

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 52/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Khichar and Dular Hospitals (P) Ltd. Through its Director Dr. Vijay Prakash Khichar Nawalgarh Road, Sikar-332001.	बनाम Vs.	Income Tax Officer, Ward-4, Sikar.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABCK8554 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Vaishnavi Joshi (Adv.) &
Shri Piyush Ganguly, Proxy
राजस्व की ओरसे / Revenue by: Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 29/02/2024
उदघोषणा की तारीख / Date of Pronouncement: 07/03/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)4, Jaipur [herein after referred to as "CIT(A)"] for the assessment year 2017-18, which in turn arise from the order dated 23.12.2019 passed under section 143(3) of the Income Tax Act (here in after "Act") by the AO.

2. The assessee has raised the following grounds of appeal:-

"1. The impugned additions and disallowances made in the order u/s 143(3) dated 23.12.2019 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence, the same kindly be deleted.

2. 1 The Id. CIT(A) erred in law as well as on the facts of the case in passing the impugned order ex-parte, in a haste without affording adequate and reasonable opportunity of being heard. The impugned order having been framed in gross breach of natural justice, kindly be quashed or alternatively be restored to the file of the Id. CIT(A).

2.2.The Id. CIT(A) also erred in law as well as on the facts of the case in not deciding the appeal on merits, which is in violation of mandate of statutory provisions. Thus, the impugned order having been framed in gross breach of statutory provisions, kindly be quashed or alternatively be restored to the file of the Id. CIT(A).

3.Rs. 10,00,000/- The Id. AO erred in law as well as on the facts of the case in making impugned lump sum addition of Rs. 10,00,000/- u/s 68 on account of discrepancies noted in the books of account (i.e. alleged short MRI receipts of Rs. 3,63,026/-, CT Scan of Rs.88,264/-and unexplained entries of Rs. 3,63,202/- as per outdoor patient register and disallowance of expenses in absence of vouchers) treating the same as undisclosed income. The addition so made, being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.

4. The Id. AO further erred in law as well as on the facts of the case in imposing tax as per provision of section 115BBE 4. of the Act. The appellant totally denies its liability. The tax liability so created, being contrary to the provisions of law and facts, kindly be deleted in full.

5. Rs. 2,53,069/-: The Id. CIT(A) erred in law as well as in facts of the case in confirming the levy of interest u/s 234B, 234C, 234D. The levy interest being charged, is contrary to the provisions of law and facts, kindly be deleted in full.

6. The appellant prays your honor 6. indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

3. Brief facts of the case are that in this case, a survey u/s 133A of the Income-tax Act, 1961 was conducted on 28.09.2016 at the business premises of M/s

Khichar& Dular Hospital Pvt. Ltd., Nawalgarh Road, Sikar and its concern M/s Apex MRI & CT Centre, Sikar. At the time of survey conducted u/s 133A, regular books of accounts were not found at the business premises. At the time of survey some incriminating documents and loose papers were found. At the time of survey, the assessee was asked to verify these documents and loose papers with the regular books of accounts but the assessee could not provide the books of accounts on the plea that the books of accounts so maintained are with the Accountant of the company, Sh. Babu Lal. In absence of verification of loose papers and incriminating documents with the books of accounts, the loose papers and incriminating documents were impounded u/s 133A(ia) of the IT Act, 1961.

3.1 The assessee has e-filed its return of Income for the A.Y. 2017-18 on 30.10.2017 declaring total income of Rs. 6,52,530/- and claimed refund of Rs 11,980/-. The return filed by the assessee was processed u/s 143(1) of the Act on 16.12.2017. Since the case of the assessee is covered under survey u/s 133A of the IT Act, 1961, falls under compulsory scrutiny. Consequently, notice u/s 143(2) was issued on 07.09.2018 which was duly served upon the assessee by the mode of electronically. In compliance with the order u/s 127 of the Act of the Pr. CIT-3, Jaipur dated 01.07.2019 the case was received transfer from ITO, Ward-3, Sikar to

ITO, Ward-4, Sikar. On change of incumbent, notice u/s 142(1) dated 24.09.2019 was issued and served and further hearings held subsequently.

3.2 During the course of survey proceedings, a hard-disk was impounded u/s 133A(3)(ia) of the Income tax Act, 1961 from the business premises of the assessee company as per S.No. 143 of Annexure-A. During the assessment proceedings, it becomes necessary to examine the contents of the hard-disk. In order to examine the contents entered into in the hard disk, a Punchnama in the presence of Dr. Vijay Prakash Khichar, one of the Director and Sh. D.D. Sharma, CA/AR was drawn and made a working copy of hard-disk and thereafter contents of hard-disk were examined. Original hard-disk was again sealed in their presence. The assessee is a company and runs a Nursing Home under the name & style of Khichar & Dular Hospital Pvt. Ltd., Sikar and a Laboratory (Diagnosis) under the name & style of Mis Apex MRI & CT Scan Centre al Opp. S.K. Hospital, Sikar. The hospital is running in its own building and Mis Apex MRI & CT Scan Centre at Opp. S.K. Hospital, Sikar is running in a rented building which is owned by Dr. Anita Choudhary. The sources of income of Khichar & Dular Hospital, Sikar are receipts on account of consultation charges from the patients and sources of income of Mis Apex MRI & CT Scan Centre at Opp. S.K. Hospital, Sikar, are from the laboratory test charges from the patients. The assessment proceedings

were attended by the Id. AR of the assessee Sh. D.D. Sharma. CA and one of the Directors, Dr. Vijay Prakash Khichar from time to time. They have furnished replies in respect of queries raised and also produced the books of accounts consisting of cash book, ledger, audit report, vouchers of purchases made & receipt books in respect of consultation charges & receipts of laboratory test charges for examination which were examined on test-check.

3.3 During the relevant period, the assessee company has declared net profit rate in minus e. (-12.68% on total turnover of Rs. 2.64,92,476/ The net profit rate declared by the assessee is too low to accept. As such, the assessee was specifically asked to explain the reasons for declaring too low net profit rate, but, the assessee could not come up with any satisfactory and plausible explanation in this regard. During the course of survey proceedings, some documents were impounded from the business premises of the assess company. On verification of these documents from books of accounts produced by the assessee company and details furnished by the assessee during the assessment proceedings. Conclusively, the Id. AO made addition in the hands of the assessee by holding as under:-

Return income of the assessee company	6,52,530/-
Add: Addition u/s 68 as discussed above	10,00,000/-
Assessed total income	16,52,530/-

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A). The Ld. CIT(A) observed that various notices were issued on 28.01.2021, 23.09.2021, 24.03.2022, 26.11.2023 & 19.12.2023 and requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued the Id. CIT(A) dismissed the appeal of the assessee ex-parte order. The extract of the finding of the ld. CIT(A) is reproduced as under:-

“Ground No. 1

5.1 I have considered the observations/findings of the AO in the assessment order for the year under consideration. During the appellate proceedings, the appellant has not furnished any information/evidences to rebut the findings of the AO. It is specifically observed here that inspite of giving many opportunities of being heard to the appellant, as detailed above the appellant has chosen not to make any submissions or furnish any information to substantiate and plead the grounds of appeal. There is substantial evidence on record in support of the assessment order. Based on the material available on file and in absence of any new submission/ finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the action of the Id. AO.

Accordingly, Ground of Appeal is dismissed.

Ground No. 2.1 to 2.2

6.2 I have considered the observations/findings of the AO in the assessment order for the year under consideration. During the appellate proceedings, the appellant has not furnished any information/evidences to rebut the findings of the AO. It is specifically observed here that inspite of giving many opportunities of being heard to the appellant, as detailed above the appellant has chosen not to make any submissions or furnish any information to substantiate and plead the grounds of appeal. There is substantial evidence

on record in support of the assessment order. Based on the material available on file and in absence of any new submission/finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the action of the Id. AO.

Accordingly, these Grounds of appeal are dismissed.”

Ground No. 3

In this ground, the appellant has raised issue in respect of charging of utterest of 234B. In this regard it is stated that charging of interest is Mandatory and consequential in nature, therefore the AO is directed to give effect of the same on the income determined vide this appellate order. Accordingly, the Ground of Appeal raised by the appellant on this issue is dismissed.”

5. During the course of hearing, the Id. AR for the assessee prayed that the Id. CIT(A) has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the Id. AO in the interest of equity and justice.

6. Per contra, Id. DR supported the orders of the lower authorities.

7. We have heard both the parties and perused the materials available on record. The bench noted from the order of Id. CIT(A) that the appeal of the assessee was dismissed by the Id. CIT (A) for want of non-prosecution of the appeal. The Id. CIT(A) has not decided the appeal of the assessee on merits and simply confirmed the view of the Id. AO. However, the Bench feels that the assessee could not advance their arguments/submissions to contest the case before

the lower authorities and have considered the prayer to give one more opportunity to submit the evidences concerning the issue in question, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the Id. CIT(A).

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. CIT(A) independently in accordance with law.

In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 07/03/2024.

Sd/-
(राठौड़ कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/03/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Khichar and Dular Hospitals (P) Ltd., Sikar.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4, Sikar.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

5. गार्डफाईल / Guard File ITA No. 52/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar