

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.8661/Del/2019  
Assessment Year: 2015-16

AB Medicos Private Ltd.,  
1196/6-C 13 Ground Floor,  
R/S, Govind Puri,  
New Delhi – 110 019.

Vs. CIT (Exemption),  
New Delhi.

PAN: AAMCA2411L

(Appellant)

(Respondent)

Assessee by	:	Shri Rohit Tiwari, Advocate
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	14.12.2022
Date of Pronouncement	:	15.03.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 04.10.2019 of the CIT(A)-I, New Delhi, for AY 2015-16.

2. The Id. Counsel for the assessee submitted that the entire impugned amount of Rs.2.20 crores received from M/s Technicare Biomed India Pvt. Ltd. was reinvested in the shares of M/s Rockland Hospitals Ltd. except an amount of Rs.187.30. The Id. Counsel further submitted that the copy of assessment order in the case of M/s Rockland Hospitals Ltd. dated 26.12.2017 for AY 2015-16 clearly reveals that the AO has made addition u/s 68 of the Income-tax Act, 1961 (for short, 'the Act') on two

amounts including the amount received from the present assessee, AB Medicos Pvt. Ltd., which is clearly discernible from the table reproduced by the AO at page 10 of the assessment order. Placing reliance on the order of *ITAT Delhi dated 23.07.2018 in ITA No.6070/Del/2017 for AY 2014-15* in the appeals filed by M/s Sukumar Enterprises Ltd. and M/s Sanskriti Tradex Pvt. Ltd., the Id. Counsel submitted that under identical facts and circumstances, the Tribunal has deleted the addition made in the hands of conduit companies, who, after receiving the amount on behalf of M/s Rockland Hospitals Ltd., invested the same in the shares of M/s Rockland Hospitals Ltd., who was the ultimate beneficiary during immediately preceding assessment year AY 2014-15. Therefore, the addition made by the AO and confirmed by the Id.CIT(A) in the present appeal may kindly be deleted. Placing reliance on the judgement of the Hon'ble Bombay High Court in the case of *PCIT vs. Alag Securities Pvt. Ltd., in ITA No.1512/2017, dated 12.06.2020*, the Id. Counsel submitted that the grievance of the assessee is also squarely covered by this judgement of the Hon'ble High Court.

3. The Id. Counsel further submitted that under identical facts and circumstances, the AO has made addition in the hands of M/s Sukumar Enterprises Ltd. and M/s Sanskriti Tradex Pvt. Ltd. who reinvested the amount in M/s Rockland Hospitals Ltd., and the Tribunal has deleted the addition in the hands of the said two companies by order dated 23.07.2018 (supra) for AY 2014-15. He further explained that the addition was made by the AO in the hands of M/s Rockland Hospitals Ltd., which was confirmed by the Id.CIT(A) and the ultimate beneficiary M/s Rockland Hospitals Ltd. settled the issue under *Vivad Se Vishwas Scheme* and paid taxes thereon and the appeal of M/s Rockland Hospitals Ltd. was dismissed as 'withdrawn' by the ITAT by order dated 29.06.2021 for AY 2014-15. The Id. Counsel vehemently pointed out that

the assessee has consistently been claiming to be a conduit company and despite this fact, the AO made addition in the hands of the assessee u/s 68 of the Act and the Id.CIT(A) confirmed the same without appreciating the surrounding facts and circumstances. Therefore, the addition made in the hands of the conduit company may kindly be deleted.

4. Replying to the above, the Id. Sr. DR strongly opposed the contentions of the Id. Counsel of the assessee and submitted that as per the requirement of section 68 of the Act, the onus was on the shoulders of the assessee to show and substantiate the identity and credit worthiness of the investor Technicare Biomed India Pvt. Ltd. and genuineness of the transactions, but, the assessee is merely submitting a sole baseless contention that it is a conduit company and after receiving the amount from M/s Technicare Biomed Pvt. Ltd., almost the entire amount was reinvested in M/s Rockland Hospitals Ltd., and the AO has made addition in the hands of M/s Rockland Hospitals Ltd., hence, no addition is required to be made in the hands of conduit assessee company. The Id. Sr. DR vehemently submitted that the proposition relied on by the Id. Counsel in the case of *PCIT vs. Alag Securities Pvt. Ltd. (supra)* is not applicable to the present case as, in that case, the assessee received cash and in lieu thereof issued cheques for the amounts slightly lesser than the quantum of deposits wherein the difference was representing the commission realized by the assessee which is not the position in the present case.

5. The Id. Sr. DR also submitted that the assessee is also harping on the assessment made in the hands of M/s Rockland Hospitals Ltd. for AY 2014-15, wherein M/s Rockland Hospitals Ltd., the so-called ultimate beneficiary, carried the matter upto the Tribunal level and, thereafter, opted to take benefit *of Vivad Se*

*Vishwas Scheme* and paid taxes thereon. The Id. Sr. DR submitted that this was the case of AY 2014-15 and these facts and findings cannot be taken and considered in the succeeding present AY 2015-16 blindly without comparison of facts. He further contended that in the present case for AY 2015-16, the assessee has produced only copy of assessment order for AY 2015-16 in the case of M/s Rockland Hospitals Ltd. and for being unable to provide further details regarding status of the said assessment order. The Id. Sr. DR also submitted that in absence of relevant documentary evidence establishing identity, capacity and creditworthiness of investor company as well as genuineness of transaction, it has to be presumed that the assessee has failed to substantiate the identity and credit worthiness of Technicare Biomed India Pvt. Ltd., and genuineness of the transaction to discharge the onus lay on its shoulders u/s 68 of the Act. Secondly, the assessee has only shown that the addition has been made in the hands of M/s Rockland Hospitals Ltd., but, what is the ultimate status of that addition is not clear from the submissions as well as the paper book filed by the assessee. Therefore, the theory of conduit company being afterthought may kindly be dismissed confirming the addition.

6. Placing rejoinder to the above, the Id. Counsel submitted that when the addition of identical amount has been made in the case of the ultimate beneficiary M/s Rockland Hospitals Ltd., then, no addition is required to be made in the case of the present assessee being a conduit company. However, on being asked by the Bench, the Id. Counsel submitted that he is unable to submit any factual position regarding status of the addition made by the AO in the hands of M/s Rockland Hospitals Ltd. as to whether the taxes has been paid thereon or the matter is still under litigation.

7. On careful consideration of the above rival submissions, first of all, we note that undisputably the assessee received Rs.2.20 crores from Technicare Biomed India Pvt. Ltd. during AY 2014-15 pertaining to AY 2015-16 also. It is also not in dispute that the assessee company in turn invested the amount of Rs.2,19,99,902.70, leaving the balance amount of only Rs.187.30 in the shares of Rockland Hospitals Ltd. However, for the purpose of section 68 of the Act, the onus was on the shoulders of the assessee that the investor company M/s Technicare Biomed India Pvt. Ltd. was having identity, capacity and credit worthiness for making such huge investments in the assessee company and it was also the duty of the assessee to establish the genuineness of a transaction.

8. In the present case, from the orders of the authorities below as well as from the paper book filed by the assessee before us, we are unable to see any document such as copies of PAN, return of income, balance sheet, confirmation, bank statements of investor company M/s Technicare Biomed India Pvt. Ltd. discharging the onus as per the requirement of section 68 of the Act. We also note that the assessee has successfully demonstrated that almost the entire amount received from M/s Technicare Biomed India Pvt. Ltd. was invested in Rockland Hospitals Ltd. and the AO made addition u/s 68 of the Act in the hands of M/s Rockland Hospitals Ltd. on account of two investments including the investment made by the assessee. These documents only establish the use of amount received by the assessee, but, these facts are not capable to discharge the onus lay on the shoulders of the assessee in this regard under provisions of section 68 of the Act. The theory of conduit company is not acceptable as, for being a conduit company, the assessee is duty bound to

establish that the company from whom it received the amount and the company in which it invested the same amount were of the same group and it was merely an intermediary or conduit company. In the present case the assessee has miserably failed to substantiate the identity, capacity and credit worthiness of the investor M/s Technicare Biomed India Pvt. Ltd. as well as the genuineness of the transaction. Except name, no details of PAN No., address, bank statement, ledger, confirmation and supporting copies of financial statements of investor M/s Technicare Biomed Pvt. Ltd. have been filed by the assessee. At the cost of repetition, we may also point out that the assessee has shown that the amount invested by the assessee company in Rockland Hospitals Ltd. has been added in the hands of recipient M/s Rockland Hospitals Ltd. u/s 68 of the Act, but, ultimate factual position of that addition is missing. Therefore, the benefit of the order of the ITAT in the case of Sukumar Enterprises Limited (supra) and other orders pertaining to AY 2014-15 is not available to the assessee in the present case as, in that case, it was established that the recipient and ultimate beneficiary company has paid taxes, etc., on the impugned amount. Therefore, we are unable to agree with the contentions of the Id. Counsel of the assessee in this regard and, hence, are unable to see any valid reason to interfere with the orders of the authorities below. Consequently, the grounds of the assessee being devoid of merits are dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 15<sup>th</sup> March, 2023.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated:15<sup>th</sup> March, 2023.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi