IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C': NEW DELHI

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER, AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 255/Del /2014
Assessment Year: 2010-11

M/s Hospital Management Group Orthonova C-5/29, Safdarjung Development Area New Delhi	Vs.	The I.T.O Ward -37(2) New Delhi
PAN : AAFFG 0992 G		
[Appellant]		[Respondent]

Date of Hearing : 20.07.2016
Date of Pronouncement : 04.08.2016

Appellant by : Shri Deepak Ostwal, CA
Respondent by : Shri Amrit Lal, Sr. DR

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the assessee is directed against the order of the CIT(A)-XXVIII, New Delhi, dated 01/10/2013 for A.Y 2010-11 passed in first appeal No. 143/2012-13.

2. The effective grounds raised by the assessee read as under:

"1. On the facts and in the circumstances of the case Ld. CIT (A)-XXVIII, New Delhi has erred both on facts and in law in upholding the impugned order passed by the respondent illegally, violative of natural justice, without fair and objective

application of mind to the facts of the case and the law applicable and without being guided by the binding decisions of courts and tribunals and hence liable to be set aside and quashed and declared non-est in law.

2. On the facts and in the circumstances of the case Ld. CIT (A)- XXVIII, New Delhi has erred both on facts and in law in upholding the impugned order passed by the respondent by making illegal additions to the tune of Rs. 14,66,250/- out of rent paid/claimed by the appellant and Ld. CIT (A) ought to have been set aside and failure to do so has vitiated the impugned order, therefore impugned order liable to be set aside and quashed.

3. On the facts and in the circumstances of the case Ld. CIT (A)- XXVIII, New Delhi has erred both on facts and in law in upholding the impugned order passed by the respondent by making illegal additions to the tune of Rs. 1,15,403/- out or vehicle running and maintenance expanse and telephone expanses claimed by the appellant on the basis of presumption of being personal use and Ld. CIT (A) ought to have been set aside and failure to do so has vitiated the impugned order, therefore impugned order is liable to be set aside and quashed.

4. AO has erred in passing the impugned order without issuing show cause notice specifically proposing to make any addition nor any effective opportunity of hearing was provided to the appellant and Ld. CIT (A) has erred in upholding the unlawful action of the AO and hence, the impugned order passed in violation of natural justice is liable to be quashed.

5. The respondent is also wrong in raising illegal demands of tax, interest and penalties mechanically and perversely and all the demands as well as penalty notice be quashed."

Ground Nos. 1 and 2

3. Apropos these grounds, we have heard the rival submissions and have carefully perused the relevant material on record. The ld. AR submitted that the ld. CIT(A) has erred on facts and in law in holding the addition made by the A.O illegally violative of principles of natural justice, without far and objective application of mind to the facts of the issue and law applicable and without being guided by the binding decisions of courts and tribunal hence the same may be set aside and quashed in toto. The ld. AR vehemently contended that the impugned addition to the tune of Rs. 14.66.250/- out of rent paid/claimed by the assessee has been made without any basis, thus the same should have been set aside by the ld. CIT(A). The ld. AR pointed out that he ld. CIT(A) noted that the impugned amount of rent has increased retrospectively and paid during the year after deducting the TDS and the assessee is maintaining its accounts as per mercantile system of accounting. Therefore, the ld. AR contended that the rent paid in pursuance to the demand of additional rent was made by the owner of the property during the year with retrospective effect was paid during the year after TDS has to be allowed irrespective of the fact it was related to previous year.

4. Per contra, the ld. counsel of the Revenue supported the action of the A.O and contended that the rent expenses claimed by the assessee does not relate to the year under consideration, hence the claim was rightly rejected.

5. On careful consideration of the above, at the very outset, we note that the impugned rent amount was the amount of addition rent which was enhanced as per lease deed at the request of the owner of the property during the year with retrospective effect. The assessee had no occasion to make any provision for the same in the earlier A.Y as the enhanced provisions was invoked by the owner during the financial year under consideration with retrospective effect. The AO has not alleged that he claim is bogus or property was not used for the business of the assessee. It is also not a case of the AO that the assessee made payment out of ambit of the lease agreement. Merely because the rent was enhanced with retrospective effect as per provisions of the lease deed the part pertaining to earlier period cannot be disallowed. Under the above noted observations, we decline to agree with the conclusion of the authorities below on this issue and consequently, we hold that the impugned addition is not sustainable and thus we demolish the same. Accordingly, Ground Nos. 1 and 2 of the assessee are

allowed and the AO is directed to allow the claim of the assessee and to delete the disallowance.

Ground Nos. 3 and 4

6. The ld. AR apropos these grounds contended that the CIT(A) has erred in law and on the facts in upholding the baseless addition made by the AO out of vehicle running and maintenance expenses and telephone expenses claimed by the assessee on the presumption of personal use. The ld. AR pointed out that there is no allegation of bogus claim and the partners of the firm have separate cars and telephone for personal use. Thus no disallowance can be made. The ld. DR replied that the assessee did not produce log book and details of car and telephone use. Hence the AO was quite correct in making disallowance of 10% of the total claim of the assessee in this regard.

7. On careful consideration of the above, from the assessment order, we note that the AO asked the assessee to submit details of car use log book and details of telephone and telex expenses, but he assessee failed to submit the same and the ld. AR fairly accepted before the AO that no log book and details of use of car, telephone and telex have been maintained. This failure prompted the AO to make disallowance of 10% of the total claim

of the assessee. The CIT(A) upheld the disallowance by observed that the disallowance made by the AO is very reasonable.

8. Before us, it was vehemently contended by the ld. AR that the partners have separate cars and telephone for personal use but this fact was not brought to the notice of the AO and the CIT(A) during the proceedings. No details of even car and telephones maintained by the partners for personal use have been submitted neither before the authorities below nor even before the Tribunal. Thus, we decline to accept the contention of the assessee being baseless and devoid of merits. Accordingly, Ground Nos. 3 and 4 of the assessee are disallowed.

9. In the result, the appeal of the assessee stands partly allowed.

The order is pronounced in the open court on 04.08.2016.

Sd/-	**Sd/-**
(S.V. MEHROTRA)	**(C.M. GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 04th August, 2016

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi