

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.421/Del/2018
Assessment Year: 2012-13

ACIT,
Circle-17(1),
New Delhi.

Vs Moolchand Healthcare Pvt. Ltd.,
203/1076, Ravinder Plaza,
Abdul Aziz Road,
WEA Karol Bagh,
New Delhi.
PAN: AACCD6396F

(Appellant)

(Respondent)

Assessee by : Shri C.S. Aggarwal, Sr. Advocate; and
Shri R.P. Mall, Advocate &
Shri Uma Shankar, Advocates
Revenue by : Shri Anshul, Sr. DR
Date of Hearing : 29.04.2024
Date of Pronouncement : 09.07.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 12.10.2017 of the Commissioner of Income Tax (Appeals)-33, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.230/16-17 of CIT(A)-33 arising out of the appeal before it against the order dated 28.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the DCIT, Circle-17(1), New Delhi (hereinafter referred to as the Ld. AO).

2. The Revenue had revised its ground and filed the following grounds:-

1. *“Whether on the facts and in circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 3,39,12,50/- made on account of expenses related to director ignoring the findings of the AO that the assessee had failed to justify the services rendered by the directors ” ?*

2. *“Whether on the facts and in circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 36,00,000/- made on account of rent paid for directors’ residence ignoring the fact that the assessee had failed to justify the services rendered by the directors and also failed to demonstrate that said expenditure was laid out or expended wholly and exclusively for the purpose of business or profession? ”*

3. *“Whether on the facts and in circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 12,80,453/- made on account of business promotion paid to directors ignoring the fact that the assessee had failed to justify the services rendered by the directors and also failed to demonstrate that said expenditure was laid out or expended wholly and exclusively for the purpose of business or profession? ”*

4. *“Whether on the facts and in circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs.5,46,452/- made on account of travelling expenses of directors ignoring the fact that the assessee had failed to justify the services rendered by the directors and also failed to demonstrate that said expenditure was laid out or expended wholly and exclusively for the purpose of business or profession? ”*

5. *“Whether on the facts and in circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs.2,63,23,008/- made on account of interest paid to Directors shareholders ignoring the findings of the AO that the assessee had failed to justify the services rendered by the directors and also failed to demonstrate that said expenditure was laid out or expended wholly and exclusively for the purpose of business or profession? ”*

6. *“Whether on the facts and in circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs.54,26,150/- made on account of legal and professional expenses ignoring the fact that the assessee had not provided documentary evidence of the same and failed to demonstrate that said expenditure was laid out or expended wholly and exclusively for the purpose of business or profession? ”*

7. *“Whether on the facts and in circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs. 59,23,385/- made on account of business income on sale of shares ignoring the findings of the AO that the shares of M/s Zee Entertainment Ltd was held as inventory and the transactions in shares were in the nature of business income?”*

8. *“Whether on the facts and in circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of Rs.21,12,305/- made on account of depreciation ignoring the findings of the AO that the brand had not been used for the business during the year under consideration? ”*

9. *“Whether on the facts and in circumstances of the case, Ld CIT(A) is justified in allowing appeal of the assessee by admitting additional evidence under Rule 46A of the Income Tax Rule, 1962 during appellate proceedings even when the assessee had not fulfilled conditions as laid down under Rule 46A of the Rule and without providing an opportunity to the AO of being heard.? ”*

10. *“Whether on the facts and in circumstances of the case, the Ld CIT(A) is justified in allowing appeal of the assessee by holding that no additions/disallowance was made by the AO on the issue in earlier years despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment is a separate year?*

11. *That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal.”*

3. On hearing both the sides, it comes up that the ld. DR primarily relies the findings of the AO while the ld. AR has submitted that the additions which have been made on account of disallowances of certain expenditures have been allowed by the AO in previous years and subsequent years also.

4. On taking note of the facts, it comes up that the assessee’s return was taken up for scrutiny and the AO examined the business of consultancy of the assessee which was primarily engaged in comprehensive hospital management including comprehensive policies, processes, work instruction, data base, tools, marketing, HR, etc. and the AO observed that the receipts of Rs.29,08,75,202/- are from Moolchand Khairaiti Trust. The AO examined the following expenditures:-

S.No.	Nature	Amount (Rs.)
i)	Director Salary	34584663
ii)	Rent of Director Residence	3600000
iii)	Business promotion paid to Director	1280453
iv)	Travelling Director	546452
v)	Interest expense	28082447
vi)	Legal & Professional	10882383
vii)	Depreciation	3384156
viii)	Other expenses	4229442

5. The AO questioned that if the same were allowable as being wholly and exclusively for the purpose of business u/s 37(1) of the Act and, further, regarding applicability of section 40A(2)(b) as the nature of payment is to related parties, i.e., to the Directors of the company who also holds more than $\frac{3}{4}$ of the shareholding in the company. The assessee has taken a plea that the assessee had developed a proprietary hospital management system which was customized and provided to M/s Moolchand Khairaiti trust for operations of Moolchand Hospital from AY 2007-08 onwards and it is because of these hospital management systems the said hospital has gain prominence. The assessee also submitted about various activities of providing services to Moolchand Hospital. However, the AO was not satisfied and held as follows:-

“6. As seen from the table at para 3, all the receipts of the company are from M/s Moolchand Khairathi Ram Trust, Also, as seen from the second table at para 4, the three Directors of the company hold more than 3/4th of the shareholding of the company. The Directors are also trustees of M/s Moolchand Khairathi Ram Trust. The entire income of the assessee company is in the form of interest, financial receipts or license fee from the trust and all these are essentially passive incomes. In the case of M/s Moolchand Khairathi Ram Trust, it has been held by the ITAT (vide its order dated 03.02.2012) that “...while the activity of providing medical relief through ayurvedic system of medicines are intra- virus” the activities of providing medical relief through Allopathic system of medicines are

ultra-virus the objects “and the trust is not entitled to exemption u/s 11 of the IT Act.” Thus, the following facts are evident from the record:

i) The entire receipts are from M/s Moolchand Khairaiti Ram Trust and all these are passive receipts in the form of license fees, financial income and interest receipts.

ii) The Directors of the company (who own more than 3/4th of the shareholding of the assessee company) are trustees of the M/s Moolchand Khairaiti Ram Trust.

iii) All the expenses claimed by the company are either expenses related to the Directors or are interest expenses on funds transferred to M/s Moolchand Khairaiti Ram Trust.

iv) It is therefore seen that the net result of the assessee’s business activities is the transfer to it of the surplus which would otherwise have been generated in the hands of M/s Moolchand Kharaiti Ram Trust, which runs the Moolchand Hospital.”

6. Accordingly, the AO disallowed the expenses related to Directors, Directors’ salary and commission, rent of directors residence, business promotion expenses paid to directors, travelling expenses of directors, interest paid to directors, legal and professional expenses and further disallowed business income of sales of shares and depreciation for which the assessee when approached in first appeal before the CIT(A), the CIT(A) allowed the appeal partly and, accordingly, the Revenue is in appeal raising the aforesaid grounds.

7. On hearing the rival sides, it comes up that this is the fifth year of operation and the expenses which the AO has disputed and disallowed are not debited for the first time. It comes up that the assessee company had generated revenue of Rs.29,08,75,202/- for which, certainly, the role of key employees and directors must have been crucial. Ld. DR has heavily relied the findings of AO, that only passive income is earned by assessee company. However, we find

that income from consultancy cannot be called to be passive. Assessee has established holding special copyrighted manuals for running a hospital and these manuals are prepared by the three directors. The directors have been paid in preceding years also. The ld. AO does not dispute that the same paid by the trust was either a licence fee or in violation of any other provisions of the Act. It was because of the services rendered to the trust by the Directors the assessee earned revenue. We find no substance in the conclusion of the AO that the assessee's business activities are merely a mode of transfer of the surplus which otherwise been added in the hands of the trust. The ld. AR was able to demonstrate that the AO himself has allowed a part of the expenditure incurred from AY 2014-15 and in AY 2020-21 no disallowance was made. Thus, we are of the considered view that when the CIT(A) has taken into consideration the aforesaid aspects to give relief to the assessee, the order of the CIT(A) requires no interference. The appeal of the Revenue is dismissed.

Order pronounced in the open court on 09.07.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 09th July, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi