

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1538/Chny/2024
निर्धारण वर्ष/Assessment Year: 2012-13

Mr. Kamalakannan Ramesh, Flat 8D, Block III, Rani Meyammai Towers, Sathyadev Avenue, MRC Nagar, RA Puram, Chennai-600 028.	v.	The ACIT, NCC-1, Chennai.
[PAN: ABCPR 2012 A]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.P. Prithvi Chopda, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Dr. Samuel Pitta, JCIT
सुनवाईकीतारीख/Date of Hearing	:	21.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	23.10.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 29.03.2024 for the Assessment Year (hereinafter in short "AY") 2012-13.



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2. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the addition of Rs.16,47,500/- made by the AO after rejecting the books of accounts of the assessee.

3. The brief facts are that the assessee is a Doctor by profession [Robotic Surgeon] who filed his return of income (RoI) for AY 2012-13 declaring total income of Rs.40,62,028/-. Later, the AO re-opened the assessment of the assessee by issuing notice u/s.148 of the Income Tax Act, 1961 (hereinafter in short "the Act") on 28.02.2019, and pursuant to it, the assessee filed RoI declaring total income of Rs.42,12,030/-. According to the AO, he got information that assessee has received unaccounted income of Rs.16,47,500/- as fees from 3295 patients [i.e. Rs.500/- per patient] viz out-patient consultation done at M/s.Appollo Hospitals. Therefore, he re-opened the assessment to ascertain if the receipts on account of ibid out-patient consultations done by the assessee while in M/s.Apollo Hospitals Ltd., were accounted for in the books of accounts and accordingly, called for relevant documents in this regard; and acknowledges that assessee had submitted the details in response to the notice which included the working as to how the gross receipts were arrived at. However, the AO noted that the assessee didn't produce the document as mandated by Rule 6F of Income Tax Rules, 1962 (hereinafter in short "the Rules") for AY 2012-13 and therefore, he asked him to produce the same. In this regard, the AO accepted that hard copy



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of a note books was produced (i.e., log note book). However, the AO disbelieved the veracity of the log book, which according to him, looks fresh [as if prepared recently] though the log book was supposed to be eight years old. Therefore, he was of the opinion that the assessee didn't maintain the requisite record of the patients who consulted him; and in the absence of furnishing any material in consonance with Rule 6F of the Rules, the AO didn't accept the gross receipt figures shown by the assessee in the RoI, and therefore, he referred to sec.145(3) of the Act completed the assessment u/s.144 of the Act by determining total income of Rs. 58,59,527/- i.e., by disallowing property loss of Rs.1,50,000/- & (ii) undisclosed outpatient fees of Rs.16,47,500/-.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to partly allow by deleting Rs.1,50,000/-, but confirmed the addition of Rs.16,47,500/-.

5. Aggrieved, the assessee is in appeal before this Tribunal challenging the addition of Rs.16,47,500/-.

6. We have heard both the parties and perused the material available on record. We note that the assessee by profession is a Doctor & Robotic Surgeon and full time consultant of M/s.Apollo Hospitals Ltd. The assessee has filed RoI on 26.07.2012 for AY 2012-13 declaring an income of Rs.40,62,028/-. The RoI filed by the assessee was re-opened by the AO



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by issuing notice u/s.148 of the Act on 28.02.2019 based on the information from the Ld.PCIT, Central-1, Chennai, that pursuant to a search conducted in the premise of M/s.Apollo Hospitals Ltd., the assessee didn't disclose an amount of Rs.16,47,500/- which was purportedly received by him as consultation fee of out-patients numbering 3295 @ Rs.500/- per patient. In order to ascertain the fact as to whether the receipts on account of such consultation in M/s.Apollo Hospitals Ltd., were accounted for by the assessee in his regular books of accounts, the AO directed the assessee to produce the books as required to be maintained as per Rule 6F of the Rules. Pursuant to which, the assessee filed the log/note-book which contained the details of out-patient seen every-day i.e, name of patients, nature of service rendered viz consultation, surgery whether to be treated as in-patients, post-operative consultation, fees received, date of receipt and maintained daily case register, which reflected that out of total gross receipt of Rs.71,76,530/-, the fees from out-patients was to the tune of Rs.9,21,906/- & fees from in-patient was to the tune of Rs.62,54,624/-. The AO doubted the veracity of the log-book maintained by the assessee [in accordance to Rule 6F of the Rules] on the specious plea that though eight years have passed, still the note-book/log book appears new [meaning it has been freshly prepared as an afterthought i.e, after reopening of assessment] and he cited section 145(3) of the Act and



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inter-alia made addition u/s 144 of the Act of Rs.16,47,500/- [alleged undisclosed fees from out-patients]. The AO by resorting to section 145(3) of the Act, has impliedly rejected the audited books of accounts maintained by assessee merely on suspicion that log-book produced appears to be prepared recently. In this regard, Ld AR pointed out that the AO has not alleged any deficiencies/infirmity in the log-book vis a vis that of Rule 6F of the Rules. The Ld AR further pointed out that AO during assessment proceedings neither expressed any doubts about the veracity of the log-book which was maintained by assessee in accordance to Rule 6F of the Rules nor gave any Show-Cause Notice to assessee, expressing his dissatisfaction about the genuineness of the log-book. According to Ld AR, only when he received the assessment order to his surprise, he came to know that AO rejected the log-book on the basis of its appearance and took adverse view, which action of AO was in gross violation of natural justice because, on the specific direction of AO, the assessee produced the log-book maintained as per Rule 6F of the Rules, and if the AO disbelieved it, then he ought to have given an opportunity to assessee to explain/rebut the same, which the AO failed to do. Therefore, the Ld AR contented that AO's action of rejecting the log-book and consequent estimation of income is bad in law. We find considerable force in the contention of assessee and note that assessee produced the log-book maintained by him in accordance to Rule 6F of the Rules and other books



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which have undergone audit. The AO has not alleged any violation of Rule 6F of the Rules in respect of maintaining the log-book in question. The AO neither pointed out any deficiencies/infirmity in the log-book nor violation of Rule 6F of the Rules, and so, he ought not to have rejected the audited books merely on suspicion that log-book appears new and recently prepared. In this regard, we further note that the AO has nowhere given a finding that the assessee has not regularly followed the method of accounting as specified u/s.145(1) of the Act. And it is also not the case of the AO that the assessee has not computed the income in accordance with the accounting standard notified u/s.145(2) of the Act. Thus, according to us, the condition for invoking sec.145(3) of the Act is not satisfied in the facts of the case. And merely based on suspicion, conjectures and surmises, the action of the AO to express his dissatisfaction about the correctness or completeness of the accounts, when assessee's books are audited cannot be accepted. By merely copying/reproducing Rule 6F of the Rules, and sec.145(3) of the Act, the AO cannot justify his action of rejecting the books of accounts which was regularly maintained by the assessee and which have undergone auditing u/s.44AB of the Act. Therefore, we don't countenance the action of the Ld.CIT(A) upholding the action of the AO rejecting the books of accounts of the assessee. And since we accept the log-book maintained by assessee in accordance to Rule 6F of the Rules and note that there is



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no other material referred to in assessment order or impugned order to support the addition of Rs.16,47,500/-. Hence, the addition of Rs.16,47,500/- can't be legally sustained.

7. In this context, the Ld.DR representing the department brought to our notice that re-opening of assessment was pursuant to a search conducted on M/s. Apollo Hospitals Ltd., and the statement of one HR(personal) named Ms. G. Subhadra was recorded by search team, and which statement has been referred to by this Tribunal while deciding a similar case of Dr. Sreenivasulu Reddy Ponnaluru, [who was also serving at Apollo Hospital] and drew our attention to the order of this Tribunal found kept at Page Nos.23-31 of the Paper Book, wherein, the statement of Ms. G. Subhadra has been reproduced at Page No.29 of the Paper Book which was the basis on which the re-opening was carried out; And we note that this Tribunal in the case of Dr. Sreenivasulu Reddy Ponnaluru (supra) has referred to the statement of Ms. G. Subhadra in its order, but we note in the present case that the AO has not discussed or mentioned about any statement or any material produced by Ms. G. Subhadra against the assessee to justify the action of AO/Ld CIT(A). Therefore, we are not inclined to accept the submission of the Ld.DR and refuse to look into the material which has not been referred to by the AO/Ld.CIT(A) to fasten the addition. Be that as it may, it is a settled position of law that the statement of a person can't be used against a person/ assessee



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without it being tested on the touch stone of cross-examination as held by the Hon'ble Supreme Court in the case of CIT v. Odeon Builders (P) Ltd., reported in [2019] 110 Taxmann.com 64 (SC). Therefore, looking from any angle, even if the statement of Ms. G. Subhadra is considered, still the addition cannot be sustained, without it being tested by cross-examination. Hence, the impugned addition of Rs.16,47,500/- needs to be deleted and we order accordingly.

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

Order pronounced on the 23rd day of October, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 23rd October, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF