

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.624/Del/2023
(ASSESSMENT YEAR 2018-19)**

Sangay Choden Bhutia FC-88, Tagore Garden Delhi-110027 PAN:AKDPB 8619B (Appellant)	Vs.	Income Tax Officer Ward-70(2) New Delhi (Respondent)
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Assessee by	Shri Gurdeep Singh, Adv.
Respondent by	Shri Anuj Garg, Sr. DR

Date of Hearing	03/07/2024
Date of Pronouncement	24/07/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi ["Ld. CIT(A)", for short], dated 04/01/2023 for Assessment Year 2018-19.

2. The brief facts of the case are, the assessee filed her return of income on 07/10/2018 and declared the total income at Rs.27,86,384/-. Subsequently, the return was processed u/s

143(1) of the Income Tax Act, 1961 ('the Act' for short) by the CPC, Bengaluru and completed the proceedings and created a demand of Rs.10,470/- instead of allowing refund of Rs.1,170/- claimed by the assessee.

3. Aggrieved with the above, the assessee filed a rectification application u/s 154 of the Act online. The assessee received rectification order u/s 154 of the Act with the demand of Rs.2,10,780/- and assessee was informed of the reasons for rectification as under:-

"In case of the assessee for the above assessment year a notice had already been issued proposing to withdraw tax credit given to the assessee earlier at the time of processing the Return u/s.143(1) of the Income Tax Act. The assessee was given an opportunity to register his/her objection within 15 days of receipt of the notice.

However, there is no response from the assessee. As stated in the above notice, in those cases where tax credits are withdrawn by the deductor, the tax credits which were allowed in the previous Intimation u/s. 143(1)/Order u/s 154 are no longer available to the assessee, due to the fact that the tax deductor of the assessee has subsequently withdrawn the same partially/fully. Consequently, the Intimation u/s. 143(1) sent to the assessee is rectified hereby u/s. 154 by reducing the tax payment credits to the extent they are withdrawn by the assessee's tax deductor. Similarly, in those cases where the assessee has not filled the Tax Payments Schedules in the Return properly, the previous Intimation u/s.143(1)/Order u/s.154 is rectified by giving credit to the taxes paid only to the extent claimed in the Return.

4. Aggrieved, the assessee preferred an appeal before NFAC, Delhi and raised the following grounds of appeal:-

“1. The Ld. DCIT, Bengaluru has erred in law and on the facts creating the demand of Income Tax and Interest arbitrarily, illegally and without any basis.

2. The Ld. DCIT, Bengaluru sans jurisdiction to make rectification and create demand u/s 154 of the Act disallowing any expenditure claimed on flimsy or untenable grounds and for the reason.

a) no proper opportunity is afforded to the Appellant.

b) no relevant reason has been stated for rectifying enhancing income of the appellant.”

5. It is informed that the assessee observed that CPC has disallowed Rs.5,57,835/- and presumed that the above disallowance is of advertisement expenditure, accordingly, filed the relevant information before the Ld. CIT(A). After considering the submissions of the assessee, the Ld. CIT(A) sustained the additions made by the CPC with the observations that advertisement expenditure incurred by Doctor is against the provisions of Indian Medical Council Regulation Act, 2022 and thereby expenditure incurred for committing offence under an act is prohibited by law. By referring to the provisions of section 37(1) he has dismissed the appeal filed by the assessee.

6. Aggrieved, the assessee is in appeal before us raising the following grounds of appeal:-

“1. The Learned Commissioner (Appeal) erred in confirming the disallowance of Rs. 575835/ being expenditure incurred for advertisement even though the same is incurred for the purpose which is not an offence or prohibited by law, thus the order dismissing the appeal is bad in law and against the law and the facts of the case.

2. The Learned Commissioner (Appeal) erred in law and on the facts, dismissing the appeal without appreciating the documents and the details of the expenditure incurred by the appellant towards Website portal design and maintenance imparting information about Hair Transplantation and Hair Loss treatment in the public interest.

3. The Ld. CIT(A) erred in law and on the facts that the demand of tax and interest emanated on the baseless, fictitious and unscrupulous grounds only after filing of application for rectification of illegal demand of Rs. 10470/- vide intimation u/s 143(1) of the Act, after which new demand of Rs.210780/- created in vengeance without application of legal mind for which the appellant was not provided any opportunity of being heard and thus the principal of natural justice violated.”

7. At the time of hearing, the Ld. AR of the assessee submitted that CPC has disallowed the expenditure claimed by the assessee with the observations that the *“tax credit which were allowed in the previous intimation u/s 143(1)/Order u/s. 154 are no longer available to the assessee, due to the fact that the tax deductor of the assessee has subsequently withdrawn the same for partially/fully”*. He submitted that the expenditure disallowed by the CPC, if at all relating to advertisement expenditure and this being an

expenditure then obligation is on the assessee to deduct the tax whereas in this case CPC has withdrawn the tax credit with the observation that tax deductor has withdrawn the same partially or fully. This is contrary to the disallowances made by the CPC. He prayed that the CPC has proceeded to disallow the certain expenditure without giving any opportunity to the assessee or issued any enhancement notice to the assessee.

8. The Ld. DR was asked to substantiate the above submissions of the AR and in this regard, the Ld. AR submitted an email of CPC on the response to the query raised by the assessee.

*"From: "Bangalore.addlcit5.cpc"<bangalore.addlcit5.cpc@incometax.gov.in>
Date: Jul 2, 2024 4:12:16 PM*

Subject: Re: Fwd: Appeal No.624/DEL/2023 in the case of Sh. Sangay Choden Bhutia (PAN: AKDPB8619B) for AY 2018-19, reg-

*To: DIT CPC Bangalore <dit.cpc.bangalore@incometax.gov.in>
Cc: "JCIT Unit 12 CPC, BENGALURU" <BANGALORE
ADDLCIT12.CPC@incometax.gov.in>, "bangalore.dcit8.cpc"
bangalore.dcit8.cpo@incometax.gov.in*

Madam,

In this case, no adjustment was made when the return was processed on 11-12-2018, as is required u/s.143(1)(a)(iv), although it was mentioned in the audit report that an amount was not allowable u/s.37, being 'Advertisement expense on political party.

Hence, this case was taken up for rectification 'Suo-moto' and accordingly a notice u/s.154 was issued, on 24-01-2019 (said notice is attached). wherein it was mentioned that the rectification proposed will have the effect of enhancing the demand/reducing the refund/increasing your

liability. However, as can be seen from the notice issued, the reason for initiating this 'Suo-moto rectification was not correctly mentioned.

The reason mentioned is

"In respect of the above return of income, it is proposed to withdraw your tax credit for the following reason/s:

1) TDS/TCS credit which had been given earlier is now withdrawn by your deductor you are requested to contact you tax deductor for any corrections in this regard.

2) The assessee has not entered the tax credit details correctly & completely in the Schedule- BTTI/Tax computation or entered TDS Deducted year wrongly. In this regard, you are requested to enter the correct details of tax credits or TDS deducted year as appearing in the Form 26AS in the appropriate schedule & file Online rectification. If credit is no available in Form 26AS, please get the same uploaded by the deductor & then file an Online rectification request

It is a fact that, the case of this assessee clearly falls under the adjustment to be made, as provided in Section 143(1)(a)(iv) and accordingly in this case the 'Suo-moto' rectification was required to be done, to make the above adjustment. However, the reason mentioned while proposing the initiation of 'Suo-moto rectification was not the correct & apt reason.

Regards,

RAJASHEKAR.V

Joint Director of Income Tax

Unit-10, CPC, Bengaluru

And with the above submissions, the Ld. DR rested his case.

9. Considered the rival submissions and material placed on record, we observed that proceedings u/s 143(1) were completed by the CPC and withdrawn claim of tax credit on the basis that tax deductor has withdrawn the tax deducted by them and accordingly, they created the demand of Rs.10,470/- against the

refund claimed by the assessee of Rs.1170/-. Subsequently, the assessee filed rectification application against the intimation u/s 143(1) of the Act. While processing the rectification application the CPC disallowed further sum of Rs.5,57,835/- without assigning any reason for such action. On enquiry, the assessee was given an explanation that the tax deductor has withdrawn the same partially/fully. It was intimated that assessee may contact the deductor. After considering the explanation offered by the CPC, it clearly indicates that CPC has withdrawn the TDS while completing the proceedings u/s 143(1). They have only withdrawn tax credit of Rs.10,470/-, however, in rectification proceedings, they have only intimated that tax deductor has withdrawn the tax credit. However, while passing the rectification order they have disallowed further sum of Rs.5,75,835/- without giving enhancement notice or opportunity to the assessee. After considering the explanation given by the CPC that they had to rectify the adjustment *suo moto* for the reason that the audit report which indicated an amount not eligible u/s 37 of the Act being advertisement expenses on political party. By considering the reasons submitted by the CPC, we are of

the view that rectification made by the CPC without giving proper opportunity to the assessee and merely observing and presuming that advertisement expenditure incurred by the assessee is towards advertisement expenses on political party. Further, we observed that even the Ld. CIT(A) has sustained the addition with the observation that the advertisement expenses of any nature are prohibited by Indian Medical Council and by the relevant provision of Indian Medical Council Regulation Act, 2002 which is against the provision of section 37(1) of the Act.

10. After considering the various explanation and findings of the Ld. CIT(A), we are of the view that CPC has wrongly made the disallowance of advertisement expenditure without properly verifying the same and observing that auditor has qualified it without properly giving opportunity to the assessee particularly in the rectification proceedings filed by the assessee. Therefore, in our considered view the CPC cannot make any adjustment while processing the rectification application. The reason given by the CPC that they have suo moto initiated the rectification in the rectification proceedings which is not proper. Even otherwise,

initiating the proceedings *suo moto* in the rectification proceedings, it is their duty to give proper notice and opportunity to the assessee before making any sort of adjustment. In this count itself, the addition proposed in the rectification order is deserves to be deleted.

11. Coming to the findings of the Ld. CIT(A), we observed that the advertisement expenditure as mentioned in Section 6.1 of Indian Medical Council Regulation Act, 2002 is as under:-

“6.1 Advertising:

6.1.1 Soliciting of patients directly or indirectly, by a physician, by a group of physicians or by institutions or organisations is unethical. A physician shall not make use of him/her (or his/her name) as subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or to his professional position, skill, qualification, achievements, attainments, specialities, appointments, associations, affiliations or honours and/or of such character as would ordinarily result in his self aggrandizement. A physician shall not give to any person, whether for compensation or otherwise, any approval, recommendation, endorsement, certificate, report or statement with respect of any drug, medicine, nostrum remedy, surgical, or therapeutic article, apparatus or appliance or any commercial product or article with respect of any property, quality or use thereof or any test, demonstration or trial thereof, for use in connection with his name, signature, or photograph in any form or manner of advertising through any mode nor shall he boast of cases, operations, cures or remedies or permit the publication of report thereof through any mode. A medical practitioner is however permitted to make a formal announcement in press regarding the following:

- (1) On starting practice.*
- (2) On change of type of practice.*
- (3) On changing address*

- (4) *On temporary absence from duty.*
- (5) *On resumption of another practice.*
- (6) *On succeeding to another practice.*
- (7) *Public declaration of charges.*

6.1.2 Printing of self photograph, or any such material of publicity in the letter head or on sign board of the consulting room or any such clinical establishment shall be regarded as acts of self advertisement and unethical conduct on the part of the physician. However, printing of sketches, diagrams, picture of human system shall not be treated as unethical.”

From the above, it can be observed that soliciting of patients directly and indirectly by a physician is prohibited whereas in this case, the assessee is running a clinic in the name and style of 'Hair n Senses'. The nature of expenditure claimed by the assessee are in the nature of general advertisement and website hosting and digital marketing expenditure. These expenditures falls under the category of general advertisement expenditure. Similarly expenditures were allowed by the Revenue in the earlier Assessment Years. Therefore, the findings of the Ld. CIT(A) are contrary to the fact on record. Accordingly, we are inclined to delete the additions proposed by the CPC in the rectification order. Accordingly, the appeal filed by the assessee is allowed.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 24th July, 2024.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 24/07/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI