

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JABALPUR
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 19/JAB/2019 (A.Y. 2016-17)

DCIT, Central Circle, Ramnath Building, Napier Town, Jabalpur-482001, Madhya Pradesh.	Vs.	Jabalpur Hospital & Research Centre, Pvt Ltd Russel Crossing, Napier Town, Jabalpur-482001 Madhya Pradesh
PAN/GIR No. : AABCJ1959K		
Appellant	..	Respondent

CO.No.04/JAB/2019 (A.Y. 2016-17)
(IN ITA No.19/JAB/2019)

Jabalpur Hospital & Research Centre Pvt Ltd, Russel Crossing, Napier Town, Jabalpur-482001. Madhya Pradesh.	Vs.	DCIT, Central Circle, Ramnath Building, Napier Town, Jabalpur-482001. Madhya Pradesh.
PAN/GIR No. : AABCJ1959K		
Appellant	..	Respondent

Assessee by :	Shri Dhiraj Ghai.CA.AR
Revenue by :	Shri Saad Kidwai. CIT-DR

Date of Hearing	21.09.2023
Date of Pronouncement	20.11.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)(CIT(A))-1, Jabalpur passed u/sec 250 of the Act and the assessee has filed the cross objections. We shall take up ITA.No.19/JAB/2019 as a lead case and facts narrated. The revenue has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 1,75,00,000/- made by the Assessing Officer on account of surrender of undisclosed income not honored subsequently by the assessee.*
- 2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing relied of Rs. 65,13,121/- out of addition of Rs. 81,57,450/- made by the Assessing Officer on account of different of stock found.*
- 3. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 10,40,000/- made by the Assessing Officer on account of cash found.*
- 4. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 24,20,375/- made by the Assessing Officer on account of interest free loan given to the Global Foundation and Medical Education without appreciating the fact that the assessee is claiming huge expenditure on account of financial charges and at the same time advancing interest free loans to the associate concern.*

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date; the appeal is finally heard for disposal..

2. The brief facts of the case are that, the assessee company is engaged in Hospital and research services. There was a search and seizure operations u/sec 132(1) of the Act carried out in the Jabalpur Hospital and Metro Hospital Group of cases on 17.11.2015. The search was conducted in the hospital premises, college premises, office premises, residence of key persons and associated persons. Whereas in the search operations some incriminating documents were found and seized and which also includes loose papers, gold and jewellery and a statement u/sec 132(4) of the Act was recorded. Subsequently, notice u/sec 153A of the Act was issued on 28.07.2016 calling for the return of income for each of six assessment years immediately preceding the A.Y 2016-17. In compliance to notice, the assessee has filed the return of income for the A.Y 2010-11 to 2016-17. Whereas for the A.Y 2016-17, the return of income was filed on 03-09-2016 disclosing a Total loss of Rs.18,84,104/- and notice u/sec 143(2) of the Act was issued. The Assessing Officer (AO) in the assessment proceedings found that (i) in the course of search

operations statement of Mr. Prakash Dhirawani, who is one of the Director of the Company was recorded u/sec 132(4) of the Act and he has surrendered Rs.3 crores bifurcated in the hands of Mr.Dinesh Dirwani Rs.65 lakhs, Shri Prakash Dhirawani of Rs.60 lakhs and Jabalpur Hospital & Research Centre of Rs. 1.75 crore. Whereas the AO found that the assessee though has filed the return of income for the A.Y 2016-17 but the amount of Rs.1.75 crores surrendered in the statement of the director u/sec 132(4) of the Act was not included. The A.O dealt on the facts and statements and has made the addition of Rs. 1.75 Crores.

3. (ii) the AO considered the Directors PAN, information and statement recorded u/sec 132(4) of the Act, and issued notice u/s 142(1) of the Act for submission of the details. The Ld. AR of the assessee along with the Director of the Company appeared and submitted the information. The AO has verified the return of income and annexure and seized material marked page 78 LPS-17 recovered from premise of Jabalpur Hospital & Research Centre, the assessee has quoted an amount of Rs. 9,20,270/- bifurcated for different periods. Whereas the AO dealt on the explanations of the assessee with respect to the addition in M/s Global

foundation of medical education research controlled by Dhirwani family. Since the assessee has failed to bifurcate the period of expenditure year wise, the AO has made addition of Rs.2,08,640/-.(iii) The AO found that during the search operations, on physical verification of the stock there is a difference and assessee was called to reconcile and to produce the details of consumer items, stock of machines, related bills and vouchers. Since the assessee has failed to establish the correlation and explain the sources of investment, the A.O has made an addition of Rs.81,5157,450/-.(iv) the AO found in the search operations cash of Rs.10,40,000/-,whereas in the books of account there is a negative balance and the explanations were called. The A.O. has dealt on the submissions and was not satisfied with the explanations and made an addition of Rs. 10,40,000/-.

4.(v) the A.O on perusal of the seized documents page 3 LPS-2 containing the details of transaction of Rs. 1,93,19,791/-, being interest free loans provided to Global Foundation and Medical Education and at the same time, the assessee is claiming huge expenditure on account of financial charges. The AO has dealt on the facts of claim of interest expenses for earlier years and at the same time

has considered the facts, that the assessee is providing interest free loan to the Global Foundation and medical education and issued a show cause notice. Since there was no proper compliance, the AO has estimated the notional interest @ 12% on the interest free loans provided to the associate concerns, which worked out to Rs.24,20,375/-. Finally the AO has assessed the total income of Rs. 2,93,26,465/- for A.Y 2016-17 and passed the common order for A.Y 2010-11 to 2016-17 U/sec143(3) r.w.s 153A of the Act dated 26.12.2017.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A) challenging additions and disallowances made by the A.O. In the appellate proceedings, the assessee has filed the voluminous details in respect of the claims, whereas the CIT(A) considered the grounds of appeal, statement of facts, submissions of the assessee, findings of the AO and dealt extensively on the facts and provisions of the Act and judicial decisions and directed the AO to delete the additions and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

6. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in directing the AO to delete the additions in respect of Rs.1.75 crores made by the AO as the surrender of income and the Ld. DR also emphasized that the CIT(A) has erred in allowing the relief to the extent of 65,13,121/-as against of Rs.81,57,450/-being added by the A,O due to difference in stock and on the third disputed issue, the CIT(A) has erred in deleting the addition of Rs.10,40,000/- made by the AO on account of cash found in the search operations. Further the CIT(A) erred in deleting the interest computed @12% on the interest loans provided to the associate concerns over looking the findings and facts dealt by the A,O in the assessment proceedings and The Ld. DR prayed for allowing the revenue appeal.

7. Per Contra, the Ld.AR submitted that the AO has not considered the various details with respect to the disallowances and surrender of income and the additions are made without any evidences and no adequate opportunity of hearing was provided. The Ld. AR emphasized on the each ground of appeal of the revenue and made exhaustive submissions on the disputed issues and the Ld.AR supported the order of the CIT(A) to the

extent of the relief granted to the assessee. Further the Ld.AR substantiated the submissions with the factual paper book and judicial decisions.

