

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.7338/Del/2019
Assessment Year: 2012-13

The Addl. CIT, Special Range-3, New Delhi 11002	vs.	M/s Fortis Healthcare Ltd. C/o Escorts Heart Institute & Research Centre Okhla Road, New Delhi 110025 PAN AAACF 0987 E
(Appellant)		(Respondent)

For Revenue :	Shri T. James Singson, CIT(DR)
For Assessee :	Shri R. M. Mehta, CA

Date of Hearing :	25.04.2023
Date of Pronouncement :	16.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-34, New Delhi dated 27.06.2019 for AY 2012-13.

2. The grounds of appeal raised by the revenue are as follows:-

1. *On the facts and in the circumstances of the case to each Ground and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs.9,11,62,023/- made by the AO Rs. 2,95,77,518/-u/s 14A r. w. Rule 8D of the I.T. At without considering the fact that the assessee failed to reconcile the bank statement and some of the expenses claimed in P&L were attributable to the exempt income.*

2. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs. 1,35, 19,052/- made by the AO on account of credit card expenses, without considering the fact that the assessee failed to reconcile the credit card payment with the information available in AIR for the year under consideration even during the remand proceedings.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 12,47,758/- made by the AO on account of interest income not offered to tax, without considering the fact that assessee failed to*

reconcile the same with the information available in AIR for the year under consideration even during the remand proceedings.

3. Apropos ground no. 1 the Id. CIT(DR) submitted that the Ld.CIT(A) has erred in deleting the disallowance of Rs.9,11,62,023/- made by the AO Rs. 2,95,77,518/-u/s 14A of the I.T Act 1961 r.w.Rule 8D of the I.T. Rules 1962, without considering the fact that the assessee failed to reconcile the bank statement and some of the expenses claimed in P&L were attributable to the exempt income. The Id. counsel of assessee submitted that the assessee has not earned any exempt income during the year therefore the Id. CIT(A) was right in deleting the addition by following the judgments of Hon'ble jurisdictional High Court of Delhi in particularly in the case of Cheminvest Ltd. vs .CIT 378 ITR 33 (Del.).

4. On careful consideration of above, we are inclined to hold that undisputedly rather admittedly the assessee has not earned and claimed any exempt income therefore in view of propositions rendered by Hon'ble jurisdictional High Court of Delhi including the judgment in the case of Cheminvest Ltd. vs. CIT (supra) no disallowance u/s. 14A of the Act, r.w.r. 8D of the Rules is called for. Hence we are inclined to hold that the Id. CIT(A) was right and justified in deleting the entire addition and therefore no interference is called for. Accordingly, ground no. 1 of revenue is dismissed.

5. Apropos ground no.2 of revenue the Id. CIT(DR) submitted that the Ld.CIT(A) has erred in deleting the disallowance of Rs. 1,35, 19,052/- made by the AO on account of credit card expenses, without considering the fact that the assessee failed to reconcile the credit card payment with the information available in AIR for the year under consideration even during the remand proceedings. The Id. CIT(DR) submitted that the credit card expenses claimed by the appellant was not allowable as the appellant failed to establish that the expenses incurred through credit card were wholly and exclusively for the purposes of business of assessee. Therefore, he submitted that the First Appellate Order may kindly be set aside by restoring that of the Assessing Officer.

6. Replying to the above, the Id. counsel of assessee drew our attention towards para 7.1 to 7.4 of First Appellate Order and submitted that the Id. CIT(A) called remand report from the Assessing Officer wherein the Assessing Officer did not made or offered any comment against the assessee on this issue therefore the Id. CIT(A) was right in allowing part relief to the assessee and restricted the disallowance to 20% of total claim. The Id. counsel submitted that the Assessing Officer made addition without any basis which was rightly restricted to the 20% of the total claim by the Id. CIT(A) and therefore the order of Id. CIT(A) may kindly be upheld.

7. On careful consideration of submissions, we note that the Assessing Officer made disallowance and addition on the basis of AIR information and by observing that the appellant has failed to reconcile the credit card payment made through American Express bank credit card. The Id. CIT(A) considered and admitted additional evidence and remand report of the Assessing Officer was called but the Assessing Officer simply objected to the admission and credence of the additional evidence without making any adverse comment against the assessee. The Id. CIT(A) noted that the appellant has filed additional evidence proving that the credit card payments mostly related to travelling expenses account but the amount mentioned in the credit card payment details did not tally with the travelling expenses detail. In such a situation of mismatch the Id. CIT(A) rightly held that the credit card payment relate to travelling expenses as well as other expenses also and hence the entire credit card expenses claim by the appellant cannot be allowed fully as the appellant has failed to substantiate an establish that the entire expenses and payment made through America Express bank credit card were incurred wholly and exclusively for the purpose of business of assessee. With these observations the Id. CIT(A) has restricted the disallowance to 20% of the total claim to the extent of Rs. 34,26,760/- against which there is no appeal by the assessee.

8. In view of foregoing discussion, we reach to a logical conclusion that the Id. CIT(A) was rightly adjudicate the issue by considering additional evidence and calling remand report from the Assessing Officer and he was quite correct and justified in restricting the disallowance to 20% of total claim of assessee and granting relief pertaining to the remaining 80% claim made by the assessee. We are unable to see any valid reason to interfere with the conclusion arrived by the Id. CIT(A) and hence we uphold the same. Accordingly, ground no. 2 of revenue is also dismissed.

9. Apropos ground no. 3 the Id. CIT(DR) contended that under the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 12,47,758/- made by the AO on account of interest income not offered to tax, without considering the fact that assessee failed to reconcile the same with the information available in AIR for the year under consideration even during the remand proceedings. He submitted that the Id. CIT(A) has dismissed stand of the Assessing Officer without any basis therefore impugned first appellate order may kindly be set aside by restoring that of the Assessing Officer on this issue.

10. The Id. counsel submitted that the Id. CIT(A) in paras 8.1 to 8.4 rightly appreciated the facts and circumstances of the issue and thereafter rightly held that the appellant filed details of interest & others and offered the same for taxation and therefore he rightly held that no additions is called for. He further submitted that the Assessing Officer was directed to verify the same from details of interest income but the

appellant could not explain the difference of Rs. 16,868/- and the disallowance was restricted to this extent against which the assessee has not filed any appeal to terminate the litigation. He submitted that when the details of interest and others have been offered for taxation then the Id. CIT(A) was right in deleting the disallowance/addition.

11. On careful consideration of above submissions, at the very outset, from the first appellate order we note that during proceedings the appellant submitted that the Assessing Officer is not correct in making addition since the interest on refund has been duly accounted for partly in preceding year ending on 31.03.2011 and partly amounting to Rs.12,47,000/- in present FY 2011-12 ending on 31.03.2012 pertaining to present AY 2012-13. The Id. CIT(A) has also given liberty and direction to the Assessing Officer to verify that as to whether the assessee has offered the interest on refund for taxation for AY 2011-12 and 2012-13. In such a situation no prejudice has been caused to the revenue and there was no leakage of revenue as the interest on refund received by the assessee was offered for taxation by the assessee as per requirement of the Act. The Id. CIT(A) was quite correct and justified in confirming the addition to the extent of Rs/ 16,868/- as the assessee could not explain the difference of said amount. Therefore, we are constrained to hold that no interference is called for in the first appellate order on this issue as the Id. CIT(A) has noted correct findings and we are unable to see any reason to interfere the same. Accordingly, ground no. 3 of revenue is also dismissed.

12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 16.06.2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER
Dated: 16th June, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi