

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri Waseem Ahmed, AM & Shri K. Narasimha Chary, JM]

**I.T.A No. 892/Kol/2013**  
**Assessment Year: 2008-09**

Dr. Ashok Kumar Maji  
(PAN: AEIPM7317Q)  
(Appellant)

Vs. Deputy Commissioner of Income-tax  
Circle-1, Siliguri.  
(Respondent)

Date of hearing: 19.10.2016  
Date of pronouncement: 26.10.2016

For the Appellant: Shri Subash Agarwal, Advocate  
For the Respondent: Smt. Sarbani Mukherjee, Addl. CIT, Sr. DR

**ORDER**

**Per Shri K. Narasimha Chary, JM:**

This appeal by assessee is arising out of order of CIT(A), Siliguri vide Appeal No. 78/ CIT(A)/Slg/10-11 dated 22.02.2013. Assessment was framed by DCIT, Circle-1, Siliguri u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2008-09 vide his order dated 30.12.2010.

2. Brief facts of the case are that the assessee is a Gynecologist practicing at Siliguri, treating patients admitted in three Nursing Homes i.e. Ram Krishna Nursing Home, Mitra’s Clinic & Nursing Home and Roy’s Clinic. For the AY 2008-09, the assessee filed return of income on 14.11.2009 disclosing total income at Rs.8,16,180/-. The case was selected for compulsory scrutiny and during the course of proceedings information was gathered from the above three Nursing Homes by issuing process u/s. 133(6) of the Act and the replies received from such Nursing Homes revealed that the assessee in all had treated 392 patients at Ram Krishna Nursing Home, 234 patients at Mitra’s Clinic & Nursing Home and 255 patients at Roy’s Clinic respectively. At the instance of the AO, the Departmental Inspector made queries with the above Nursing Homes and gathered information in respect to the fees and charges collected from patients. Basing on such information, the AO assessed the income of the assessee at Rs.41,72,730/- and on that basis added Rs.33,56,550/-. Aggrieved by the said addition, the assessee filed appeal before the Ld. CIT(A), who by way of the impugned order dismissed the appeal of assessee confirming the addition. Aggrieved by the said order, the assessee is in appeal before us on the following grounds:

*“1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the estimated addition of Rs.33,56,550/- made by the AO on account of alleged suppression of professional income.*

*2. Without prejudice to ground no. 1, the Ld. CIT(A) ought to have directed the AO to estimate or ought to have himself estimated the assessee’s professional income on a reasonable basis.”*

3. It is the argument of the Ld. AR that the assessee never collected any amount from the Nursing Homes and for his professional services he always collected fees from the patients directly. The details submitted by the assessee to the AO in respect of number of patients is admitted as treated in the Nursing Homes, but in so far as the quantum of fees is concerned, the assessment is made on mere conjectures and surmises. It is further contended by the Ld. AR that inspite of repeated demands the AO failed to furnish the information furnished by the Nursing Homes and also the information gathered by the Departmental Inspector and the assessee was never given an opportunity to cross examine the persons basing on whose statements the Departmental Inspector furnished the information the AO. For these reasons, the Ld. AR prayed to quash the orders of the authorities below by allowing this appeal.

4. Per contra, it is the argument of Ld. DR that in this matter the assessee has never maintained Form 3C information as such, the AO is justified in gathering the information through the Departmental Inspector to base his assessment. He also stated that since there were no compelling reasons for the Ld. CIT(A) to interfere with the findings of the AO, the Ld. CIT(A) after giving ample opportunity to the assessee and remanding the matter to the AO more than ones reached a right conclusion in confirming the addition. He, therefore, prayed before the Bench to dismiss the assessee’s appeal.

5. We have heard rival submissions and gone through facts and circumstances of the case and the material available on record. Insofar as the number of patients treated by the assessee is concerned, it is borne on record and there is no dispute. In all, the assessee has treated 881 patients during the relevant year at the Nursing Homes specified by the AO in his order. However, the entire dispute in this matter revolves around the quantum of fee said to have been collected by the assessee. For this purpose, the AO is relying on the information furnished by the Departmental Inspector which was gathered from the concerned persons of the Nursing Homes. The assessee is denying such quantity and right

from the beginning has been demanding for the information to be furnished to him which forms the basis for quantification. He also demanded that he must be given an opportunity to test the veracity of the witnesses who furnished such information.

6. The Ld. CIT(A) in his order extracted not only the order of the AO but also the subsequent proceedings that had taken place during the appellate proceedings. The Ld. CIT(A) recorded in his order that before the AO the assessee requested to prove with the copies of the replies said to have been received by the AO to the notices u/s. 133(6) of the Act from the third parties and the copies of the statements of the witnesses on which the AO was relying upon in making the additions. It is also represented before the AO that at no point of time the assessee collected any amount from any of the Nursing Homes but whatever the professional fees he had earned during the year he collected it directly from the patients. The assessee further represented before the AO that for want of information on these vital aspects, the statements of the third parties cannot have any bearing on the quantum of fees received by the assessee. Before the AO, the assessee submitted so many citations in support of his contention.

7. Before the Ld. CIT(A) the assessee reiterated all these grounds and demanded for the copies of the documents along with the details of the witnesses and also an opportunity of cross examination of the witnesses. The Ld. CIT(A) after a long hearing in this matter sought a remand report from the AO. AO submitted his remand report stating that the evidence adduced before him during the remand proceedings suggested that the Nursing Homes collected only administrative charges but not the professional fee and the professional fee was directly collected by the doctor. As a response to this remand report, the assessee contended that the copy of the report of the departmental Inspector was not furnished to him to effectively meet the contention of the AO. At that time the assessee further contended that he produced books of account containing the details of the patients admitted along with the details of consultation fee, but the AO without finding any discrepancy in the details of accounts produced by the assessee, and without giving any reason, resorted to assess the income of the assessee on estimate basis. The assessee contended that non-maintenance of daily case register in Form No. 3C read with Rule 6F does not empower to accept any report of the Departmental Inspector without providing any

copy thereof to the assessee and also to deny an opportunity to cross examine the witnesses who furnished such information.

8. Whatever may it be, it has come on record that the AO vide proceedings dated 13.08.2012 recorded a finding that the basis of getting average value (in respect of the professional fee for different services) is not verified and no other documentary evidence was available with him. He further recorded that the persons by name Shri Sudipto Kumar Dey and Shri G. S. Mishra employees of Ramkrishna Nursing Home who furnished the information to the Departmental Inspector, had already left the services and their whereabouts could not be found to secure their presence for cross examination.

9. This is the factual situation that was available before the Id. CIT(A). Ld. CIT(A) observed that the Departmental Inspector had not prepared the report in his own wisdom and due to paucity of time he collected information from the Administrators and the Financial Manager of the Nursing Home which he endorsed as proper. He further observed that the field enquiry report assumes so much of importance that it would be a travesty of truth to say that the assessment was finalized on the basis of hearsay. The Ld. CIT(A) further observed that the non-maintenance of record in Form 3C and non-production of bills issued to the patients clearly point to the fact of suppression of professional income. Basing on these observations, the Ld. CIT(A) dismissed the appeal of the assessee.

10. Having observed this factual situation, we understand that the bone of contention in this matter is only in respect of the quantification of the professional fees said to have been collected by the assessee. According to the assessee, he clearly mentioned such details before the AO but the AO without finding any defect or discrepancy of such details simply refused to accept the same in his inclination to accept the departmental Inspector's report. The fact remains that there is no material whatsoever to support the report of the Departmental Inspector inasmuch as the persons who furnished the information which is the basis for the Departmental Inspector's report were not to be found to secure their presence for cross examination by the assessee. However, we cannot forget the basic fact that the report of the Departmental Inspector is purely based on the information furnished by some third parties and there is no material on record to say whether such persons furnished correct information or not. It is not suspecting the genuineness of the Departmental Inspector's

report but it is the precaution that is required to be taken to test the veracity of the information that was received by the Departmental Inspector. The only way of finding the truth or otherwise of the contents of an oral statement of such witnesses is by way of cross examination. We have to keep in mind that there is no documentary evidence in support of the quantification of the professional fee collected by the assessee other than the Departmental Inspector's report which in turn, based on the oral account of some persons who vanished into thin air by the time of requirement of their presence for cross examination. Then how to know whether such persons have spoken truth or not before the Departmental Inspector and how to know whether the Departmental Inspector recorded the true account of such oral testimony of the witnesses unless and until the veracity of such witnesses is tested during cross examination. In the absence of any such test, it shall be taken that the entire exercise of assessment is based on hearsay. The untestified oral account cannot be the basis to fasten any financial liability on any person, more so, to the tune of Rs.3,56,550/-.

11. The Ld. AR produced before us a copy of the order dated 14.07.2014 of a coordinate bench of this Tribunal in assessee's own case in ITA No. 394/Kol/2010 in AY 2006-07 wherein also a similar addition was made on estimate basis to the income of the assessee. This Tribunal on a consideration of all the circumstances which are similar to those in this case reached a conclusion that the very foundation of estimation itself was erroneous and on such estimation no addition could be sustained.

12. For the foregoing reasons, we find lot of force in the arguments of the Id. AR that there is no sound basis for the estimated addition in question and any addition made on the basis of such lopsided approach cannot be sustained. We further find strength in the contention of the Ld. AR that the AO and the Departmental Inspector should have chosen a sample of patients for enquiry in respect of the fee paid by them instead of choosing some former employees of the Nursing Homes whose presence can never be secured at relevant times of need. There is no reason why none of the patients whose addresses were available on record with the AO. The cumulative effect of all these factors is that the revenue failed to substantiate its claim for justification of addition of amount by the AO or its confirmation

by the Id. CIT(A). We, therefore, hold that the addition made by the AO as confirmed by the CIT(A) is hereby deleted. Appeal of assessee is allowed.

13. In the result, appeal of assessee is allowed.

Order is pronounced in the open court on 26.10.2016

Sd/-

(Waseem Ahmed)  
Accountant Member

Sd/-

(K. Narasimha Chary)  
Judicial Member

Dated : 26th October, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – Dr. Ashok Kumar Maji, C/o Akash Nursing Home, Ashrampara, Siliguri -734001
- 2 Respondent – DCIT, Circle-1, Siliguri.
3. The CIT(A), Siliguri
4. CIT , Siliguri
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.