

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./IT(SS)A No.11 to 16/SRT/2021 &

आ.अ.सं./ITA No.40/SRT/2021 (AYs 2008-09 to 2014-15)

(Hearing in Physical Court)

Me & Mummy Hospital 2 nd Floor, Patwa Building, Opp. Tapi Baug Society, Varachha, Surat-395006 PAN No. AANFM 0445 Q	Vs	Dy. Commissioner of Income Tax, Central Circle-3, Room No. 507, Aaykar Bhavan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

आ.अ.सं./IT(SS)A No.17 to 22/SRT/2021 &

आ.अ.सं./ITA No.41/SRT/2021 (AYs 2008-09 to 2014-15)

Me & Mummy Hospital 3 rd Floor, Jainidhi Complex, Opp. Bahumali, Besides Navdi Ovara, Nanpura, Surat-395001 PAN No. AAGFM 2467 B	Vs	Dy. Commissioner of Income Tax, Central Circle-3, Room No.507, Aaykar Bhavan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से /Assessee by	Shri Hiren M. Diwan, C.A & Shri Dhruvang H. Diwan, C.A
राजस्व की ओर से /Revenue by	Shri Ashish Pophare, CIT-DR
सुनवाई की तारीख/Date of hearing	08.12.2022
उद्घोषणा की तारीख/Date of pronouncement	30.12.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This set of fourteen appeals by two assesseees are directed against separate orders of ld. Commissioner of Income-tax

(Appeals)-3 Surat [for short to as “Ld. CIT(A)”] dated 18.03.2021 and 04.03.2021 for the assessment years 2008-09 to 2014-15, which in turn arise out of assessment orders passed by Assessing Officer under section 143(3) r.w.s. 153A of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) on 18.03.2016.

2. In all appeals, the assesseees have raised identical grounds of appeals, except variation of additions on account of suppression of professional receipts, facts in all appeals are similar, therefore, with the consent of parties, all the appeals were clubbed, heard together and are decided by consolidated order to avoid conflicting decisions. For appreciation of facts, facts in assessment year 2008-09 in IT(SS)A No.11/SRT/2021 in the case of Me And Mummy Hospital is treated as “**lead**” case. The assessee in its appeal has raised the following grounds of appeal: -

IT(SS)A No.11/SRT/2021

“1) The ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.44,400/- made on the ground of suppression of professional receipts from the patients admitted in the hospital.

2) The appellant craves, leave to add, amend, alter, modify, substitute, delete, change or vary one or more or all the grounds of grounds of appeal.”

3. Brief facts of the case are that assessee is a partnership firm engaged in running of hospital at Surat. One of the partners of assessee is a Gynaecologist doctor. A search and seizure action under section 132 was carried out at residence as well as business premises of assessee on 04.03.2014. In said search medical professional of Surat were covered. The assessee-hospital was also covered under said search. During search action, certain incriminating evidence with cash were found from such premises. Consequent upon such search action, notice under section 153A was issued to assessee for assessment year under consideration on 15.09.2014 for filing return of income. In response to show cause notice under section 153A, the assessee filed its return of income for assessment year 2008-09 on 12.05.2015, declaring income of Rs.6,29,000/-. The case was taken up for scrutiny. The Assessing Officer after serving notice under section 143(2) and 142(1) proceed for re-assessment. During the assessment, the Assessing Officer noted that during search action in the assessee's hospital premises the search team found that accounting software used by assessee-hospital had an option for

modifying the receipts. The assessee-hospital used to add fixed receipt thereby suppression in the receipt. On analysis of computer (back-up) data retrieved from the computer of hospital in the hospital premises, it was found that the real receipt by hospital categorized as charged bill whereas actual bill shown as in patient bills. The charged bills did not contain any bill number, whereas the in-patient bills, which are kept for accounting purposes contains the bill number. Those patient who paid the bill in cash were given charged bill, which contain the actual payments received by the hospital. The patient who were having medical policies or whose medicals bills were reimbursed like ONGC, their charged bills and in-patients bills remains the same for the reasons that their payments were made by their company and routed through bank, hence, there was no possibility of changing the data.

4. The Assessing Officer also noted that assessee has shown some “Zero Receipt Patients” in IPD” indoor patient department. On analysis of disc of computer during the search action, it was noted that many patients were operated but payments made by them, are not accounted in

the books of account and such patients were referred as “Zero Receipt Patients-IPD”. In certain cases, payments were paid by those patients and payment of more were shown in cash. One such example print-out were screen out by Assessing Officer in para-7 of the assessment order. The Assessing Officer identified one of such patient, Smt. Prabhaven Bhagvanbhai Bhalala. The assessing officer on the basis of bill, copy of which is scanned by Assessing Officer in assessment order recorded that such patient made payment of Rs.18,500/-. However, no amount was entered in the books of account. The assessee recorded total 28 ‘zero receipt patient-IPD’ category. As per the hard disc, mode of payment against such patient is mentioned as cash in all cases but amount of charge is not mentioned. The Assessing Officer in order to verify the veracity of receipt issued notice under section 133(6) and required details of treatment obtained by her and payment made to the hospital by her. The assessing officer recorded that in case of Indoor Patient, the hospital never provides free of cost services. The assessing officer further recorded that it was also proved on the inquires under section 133(6). The

assessing officer recorded that probable reason of these “zero patient-IPD” is that these patient not demanded the receipt of a fee, which gave an opportunity to the assessee-hospital not to generate either charged bill or in patient bill. The Assessing Officer also recorded that during the course of recording statements of Dr. Arvind H Viradiya who admitted the fact of modification of receipts vis-à-vis suppression of receipt. The Assessing Officer recorded that during the assessment proceedings, the assessee was asked to produce the rate chart for different procedures vide order-sheet dated 09.03.2016 to furnish details by 11.03.2016. The Assessing Officer recorded that no details were furnished by assessee-hospital. The Assessing Officer on the basis of quantification of indoor “Zero Receipt Patients-IPD” prepared a chart by way of Annexure-A and made total of such total charges and worked out a figure of Rs.1.48 lakh as unaccounted income of assessee against the indoor “Zero Receipt Patients-IPD”.

5. Aggrieved by the addition, the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) assessee has filed combined written submission for assessment years 2008-09 to 2013-

14. The submission of assessee-hospital is recorded in pages 12-29 para-6-7 of the order of Ld. CIT(A). The assessee in its submissions stated that assessee-hospital is a well reputed and best gynaecology hospital in the city of Surat. The assessee-hospital was flourished practice since its inception and increasing year-after-year. The Sr. doctor / partner of the assessee-hospital issued strict instruction to its doctors under assessee-hospital to ensure that patient coming their hospital get best profession services and no dissatisfaction take place against the patients.
6. The Assessing Officer assumed that assessee has not charged any fees from certain indoor / admitted patients, in fact, from such patients, the fees were charged in all assessment years. The Assessing Officer prepared Annexure-A, wherein the details of free indoor patients charged were prepared by Assessing Officer. The Assessing Officer on the basis of such details noted on Annexure-A assumed that certain indoor patients were treated free. The assessee furnished the details of such patients from whom the fees were charged, though Assessing Officer assumed that they were treated free. The assessee furnished copy of

relevant bills, copy of registers, in Form No-3C has highlighted entries and relevant pages of cash book for all concerned assessment years. The assessee explained that in case of Smt. Prabha Bhagwanbhai Bhalala, that such patient was treating as free-of-cost by the assessee-hospital, in fact, the assessee charged fees. The assessee-hospital also submitted that in the details compiled to assessment year 2013-14, whereas Assessing Officer made addition in all assessment years and such action of Assessing Officer is not legally tenable and the addition on the basis of fact of one year cannot be made in various assessment years by making generalized statement as has been held in various case law by Hon'ble higher courts of the country. The Assessing Officer incorrectly recorded that finding in case of patient, Smt. Prabha Bhagvanbhai Bhalala, one was confronted with the assessee-hospital and no confrontation was made by Assessing Officer. The Assessing Officer also recorded similar finding after issuing notice under section 133(6) of the Act that such information was never confronted with the assessee and such observation of Assessing Officer was incorrect.

7. On the contrary, the assessee submitted various reply / confirmation from various patients for different assessment years, whereby the concerned patients had confirmed that as “Zero Receipt Patients-IPD” they were treated free by the assessee-hospital. The details of such responses of various patients were filed. The Assessing Officer incorrectly observed that in case of indoor patients, the assessee-hospital never provided free-of-cost services to the admitted patients. If such conclusion of Assessing Officer is upheld that no indoor patients were treated free-of-cost then why for the matter of partner of assessee-hospital, the assessee for treatment of received by them. The assessee submitted that it is settled law that unless the information collected at the back of assessee are confronted with the assessee-hospital during assessment proceedings, no addition on the basis of such information can be made. To support such submission of assessee, the assessee relied on certain case law. The assessee further submitted that Assessing Officer made addition on account of suppression of funds received from IPD patients, is made only on the basis of assumption and not on the basis of reliable piece of evidence as per

Annexure-A prepared by Assessing Officer which was enclosed with the assessment order. The Assessing Officer prepared a summary of total OPD patients treated free-of-cost by the assessee-hospital during the different assessment years in the following manner:

Assessment Year	Number of patients treated fee by the appellant according to the Id.AO	No. of patients in fact treated free in view of para (a) above
2008-09	28	28
2009-10	50	48
2010-11	29	29
2011-12	48	38
2012-13	21	20
2013-14	35	32

8. From the aforesaid details, the patients were treated free per date, does not figure even in any of the assessment years. The Assessing Officer worked out the huge addition in different assessment years on the basis of assumption without giving any concession for treating two-three free-of-cost of daily OPD patients, which the Assessing Officer has given to other doctors, who are covered by the same such action, if such concession is given to the assessee-hospital, the Assessing Officer would not have been in a position to make addition in case of assessee-hospital. The Assessing Officer stated that in the hard disallowance in the list of IPD patients, treated free-of-cost. In the last column of the list,

the word “cash” written, which shows that fees are collected in “cash” and for they were not accounted for. The assessee explained that as submitted earlier software of assessee-hospital was defective and therefore such word “cash” has been appeared in the list, though no cash or fees were charged by assessee-hospital. On the observation of Assessing Officer, that the partner of the assessee-hospital, during search action has accepted the suppressed fees in the statement recorded by such different years. The assessee submitted that such admission was made only for financial year 2013-14 relevant to assessment year 2014-15. The partners of assessee-hospital in his statement categorically stated that except in case of assessment year 2013-14 was suppressed of income has not been made by assessee-hospital in any of earlier financial year. The copy of statement of partners were furnished. The partner of assessee-hospital admitted undisclosed income of Rs.81 lakh for assessment year 2014-15 and paid due tax thereon while filing return of income. Thus, the Assessing Officer was not justified in holding that in the assessment order of assessment years 2008-09 to 2013-14 that partners of

assessee-hospital admitted suppression of income in any statement.

9. The assessee further stated that Assessing Officer before making addition on account of suppression of professional receipt from IPD patients had not issued any show cause notice to the assessee-hospital to afford an opportunity to represent or explained its case. The Assessing Officer made addition in complete defiance of law.
10. The Ld. CIT(A) after considering the contents of assessment order, submission of assessee and the materials placed before him and noted that addition on account of suppression of receipt on account of income from “Zero Receipt Patients-IPD” categories. The Assessing Officer noted that certain documents were found during the course of search action which contents real payment from ‘IPD categories of patients’. The Assessing Officer made inquiry from the case of Smt. Prabhaven Bhagvanbhai Bhalala, against whose name an amount of Rs. 18,500/- is mentioned in the cash memo. The Assessing Officer stated that through inquiry to inspector was made further assessee-hospital as fact from comparable fees struck was

