

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

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

Sr. No	Appeal Numbers	Assessment Years	Appellant	Respondent
1	ITA No.673/Chny/2022	2011-12	Dr. Sreenivasulu Reddy Ponnaluru No.24, Nerkundrum Road Vadapalani, Chennai – 600 026. [PAN: AADPR-6939-G]	ACIT Non Corporate Circle-14(1), Chennai.
2	ITA No.674/Chny/2022	2012-13		
3	ITA No.675/Chny/2022	2013-14		
4	ITA No.676/Chny/2022	2014-15		
5	ITA No.677/Chny/2022	2015-16		
6	ITA No.678/Chny/2022	2016-17		

अपीलार्थी की ओरसे/ Assessee by	:	Shri Y. Sridhar (CA)-Ld. AR
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri S. Chandrasekaran (JCIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	20-09-2022
घोषणा की तारीख / Date of Pronouncement	:	20-09-2022

आदेश / ORDER

Per Bench:

1. Aforesaid appeals by assessee for Assessment Years (AYs) 2011-12 to 2016-17 arises out of separate orders passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 29.06.2022 in the matter of separate assessments framed by Id. Assessing Officer u/s 143(3) r.w.s. 147 of the Act. The facts as well as issues are same in all the years and it is admitted position that adjudication in any one appeal shall equally apply to the other appeals also. For the purpose of adjudication, facts from AY

2011-12 have been culled out wherein the grounds raised by the assessee read as under: -

1. The orders of Id AO and learned CIT(A) are contrary to law, unjust, and against facts and circumstances of the case.
2. The Ld CIT (A) failed to note that the Ld. AO wrongly assumed jurisdiction u/s.147 of the Act, based on oral statement of one Ms. Subhadra, Manager (Operations) of Apollo Hospital, who had no *locus standi* nor access to the authentic data or records of patients to give such statement and without having any valid material to form a belief that income had escaped assessment and thus, the notice u/s.148 of the Act is *ab initio void*.
3. The addition was based on unverified statements gathered by Investigation Wing, and the same being not put to any verification by the Ld.AO while passing the orders u/s 143(3) rws 147, with an addition of Rs.8,08,400/- as income allegedly escaped from returns, whereas, the appellant has filed his return of income based on data furnished by the Hospital.
4. The Ld. AO and the Ld. CIT (A) failed to consider that the follow-up patients and many categories of patients were not charged by the appellant doctor.
5. For the above reasons and other reasons that may be adduced at the time of hearing, the Order u/s 250 by the CIT(A) may kindly be quashed and justice be rendered.
6. The appellant craves to amend, alter or delete any of the above grounds of appeal.

As is evident, the assessee is aggrieved by confirmation of certain additions which are based on third-party statement.

2. The Ld. AR advanced arguments and assailed the additions on the ground that the same are based on mere estimations, suspicion, conjectures and surmises. The Ld. AR submitted that whole additions have been made on abstract facts and figures without there being any material evidence on record to justify / corroborate the impugned additions.

The Ld. Sr. DR, on the other hand, submitted that the additions are based on data obtained by the department during search action.

Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee is an ENT specialist having consultancy at Apollo Hospital, Chennai. The assessee admitted income of Rs.43.89 Lacs in the return of income. The case was reopened pursuant to receipt of

certain information from investigation wing which was based on data obtained by the department during search action on M/s Apollo Hospital Group coupled with statement of Ms. G. Subhadra, Manager (Operations).

3.2 The investigation wing carried out search and seizure operation in case of M/s Apollo Hospital Group, Chennai on 05.01.2016. It transpired that the hospital was providing a platform for its visiting specialist doctors to carry out consultancy services to the out-patients in its hospital premises by allotting space on monthly rent. It was also noted that specialist doctors who provided such consultation collected fees separately. These doctors were visiting doctors who received professional charges from the hospital also. The hospital provided cubicles to the doctor in lieu of monthly rent. The hospital also maintained the data of the out-patients taking appointments with various doctors along with the details of the visits of the patients and the doctors who provided medical services to these patients.

3.3 Armed with this information, the assessee's case was reopened and notice was issued u/s 148. Upon verification, it was found that OPD consultation fees offered by the assessee was not tallying with the data collected during search action. The assessee submitted that the OPD patients list maintained by Hospital includes several types of non-billed or non-charged patients. All the appointments are not billed and all in-patients are not charged for follow-up consultations. Further, no fee is charged for revisits on humanitarian grounds and no fees is charged on references from VIPs, friends, Government officials, hospital staff etc. If all such exclusions are removed, the gross receipts would tally. The

assessee also submitted that it charged consultation fee of Rs.200/- per patient and not Rs.400/- per patient as alleged.

