

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 167/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13.

The Assistant Commissioner of Income Tax, Central Circle-1, Jaipur.	बनाम Vs.	M/s Sharma East India Hospitals and Medical Research Ltd., H-1 Chitranjan Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AABCS 9729 A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by: Shri Mukesh Verma (CIT)
निर्धारिती की ओर से/ Assessee by : Shri Manish Aggarwal (CA)

सुनवाई की तारीख/ Date of Hearing : 03.04.2017.
घोषणा की तारीख/ Date of Pronouncement : 10/04/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the revenue directed against the order of Id. CIT (A)-4, Jaipur dated 22.12.2016 pertaining to assessment year 2012-13. The revenue has raised the following grounds of appeal :-

- “1. Whether on the facts and in the circumstances of the case the CIT(A) was justified in deleting the addition of Rs. 35,90,595/- on account of disallowance of interest.
2. Whether on the facts and in the circumstances of the case the CIT(A) was justified in deleting the addition of Rs. 4,72,778/- on account of bogus purchases.

The appellant craves, leave or reserves the right to amend, alter, add, or forego any ground(s) of appeal at any time before or during the hearing of this appeal”

2. Briefly stated the facts are that the search & seizure operation u/s 132(1) of the Income Tax Act, 1961 was carried out on 08/06/2011, at the different premises of the Jaipur Hospital Group. Subsequently, in order u/s 143(3) and 153B(b) of the Act, was framed vide order dated 21/03/2014. While framing the assessment, the Assessing Officer made addition on account of bogus purchase of Rs. 5,56,210/- and disallowance the interest of Rs. 35,90,595/-. Aggrieved by this order, the assessee preferred an appeal before Id. CIT(A) who after considering the submissions deleted both the additions. Aggrieved by this, the Revenue is in appeal before this Hon'ble Tribunal.

3. Ground no. 1 is against deletion of disallowance of interest expenditure. Id. Departmental Representatives submitted that the CIT(A) was not justified in deleting the disallowance. He supported the order of the Assessing Officer.

3.1 On the contrary, Id. Counsel for the assessee reiterated the submissions made in the written submissions. The relevant contents of the written submissions are reproduced as under:-

"Here the Id. AO had disallowed interest paid by the assessee on the borrowed funds, b6y alleging that there were certain interest free advances and non-business investment made by the assessee out of the funds so borrowed and accordingly he made the disallowance by applying interest rate of 13% on such advances, though after reducing the value of funds already available with the assessee in the shape of Share Capita, Reserves & Surpluses; but without properly appreciating the real nature of investment/advance made and further ignoring the fact that, the assessee was having at its disposal sample amount of other interest free funds (duly appearing in the financial statements of assessee). Most importantly, it is submitted that, the Id. AO had miserably failed to prove any sort of nexus between borrowed funds and the alleged interest free advance and investments made by the assessee, especially when the assessee was having at its disposal sufficient amount of fund to meet out all the concerned advances/investments.

Attention of the Hon'ble bench is invited to the fact that, similar disallowances by making identical allegations under exactly similar circumstances were also made in immediately preceding assessment years (i.e. in AY 2010-11 and AY 2011-12) where such disallowances were fully deleted by the Id. CIT(A) and such orders were upheld by this Hon'ble Bench vide orders dated 05/06/2015 in ITA Nos. 718 & 719/JP/2014 (Assessee's Appeals) and 803 & 804/JP/2014 (departmental appeal) (copy enclosed), wherein it has been observed a under: (page 20 para 3.10)

"3.10 Apropos revenue appeals about relief in respect of claim of interest u/s 36(1) (iii); from the financial statements and assessee's submission following facts clearly emerge from the record:-

- (i) *The assessee had at its disposal sufficient available funds in the form of share capital, reserves and other interest free funds etc. which are more than alleged advances investments.*
- (ii) *The nature of such advances/investments as explained and considered by Ld. CIT(A) leave no room for any doubt that the alleged advanced/investments were for the purposes of assessee's hospital and medical professions.*

In view of the above findings and observations, no disallowance of interest u/s 36(1)(iii) is justified."

In the year under appeal, Id. CIT(A) has deleted the disallowance by following the orders of his predecessor which orders were further upheld by the Hon'ble Bench, thus in the circumstances the order passed by the Id. CIT(A) deleting the disallowance deserves to be upheld.

Further it is submitted that while making the disallowance, the Id. AO has committed a gross error in considering only the amount of Rs. 531.38 lacs as interest free funds available with assessee for making concerned advances/investment and leaving out/ skipping other interest free funds available with the assessee to meet out these advances/ investments which are grouped under the head "Current Liabilities" totaling to Rs. 428.55 lacs. Details of which is as under:

Particulars	Amount (lacs)
Sundry Creditors for goods and expenses	18.58
Advances from patients	18.70
Other payables	86.71

Outstanding Liabilities Expenses	302.63
Long term advances from patients	1.93
Total	428.55

From above it is amply evident that the assessee had sufficient, interest free funds available with it, and if the same is added to Share Capital and Reserve & Surplus, already considered by the Id. AO, the total interest free funds available with the assessee comes to Rs. 959.93 lacs which is more than the total alleged non-business advances/assets/investments of R. 723.19 lacs (wrongly appearing as 797.35 lacs in the assessment order). Thus there is no question of application of interest bearing funds in non-business advances/assets/investments."

3.2 We have heard the rival contentions, perused the material available on record. We find that the Id. CIT(A) has given a finding on fact by observing as under:-

"The assessee, own fund, which non-interest bearing as on 31/03/2012 is as under:

➤ Share capital issued and subscribed	Rs. 415.75 Lakhs
➤ <u>Reserve and surplus</u>	Rs. 115.63 Lakhs
	Rs. 531.38 Lakhs

Further, total advances made by the assessee during the year are as under:

Loans and Advances	Amount
Investment in lands	1,55,45,014.00
Advances to Ganpati Plastifab Ltd.	15,00,000.00
Shrama Memorial Hosp. & Research Institute (Land)	4,46,041.00
Sharma Memorial Hosp. & Research Institute (Advance) *	3,17,44,419.00
Shrey Associates	20,00,000.00
BLS Projects (P)ltd	11,90,000.00
Silvering Roadways	6,50,000.00
Sharma Nursing Home & Bone Hosp.(P) ltd	2,77,290.00
Sharma Hospital (P) ltd	1,36,431.00
Non-current investments in shares of various	31,46,000

companies	
Non-current investments in immovable (land at Kalwar road)	1,56,84,000.00
Total	7,23,19,195.00

It is pertinent to mention here that advances made to M/s Sharma Memorial Hosp. & Research Institute (Advance) amounting to **Rs. 3,17,44,419/=** is covered by aforementioned decision of Hon'ble ITAT Jaipur in assessee's own case(supra). Therefore, the balance amount of **Rs. 4,05,74,776/= (7,23,19,195 – 3,17,44,419)** is fully covered by interest free fund available with in form of share capital & reserve and surplus of **Rs. 531.38 Lakhs** as on 31.03.2012 (**Reference balance sheet & assessment order pg 12**)

In view of these facts and circumstances of the case as discussed above, addition made of Rs. 35,90,595/= is hereby deleted. Assessee's appeal in Gr No 1 to 1.1 stands allowed."

The above finding of fact is not controverted by the Revenue. Therefore, this ground of the Revenue's appeal is rejected.

4. Ground no. 2 is against deletion of addition of Rs. 4,72,778/- made on account of bogus purchases.

4.1 The Id. Departmental Representatives supported the order of the Id. Assessing Officer. The Id. Counsel for the assessee submitted that the issue is covered by the decision of the Tribunal.

4.2 We have heard the rival contentions, perused the material available on record. We find that Id. CIT(A) has decided this issue by observing as under"-

"Therefore in view of facts & circumstances of the case and respectfully following aforementioned decision of Hon'ble Jaipur ITAT, AO is directly to restrict the disallowance to 15% of unverifiable purchases, Rs. 5,56,210/- in AY 2012-13. This will translate into addition of Rs. 83,432/- in AY 2012-13. Assessee's appeal in Gr. No. 2 to 2.5 in AY 2012-13 are partly allowed."

The Id. CIT(A) has followed the decision of the Tribunal in ITA No. 718 & 719/JP/2014. This fact is not controverted by the Revenue. Therefore, taking a consistent view, we do not see any reason to interfere into the order of the Id. CIT(A), same is hereby affirmed. This ground of the Revenue's appeal is dismissed.

5. In the result, appeal of the Revenue in **ITA No. 167/JP/2017** is dismissed.

Order pronounced in the open court on Monday, the 10th day of April 2017.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member
Jaipur

Dated:- 10/04/2017.

Pooja/

Sd/-

(कुल भारत)

(KUL BHARAT)

न्यायिक सदस्य / Judicial Member

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

1. The Appellant- The ACIT, Central Circle-1, Jaipur.
2. The Respondent- M/s. Sharma East India Hospitals and Medical Research Ltd., Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 167/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