8. We heard the rival submissions and perused the material on record. The Ld. DR submitted that the CIT(A) has erred in deleting addition of Rs.1.75 Crores as the AO has made addition based on the statement u/sec132(4) of the Act, whereas the Ld.AR submitted that the CIT(A) has considered facts that the addition was made without any corroborative evidences. We find that the CIT(A) has considered the written submissions of the assessee on 11.12.2016 dealt at Para 6.2.2 as under:

“6.2.2 The AR of the appellant in his written submission dated 11/02/2019 furnished in respect of this issue of appeal contended as under :

2. "In the 2nd to 4th ground of appeal the assessee has contested the addition of 1,75,00,000/- made by the ld. AO on the basis of under protest surrender of income during the search.

2.1 The ldAO has discussed this issue in para 4.1 to 4.1.2.

2.2 Our Submission:-

(That a search was conducted on 17/11/2015 in the premises of Jabalpur Hospital & residential premise of Dhirawani Family

(ii) During the course of search Shri Prakash Dhirawani, director of the assessee company in reply to question no. 20 of statement of oath recorded u/s132(4) on 21/11/2015 has surrendered Rs. 1,75,00,000/- under protest on account of Jabalpur Hospital & Research Centre Pvt. Ltd. The relevant portion from the statement of oath is reproduced hereinafter.

“प्रश्न 20: क्या अब और कुछ कहना ?

उत्तर: मैंने अपने बयान के प्रश्न क्रं. 1 से 19 तक जो भी अघोषित आय स्वीकार कि है उसका विस्तृत ब्यौरा इस प्रकार है।

(i) प्रकाश धीरावाणी साठ लाख रूपए चालु (F. Y. 2013-14) Rs. 60,00,000/- (साठ लाख रूपए)

(ii) दिनेश धीरावाणी – पैसठलाख रूपए Rs. (65,00,000/-) (F. Y2013-14) जबलपुर हॉस्पिटल एवं रिसर्च सेंटर एक करोड़ पचहत्तर लाख रूपए जिसका ब्यौरा मेंबाद मेंउपलब्ध करा दूँगा । (under protest) इस प्रकार में अपने एवं परिवार एवं कम्पनी जिसका मैं डायरेक्टर हूँ कुलतीन करोड़ रूपए अपनी अघोषित आय के रूप में स्वीकार करता हूँ।” (copy of statement of oath recorded on 21/11/2015 is enclosed on page no 50 to 69 of this reply)

(iii) In reply to question no. 111 of statement of oath recorded by ld. ADIT (Inv.) Jabalpur during period from 11/04/2016-16 30/05/2016, the assessee have informed the ld ADIT (Inv.) that after examination of books of accounts etc of Jabalpur Hospital & Research Centre Pvt. Ltd. no mistake was found hence no surrender of income will be made on behalf of Jabalpur Hospital

& Research Centre Pvt. Ltd. The relevant portion from page 61 & 62 of the statement of oath is reproduced hereinafter-

प्रश्न 111: क्या आपको और कुछ कहना है ?

उत्तर: उपरोक्त ब्यानों के माध्यम से मेरे द्वारा जिस-जिस कागजातों के माध्यम से बताना चाहूंगा कि जहां तक JHRC की कार्य प्रणाली एवं books of A/c maintenance का प्रश्न है यह पूर्ण रूप से HMS software के माध्यम से संचालित है यह software खासतौर पर hospital के लिए बनाया गया है एवं इसमें हॉस्टिल की प्रत्येक गतिविधि को feed किया जाता है जो बाद में accounts section को Tally software में account संबंधि जानकारीयाँ transfer हो जाता हैये दोनों ही software search के दौरान seize किए गए हैं एवं आपके पास उपलब्ध हैं। अस्पताल की विषाल रूप देखते हैं एवं इन software की गुणवत्ता देखते हुए हमारे A/c संपूर्ण रूप से maintained हैं एवं ठेकेदारों को दिया गया cash जिसे मे पूर्व में विस्तृत रूप से आपको बता चुका है जिसे मैं अपनी अघोषित आय मानता हूँ। एवं बाकि अघोषित आय का विवरण मैं अपनी Block assessment की विवरणी भरते वक्त प्रस्तुत कर दूंगा। (iv) यह बयान सोच समझकर पूर्ण होष - हवाष में बगैर किसी दबाव के दिया गया है। तथा बयान पढ़ा- समझा एवं सही जानकर दस्तखत किये गये हैं।(copy of page 61 & 62 of statement of note is enclosed on page no 70 to 71 of this reply)

(v) In reply to the show cause notice dated 13/11/2017, filed in dak on 28/11/2017 the assessee, has been informed the Id. AO that the surrender of Rs. 1,75,00,000/- was under protest and subsequently on verification of books of accounts no deficiency was found hence no surrender was made. (Copy of the above

reply filed on 28/11/2017 in enclosed as page no 26 to 49 of this reply)

(vi) It is a well-known fact that during the search the assessee is not in normal state of mind. For this reason the CBDT, vide instruction dated 10/03/2003 has instructed the search party, that during the search no confession of undisclosed income should be obtained and if the confession is obtained it will be viewed adversely. The CBDT has also instructed that the addition should be made only on the basis of material gathered during the search CBDT vide letter no.F.No.286/98/2013-IT (Inv.II) dated 18/12/2014 has reiterated its earlier instructions. The relevant portion from the instruction dated 18/12/2014 is reproduced hereinafter

"2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed incomer under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T. Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely" (Copy of instructions enclosed to page no 72 to 73)

(vi) It has been held by Hon'ble Madras High Court in the case of CIT v K. Bhuvanendran (2008) 303 ITR 235 that no addition can be made solely on the basis of surrender made in the statement

on oath recorded during the search. The relevant portion from the head note is reproduced hereinafter:-

"There was a search in the assessee's residential premises. The assessee filed a return declaring an undisclosed income of Rs. 1,48,500/. The assessee did not specifically include the sum of Rs. 23 lakhs as undisclosed income in the in the return even though he admitted the payment of the said amount relating to the purchase of property by his wife and sons over and above the amount disclosed in the sale deed. Based on the admission the Assessing Officer added the amount of Rs. 23 lakhs as undisclosed income for the assessment year 1997-98 of the block period April 1, 1988, to March 128, 1999. Aggrieved by the order, the assessee filed an appeal to the Commissioner (Appeals)The Commissioner (Appeals) allowed the appeal and acted the Assessing Officer to delete the addition of Rs. 23 lakhs The venue file appeal to the Tribunal The Tribunal dismissed the Revenue's appeal and confirmed the order of the Commissioner (Appeals)On appeal to the High Court.

Held, dismissing the appeal, that the Tribunal had found that there was no evidence or material found during the course of search operations. The statement recorded from the assessee was subsequently retracted the rebutted. Furthermore, the statement was not relatable to any seized material. Therefore, even the statement could not be the basis for making any addition When the sale deed disclosed a sale deed is not the correct sale consideration. In the case the Revenue could not bring on record any material to show that the assessee had paid on-money of Rs. 23,00,000/-. The reasons given by the tribunal were based on valid material. The deletion of addition was justified

(vii) was In the case of the the addition of Rs. 1,75,00,000/- made solely on the basis of under protest surrender of that

amount by Shri Prakash Dhirawani in the statement recorded on 21/11/2015. It may kindly be noted that Shri Prakash Dhirawani has informed the Investigation Wing in his statement on oath recorded from 11/04/2016 to 30/05/2016, that no mistake was found in the books of Jabalpur Hospital hence no surrender will be made in the case of M/s Jabalpur Hospital Pvt. Ltd. It may kindly be noted that the ld. AO has made the addition solely on the basis of under protest surrender in statement on oath of Shri Prakash Dhirawani, recorded on 21/11/2015 without considering subsequent retraction. Hence in view of CBDT circular, Hon'ble Madras High Court decisions relied in para (v) and (vi) above it is submitted the ld. AO was not justified in adding Rs. 1,75,00,000/- to the income of the assessee on the basis of under protest surrender made on 21/11/2015 hence the addition of Rs. 1,75,00,000/- may kindly be deleted.”

9. Whereas the CIT(A) has dealt on the facts and the information and has deleted the addition as no incriminating documents or material was found and observed at Para 6.2.9 of the order as under:

6.2.9. It is the case of the assessee that during the course of search & seizure, no incriminating material or undisclosed income or investments were found. It is stated that the assessee was under mental pressure and tired. Therefore, to buy peace of mind, he accepted and declared Rs.1,75,00,000/- in the name of hospital. The Hon'ble Supreme Court rendered in the case of Pullangode Rubber Produce Co. Ltd. 91 ITR 18 (SC), wherein the Hon'ble Court has held that admission cannot be said that it is conclusive. Retraction from admission was permissible in law and it was open to the person who made the

admission to show that it was incorrect. However, reliance is placed on the judgment of the Hon'ble Gujarat High Court rendered in the case of CIT Vs. Chandra kumar Jethmal Kochar (2015) 55 Taxmann.com 292 (Gujarat), wherein it has been held that merely on the basis of admission that few benami concerns were being run by assessee could not be basis for making the assessee liable for tax and the assessee retracted from such admission and revenue could not furnish any corroborative evidence in support of such admission. It was further urged by the assessee that admission should be based upon certain corroborative evidences. In the absence of corroborative evidences, the admission is merely a hollow statement. A thoughtful consideration to contentions of the appellant and AO. It is undisputed fact that the rival statement recorded u/s 132(4) of the Act has a better evidentiary value but it is also a settled position of law that the addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the contents of the statement. In the case in hand, revenue could not point out as what was the material before the A.O., which supported the contents of the statement. The A.O. failed to co-relate the disclosures made in the statement with the incriminating material gathered during the search. The Hon'ble ITAT Indore in the case of ACIT 1(1)Bhopal v/s Shri Sudeep Maheshwari vide ITA no. 524/Ind/2013 A.Y. 2010-11 date 13.02.2019 deleted the addition on the similar facts. Respectfully following the decision of the Hon'ble Tribunal the addition made by AO amounting to Rs.1,75,00,000/- is Deleted. Therefore, the appeal on this ground is Allowed.

10. On the second disputed issue, the Ld. DR submitted that the CIT(A) has erred in allowing the relief to the extent of Rs. 65,13,121/- out of the addition of Rs. 81,67,450/- in

respect of stocks and relied on the findings of the AO. The CIT(A) has dealt on the written submissions of the assessee at Para 6.4.2 of the order as under:

“6.4.2 The AR of the appellant in his written submission dated 11/02/2019 furnished in respect of this issue of appeal contended as under:

4. "In the Ground No.7 to 9. The assessee has contested adding of Rs. 81,57,450/- made on account of so called unexplained stock found during the search.

4.1 The ld. AO had made the addition for the reasons given in para 9.2 to 9.2.6 of assessment order. Briefly the reason given by the ld. AO is that, in the statement on oath recorded during the search on 21/11/2015 Shri Prakash Dhirawani has agreed to surrender the closing stock however no stock was surrendered hence the ld. AO has treated stock of Rs. 81,57,450/- as unexplained and added same to the income.

4.2 Our Submission-

4.2.1 Facts relating to this ground :-

(i) That in the inventory module of HMS software only the entry of consumable stores etc purchased and received in the store were made and mostly no entry of issue of material was made. For this reason in the list of inventory taken from HMS software during the search the material purchased from 01/04/2011 onwards are appearing

(ii) That the consumable store etc. included in the computer printout of stock of Rs. 81,57,450/- found during the search are purchased by the assessee company and the purchases is duly recorded in books of accounts.

(ii) The ld AO in para 9.2.4 of assessment order has wrongly stated that the assessee has not filed any reply to show cause notice u/s 142(3) dated 13/11/2017 in which the query about addition of stock of Rs. 81,57,450/- was raised. The correct position is that the assessee has filed the reply of this show cause notice on 25/11/2017 and has also filed the copy of the reply in dak on 28/11/2017. (the copy of the reply enclosed on page 26 to 49) In para 3 of the reply filed on 28/11/2017 the assessee has even given item wise detail explanation about difference in stock. This reply is enclosed with this reply and the detail explanation of the stock is on page no. 8 to 36 of this reply.

i) Reason for not showing value of consumable item in closing stock - Till the year ended on 31/03/2015 the assessee company was not taking into consideration the closing inventory of consumable item and medicines while working out the profit for the reason that the assessee is not trading in consumable items found during the search. These consumable items are always available in the market. For this reason these items are purchased as and when required for consumption in hospital/treatment of patient and the assessee is not having stock/has only minimum stock of these items.

As is evident from the printed list of inventory these items are not having much value. Further these items cannot be used again and again. The assessee hospital purchases these items for consumption.

iv) As per accounting standard issued by Institute of Chartered Accountant of India, one of the recognized methods is that such type of consumable item be written off on purchase and need not be included in closing stock. For this reason none of the person carrying on transportation business is showing the closing stock of diesel in tank of the vehicles.

v) However, after search, while preparing the final accounts for year ended 31/03/2016, the assessee company has

considered the closing stock of consumable item and medicines (Rs. 26,03,488/-) while working out the net profit for the year ended 31/03/2016. (Copy of audited accounts is enclosed of page no 100 to 154 of this reply) 1st Submission: The closing stock was not worked out correctly using the search. In support of this submission the assessee would like to submit as under:-

1) That during the search the inventory of stock of Rs. 81,57,450/- (copy of inventory is enclosed on page no 75 to 99) was not prepared on the basis of any physical verification done by the search party but is a printout of receipt of material recorded in the inventory module of HMS software from 01/04/2011 onward.

(ii) As per the practice followed by the assessee, though the receipt of medicine and consumable stores etc. is recorded in the inventory module of HMS software but the issue of material from the store is generally not recorded. For this reason in the inventory as per computer printout is abnormal and incorrect stock of consumable is appearing in the printout taken out by the search party. The detail of these discrepancies has been given in para 3 of reply submitted in reply filed on 25/11/2017 and filed in dak on 28/11/2017. This reply is enclosed on page no. 26 to 49 of this submission and the para 3 is on page no. 28 to 36 of this submission. Few examples of such discrepancies are given herein after:-

(a) Oxygen Cylinder- As per computer inventory list the assessee has in stock 695 oxygen cylinders valued at Rs. 2,86,742/-. These 695 oxygen cylinders were received by the assessee during the period from 01/04/2011 to 17/11/2015 in support of this copy of Oxygen (O₂) cylinder big inventory statement taken out from inventory module of HMS software is enclosed on page no. 155 to 958 of this reply. From this printout of HMS it is evident that the 1st entry of receipt of oxygen cylinder is dated 13/09/2011 and last entry is of

17/11/2015. All the payment made in respect of oxygen cylinder is duly recorded in books of accounts.

Just like domestic LPG gas supply, as per the trade practice the oxygen is supplied in cylinder by the oxygen plant (in the case of assessee by Aditya Ai Product Pvt Ltd.) and the supplier is the owner of the cylinder and the consumer has to pay the charge of oxygen filled in the cylinder As per the certificate given by M/s Aditya Air Product Put a time it is not give more than 40 oxygen cylinder to the assessed copy of letter of M/s Aditya A Product Pvt. Ltd is enclosed on page no 959)For this reason the assessee cannot have 695 oxygen cylinders in its stock as on the date of search and further the payment in respect of oxygen cylinder is duly recorded in books of accounts hence its stock cannot be termed as unexplained stock For this reason the ld AO was not justified in adding Rs. 2,86,742/- on account of stock of 695 oxygen cylinder.

(b) Nitrous oxide cylinder- As per inventory list the assessee has in stock 79 nitrous oxide cylinder valued at Rs. 2,55,800/-. These 79 Nitrous oxide cylinder were received by the assessee during the period from 01/04/2011 to 17/11/2015 in support of this copy of Nitrous oxide cylinder inventory statement taken out from inventory module of HMS software is enclosed on page no. 960 to 965 of this reply. From this printout of HMS software it is evident that the 1st entry of receipt of Nitrous oxide cylinder is dated 22/10/2011 and last entry is of 02/11/2015. All the payment made in respect of Nitrous oxide cylinder is duly recorded in books of accounts Just like domestic LPG gas supply, as per the trade practice the nitrous oxide gas is supplied in cylinder by the nitrous oxide plant (in the case of assessee by IGP & Accessories) and the supplier is the owner of the cylinder and the consumer has to pay the charge of nitrous oxide filled in the cylinder. As per the certificate given by M/s IGP & Accessories it has not given more than 4 nitrous oxide cylinder to the assessee. (Copy of letter of M/s IGP & Accessories. is

enclosed on page no 966). For this reason the assessee cannot have 79 nitrous oxide cylinders in its stock as on the date of search and further the payment in respect of nitrous oxide cylinder is duly recorded in books of accounts hence its stock cannot be termed as unexplained stock. For this reason the ld AO was not justified in adding Rs. 2,55,800/- on account of stock of 79 nitrous oxide cylinder.

(c) Letter Head-As per the computer printout of inventory the assessee has 23,650 JHRC big pad valued at Rs. 17,66,710/- These better heads printed by the assessee during the period from support of this copy of letter head inventory statement taken out from inventory module of HMS software is enclosed on page no967 to 978 of this reply From this printout of HMS software it is evident that the 1st entry of receipt of letter head is dated 29/08/2011 and last entry is of 03/11/2015All the payment made in respect of printing bill of letter head is duly recorded in books of accounts.

1 letter head pad consist of nearly 100 pages accordingly as per the printout of inventory taken by search party, the assessee has 23,65,000 pages of big pad The big pads are used for indoor and outdoor patient prescription On an average the assessee has 70,000 indoor and outdoor patient in a year. For this reason there is no question of holding in stock 23,65,000 pages of big pad The assessee has got BIG PAD printed as and when required in each year. The hospital gets printed big letter head more than once in each year and does not store the pad for long time because the paper of the letter head changes the color with passage of time Copy of bill of BIG PAD for the financial year 2015- 16 is enclosed on page no. 979 to 981 of this reply)

For this reason the assessee cannot have 23,650 JHRC big pad in its stock as on the date of search and further the payment in respect of letter head is duly recorded in books of accounts hence its stock cannot be termed as unexplained

stock For this reason the ld AO was not justified in adding Rs. 17,66,710/- on account of stock of 23,650 JHRC big pad.

(d) Bed Sheet - As per the inventory print out taken from computer the assessee has 1788 bed sheet which are valued at Rs. 5,57,632/-. These bed sheets were purchased by the assessee during the period from 01/04/2011 to 17/11/2015 in support of this copy of bed sheet inventory statement taken out from inventory module of HMS software is enclosed on page no. 982 of this reply. From this printout of HMS software it is evident that the 1st entry of receipt of bed sheet is dated 26/12/2011 and last entry is of 9/07/2015. All the payment made in respect of purchase of bed sheet is duly recorded in books of accuse

The assessee further like to submit that at present the assessee hospital has nearly 250 beds only It may kindly be noted that most of the time all the beds are in use further in some cases daily bed sheet is not required to be changed For this reason the assessee does not require more than 600-700 bed sheet at a time.

It is well known fact that the bed sheet is always of white color and its present purchase cost is around Rs 280/- per bed sheet. The hospital purchases bed sheet each year and copy of purchase bill of bed sheet for the financial year 2015-16 is enclosed on page no. 983 to 985 of this reply.

Generally a bed sheet does not lost for more than 4 months and it is consumable item. . For the above reasons Rs. 5,57,632/- taken in inventory on account of 1788 is incorrect and cannot be considered as unexplained and added to the income.

(e) Cooler As per the print out of the inventory taken from computer the assessee has 15 coolers which are valued at Rs. 92850/-. These 15 coolers were received by the assessee on 11/05/2015 in support of this copy of computer inventory

statement taken out from inventory module of HMS software is enclosed on page no. 986 of this reply. These 15 coolers were purchased on 09/05/2015 from Bhavani Traders for Rs. 1,05,849/- and the purchase of these coolers has been shown in the fixed asset chart for the year ended 31/03/2016. The purchase of cooler is duly recorded in books of accounts and the payment of Rs. 1,05,849/- was made by cheque no. 043582 dated 23/07/2015 drawn on Bank of Maharashtra Jabalpur Hospital Branch. The copy of relevant portion of the bank accounts is enclosed on page no. 987 of this reply. For the above reasons Rs. 92,850/- taken in inventory cannot be considered as unexplained and added to the income.

10 Discharge file -As per the inventory taken from computer the assessee has 8468 discharge file which are valued at these discharge file were purchased by the assessee during the period from 01/04/2011 to 17/11/2015 in support of this copy of discharge file inventory statement taken out from inventory module of HMS software is enclosed on page no. 988 to 992 of this reply. From this printout of HMS software it is evident that the 1st entry of receipt of discharge file is dated 29/08/2011 and last entry is of 21/05/2015 All the payment made in respect of purchase of discharge file is duly recorded in books of accounts The assessee further submits that it purchases discharge file regularly (copy of bill of discharge file printed in financial 2015-16 is enclosed on page no 993 of this reply) These files are required at the time of discharge of indoor patient from the hospital In a year the assessee has average 12000 indoor patient For the above reason it is submitted that the inventory of discharge file is incorrect and Rs2,57,487/- cannot be added to the income of the assessee.

(9) Infusion pump- As per the print out of inventory taken from computer the assessee has filed infusion pump (optima) valued at Rs. 2,54,811/-. These Infusion pump were purchased by the assessee during the period from 01/04/2011 to 17/11/2015 in support of this copy of Infusion pump inventory statement taken out from inventory module of

HMS software is enclosed on page . 994 of this reply. From this printout of HMS software it is evident that the 1st entry of receipt of Infusion pump is dated 29/08/2011 and last entry is of 18/09/2014. The copy of purchase bill of infusion pump is enclosed on page no. 995 to 997 of this reply. All the payment in respect of purchase are duly recorded in books of accounts. The assessee would further like to submit that the infusion pump is a fixed asset and it's purchase is duly recorded in books of accounts and the WDV of infusion pump is include in fixed asset chart of the balance sheet. For the above reason it is submitted that the Infusion Pump Rs. 2,54,811/- cannot be treated as unexplained stock Investigation pad -As per the print out of iron fake from computer the assessee has 2480 investigation pad having nearly 248000 pages which are valued at Rs. 1,09,946/-. These investigation pad were printed on 02/05/2015, 19/05/2015 and 25/08/2015. All the payment made in respect of printing bill of letter head is duly recorded in books of accounts For the above reason it is submitted that the inventory of investigation pad is incorrect and Rs. 1,09,946/- cannot be treated as unexplained.

(a) Lancets Device As per the print out of inventory taken from computer the assessee has 900 Lancets Device which are valued at Rs. 1,35,450/-. It may kindly be noted that lancet device is disposable syringe and after use it is thrown. 1000 lancets device were purchased by the assessee on 13/04/2015. All the payment made in respect of purchase of lancet device is duly recorded in books of accounts. In this connection it is submitted that he assessee purchases Lancets Device. For the above reason it is submitted that the inventory of Lancets Device is incorrect and Rs. 1,35,450/- cannot be treated as unexplained.

(b) NIBP Module - As per the print out of inventory taken from computer the assessee has 5 NIBP Module valued at Rs. 1,06,000/- (as per delivery challan) in this connection it is submitted that the NIBP Module is a fixed asset and it was

purchased on 10/01/2013 from Larson and Toubro Ltd. for Rs. 1,00,000/- (Copy of bill enclosed on page no. 998 of this reply). The payment of Rs. 1,00,000/- was made on 18.05.2012 by cheque no894561 drawn on Bank of Maharashtra Jabalpur Hospital Branch This purchase of NIBP Module is duly reflected in fixed asset chart for the year ended 31/03/2013. For the above reason it is submitted that the inventory of NIBP Module Rs. 1,06,000/- cannot be treated as unexplained.

(c) Philips PCG Assembly Acquisitions per the print out of inventory

taken from computer the assessee has 1 Philips PCG Assembly Acquisition Acquisition is a fixed asset and it was purchased Page 36 of 53 9/10 2015 from Marc valued at Rs. 1,40,100/- it is submitted that the Philips PCG Assembly medical Services for Rs. 1,47,105/- (Copy of bill enclosed on page no999 of Es reply)The payment of Rs. 1,47,105/- was made on 09.10.2015 by cheque 147105 drawn on Bank of Maharastra Jabalpur Hospital Branch This purchase of Philips PCG Assembly is duly reflected in fixed asset chart for the ear ended 31/03/2016Acquisition Rs. 1,40,100/- cannot be treated as unexplained.

Plus Aerobic As the print out of the inventory taken from computer the assessee has 100 Plus Aerobic valued at Rs. 2,61,250/- in this connection it is submitted that the Plus Aerobics is a consumables and is a used for pathology department for blood test. It is one time used items These plus aerobics were purchased on 16.05.2015 & 27.06.2015The relevant sample bills are enclosed here with as page no. 1000 and 1001 of this reply. This purchase is duly recorded in books of accounts For the above reason it is submitted that the inventory of Plus Aerobic Rs. 2,61,250/- cannot be treated as unexplained

(e) *Promus Element* -As per the print out of inventory taken from computer the assessee has 1 *Promus Element* valued at Rs. 1,00,000/- in this connection it is submitted that the *Promus Element* is *STUNT* and is used for heart surgery This purchase is duly recorded in books of accounts. (Copy of purchase bill is enclosed on page no. 1002 of this reply)For the above reason it is submitted that the inventory of *Promus Element* treated as unexplained. Rs1,00,000/- cannot be

S Visiting Card - As per the print out of inventory taken from computer the assessee has 1800 *Visiting Card* which are valued at Rs1,01,790/-. These visiting cards were printed by the assessee during the period from 01/04/2011 to 17/11/2015 in support of this copy of visiting cards inventory statement taken out from inventory module of *HMS* software is enclosed on page no. 1003 of this reply From this printout of *HMS* software it is evident that the 1st entry of receipt of visiting cards 2011 and last entry is of 18/09/2014. All the payment made in respect of printing bill of visiting card is duly recorded in books of accounts

It is further submitted that the assessee purchases *Visiting Card* regularly (copy of bill of *Visiting Card* printed in financial 2015-16 is enclosed on page no 1004 of this reply)We have brought necessary evidence for your kind verification. Further the cost of Rs56.55 per visiting card is excessive For the above reason it is submitted that the inventory of *Visiting Card* is incorrect and Rs. 1,01,790/- cannot be treated as unexplained

(i) *X-ray Envelop* As per the print out of inventory taken from computer the assessee has 9750 *X-ray Envelop* which are valued at Rs9,10,942 /-These x-ray envelope were printed by the assessee during the period from 01/04/2011 to 17/11/2015 in support of this copy of x-ray envelope inventory statement taken out from inventory module of *HMS* software is enclosed on page no. 1005 to 1012 of this reply. From this printout of *HMS* software it is evident that the 1st

entry of receipt of x-ray envelope is dated 29/08/2011 and last entry is of 25/08/2015 All the payment made in respect of printing bill of letter head is duly recorded in books of accounts.

It is further submitted that the assessee purchases X-ray Envelop regularly (copy of bill of X-ray Envelop printed in financial 2015-16 is enclosed on page no 1013 to 1015 of this reply) We have brought necessary evidence for your kind verification. Further the cost of Rs93.43 per X-ray Envelop is excessive Generally one envelope cost around Rs 9/- For the above reason it is submitted that the inventory of X-ray Envelop is incorrect and Rs9,10,942/- cannot be treated as unexplained.

(i) Explanation about remaining items individually valued at less than Rs. 1 lakh:-The assessee has given explanation in (a) to (i) above in respect of items which were costing more than Rs Regarding remaining items it is submitted that they are fixed asset Paes taken in inventory.

(few example revolving chair (item no 1182), table (item no 1252) trolley (item no 1264)) and other are consumable items The purchase of consumable items and fixed asset is duly recorded in books of accounts and we have brought books of accounts bills and voucher so that your good self may verify correctness of this submission.

For the above reasons Rs17,66,710/- taken as inventory is incorrect and cannot be considered as unexplained and added to the income.

(ii) That the purchase of each and every item included in the inventory module of HMS software is duly recorded in books of accounts of respective year. In support of this the purchase bill etc. of consumable item appearing in inventory list for the period from 01.04.2011 to 17.11.2015 is enclosed on page no 75 to 99 of this reply

(iii) In the inventory list the purchase of consumable material and the purchase of consumable item and medicines is duly recorded in books of accounts maintained by the assessee. Hence, it cannot be said that the assessee has made any unexplained investment in inventory Further for the reason given in earlier paragraphs the assessee did not have the inventory of Rs. 81,57,450/- as on the date of search For this reason the ld AO was not justified in adding Rs81,57,450/- to the income of the assessee Accordingly this addition of Rs. 81,57,450/- may kindly be deleted for this reason also.

4.2.3 2nd Submission: The assessee has considered the closing stock as on 31/03/2016 of consumable items and medicines while working out its income In support of this submission the assessee would like to submit as under:-

(i) During the course of search Shri Prakash Dhirawani has stated in reply to "प्रश्न 14: आपके संस्थान के लाभहानी खाते तथा Balance Sheet में Closing Stock निरंक दर्शाया गया है जबकी भौतिक सत्यापन पर Hospital का Stock Rs81,47,450/- पाया ग्रह है। अतः अधिक पाए गए Stock के संबंध में अपना पाक्ष दर्शाए?

उत्तर मैंने अपने Chief Accountant श्री सुब्रत चटर्जी से बात की। जी हाँ में स्वीकार करता हूँ कि मेरी जानकारी में Stock Consumable Items Ventilator ECG Machine BP Apparatus offer है। इसकी जो भी राशि होती है उसे हटाकर जो भी शेष Excess Stock की राशि होती है वह मैं अपनी Hospital Company की अधेषित Investment वित्तीय वर्ष 2015-16 में स्वीकार करता हूँ तथा उस पर करारोपण देने का वचन देता हूँ।

(iii) That, till the year ended on 31/03/2015 the assessee company was not taking into consideration the closing inventory of consumable item and medicines while working out

the profit. However while preparing the final accounts for year ended 31/03/2016, the assessee company has considered the closing stock of consumable item and medicines (Rs. 26,03,488/-) while working out the net profit for the year ended 31/03/2016. (Copy of audited accounts is enclosed on page no 100 to 154 of this reply). For this reason the Id AO was not justified in holding that the assessee has not surrender the closing stock of consumable items and medicines while working out the taxable income

4.2.4 3rd submission:- If the stock of Rs. 81,57,450/- is added to the income on the basis of computer printout taken during the search then the set off of this amount has to be given. In support of this submission the assessee would like to submit as under:-

(i) As stated in para 4.2.3 above, the assessee has considered the closing stock as on 31/03/2016 of Rs. 26,03,488/- while working out its taxable income

(ii) In case if the stock of Rs. 81,57,450/- is added to the income of the assessee on the basis of printout of inventory module of HMS software of store account taken during the course of search on 17.11.2015, then, as per the principle of accounting, while working out the taxable income of the assessee for the period from 18.11.2015 to 31/03/2016 this stock of Rs81,57,450/- is to be taken as opening stock because the assessee has taken into consideration the closing stock as on 31.03.2016 consumable items and medicines Rs. 26,03,488/- i.e. the stock of Rs. 81,57,450/- will be treated as expenses for the period from 18.11.2015 to 31/03/2016. Accordingly the Id AO should have given deduction of Rs81,57,450/- while working out the taxable income of the assessee."

11. The CIT(A) after considering the facts, submissions and information has granted the partial relief and dealt at Para 6.4.3 & 6.4.4 of the order as under:

“6.4.3 DECISION:

I have carefully considered the written submissions put forth by the counsel, perused the facts of the case including the finding of the AO in the impugned assessment order and other material brought on record. The A.O. made the addition on the ground of unexplained stock found during the search. During the course of search stock of Rs.81,57,450/- was found. The stock found can be bifurcated into the two parts i.e. fixed assets and consumables. The bifurcation of the stock found is as under:-

Details of Fixed Assets

Fixed Assets (Cooler) 98,280

Fixed Assets (Infusion Pump Optima) 2,54,811

Fixed Assets (NIBP Module Charges) 1,06,000

Fixed Assets (Philips PCG Assembly Acquisition CT) 1,40,100

Fixed Assets (Screen Bed Side) 58,090

Fixed Assets (Table) 4,076

Fixed Assets (Trolley) 13,728

Fixed Assets (Revolving Chair) 22,724

Fixed Assets (Ventilator) 52,77,309

Fixed Assets (02 Gas Cylinder) 2.82.758

Fixed Assets (Nitrous Gas Cylinder) 255275

Total 65,13,121

Consumables 16,44,329

6.4.4. During the course of search, physical verification of the stock has not been done but print out of inventory as recorded in the HMS Software is only taken. The fixed assets cannot be considered as a part of physical stock. These are the items which are part of fixed assets and depreciation is allowable as per rate prescribed. The items mentioned in the details of fixed assets cannot form part of taxable income as per the accounting principle. The A.O. can make addition only when the fixed assets has been purchased out of the unaccounted investment. A.O can only make addition in respect of consumables treating the same as unaccounted stock. Therefore, the addition made by the A.O. amounting to Rs16,44,329/- is Confirmed The appellant will get relief of Rs. 65,13,121/-. Therefore, the appeal on this ground is Partly Allowed.”

12. On the third disputed issue, the Ld. DR submitted that CIT(A) has erred in deleting the cash found of Rs. 10,40,000/- in the course of search and as it was remain unexplained. The Ld. DR contentions are that the AO has considered the factual aspects and since no explanations were filed by the assessee, the A.O has made addition. Whereas the Ld. AR relied on the written submissions dealt in the appellate order at Para 6.5.2 as under:

“6.5.2 The AR of the appellant in his written submission dated 11/02/2019 furnished in respect of this issue of appeal contended as under :

"In the Ground No. 10 and 11 The assessee has contested adding of Rs10,40,000/- on account of so called unexplained cash found during the search.

5.1 The ld AO has made the addition of cash of Rs10,40,000/- found in the premises of the assessee hospital for the reason given in para 9.3 of the assessment order.

5.2 Our Submission:-

(i) During the course of search on 19.11.2015 Shri Subarato Chatterjee in reply to question no 33 of statement of recorded has informed to search party that the assessee company issues receipt of amount received from the patient etc from Hospital Management System (HMS) i.e. all the receipts of the hospital from the patient is recorded in HMS immediately on receipt of the amount Thereafter the XML data files from HMS is transferred to tally software in which books of accounts of the assessee is maintained The question no33 and its reply is reproduced here in after:-

प्रश्न 33: प्रश्न क्रमांक 8 reply में आपने बताया था कि आपकी Book में Cash Balance, Credit Balance Amount Rs. 2,27,88,355.08/- है जबकि तलाशी व जब्ती की कार्यवाही के दौरान Cash Balance भौतिक रूप में Rs.10,40,000/- प्राप्त हुए हैं। कृपया स्पष्टीकरण दें ?

उत्तर. हॉस्पिटल में Cash receipt HMS Hospital Management System में receive की जाती है इसके बाद zy data XML file through HMS #Tally Software #import for us and daily basis 47 किया जाता है किन्तु import का कार्य 30 Sept. 2015 के बाद से नहीं किया गया है इसी वजह से Cash Balance, Credit Balance shotu कर रहा है। अनुरोध पर

बयान स्थगित। (copy on statement on oath of Shri Subarato Chatterjee recorded on 19/11/2015 to 1027 of this reply) page no. 1016

(ii) During the search the search party was informed that the data from 01.10.2015 to 16.11.2015 (date of search) was not transferred from HMS to tally account. The search party was informed that if HMS data is transferred from HMS to tally then the cash balance as on 16.11.2015 will come to Rs40,60,052.92 Out of this cash, a sum of Rs. 30,00,000/- was found in the residence of Dr. Rajesh Dhirawani and Rs. 10,40,000/- was found in hospital premises The search party was also informed that

The assessee had deposited Rs. 2,50,79,200/- out of cash receipts recorded in HMS in Bank of Maharashtra account during the period from 01.10.2015 to 16.11.2015 The date wise detail which was submitted to the search party is enclosed on page no 213 of this reply.

In addition to this deposit the assessee company has also incurred cash expense from the cash receipts recorded in HMS These expenses are recorded in the tally account.

For this reason there was minus cash of Rs2,27,88,355/- in the tally account. The search party has checked this fact and found the explanation satisfactory. For this reason no further question in respect of difference in cash was raised during the search proceeding and the assessee was not asked to surrender any amount on account of difference in cash

(iii) During the course of assessment proceeding the assessee has produced the books of accounts and date wise detail of transfer of data from HMS system to tally data. The ld AO has

examined the books of accounts and found them in order and for this reason has accepted the book results(Copy of cash book dated 17.11.2015 (date of search) is enclosed on page no. 1028 of this reply)

(iv) In the assessment order the ld AO just for making this addition has stated that the assessee has not produced books of accounts during the assessment proceeding Had the assessee not produced books of accounts and other supporting record

during the assessment proceeding than the ld AO would have rejected books of accounts and passed the assessment order under section 144 instead of section 143(3) of the Act and would have not accepted the profit books of accounts.

iii) The assessee company would also like to submit that it is not depositing its full available cash in bank but is keeping part of the cash to meet out any contingency For this reason the average cash balance of the assessee from 1.04.2017 to 30.09.2017 is around Rs40 lacs The minimum closing cash balance in this period was Rs9,49,478/- and maximum closing cash balance was 1,00,54,201/-Even on 30.09.2017 the closing cash balance was Rs42,11,425/-For your ready reference we have brought books of accounts Similarly after search also the average closing cash balance of the assessee is around Rs 50,00,000/-.

(iv) In view of above it is submitted that the cash of Rs40,60,052/- found in the search is fully explained and the ld AO was not justified in treating cash of Rs. 10,40,000/- found in search as unexplained and adding it to the income of the assessee. Hence this addition may kindly be deleted.

13. Whereas, the CIT(A) has considered the information and deleted the addition observing at Para 6.5.3 of the order as under:

“6.5.3 I have carefully considered the written submissions put forth by the counsel, perused the facts of the case including the finding of the AO in the impugned assessment order and other material brought on record. During the course of search, cash amounting to Rs. 10,40,000/- was found at the premises of the appellant. The appellant issued the receipt of amount received from the patients in the HMS Software. All receipt of hospital is recorded in HMS Software immediately on receipt of the amount. After that the HMS data is transferred to Tally Software in which the books of account is maintained. During the search, it was found that data from 01.10.2015 to 16.11.2015 was not transferred from HMS to Tally account. The same is evident from the statement of the Accountant Shri Subrat Chatterjee and the same has been reproduced by the A.O. in assessment order at page no. 13, 14 & 15. While analyzing the book was found that

average cash balance available as per the books is in the range of Rs. 40,00,000/-The appellant during the course of assessment proceedings, after completion of the books of accounts arrived that as per the books on 30.09.2017 the cash balance was at Rs.42,11,425/-. There was no seizure made in respect of the cash found. Therefore, the addition made by the A.O. amounting to Rs. 10,40,000/- is Deleted. Therefore, appeal on this ground is Allowed.”

14. The last disputed issue, the CIT(A) deleted the notional interest @12% calculated by the A.O on the

interest free loans provided to the associate concerns i.e M/s Global Foundation and Medical Education. The Ld. DR has relied on the findings of the AO. Whereas the CIT(A) has considered the facts of business expediency and the submissions of the assessee at Para 6.6.2 of the order as under:

6.6.2 The AR of the appellant in his written submission dated 11/02/2019 furnished in respect of this issue of appeal intended as under:

“In the ground no. 12 & 13: The assessee has contested the disallowance of Rs. 24,20,375/-out of interest paid by the assessee.

6.1 The Id AO has discussed the issue of disallowance of interest in para 9.4 of the assessment order

6.2 Our Submission:-

(i) The assessee is running a hospital. For smooth running of hospital nursing staff is required. Since the supply of the nurses is very limited due to non-availability of local nurses. Hence to employ and retain the nurses in hospital is very difficult but crucial for running of the hospital

(ii) To overcome this problem the directors of the assessee company has started a nursing college under the name and style of Global Foundation and medical and education.

(iii) It was agreed in clause 1 of the agreement dated 28/01/2015 between the Global Nursing college and the assessee company that the nurses studying in Global Nursing

college will be getting practical training in the hospital run by the assessee company. (Copy of agreement is enclosed on page no 1029 to 1031 of this reply). It is also agreed in clause 2 of the agreement dated 28/01/2015 that during this period of the training of the nurses, the assessee company is not required to pay any salary or remuneration to these trainee nurses. Further out of these trainee nurses the assessee company employees the skilled nurses in the hospital after completion of their B.Sc (Nursing) and GNM courses.

(iv) For the above reason the relationship between the assessee company and Global Foundation is business relationship and by advancing the money to Global Foundation the assessee company is deriving benefit and the assessee has given the interest free advance to Global Foundation as a measure of commercial expediency

(v) That the Hon'ble Supreme Court in the case of S.A. Builders Ltd. vs. CIT reported in [2007] 288 ITR 1 has held as under in para 33 on page 9 of the report: -

33....xxx... The correct view in our opinion was whether the amount advanced to the subsidiary or associated company or any other party was advanced as a measure of commercial expediency. We are of the opinion that the view taken by the Tribunal in Phaltan Sugar Works Ltd. (supra) that the interest was deductible as the amount was advanced to the subsidiary company as a measure of commercial expediency is the correct view, and the view taken by the Bombay High Court which set aside the aforesaid decision is not correct.."

In para 35 (page 9) of the report the hon'ble Supreme Court has confirmed the following finding of hon'ble Delhi High Court in the case of Dalmia Cement (B) Ltd:-

"We agree with the view taken by the Delhi High Court in CIT vs. Dalmia Cement (Bharat) Ltd. (2002) 174 CTR (Del) 188: (2002) 254 ITR 377 (Del) that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The IT authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own viewpoint but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister-concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."

(vi) The Hon'ble M.P. High court has held in the case of D.H. Secheron Electrode P.Ltd V CIT (1983)142 ITR 528 as under on page 530 of the report :-

Now, under s. 36(1)(ii) of the Act, to sustain a claim for deduction of the amount of interest, all that is necessary is that the capital must have been borrowed by the assessee; secondly, it must have been borrowed for the purpose of the business or profession of the assessee and, thirdly, that the assessee should have paid that amount by way of interest. In the instant case, the Tribunal has not given any finding holding that the conditions required to be satisfied under s. 36(1)(iii) of

the Act were not fulfilled. The only ground, for disallowing a part of the interest, given by the Tribunal was that the assessee had not chosen to charge interest on advances made to the three concerns. The contention urged on behalf of the Department, in the instant case, that a part of the capital borrowed by the assessee was not for the purpose of the business, cannot be considered because that is not the finding of the Tribunal. All that the Tribunal has found is that the assessee was not entitled to claim deduction in respect of a part of the interest, as the assessee had not charged interest to the three sister concerns, to whom advances were made. This ground cannot justify disallowance of interest.

(vii) In view of above discussed factual and legal position the ld A.O. erred in disallowance of interest of Rs. 24,20,375/-, hence it is requested that this disallowance may kindly be deleted."

15. The CIT(A) having considered the business connection with the associate concerns and commercial operations has deleted the addition, observing at Para 6.3.3 of the order as under:

6.3.3. Decision have carefully considered the written submissions put forth by the counsel, perused the facts of the case including the finding of the AO in the impugned assessment order and other material brought on record. The A.O. made addition on the ground that appellant has advanced interest free loan to Global Foundation and Medical Research Centre. The A.O. charged the notional interest @ 12% on the advance given by the appellant to the Global Foundation and Medical Research Centre. The appellant has given the loan and advance to the

person from Jabalpur (M.P.) own fund and interest free fund. It is accepted principle that if there is interest free fund available to the appellant sufficient to meet its investment and at the same time the appellant raised the loan, it can be presumed that the investment is from the interest free fund available. It is not the case that the appellant has diverted interest bearing borrowed funds for investment not earning income. Therefore, the addition made by the AO amounting to Rs.24,20,375/- is Deleted. Therefore, the appeal on these grounds is Allowed.

16. We considering the facts, circumstances and submissions found that the CIT(A) has dealt on the factual aspects, provisions of law, judicial decisions and the written submissions filed in the course of hearing. whereas on the first disputed issue of deletion of Rs.1.75 crores by the CIT(A), we find CIT(A) has considered the facts that the addition was made without any corroborative material/ evidences and further the A.O has made addition solely on the basis of statement of the director being the protest surrender and subsequently the statement was retracted by the director. On the second disputed issue, were the CIT(A) has deleted the addition of unexplained closing stock of Rs.65,13,121/-, The CIT(A) has relied on the List of items with respect to fixed Assets and granted relief to that extent to the Assessee. On The third disputed issue,

with respect to deletion of unexplained money of Rs.10,40,000/- by the CIT(A).The contentions raised by the assessee that this amount is part of business working capital found in the course of search and the CIT(A) has granted the relief. The last disputed issue, the CIT(A) has deleted the notional interest @12% of Rs.24,20,375/- calculated by the A.O on the interest free loans provided to the associate concerns i.e M/s Global Foundation and Medical Education. The CIT(A) considered the business expediency and commercial operations with the assessee business, were the nurses studying in the M/s Global Foundation and Medical Education will be getting practical training in the hospital run by the assessee as per the agreement. Hence the interest free loans are provided considering the business connection of the parties. The CIT(A) has considered the facts, submissions and relied on the judicial decisions and has passed a conclusive and reasoned order. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent evidences or information to take different view. Accordingly, we do not find any infirmity in the order of the CIT(A) on the disputed issues challenged by the revenue and uphold the same and dismiss the grounds of appeal of the revenue.

17. In the result, the appeal filed by the revenue is dismissed.

CO No. 04/JAB/2019

18. The assessee has raised the grounds of cross objections as under:

1. Considering the fact that the Id AO has passed the assessment order on 26/12/2017 without considering the reply of the 28/11/2017 hence filed on various the additions made by the Id AO in the assessment order, are made in contravention to principle of natural justice. Accordingly the ld CIT(A) should have deleted the additions for this reason also.

2. Considering the fact that the expense of Rs2,08,640/- relates to M/s Global Foundation & Medical Research Centre and these expenses are duly recorded in books of accounts of Global Foundation. Further the assessee has nothing to do with these expenses hence the ld CIT(A) should have deleted the addition of Rs2,08,640/-

3. On the facts and in the circumstances of the case the ld CIT(A) should have deleted the addition of Rs2,08,640/- made by the ld AO on account of expenses of Global Foundation

4. On the facts and in the circumstances of the case the ld CIT(A) was not justified in confirming addition of Rs. 16,44,329/- made on account of so called unaccounted stock found during the search.

5. Without prejudice to ground no. 4 and in alternative, since the assessee has considered the value of closing stock of consumable etc. as on 31/03/2016 for working out its profit for assessment year 2016-17, hence the set off of addition, if any, sustained on account of closing stock found in the search, may kindly be given.

The respondent craves leave to add, amend or modify any ground of cross objection.

19. At the time of hearing, the Ld.AR has made submissions on the additional ground of cross objections raised challenging the validity of passing of the assessment order without proper approval by the revenue authorities. We after hearing the rival submissions and perusal of material on record found that the order was passed in accordance with the provisions of the Act and we do not find merits in the additional ground raised and is dismissed. Further the Ld.AR has not pressed the ground. no. 2 & 3 of the CO, accordingly are treated as withdrawn and are dismissed. The ground no.4, pertaining to sustaining of the disallowance of Rs.16,44,320/- on account of differential stock by the CIT(A).The Ld.AR contentions are that these are consumables utilized for the purpose of hospital services and are duly recorded in

the books of account. We found there is no contrary view of the AO except mentioning that these are not disclosed by the assessee. Whereas, the Ld.AR submitted that the disputed items are part of the consumables used for the purpose of services and are disclosed in the books of accounts and supported with submissions in the paper book. We considering the facts, circumstances and submissions direct the Assessing officer to delete the addition of Rs.16,44,329/- and partly allow the grounds of cross objections of the assessee.

20. In the result, the appeal filed by the revenue is dismissed and the Cross objections filed by the assessee are partly allowed.

Order pronounced under Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai. Dated 20.11.2023

KRK, PS

ITA No. 19/JAB/2019 &
CO. 04/JAB/2019
M/s Jabalpur Hospital & Research Centre, Jabalpur.

- 43 -

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति // True Copy/

(Asst. Registrar)
ITAT, Jabalpur.