

आयकर अपीलीय अधिकरण, मुंबई "ए" खंडपीठ मे
Income-tax Appellate Tribunal -"A" Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and Amarjit Singh,Judicial Member
आयकर अपील सं./I.T.A./7617/Mum/2013,**निर्धारण वर्ष** /Assessment Year: 2002-03

Dr. Anjali A. Malpani 6th Floor, Jamuna Sagar, Bhagatsingh Road,Colaba,Mumbai-5. PAN:AAHPM0693E	Vs.	The ACIT, Circle-11(2) Aayakar Bhavan Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A./7618/Mum/2013,**निर्धारण वर्ष** /Assessment Year: 2002-03

Dr. Aniruddha N. Malpani 6th Floor, Jamuna Sagar, Bhagatsingh Road,Colaba.Mumbai-5. AACPM9738M	Vs.	The ACIT, Circle-11(2) Aayakar Bhavan Mumbai-400 020.
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राजस्व की ओर से / **Revenue by:** Shri Jagdish P. Jangid-DR

अपीलार्थी की ओर से /**Assessee by:** Shri Hari S. Raheja

सुनवाई की तारीख / **Date of Hearing:** 19/05/2017

घोषणा की तारीख / **Date of Pronouncement:** 24.05.2017

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the orders dated 24/10/2013 of the CIT (A)-3,Mumbai, both the assesseees have filed the appeals for the above assessment year.As the issue involved in the appeals is identical,so,we are adjudicating them together.Assesseees are doctors by profession. This is the third round of litigation before the,so,we would like to narrate the facts briefly.

ITA/7617/Mum/2013:

2.A survey action, u/s. 133A of the Act,took place at the business premises of the assesseees. During the assessment proceedings, the Assessing Officer (AO) called for the receipt books of the assessee and impounded the same.The assessee is an infertility specialist and provides services to the patients along with her husband.She would receive fees separately from the same patient and account for them in the respective books of accounts.Besides,there is a partnership firm Malpani Infertility Clinic and it charges the patients separately for providing facilities. Receipts from the patients are shown in the books of accounts in the ratio of 40: 40: 20 in the books of the assessee, husband and the partnership firm respectively. If services of an anesthetist is taken,separate charges are collected and handed over to him.

2.1.During the assessment proceedings,the AO noted that on reverse of all the receipts certain figures were appearing. He observed that there was difference between the figures appearing on the receipt and the income declared by the assesseees. In this regard, it was stated by the assessee that the cashier would collect amount from the patients, that same is divided among

three/four entities. An affidavit of the cashier was also filed. After considering the available material, the AO made addition to the income of the assessee. Matter travelled up to the Tribunal.

3. The First Appellate Authority (FAA) was directed by the Tribunal to adjudicate the issue afresh. In pursuance of the directions of the Tribunal, the assessee furnished addresses of the patients available with her and the details of various receipts and how the same were accounted for in the hands of three entities. He called for a remand report from the AO and accepted the claim of the assessee that it was a case of double addition i.e. same amount was added in her hands and in the hands of her husband. He also carried out an exercise on test check basis and informed the FAA that figure written behind on receipts was the cumulative figure that was distributed between both the assessees. The FAA, during the appellate proceedings, asked the assessee to file certain details. After considering the same, he granted relief in respect of common patients. But, in respect of aggregate addition, being more than a certain range, only limited relief was granted.

4. The assessee again preferred an appeal before the Tribunal. It was argued that there was not a single instance where the AO had been able to point out any receipt over and above what had been declared by the assessee, that there was not an instance to show that bifurcations claimed by the assessee in three hands (i.e. the assessee, her husband and the partnership) incorrect, that the AO had not pointed out any defects in the books of accounts of the assessee, that the revenue authorities had not pointed out any mistake in the reconciliation statements and charts filed before them. It was also stated that the assessee was interested in bringing an end to the litigation, that the matter was very old, that a small addition could be sustained in order to meet any eventuality of any income escaping assessment on account of any error in reconciliations. The Tribunal adjourned the case for one day.

During the next hearing, the authorised representative of the assessee, after consultation with her, proposed to retain an addition not exceeding Rs. 2 lakhs in the hands of both the assessees. Vide its order dated 14/09/2016, the Tribunal confirmed the addition to the tune of Rs. 7 lakhs as undisclosed income in the hands of the assessee as against the addition of Rs. 12.19 lakhs made by the FAA. The assessee filed a miscellaneous application before the Tribunal and the order was recalled. In its order, dated 06/03/2017 (MA/386/Mum/2016) the Tribunal observed that the assessee had filed an MA contenting that the addition of Rs. 7.00 lakhs was on higher side, that there was a mistake of fact in understanding by the Tribunal of the offer of settlement/concession made by the Ld. Counsel for the assessee which was to

restrict the sustaining of addition to the tune of Rs.2.00 lakhs, that the assessee had a good case on merits,that the assessee was requesting to restrict the addition to Rs.2.00 lakhs or else to recall the orders. Accordingly, the orders were recalled by the Tribunal in both the cases.

5. During the course of hearing before us, the Authorised Representative narrated the facts of the case and stated that the assessee had agreed for addition of Rs. 2 lakhs to bring an end the litigation of a matter which was pending for a long period, that the AO/FAA had not pointed out any discrepancy in the books of accounts maintained by her, that the in its order had observed that the assessee had agreed for addition of Rs. 2 lakhs only. The departmental representative stated that matter could be decided on merits.

6. We have heard the rival submissions and perused the material before us. We find that while adjudicating the miscellaneous application, filed by the assessee, the Tribunal had observed that the assessee had agreed that addition to her income should be restricted it to the extent of Rs.2 lakhs,that the offer was made after the authorised representative had sought time for one day to discuss the issue with the assessee,that the AO/FAA had gone through the charts/ reconsideration statements filed by her and had not pointed any defect in the manner the accounts were maintained.

The matter is pending from the day when a survey action was carried out at the business premises of the assessee. The assessee, on its own, had offered that ad hoc addition could be made so that the litigation comes to an end. Considering the peculiar facts and circumstances of the case, we are of the opinion that in the interest of Justice addition should be restricted to Rs. 2 lakhs. Effective ground of appeal is allowed in favour of the assessee, in part.

ITA/7618/Mum/2013.

7. Facts in case of the husband of the assessee are identical to the facts of her case. Therefore following the earlier order, we hold that addition of Rs. 2 lakhs should be made in the hands of Dr. Aniruddha Malpani also.

A result appeals filed by both the assessee stand partly allowed.

फलतः दोनों निर्धारितियों द्वारा दाखिल की गई अपीलें अंशतः मंजूर की जाती हैं।

Order pronounced in the open court on 24th, May, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 24 मई, 2017 को की गई।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 24.05.2017.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Appellant /अपीलार्थी

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

2. Respondent /प्रत्यर्थी

- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
5.DR “A ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ए खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**