IN THE INCOME TAX APPELATE TRIBUNAL
HYDERABAD BENCHES "A" ("SMC") : HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT

ITA.No.334/Hyd/2016
Assessment Year 2010-2011

The ACIT, Circle-2(2), Hyderabad.	vs.	M/s. Gowri Gopal Hospitals P. Ltd., Hyderabad. PAN AACCS9035Q
(Appellant)		(Respondent)

For Revenue :	Mr. A. Sitharama Rao
For Assessee :	-None-

Date of Hearing :	20.07.2016
Date of Pronouncement :	10.08.2016

ORDER

This appeal is filed at the instance of the Revenue and it pertains to the A.Y. 2010-2011. The following grounds are urged before the Tribunal :

1. *"Whether in the facts and circumstances of the case the CIT (assessee) is correct in allowing the appeal by solely relying on the decision of the Ahmedabad Tribunal's decision in the case of M/s. V. Yadunandan Corporation wherein the expenditure was incurred to change the 'usage of the property' whereas in the present case the expenditure was incurred towards 'building penalization charges' ?*

2. *Whether in the facts and circumstances of the case the CIT(A) is correct by directing the AO to allow the expenditure incurred towards 'building penalization charges' which is not an allowable expenditure u/s.37(1) of the Act ?"*

2. The assessee is engaged in the business of rendering medical and diagnostic services. For the year under consideration, it declared total loss of Rs.33,68,182. During the course of scrutiny proceedings, the A.O. noticed that the assessee debited an amount of Rs.39,58,945 towards fees and charges under the head "Administrative Charges". Assessee was asked to furnish details of expenditure incurred under this head. In response thereto, assessee furnished a copy of the ledger account which shows that the assessee paid an amount of Rs.36,31,469 towards building penal charges and debited the same under the sub-head "Fees and Charges". It is admitted that the building penal charges were paid towards regularization of unauthorized construction of hospital building. The A.O. observed that the charges being paid due to violation of laws it cannot be allowed as deduction in view of Explanation to section 37(1) of the Act. In otherwords, the payment is for infraction of law. Therefore, the same is not allowable as deduction. A.O. accordingly made the impugned addition.

2.1. Before the CIT(A), the assessee contended that the amount paid to Municipality cannot be treated as penalty but it is an additional fees for regularization of construction and therefore,

not covered by Explanation to Section 37 of the Act. Ld. CIT(A) relied upon the decision of the ITAT Ahmedabad Bench in the case of ITO vs., M/s. V. Yadunandan Corporation (copy not available on record) wherein the Bench relied upon the Coordinate Bench decision of Bombay ITAT in the case of Kaira Can Co., Ltd., vs. DCIT 32 DTR 485 (Mum.) (Tribu.) and observed that *'if an expenditure is incurred which is an offence prohibited by the law, then it should not be allowed whereas in the case before the Bombay Bench the impact fees does not appear to be levied in respect of any breach or violation of law and therefore, it was treated as a fees and not a penalty'.* Following the said decision, the Ld. CIT(A) set aside the addition made by the A.O.

3. Aggrieved, the Revenue contended before the Tribunal that the decision of the Hon'ble Tribunal in the case of M/s. V. Yadunandan Corporation (supra) is distinguishable on facts inasmuch as the issue in dispute before them was the allowability of expenditure incurred to change the "usage of the property".

4. None appeared on behalf of the assessee though the case was adjourned at the behest of the Counsel for the assessee. Under these circumstances, I proceed to dispose of the appeal ex-parte, qua the assessee.

5. The moot question before me is, whether the charges levied by the municipal authorities was towards fees or in the form of penalty ?. The assessee has not placed any material on record to

indicate that the payment was made towards regularisation and it was not to compound an offence. Explanation (1) to Section 37 of the I.T. Act speaks of disallowance of claim of expenditure which is in the form of payment for infraction of law.

6. The case law relied upon by the CIT(A) appears to be not on the issue with which we are concerned herein. The ITAT, Chennai Bench in the case of Shri C. Shankar (ITA.No.1223/Mds/2008 dated 17.04.2013) observed that the payment of this nature has to be made when assessee contravenes the plan approved by the competent authority and makes unauthorised construction. The option available before such assessee is either to demolish the unauthorised portion or permit the civic authorities to demolish the unauthorised portion and thereafter, face the penal consequence. In lieu of the above said consequence, it is possible for an assessee to make payment to the appropriate local authority and get the unauthorised construction approved. Thus, it is the option of the civil authority and not the option of the assessee. The ITAT, Chennai Bench inturn, relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Mamta Enterprises 266 ITR 356 wherein under similar circumstances the Court observed that a compounding fee paid to the Municipal Corporation is a penalty which is not deductible under section 37 of the Act. Again in the case of Millennia Developers P. Ltd., 322 ITR 401 the Hon'ble Karnataka High Court reiterated its view. The ITAT 'B' Bench, Pune in the case of M/s.

Mody Developers vs. JCIT ITA.Nos.1693 & 1672/Pune/2013 dated 26.06.2015 considered this issue elaborately and preferred to follow the decision of the Hon'ble Karnataka High Court by observing that the decision of the Hon'ble Supreme Court in the case of Ahmedabad Cotton Manufacturing Co., and the decision of the Hon'ble Delhi High Court in the case of Loknath & Co., were rendered prior to insertion of Explanation to Section 37(1) of the Act and therefore, they are not applicable to the facts of the case and also observed that the Hon'ble Karnataka High Court having distinguished the decision of Hon'ble Delhi High Court and followed the decision of the Apex Court in the case of Haji Azia & Abdul Shakoor Brothers vs. CIT 41 ITR 350 (SC) the view taken therein deserves to be followed and accordingly viewed that compounding fee paid by the assessee to the Municipal Corporation, on account of deviation from original sanctioned plan, deserves to be treated as a payment in the nature of penalty and thus, the same is attracted by Explanation to section 37(1) of the Act.

7. The Ld. CIT(A) has not extracted the relevant provisions of Municipal Corporation to appreciate as to the nature of payment. But since it is a common phenomena in all the cases it cannot stand on a different footing. However, since neither the Assessing Officer nor the CIT(A) has verified the provisions before recording a finding as to whether it was in the form of fees or penalty, in the light of decisions (cited supra), I deem it fair and

reasonable to restore the matter to the file of the Assessing Officer who is directed to reconsider the matter in accordance with law, bearing in mind the principles set out in the aforecited case law.

8. In the result, appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open Court on 10.08.2016.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad Dated 10th August, 2016

VBP/-

Copy to

1.	ACIT, Circle-2(2), 8th Floor, 'B' Block, Room No.824, I.T. Towers, A.C. Guards, Hyderabad – 500 004.
2.	M/s. Gowri Gopal Hospitals P. Ltd., C-4, Industrial Estate, Sanath Nagar, Hyderabad – 500 018.
3.	CIT(A)-2, Hyderabad.
4.	Pr. CIT-2, Hyderabad.
5.	D.R. ITAT "A" (SMC)Bench, Hyderabad.
6.	Guard File