

आयकर अपीलिय अधिकरण, 'बी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.852 & 853/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2012-13 & 2013-14)

Dr.Thiruvengadam Prithviraj, 3, 3 rd Street, Dr.Radhakrishnan Salai, Mylapore Chennai-600 004.	Vs	The Assistant Commissioner of Income Tax, Non-Corporate Circle-1 Chennai-34.
PAN: AGUPP 5656M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mrs. R.Maheswari Advocate
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. G.Johnson Addl.CIT

सुनवाई की तारीख/Date of hearing	:	02.09 2021
घोषणा की तारीख /Date of Pronouncement	:	08.09 2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate but identical orders passed by the learned CIT(A)-2, Chennai, both dated 27.08.2020 and pertain to assessment years 2012-13 & 2013-14. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

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

“1. Appellant is a General Surgeon, who receives charges for surgeries done by him and the pre-post operation consultancy. The Appellant serves only at Apollo Hospitals and does not serve at any other hospital or clinic. The consultancy fees charged on patients is included in the Apollo Hospital billing system which also includes consultation charges on patients in master health check, surgery consultations, patients under insurance cover and post-operative care. Apollo Hospitals collects all fees directly from the patients and makes payment of fees to the Appellant vide RTGS after deducting 10% TDS, which is reflected in the bank transactions of the Appellant. No consultation fees has ever been collected directly by the Appellant from the outpatients or inpatients. Apollo Hospitals maintains the particulars of all patients and the income of the Appellant is supported by the statement of Apollo Hospitals, as may be required under Rule 6F of the Income Tax rules. The Assessing Officer called for details as per Rule 6F alleging concealed income. In the absence of any such income, the Appellant could not produce the alleged presumptive details.

2. The Respondent has relied upon the oral evidence given by one of the employees of Apollo, without notice to the Appellant and without affording an opportunity to cross-examine the employee, which is against the principles of natural justice enshrined in Article 14 of the Constitution of India. The Hon'ble Supreme Court has repeatedly held that the statement of witnesses recorded in the absence of Assessee without giving opportunity for cross-examination is a breach of the principles of natural justice and thus renders the order passed a nullity. In ITA No.127/CIT(A)-2/2018-19 order dt. 22.08.2019 w.r.t. Appellant's assessment for AY 2011-12, the CIT (Appeals) held the recording of sworn statement without notice to Appellant and opportunity to cross-examine is a serious flaw, wherein the Assessing Officer herein had relied upon the very same sworn statement of witness dated 05.01.2015 / 05.01.2016. These shortcomings constitutes serious flaw and the unilateral examination of witness does not hold good in law and is against the settled principles of law.

3. Brief facts of the case are that the assessee is a General Surgeon by profession practicing at M/s. Apollo Hospital, Chennai as consultant and receives consultancy fees . The

consultancy fees charged on patients is included in Apollo Hospital billing system which also includes consultation charges on patients in master health checkup, surgery consultations, patients under insurance cover and post-operative care. The Apollo Hospital collects all fees directly from patients and after deducting applicable TDS on professional charges remits balance amount payable to the assessee vide cheque / RTGS . All registers required to be maintained under Rule 6F of I.T Rules, 1962, are maintained by Apollo Hospitals. The assessee has declared consultation charges received from Apollo Hospitals and filed return of income for relevant assessment years.

4. The assessment for impugned assessment years have been subsequently reopened u/s. 147 of the Act, on the basis of reasons recorded as per which income chargeable to tax had been escaped assessment on account of undisclosed income towards consultation charges received from Apollo Hospitals in cash. The case has been selected for scrutiny and during the course of assessment proceedings, the Assessing Officer called upon the assessee to file necessary evidences including

books of account supposed to be maintained as per Rule 6F of Income Tax Rules, 1962, to justify income declared in his return of income filed for relevant assessment years. Since the assessee has not filed relevant details, the Assessing Officer has completed assessment u/s.144 r.w.s. 147 of the Act, for both assessment years and made additions of Rs.5,31,000/- for assessment year 2012-13 and a sum of Rs.12,50,000/- for assessment year 2013-14 towards unaccounted professional charges received from Apollo Hospitals in cash.

5. Being aggrieved by assessment order, the assessee preferred an appeal before learned CIT(A). Before the learned CIT(A), the assessee submitted that all books of account required to be maintained under Rule 6F of I.T. Rules, 1962 is maintained by Apollo Hospitals and the assessee does not maintain those books separately in his individual capacity. The assessee further submitted that he is working exclusively for Apollo Hospitals and receive consultation charges by cheque / RTGS, thus question of receipt of consultation charges in cash and not declaring same in return of income does not arise.

6. The learned CIT(A), after considering relevant submissions and also taken note of various facts brought out by the Assessing Officer opined that since the assessee did not furnish books of account or any other evidences in support of professional charges received from Apollo Hospitals, claim of the assessee that he had given treatment to certain patients without charging fees is unsubstantiated. Therefore, he opined that there is no error in the reasons given by the Assessing Officer to make additions towards unaccounted professional charges and hence, sustained addition made by the Assessing Officer for both assessment years. Aggrieved by learned CIT(A) order, the assessee is in appeal before us.

7. The learned A.R for the assessee submitted that the learned CIT(A) has erred in sustaining additions made by the Assessing Officer towards unaccounted professional charges received from Apollo Hospitals, without appreciating fact that the Assessing Officer has relied upon oral evidence given by one of the employees of Apollo Hospitals, without confronting those evidences and also an opportunity of cross examination to the assessee contrary to the principles of natural justice. The learned A.R further submitted that the Assessing Officer

has made additions solely on the basis of statement of an employee recorded during the course of search in the case of Apollo Hospitals, but could not gather any other evidences to disprove claim of the assessee that he has not received professional charges in cash, other than what was received by cheque/ RTGS. The AR further referring to decision of learned CIT(A) for assessment year 2011-12 in ITA No.127/CIT(A)-2/2018-19 dated 22.08.2019 submitted that when the CIT(A) has accepted fact that additions made by the Assessing Officer solely on the basis of statement a third party, without providing opportunity of cross-examination to the assessee is violative of principles of natural justice and thus, additions cannot be sustained. However, for the impugned assessment year, the CIT(A) has taken a different view ignoring specific arguments made by the assessee in light of order of the CIT(A) for assessment year 2011-12, without there being any change in facts and circumstances of the case for year under consideration. Therefore, she submits that additions made for both assessment years needs to be deleted.

8. The learned DR, on the other hand, strongly supporting order of the Assessing Officer as well as learned CIT(A) submitted that it is a matter of record that the assessee has not maintained books of account required to be maintained by medical practitioner, as per Rule 6F of Income Tax Rules, 1962 and thus, in absence of relevant books of account, the Assessing Officer was right in making additions towards unaccounted professional charges received from Apollo Hospitals on the basis of evidences collected during the course of search and hence, there is no merit in the arguments taken by the learned A.R for the assessee.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Admittedly, the Assessing Officer has passed best judgement assessment u/s. 144 r.w.s.147 of the Income Tax Act, 1961, and made additions towards unaccounted professional charges received from Apollo Hospitals in cash. The sole basis for additions towards unaccounted professional charges is statement recorded from an employee during the course of search in the case of Apollo group, where Department has gathered certain materials which shows

payment of professional charges in cash to some consultant Doctors including the assessee. The assessee has denied having received professional charges in cash from Apollo Hospitals other than what was received in cheque/RTGS.

10. We have given our thoughtful consideration to the reasons given by the Assessing Officer in light of arguments of the assessee and we do not ourselves subscribe to the reasons given by the Assessing Officer to make additions towards unaccounted professional charges received in cash for simple reason that except statement of an employee recorded during the course of search, the Assessing Officer has never brought on record any other evidence to support his finding that the assessee has received professional charges in cash from Apollo Hospitals. We further noted that although, there is a difference in professional charges admitted by the assessee in return of income for impugned assessment years, when compared to professional charges quantified by the Assessing Officer on the basis of number of patients registered with the name of assessee in Apollo Hospitals, but the assessee has explained difference and submitted that he had treated certain

patients without collecting charges and further, some of the patients though registered with Apollo Hospitals, but did not turn up for treatment. In our considered view, explanation given by the assessee that additions cannot be made on the basis of number of patients registered with Apollo Hospitals appears to be reasonable and bonafide. The Assessing Officer never disproved claim of the assessee with any evidences, but went on to make additions only on the basis of statement of a third party, that too without providing evidences and opportunity of cross examination to the assessee in violation of principles of natural justice. It is well settled principles of law by the decision of the Hon'ble Supreme Court in the case of M/s.Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkatta-II (15 SCC 785), where it was categorically held that not allowing assessee to cross examine witnesses by the adjudicating authority, though statements of those witnesses were made on the basis of impugned order is a serious flaw, which makes the order nullity, inasmuch as it amounted to violation of principles of natural justice, because of which the assessee was adversely affected. We further noted that the CIT(A) for the assessment year 2011-12 in ITA No.127/2018-

19 vide order dated 22.08.2019 has deleted additions made by the Assessing Officer towards unaccounted professional charges received from Apollo Hospitals in cash on the basis of very same statement recorded from an employee during the course of search by following decision of the Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkatta II (supra), and the decision of Hon'ble Bombay High Court in the case of H.R.Mehta Vs. ACIT. Therefore, we are of the considered view that when learned CIT(A) having accepted legal position for earlier assessment year then erred in not accepting similar legal position for subsequent assessment years, even though there is no change in facts & circumstances of the case for impugned assessment years.

11. In this view of the matter and considering facts & circumstances of the case and also by following the ratio laid down by the Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkatta-II (supra), we are of the considered view that the Assessing Officer has erred in making additions towards

unaccounted professional charges received in cash from Apollo Hospitals on the basis of statement of a third party, without providing opportunity of cross-examination to the assessee. The learned CIT(A), without appreciating facts has simply sustained additions made by the Assessing Officer. Hence, we set aside orders passed by the learned CIT(A) for both assessment years and direct the Assessing Officer to delete additions made towards unaccounted professional charges received in cash from Apollo Hospitals for both assessment years.

12. In the result, appeal filed by the assessee for both assessment years are allowed.

Order pronounced in the open court on 8th September, 2021

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(जी. मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 8th September, 2021

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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