3.4 The requisite information was gathered from Apollo Hospital u/s 133(6) which include list of outpatients for whom appointment was provided by the assessee. The data obtained from the hospital included the name of the patient, appointment date and time taken, visit time and concluding time which was separately maintained for each doctor. It was further stated that the doctors are free to charge outpatient fee based on their experience and credentials. The hospital provided the details of outpatients consulted by the doctor during AYs 2011-12 to 2016-17 as per the appointment module in CD format. The information was also collected from Assessing Officer of M/s. Apollo Hospitals.

3.5 A sworn statement was recorded from Smt. G. Subhadra-Manager (Operations), Outpatient services. In the sworn statement Smt. G. Subhadra, provided hard copy of fees charged by the doctors who were doing private consultation in Apollo Hospitals from 2012 onwards. She also confirmed such fees collected by the doctors directly are not accounted in the books of Apollo Hospitals. As per the list provided by her, as part of sworn statement, no fee is charged for review undertaken within a period of 15 days from new patients.

3.6 The data as obtained from the hospital was counter-checked with the data furnished by the Investigation wing. The data being the same, a copy of the data was provided to the assessee for their information. The assessee was requested to segregate the data as first visit patients, patients revisiting within 15 days and revisits made after 15 days. The assessee, vide reply dated 17.10.2018, submitted details of fee collected in cash.

3.7 As per the data furnished by M/s. Apollo Hospitals, the number of patients who took consultation from doctor during the previous year was 6502 and the fee collected by him would be Rs.400 for new patients and Rs.400 for follow up visits after 30 days. As per the data analyzed, out of the total patients, 1346 were first visit and 2758 were follow up visits after excluding not consulted, Master Health check-up (MHC) patients.

3.8 The assessee reiterated that he has declared professional cash receipt of Rs.4.19 Lacs which is computed for 1678 patients @Rs.250/- per patient. The 5872 number of patients were review patients who were not charged. However, Ld. AO held that the submissions were not supported by any documentary evidences. The Id. AO also rejected the plea of the assessee that fee of Rs.400/- per patient was not charged particularly in view of the fact that the assessee was a specialized doctor who was sought after consultant.

3.9 Finally, Ld. AO estimated the concealed fee as under

First visit	1346 @Rs.400	Rs.5,38,400/-
Follow up visit	2758 @Rs.250	Rs.6,89,500/-

After adjusting fee of Rs.4.19 Lacs as already offered by the assessee, balance fees of Rs.8.08 Lacs was added to assessee's income. Similar estimation was made for all the other years also. The additions so made could be tabulated as under: -

AY	Actual Fee Charged admitted as income (Rs.)	Fees Considered by AO (Rs.)	No. of Patients admitted as per Return filed	No. of Patients considered by AO	Difference
2011-12	250	500	7522	4104	3418
2012-13	250	500	5818	5765	53
2013-14	350	500	8909	8898	11
2014-15	350	500	7181	7181	-
2015-16	500	500	5199	5199	-
2016-17	500	500	4263	3220	1043

Appellate Proceedings

4.1 The assessee reiterated that as a general practice, any doctor would charge only for first consultation but the subsequent or review consultation would be free of charge. It was also submitted that no fee is charged from hospital employees, their family and friends and government officials and VIPs. Further, Smt. G. Subhadra has given a statement that the data was collected from October, 2012 onwards and she did not have the data from 2010-11. Further, she was not authorized by the hospital, in this regard, which is clear from the recorded statement. The statement is a general statement and would not apply for each and every doctor. Further, she had no authentic information.

4.2 However, rejecting the same, Ld. CIT(A) upheld the action of Ld. AO as under: -

4.6 I have duly considered the reply of the appellant. It is more or less the same reply as filed during the assessment proceedings. It is to be noted that the AO has made due diligence and proper analysis of the information received from the investigation wing and it has been counter checked from the information provided by the hospital and both the information are matched. Further, it is important to note that the statement recorded under oath has evidentiary value and the Manager (operations) of the hospital Ms. Subhadra G. has clearly stated that there was no accounting of out patients fee in the books of accounts of hospital. The AO has made complete analysis of the appellant data and has arrived that income amounting to Rs.8,08,400/- has escaped from taxation. Considering the totality of the facts and circumstances of the present case, I am inclined to accept the findings of the Assessing Officer in his assessment order with regard to addition of Rs.8,08,400/- therefore, I hereby confirm the addition of Rs.8,08,400/-. Hence, these grounds of appeal are dismissed.

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

Our findings and Adjudication

5. From facts, it emerges that the Doctor is an ENT specialist working as a consultant Doctor in Apollo Hospital. Based on search findings on Hospital, the consultation fee of the Doctor has been estimated and

differential fee has been added to his professional income. The whole basis of the addition is statement of Smt. Subhadra G., the relevant portion of which read as under: -

Q.3. please provide the consultation fees charged by the doctors using Apollo hospital premises from the period 01-04.2009 to till date?

Ans: Total number of doctors is 225 (approx..). The seven doctors of nephrology department are permanent employees of Apollo hospitals working on guaranteed income. Rest of the doctors fix their own consultation fees. I took over the job of managing outpatient services in the year 2012. Out of my own interest I collected the datas regarding consultation fees charged by the doctors. I have provided a hard copy of the fees charged by the doctors in the year 2012 (Annexure 1). I have signed the same and authenticated it. The data was collected in the month of October 2012. We collected the fees charged by the doctors again in June 2015 (Annexure 2). It reflects the changes in fees collected between October 2012 and June 2015. It may not reflect the present fees charged by the doctors. But in 98% of the doctors, the fees may not have changed.

Q4. Please provide me the details of number of outpatients treated in this hospital from the year 2009?

Ans: I have asked our IT team to collect the details and I will be submitting the same by today as softcopy.

Q5 Whether the cash collection is routed through the books of accounts of Apollo hospitals. If not why?

Ans: The fees collected by the employed doctors of Apollo hospitals (i.e.) 7 doctors in the nephrology department are booked in the accounts of Apollo hospitals. The fees collected by the remaining doctors are not booked in our accounts. The non-employee doctors have their discretion to fix their fees. They pay monthly rent of Rs.13,800 p.m. presently. In case of part-time Doctors, the rent is charged on an hourly basis. The fees charged by the non-employee doctors are not booked in the accounts of Apollo hospitals even before I took over. I am continuing the same procedure. Dr. Satyabhama, Director of Medical Services only has the final say regarding the fees of non-employee doctors and whether or not to book the same in the accounts of Apollo hospitals.

Q6 Please provide the details of consultation fees received by the doctors for the consultations to patients in Apollo from 01-04-2009 to September 2012?

Ans: As per the statement of Mrs. Sashikala, my predecessor, the for OPD consultation fees was between Rs.450-500. There is no possibility for any doctor to charge above this rate but there is no physical evidence available with us as proof. We will be able to provide the list of patients who were offered consultation during the period 01-04-2009 to September 2012 as a soft copy.

Upon perusal of above statement, it could be gathered that the Manager (Operations) merely act as data collector and has no idea about the exact fee charged by the Doctor from each of the patient. Further, she is not authorized to collect fees for non-employee Doctors. The fee is

directly collected by the assessee's staff and such fee is not accounted for in the Hospital's books of account. Such category of doctors has discretion to fix their own fees and they merely pay monthly rent to the Hospital. The fees so collected by them are not booked in the books of Apollo Hospital. The range of fees being charged is only an estimated one and there is no physical evidence available before her. It could also be seen that apart from this statement, there is no corroborative evidence on record to support the working of Ld. AO. The estimate has been made merely on abstract figures.

6. It could also be seen that as per the submission of the assessee all out patients were not charged. The certain category of patients and review patients would not be charged if they visit within 15 days of first consultation. The fee prescribed by Apollo Hospitals for Master Health Check-up patients is Rs.150/- only. This being the case, the assessee Doctor cannot be expected to charge substantially higher amount as considered by Ld. AO and therefore, the estimation as made by Ld. AO could not be upheld.

7. We find that the whole basis of addition is the statement of Ms. Subhadra G. who does not possess any concrete data except abstract figures of number of patients. There is no corroborative evidence to support that so much of fees has been collected by the assessee from the patients. The assessee has also placed on record the certificate issued by Senior Vice-President (Finance) which clearly states that "the out-patient list maintained by the Information Technology Department of Apollo Hospitals includes several types of non-billed or non-charged patients also". The same supports the submissions of the assessee.

8. Pertinently, the assessee is a regular Income Tax Payer and works only in Apollo Hospital. His income averages to more than Rs.50 Lacs per year which could be tabulated as under: -

AY	Gross Fees as per Profit & Loss Account (Lacs)	Gross Income Declared (Lacs)	Total Declared	Net Taxable Income Declared (Lacs)
2011-12	71.31	45.04		43.89
2012-13	80.90	52.01		51.82
2013-14	92.55	53.85		51.29
2014-15	97.60	60.81		59.51
2015-16	98.48	58.16		56.21
2016-17	88.73	47.55		45.35

Based on above tabulation, it could not be accepted that the assessee would attempt to conceal income as estimated by Ld. AO. The Hon'ble Supreme Court in the case of **CIT vs Odeon Builders (P) Ltd (2019) 110 Taxmann.com 64 (SC)** has held that no addition can be made on the basis of third-party information gathered by the Investigation Wing of the Department.

9. Considering the facts and circumstances of the case, the impugned additions are not sustainable in law and therefore, we delete the impugned additions for all the years. Though the assessee has taken grounds challenging the validity of assessment proceedings also, however, these grounds have not been urged during hearing before us. Accordingly, no findings have been rendered on these grounds.

10. All the appeals stand partly allowed.

Order pronounced on 20th September, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

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