given an additions were made. However, the assessee stated that whatever the charges recovered from the patients from accounted properly and there was no suppression of receipt. The assessee also took a stand that there were not confronted with the material of inquiry collected by Assessing Officer. The Assessing Officer objected that Assessing Officer factually incorrect that Shri Arvind Harjibhai Viradiya has admitted suppression of income for all those assessment years. Shri Arvind Harjibhai Viradiya (partner of assessee-hospital) admitted suppression of income only for assessment year under consideration for the year 2014-15, which has been shown in the regular return of income and no addition should be made. The Ld. CIT(A) held that Assessing Officer made addition on the addition of cash memo during the course of search action as mentioned in the assessment order itself. However, the Assessing Officer made addition of total gross receipt which cannot be held justified because as only profit or income part should be taxed as has been held by Hon'ble jurisdictional High Court in the case of CIT Vs President Industries (2000) 158 CTR 372 (Gujarat). On the basis of such reasoning the Ld.

CIT(A) restricted the addition to the extent @ 30% and remaining addition was deleted. Thereby ld CIT(A) upheld the addition to the extent of Rs. 44,400/- and remaining addition of Rs.1,03,600/- were deleted. Further, aggrieved the has filed present appeal before Tribunal.

11. We have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Departmental Representative (ld. CIT-DR) for the Revenue and have gone through the orders of lower authorities carefully. The Ld. AR for the assessee submits that no incriminating material was found in the search action carried out in case of assessee on 04.03.2014 to shat that assessee was has given free treatment to the IPD patients admitted rather the fact that assessee charged fees were found during the course of search action. The Assessing Officer prepared Annexure-A which was made a part of assessment order, copy of which is filed at pages 46 to 139 of the paper book filed for all assessment years by assessee, wherein Assessing Officer's last column mentioned the amount charged and added by Assessing Officer only as per his assumed of fees charged and that such fees are not

mentioned in the print out allegedly obtained from hard disclosure of computer of assessee-hospital. From such details, it can be showed that against the details of patients treated free-of-cost not a single amount stated as of fees charged. The Ld. AR for the assessee submitted that assessee-hospital explained that software seized from assessee was defective and appreciating such fact, the Ld. CIT(A) deleted huge addition in the block of assessment years on account of indoor IPD category cases. The Ld. AR for the assessee submits that if the intention of assessee was of suppressing the income under the guise of free treatment, the amount would be collected in cash only and not at all by banking channel, in which case, nobody would maintain such column. The Ld. AR for the assessee submits that as per details of page No.140 of paper book filed by assessee, the year-wise statement showing number of patients treated free according to the Assessing Officer is available. The statement shows that during each year, the assessee has treated of huge patients free and average patients treated were not worked out resultant rather which should have been accepted as genuine taking into

consideration that average doctors available to treat bill certain patients free-of-cost. The Ld. AR for the assessee submits that in case of other doctors, carrying on the same profession as genealogists, wherein similar search action was carried out, the same assessment concluded that due to poor patients and known patients can be reasonable accepted to be treated free-of-cost per day contrary to that, in assessee's own case, the same Assessing Officer made addition on the ground that assessee-hospital cannot treat free-of-cost even in the whole of the assessment year.

12. The Ld. AR for the assessee shows a special example in the name of first patient treated as free is Rashmi Hiren Diwan who is in fact wife of Ld. counsel for the assessee, was treated free due to their relationship with the doctors since their school times and who is their tax consultant from the beginning. The Ld. AR for the assessee also confirmed that prices have not charged in their case.

13. The Ld. AR for the assessee submits that though the Assessing Officer issued notice 133(6) to various patients, however, the Assessing Officer could not obtain even a single statement that they were treated free, in fact, fees

were charged from the patients. The Ld. AR for the assessee submits that entire additions were made directly without giving opportunities to the assessee and assessee also pointed out such fact during assessment proceedings and that such fact was brought to the notice of Ld. CIT(A). The Ld. AR for the assessee submits that he has given the indexation in his own case, however, there are many more patients whose income has been receipt has been accounted for. The Assessing Officer made the addition in all assessment years as assessee treated the patients free-of-cost.

14. The ld. AR for the assessee submits that in the form of prints out eligible taken from the hard disc impounded from the premises of assessee-hospital is not admissible and those admissibility of such evidence, the condition prescribed under section 65B(2) which states that certificate of two persons having controlled over use of computer, nor should arrive was regular paid into computer in the ordinary course of activity and that computer was operating properly during the relevant period. In absence of such certificate with regard to any electronic device for

admissibility of such evidence is mandatory for admission of evidence collected from such computer system. To support such submission, Ld. AR for the assessee relied upon the decisions of Hon'ble Apex Court:

- Arjun Paditrao Khothar vs. Kailash Kushanrao Gorantyal (Civil Appeals No. 20825-20826 of 2017)
 - Anvar P.V. vs. P.K.Basheer [2014] (3) ECS (1) (SC)
 - Ravinder Singh @ Kaku vs. State of Punjab [2022] Live Law (SC) 461]
15. The ld. AR for the assessee submits that all the allegations

of suppression of receipts are totally false and based really assessment and presumption. The assessee and its partners / doctors are paying tax to the government exchequer for assessment year 208-09 and the assessee-firm has paid tax of Rs.33,17,496/- and the partners of assessee have paid tax of Rs.28,22,084/-. Thus, total tax by assessee-hospital and partners of assessee is Rs.61,39,580/-. Therefore, the assumption of Assessing Officer that the assessee-hospital has suppressed the receipt of IPD patients of Rs.144 lakh is totally baseless. The Ld. AR for the assessee furnished the following chart showing the details of income by assessee-hospital and partners of assessee together for different assessment years :

A.Y	Profit before partners remuneration and interest	Taxes paid by the firm	Taxes paid by the partners of the firm	Total taxes paid by the firm and partners
2017-18	5,65,00,000	65,40,959	1,89,52,916	2,57,93,875
2016-17	5,26,29,508	73,71,497	1,71,28,433	2,44,99,930
2015-16	4,66,48,6614	61,34,002	1,53,64,554	2,14,98,556
2014-15	4,47,75,249	60,56,341	1,72,62,374	2,33,18,715
2013-14	3,42,31,695	42,77,447	1,08,45,333	1,51,22,780
2012-13	4,50,31,123	56,75,514	97,07,318	1,53,82,832
2011-12	4,16,14,019	50,68,252	79,42,526	1,30,10,778
2010-11	3,05,75,777	36,80,75	59,89,897	96,70,652
2009-10	2,57,80,940	50,14,035	36,76,099	89,90,134
2008-09	1,87,00,808	33,17,496	28,22,084	61,39,580
TOTAL	39,64,87,733	5,43,36,298	10,96,91,534	16,31,27,832
AVERAG	3,96,48,773	53,43,630	1,09,69,153	1,63,12,783

16. The Ld. AR for the assessee on the basis of aforesaid submission, Ld. AR for the assessee submits that there is no suppression of receipts at all and entire addition is liable to be deleted. Ld. AR for the assessee while referring the order of Ld. CIT(A) submitted that Ld. CIT(A) deleted the other addition by taking view that there was no incriminating material for making such addition with regard to suppression of receipt of OPD patients, however, the Ld. CIT(A) restricted the addition @ 30% which were excluded based on assumption and presumption procedure.
17. On the other hand, Ld. CIT-DR for the Revenue supported the order of lower authorities. Ld. CIT-DR submits that Assessing Officer made addition on the basis of his appreciation of evidence found during the course of search action and inquiries conducted by her during assessment

stage. The Assessing Officer made a reasonable addition only with regard to discrepancy, the Ld. CIT(A) found with regard to “Zero Receipt Patients-IPD”. The Ld. CIT(A) reasonably restricted the addition to the extent of 30% of such suppressed receipts, which is quite reasonable.

18. We have heard the rival submissions of both the parties and have gone through the order of lower authorities carefully. We find that at the time of framing assessment the assessing officer made additions by taking view that on analysis of computer disc, during the search action, it was noted that many patients were operated but amounts paid by them were not accounted and such payments were referred as “Zero Receipt Patients-IPD”. The Assessing Officer identified one of the patient, Prabhaven B Bhalala. The Assessing Officer issued notice under section 133(6). The assessing officer recorded that it was also proved on the inquires under section 133(6). We find that the information gathered by assessing officer was not confronted with the assessee. The Assessing Officer further took his view that probable reason of these “zero patient-IPD” is that these patient not demanded the receipt of a fee, which gave an

opportunity to the assessee- hospital not to generate either charged bill or in patient bill. In our view such view which was taken on “probable reason” is certainly a presumption. We further find that the Assessing Officer made additions in all years on the basis of information gathered under section 133(6), though such patient, namely, Prabha B Bhalla relates to assessment year 2013-14, whereas the Assessing Officer made addition in all assessment years, which is not tenable. Even otherwise, Assessing Officer has not confronted the information gathered from such patient to the assessee. The assessing officer also incorrectly took her view that assessee-hospital never provided free-of-cost services to the admitted patients. Such observation of Assessing Officer is contrary to the finding of Assessing Officer in case of Dr.Pregna H. Pathak (PAN No.AGRPP 5765A), whose assessment was also completed by same Assessing Officer and allowed to patients at zero patient per/day for AYs 2008-09, 2009-10 and 2010-11. We further find that though the Assessing Officer recorded that there was 28 patients whose aggregate of Rs.148,000 was added

as suppress receipt, however, total number of patients in the Annexure-A is 26.

19. We find that the Ld.CIT(A) restricted the addition to the extent of 30% of alleged suppressed receipt by taking view that only profit element of reasonable basis should be taxed.
20. We noted that the Assessing Officer has granted concession of two patients in respect of other hospitals for treatment of free patients, however, no such concession was allowed in case of assessee-hospital. It is a common factor that a privately managed hospital has to treat second category of patients as free-of-cost, which may include relatives of doctors, para-medical staffs, close relatives or family friends etc., During the hearing, we also find that certain patients which were closely related with the partners of assessee-hospital. Thus, in view of aforesaid factual discussion, we find that the Assessing Officer has made addition without being confronting information collected by her at the back of assessee-hospital. No show cause notice before making such addition on account of suppressed addition, therefore the addition is not justified. We further find that allegation of suppressed income for A.Y 2008-09 is of Rs.148,000,

however, the assessee-hospital had paid the tax of Rs.33,17,496/- and the partners had paid tax of Rs.28,22,084/- thus total tax of Rs.61,39,580/- was paid. Thus, we find merit in the submission made by Ld. AR for the assessee that allegation of suppress receipt of IPD patients of Rs.1,48,000/- is not tenable. Hence, we direct the Assessing Officer to delete the entire addition of suppressed receipt on account of IPD patients. In the result, the grounds of appeal raised by assessee are allowed.

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

**IT(SS)A No.12-16/SRT/2021 and ITA No.40/SRT/2021
(A.Ys. 2009-10 to 13-14)**

22. As recorded above, in all appeals the assessee has raised similar grounds of appeal, as raised in A.Y. 2008-09, which we have allowed, therefore, following the principle of consistency, remaining assessee's appeals are allowed with similar observation as in IT(SS)A No.11/SRT/2021 (supra).

**IT(SS)A No.17-22/SRT/2021 and ITA No.41/SRT/2021
(A.Ys. 08-09 to 13-14)**

23. As recorded above, in all appeals the assessee has raised similar grounds of appeal, as raised in IT(SS)A No.11/SRT/2021, which we have allowed, therefore,

following the principle of consistency, all these assesseees are also allowed with similar observation as in IT(SS)A No.11/SRT/2021 (supra).

24. In combined result, all appeals of the assessee are allowed.

A copy of the instant common order be placed in the respective case file(s).

Order pronounced in the open court on 30/12/2022.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER]

Surat, Dated: 30/12/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

Sd/-

(PAWAN SINGH)

[न्यायिक सदस्य JUDICIAL MEMBER]

By order

Sr.P.S./Assistant Registrar, ITAT, Surat