

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.874 to 878/Chny/2020 & S.P Nos.185 to 189/Chny/2020
[in ITA Nos 874 to 878/Chny/2020]

(निर्धारणवर्ष / Assessment Years: 2012-13 to 2016-17)

Dr.S.Chandrasekara Chandilya 13, 3 rd Cross Street, Mandavelipakkam, Chennai-600 028.	Vs	The Assistant Commissioner of Income Tax, Non-Corporate Circle-1 Chennai-600 034.
PAN:AAUPC 3096J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Murali Kumaran, Advocate
प्रत्यर्थीकीओरसे/Respondentby	:	Ms. R.Anitha,JCIT

सुनवाईकीतारीख/Date of hearing	:	10.11.2020
घोषणाकीतारीख /Date of Pronouncement	:	10 11.2020

आदेश / ORDER

PER BENCH:

These five appeals and five stay petitions filed by the assessee are directed against separate but identical orders of the learned Commissioner of Income Tax (Appeals)-2,Chennai, all dated 16.09.2020 and pertain to the assessment years 2012-13 to 2016-17. As the appeals of the assessee itself are taken up for disposal, the stay petitions filed by the assessee have become infructuous and the same are dismissed accordingly. Since the facts are identical and issues are common, for the sake of

convenience, the appeals are heard together and disposed off by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for all assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2012-13 are reproduced as under:-

“A. When it is an admitted fact that all the outpatient consultation amounts are charged by Apollo Hospitals and are paid from the account of the Apollo Hospitals to the Assessee after deducting TDS. the Assessing Officer without giving credit to the said amount disclosed in making a separate addition for the very same consultations.

B. The addition and the related tax thereto, results in complete double taxation.

C. At any rate the Assessing Officer has not made any addition in the income of the Apollo Hospitals, proportionate to the addition of 15% retained by the Apollo Hospitals, for the in-patients as per the agreement dated 1st April, 2013.

D. With regard to the medical profession carried out by the Assessee in Apollo Hospitals, which resulted in the subject matter of addition, since the Assessee did not collect any amount directly from the patients nor issued any receipts and Apollo Hospitals having only received the said amount maintained the said accounts as the Authorized Representative of the Assessee, the books of accounts under Rule 6E(has been maintained by the Authorized Representative viz, the Apollo hospitals, which has not been disputed and in such circumstances, no addition can be made on the said score in the Assessee's account for non-maintenance of another set of separate books by the Assessee.

E. The Assessing Officer has not shared either the evidence or the details of the evidence based on which the Assessing Officer has come to the conclusion that the Assessee has received an

unaccounted income in the form of outpatient consultation done at Apollo Hospitals, numbering to 2574 Rs.500/- per patient.

F. The Assessing Officer erred in adding the income without verification of the corresponding items in the assessment of the alleged payer, Apollo Hospitals Enterprises Limited. Neither there would be additions of income in the hands of the employer. Apollo Hospitals Enterprises Limited nor a corresponding disallowance in their hands under Section 40-A(3) or any other applicable provisions of the Income Tax Act, for the alleged payment/expenses in cash.

G The First Appellate Authority erred in sustaining the addition made in the assessment order, as it suffers from the vice of lack of furnishing the information to the Assessee for re-opening of the assessment.

H. In the absence of the information being given to the Assessee by the Assessing Officer for re-opening the assessment, renders the assessment void.

I The consultation list, unless it is supported by fees charged and collected, can in no manner be a basis of making any addition.

J. The Assessing Officer's action of addition to income is in opposition to law, facts and circumstances of the case.

K. The Assessing Officer's action of addition to income is without any reliable evidence or material.

L. The amount of consultation rate and thereby the total addition are arbitrary.

M. The person from whom the statement was recorded during search is not from outpatient Department and hence, it is unauthorized, in-genuine and unreliable

N. The learned CT (A) for the Assessment Year 2011-12, has deleted the additions for the identical sets of facts and circumstances."

3. Brief facts of the case are that the assessee is a medical practitioner rendering his professional services in different hospitals including that of the Apollo Hospital. The assessee had entered into contract with M/s. Apollo Hospital for sharing professional income from out patients as per which clause 2 of the said agreement states that any consideration of services provided by the consultant to the patients, the Apollo Hospital may charge professional fees to the patients and after retaining 15% of the fees collected balance amount shall be paid to the assessee. For the impugned assessment year, the assessee filed return of income declaring total income at ₹ 9,33,410/-. In the return filed for the assessment year 2012-13, the assessee disclosed receipt from Apollo Hospital at ₹ 12,26,134/- which he received in his bank account after deducting TDS u/s.194J of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The case has been subsequently reopened u/s.147 of the Act, on the basis of information received from Principal CIT, Central Circle, Chennai, as per which the assessee has received professional income from Apollo Hospital in cash and the same has not been disclosed in his

return of income. Accordingly, notice u/s.148 dated 13.03.2019 was issued. In response to the notice, the assessee has filed his return of income on 21.03.2019 and stated that return filed u/s.139 may be treated as return filed in response to notice u/s.148 of the Act. The case has been selected for scrutiny and notice u/s.142(1) of the Act was issued calling for various details including books of account maintained under Rule 6F(2) of the Income Tax Rules, 1962. Thereafter, a show cause notice dated 14.11.2019 was also issued and called upon the assessee to explain as to why additions should not be made towards undisclosed income received from Apollo Hospital group. The assessee neither appeared nor filed any details before the Assessing Officer. Therefore, the Assessing Officer passed ex-parte assessment u/s.144 r.w.s 147 of the Act and made additions of Rs.12,87,000/- towards income received from Apollo Hospital group on the basis of information received from Principal CIT, Central Circle, Chennai.

4. Being aggrieved by the assessment order, the assessee preferred appeals before the learned CIT(A) . Before the learned CIT(A), the assessee has filed detailed written submissions and

argued that consultancy service fee received from Apollo Hospital group has been included in gross receipts received from profession for the year and such payment has been received from bank. The assessee further submitted that Apollo Hospital group has made payment as per the terms of agreement after deducting 15% fees collected from patients towards their charges through bank and has also deducted TDS as per section 194J of the Act. He further submitted that books of account required to be maintained under Rule 6F of I.T. Rules has been maintained by Apollo Hospital containing details of patients and therefore, the assessee has not separately maintained the said records. The learned CIT(A), after considering the relevant submissions of the assessee and taken into consideration the facts brought out by the Assessing Officer observed that the assessee did not furnish any details including patients who did not pay the consultancy fee in accordance with Rule 6F of I.T. Rules, 1962 and accordingly, there is no error in the findings recorded by the Assessing Officer to come to a conclusion that the amount received from Apollo Hospital group is undisclosed

income of the assessee . Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. The learned AR for the assessee submitted that the learned CIT(A) failed to appreciate the facts that the assessee has received the amount from Apollo Hospital group, Chennai, in accordance with the agreement between the parties and as per the said agreement the Apollo Hospital group has paid 85% of fees collected from out patients through cheque after deducting TDS and the said payments have been recorded in form 26AS. The learned AR further submitted that the assessee has included the amount received from Apollo Hospital in his return of income and paid necessary taxes and further addition towards the said amount on ad-hoc basis based on information received from Principal CIT., Central Circle, Chennai amounts to double taxation of same income. The learned AR further submitted that the assessee never collected any amount from patients and all amounts have been collected by Apollo Hospital and necessary records required to be maintained as per rule 6F(2) has been maintained by Apollo Hospital, which has not been disputed. Therefore, in such circumstances making addition towards

same income twice for not producing the required records under Rule 6F amounts to double taxation, which is incorrect.

6. The learned DR, on the other hand, supporting the orders of Assessing Officer and learned CIT(A) submitted that the assessee neither appeared before the authorities nor filed any details to justify the amount received from Apollo Hospital group has been included in his return of income filed for the relevant years and hence there is no error in the findings recorded by the authorities below to come to a conclusion that income received from the Apollo Hospital group is outside the books of account of the assessee. The learned DR further submitted that assessee has filed various details including financial statements, bank statements and form 26AS to prove that the said amount has been included in his return of income filed for the relevant assessment year, but those documents are not before the Assessing Officer and hence if at all, the assessee claims that the said amount has been already considered in his returns, the matter may be set aside to the file of the Assessing Officer to examine the claim of the assessee in light of various additional details.

7. We have heard both the parties, perused materials available on record and gone through the orders of the authorities below. The sole issue that came up for our consideration from the given facts and circumstances of this case is whether consultation charges received from Apollo Hospital group, Chennai was included in the return of income filed for relevant assessment years or which is outside the books of account as claimed by the Assessing Officer on the basis of information received from PCIT., Central Circle, Chennai. The Assessing Officer has made additions towards income received from Apollo Hospital group, Chennai on the basis of information received from PCIT., Central Circle, Chennai, as per which the assessee has received consultation charges @ ₹ 500/- per outpatient and for the year under consideration, he has attended 2574 outpatients which works out to ₹ 12,87,000/- and the same has not been accounted in the books of account of the assessee. The assessee claims that the amount received from Apollo Hospital group, Chennai, has been received through cheque and said payment has been subjected to TDS under the provisions of section 194J of the Act and further the same has been included in

his gross receipts reported for the year in the income-tax returns filed for the relevant assessment years for which the assessee has filed necessary agreement between the parties, bank statements and form 26AS. The assessee further claimed that as per agreement between the parties, the principal, M/s.Apollo Hospital group, Chennai has maintained necessary records required to be maintained under rule 6F of I.T Rules, 1962 containing particulars of patients and amount charged and said amount has been directly collected by Apollo Hospital group, Chennai from patients. We have gone through the paper book filed by the assessee and find that the assessee has entered into agreement with Apollo Hospital group, Chennai and as per which Apollo Hospital group directly collects consultancy charges from outpatients and after deducting 15% of the fees collected from patients, the balance amount has been paid to the assessee . Further, the said payment has been made through banking channel after deducting applicable TDS under section 194J of the Act. We further noted that the assessee has included the amount received from Apollo Hospital group, Chennai in his return of income for the impugned assessment year

and also claimed TDS deducted by the Principal in his return of income. All these records are part of the paper book filed by the assessee. Therefore, from the above, prima-facie it appears that the assessee has included the amount received from Apollo Hospital group in his return of income filed for the relevant assessment year including the impugned assessment year. Therefore, we are of the considered view that making ad-hoc addition on the basis of information received from third party source on the pretext that assessee has received consultation charges in cash amounts to double taxation, which is incorrect. But, the fact remains that relevant documents including bank statement and form 26AS were not produced before the Assessing Officer or even before learned CIT(A), because the assessee neither appeared before the authorities below nor filed any details. Therefore, we are of the considered view that there was no occasion for the lower authorities to examine the case of the assessee in light of various evidences including form 26AS filed for relevant assessment years. Therefore, the issue needs to go back to the file of the Assessing Officer for limited purpose of examining

the issue with regard to amount received from Apollo Hospital group, Chennai, to ascertain the facts whether the said amount is part of income declared by the assessee for the relevant assessment year . In case, the Assessing Officer found that the amount received from Apollo Hospital group, Chennai, is included as income in the relevant assessment years, then the Assessing Officer is directed to delete the additions made towards consultation charges received from Apollo Hospital group.

ITA Nos. 875 to 878/Chny/2020:

8. The issues involved in these appeals are identical to the issue which we have already considered in ITA No.874/Chny/2020 for the assessment year 2012-13. The reasons given in the preceding paragraph of ITA No.874/Chny/2010 shall *mutatis mutandis* apply to these appeals as well. Therefore, for the same reasons, we set aside these appeals also to the file of Assessing Officer and direct him to examine the issue in light of various evidences filed by the assessee including form 26AS for the relevant assessment years .

ITA Nos. 874 to 878/Chny/2020
& S.P Nos.185 to 189/Chny/2020

The appeals filed by the assessee for the above assessment years are allowed for statistical purposes.

9. In the result, the appeals filed by the assessee for assessment years 2012-13 to 2016-17 are treated as allowed for statistical purposes and the five stay petitions filed by the assessee are dismissed as infructuous.

Order pronounced in the open court on 10th November, 2020

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष/ Vice-President
चेन्नई/Chennai,
दिनांक/Dated 10th November, 2020
DS

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.