordingly.

11. Another issue raised pertains to disallowance of depreciation. On this issue, the Ld. CIT(A) has held as under:-

“This ground of appeal is regarding addition with respect to claim of depreciation, amounting to Rs.5,228/- against addition of fixed assets of Rs.70,500/-. The A.O. during the course of assessment proceedings has come to the conclusion that the appellant was not able to provide the necessary documents in support of addition to the fixed assets amounting to Rs.70,500/-. Accordingly, Assessing Officer disallowed the claim of depreciation of Rs.5,228/-. During the course of assessment proceeding, the relevant bills could not be produced before the A.O. The appellant seeks to produce

the bill now at the appellate proceedings stage. The present claim is hereby disallowed and the action of the A.O. is affirmed. The ground of appeal is hereby rejected.”

12. Upon careful consideration, we remit this issue to the file of the Assessing Officer. The Assessing Officer shall consider the same afresh in light of the documents which were sought to be produced before the Ld. CIT(A). Needless to add, the assessee should be granted adequate opportunity by the Ld. CIT(A).

13. In the result, the appeal of the assessee stands partly allowed.

Order pronounced in the open court on 26/08/2022.

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

Sd/-

**[SHAMIM YAHYA]
ACCOUNTANT MEMBER**

Delhi; 26.08.2022.

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi