

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./ITA No.355 & 365/SRT/2023

(AYs 2013-14 & 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, Surat, Room No. 507, Aayakar Bhawan, Majura Gate, Surat-395001
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Hiren M. Diwan, C.A & Shri Dhruvang H. Diwan, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	18.05.2023 & 22.05.2023
सुनवाई की तारीख/Date of hearing	02.11.2023
उद्घोषणा की तारीख/Date of pronouncement	06.11.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeal assessee are directed against common orders of Id. Commissioner of Income-tax (Appeals)-4 Surat [for short to as “Ld. CIT(A)”] dated 18.03.2021 passed under section 154 of Income Tax Act, 1961 (‘the Act’) for the assessment years 2013-14 & 2014-15. The facts related to passing order under section 154 in both the years are common, therefore, with the consent of parties, both the appeals were clubbed, heard together and are decided by consolidated order to avoid conflicting decision. For appreciation of facts, facts in assessment year 2013-14 in ITA No.355/SRT/2023 is treated as “**lead**” case. The assessee in its appeal has raised the following grounds of appeal: -

“1) The ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.2,28,015/- made on the ground of suppression of professional receipts from the patients under OPD category.

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.”

2. Brief facts of the case are that assessee is a partnership firm engaged in providing medical services by running of hospitals at different location in Surat. Facts related in grounds of appeal are that pursuant to search action carried out on assessee group on 04.03.2014, assessment for assessment year 2013-14 was completed under section 143(3) r.w.s. 153A on 18.03.2016. The assessing Officer while passing the assessment order made addition of Rs.7,60,050/- on account of “Zero Receipt Patients-OPD” (Out-door Patient). The Ld. CIT(A) while deciding appeal of assessee for AY 2008-09 to 2014-15 on 23.02.2021 quashed/ deleted entire subject addition, by taking view that no such addition is sustainable in view of the decision of Hon’ble jurisdictional High Court in the case of PCIT Vs Saumya Construction P. Ltd. (2016) 95 CCH 0335 (Guj). However, the order dated 23.02.2021 was rectified *suo motu* in order dated 18.03.2021 by invoking provision of Section 154 of the Act. The Ld. CIT(A) while rectifying his order noted that on going through his order, found that assessment order for assessment years 2013-14 and 2014-15 were got abated. Therefore, the ratio of case law in the case of Saumya Construction P. Ltd. (supra) is not applicable in those assessment years. The Ld. CIT(A) after giving show cause notice rectified his order. The ld CIT(A) in rectified order,

restricted the addition of Assessing Officer on account of “Zero Patient-OPD” to the extent of 30% thereby granted part relief. Aggrieved by the order of Ld. CIT(A) the assessee has filed present appeal before the Tribunal.

3. We have heard the submission of learned Authorized Representative (Ld. AR) for the assessee and learned Senior-Departmental Representative (ld. Sr-DR) for the Revenue and have gone through the orders of lower authorities carefully. The Ld.AR for the assessee submits that while making the addition on account of “Zero Patient-OPD” in the assessment order, no show cause notice for proposing such addition was issued by the Assessing Officer. The assessee in the statement of fact, clearly and categorically raised such issue. The Ld. AR for the assessee submits copy of statement of fact filed along with regular appeal, is placed on record. Since, no show cause notice issued before making such addition, therefore basis of addition itself is wrong and liable to be deleted. In alternative submission, Ld. AR for the assessee submits that assessing officer also made similar addition on account of “Zero Patient-IPD”, which was also challenged by the assessee. the ld CIT(A) partly allowed relief to the assessee in his order dated 23.02.2021. however, on further appeal by assessee before Tribunal entire additions were deleted by the combination of this Bench in order dated 30.12.2022 in ITD(SS)A Nos.11-16/SRT/2021, IT(SS)A Nos.17-22/SRT/2021 & ITA Nos.40-41/SRT/2021. This bench while granting relief to the assessee on similar addition of “IPD patient” has held the finding of Assessing Officer “on probable reason”

is certainly a presumption. The Ld. AR for the assessee submits that it was a search case and no addition can be sustained on mere presumption, if the same is not based on seized material, however, Ld. CIT(A) while rectifying his order, restricted the addition to the extent of 30% on suppressed receipt and taxed only "profit element". Once, similar addition on Indoor Patient (IPD) patient was deleted by this Tribunal. Therefore, keeping in view the principle of parity, this addition is also liable to be deleted. The Ld. AR for the assessee submits that assessee is liable to be succeeds on legal submission as well as on merit.

4. On the other hand, Ld. Sr-DR for the Revenue submits that addition made by Assessing Officer was, in fact, based on seized material, which is the print out extracted from computer data, that assessee was not maintained proper record of outdoor patient (OPD). The entry in the computers date were not in a systematic manner or date-wise. By pointing out such discrepancies on page-19 of paper book, Ld. Sr-DR for the Revenue submits that entries on 9th May 2012, was shown earlier i.e., date of 8th May, 2012. And on the basis of such discrepancies, the Ld. Sr-DR for the Revenue submits that addition of OPD patient based on seized material. So far objection with regards to non-issuance of show cause notice on the subject addition, the ld. Sr-DR for the Revenue submits that Assessing Officer in his assessment order clearly recorded that assessee was given show cause notice vide order-sheet entry dated 03.03.2016 to explain such discrepancies with regard to "Zero Receipt Patients-OPD". The ld CIT(A) has already

granted substantial relief in his order, so the assessee does not deserve further relief.

5. In rejoinder submission, the ld. AR for the assessee submits that Assessing Officer failed to appreciate day to day the practice of assessee-hospital. The assessee is running a well-known and reputed hospital in Gujarat as a Maternity centre. On number of times, the patients visited for follow-up all procedure to show their test report carried out on earlier occasions on the advice of specialist doctors and in such cases no fees are charged by the assessee-hospital. Besides there are number of patients who are either family members of doctors, staff doctors or para-medical staffs or recommended by Member of Legislative Assembly or Member of Parliament or by Senior bureaucrats of Central and State Government, which are to be consulted free-of-cost. Thus, there is no ambiguity in the record of fees receipt in OPD category.
6. The Ld. AR for the assessee in his other submission, submits that he strongly object for admissions of digital date extracted from the computers of assessee by search team without being certified by a requisite certificate as required under section 65B(4) of Evidence Act, which is a condition precedent for admissibility of evidence of electronic record. As obtaining a certificate under section 65B(4), is not a mere formality, but it is mandatory for reliance of such electronic evidence. The Assessing Officer is relying on such electronic record without obtaining a certificate under section 65B(4). To support his view, Ld. AR for the assessee relied on Hon'ble Apex Court in Anvar P.V. vs. P.K.

Basheer & Others 2014 (3) ECS (1) (SC) and in the case of Ravinder Singh @ Kaku Vs State of Punjab (2022 Live Law (SC) 461). The ld AR for the assessee also relied on the Investigation Manual about digital evidence circulated by Central Board of Direct Taxes (CBDT).

7. We have considered the rival submissions of both the parties and have gone through the order of lower authorities carefully. We find that Assessing Officer made addition of Rs.7,60,050/- on account of "Zero Patient-OPD by taking view that assessee has recorded zero receipt again such total patients of 5797 in OPD category. The zero receipt cases are often used to conceal the receipt, out of book. The Assessing Officer allowed two patients per day, in OPD category thereby allowed 730 number of patients in a year, out of total patients in such category. The Assessing Officer worked out average consultancy fees of OPD category @ Rs.150/- per patient and added Rs.7,60,050/- as unaccounted income of assessee. The Ld. CIT(A) while passing order under section 154 restricted such addition to the extent of 30% being profit element of unrecorded receipt and deleted remaining addition. We find that Assessing Officer has adopted a figure of Rs.100/- as minimum charge and Rs. 3,00/- as maximum charge of consultancy fees in OPD and worked out average consultancy fees of Rs.150/- per patient adopting average consultancy fees, is nothing but on presumption.
8. We further find that assessing officer made similar addition in respect of indoor patient (IPD patient), and on appeal before ld CIT(A) it was also restricted to 30% by ld CIT(A) in order dated 23.02.2021. And on

further appeal before Tribunal such additions were deleted in IT(SS)A No.11-16/Srt/2021, 17-22/Srt/2021 & ITA No.40-41/Srt/2021 for assessment years 2008-09 to 2014-15 dated 30.12.2022. The relevant part of order of this Tribunal is extracted below;

“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.”

9. Considering the fact that we have allowed full relief to the assessee on the addition on the “Zero Patient IPD”, which were also based on the similar reasoning, thus, consistently following our decisions the impugned additions in the present appeal on account of “Zero Patient-OPD” is also deleted. Keeping in view the facts that we have allowed full relief to the assessee, therefore, consideration and adjudication on

other alternative submissions of ld AR for the assessee have become academic. In the result, the grounds of appeal raised by assessee is allowed.

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

ITA No.365/SRT/2023 (A.Y. 14-15)

11. As recorded above, the assessee in this year has also raised similar grounds of appeal as raised in ITA No.355/Srt/2023 for A.Y. 2013-14, which we have allowed. Thus, following the principle of consistency, this appeal is allowed with similar observation.

12. In combined result, both appeals of the assessee are allowed. Registry officials are directed to copy of this order in the respective case file(s).

Order pronounced in the open court on 06/11/2023.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 06/11/2023

Sd/-

(PAWAN SINGH)

Dkp. Out Sourcing Sr.P.S

Copy to:

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

By order

// True Copy //

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