

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM :

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM

AND

The Hon'ble Mrs.JUSTICE V.BHAVANI SUBBAROYAN

T.C. No.885 of 2016

Commissioner of Income Tax
Corporate Circle 3 (2), Chennai. ... Appellant

-vs-

M/s.Vasantha Subramanian Hospitals
Private Limited, New No.13, Old No.7,
East Spur Tank Road, Chetpet,
Chennai 600 031. ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961, against the order dated 22.04.2016 passed in I.T.A.No.2345/Mds/2015 by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, for the Assessment Year 2012-13 preferred against the order of the Commissioner of Income Tax (Appeals)-II, 121, Mahatma Gandhi Road, Chennai-34 dated 30/11/2015 in ITA No.415/2014-15-CIT(A)-11 against the order of the Deputy Commissioner of Income Tax Corporate Circle 3(2) Chennai-34 dated 26/02/2015 in GIR No/PAN AACCV2462L for the Assessment Year 2012-2013.

For Appellant : Mr.M.Swaminathan
Stng. Counsel

For Respondent : M/s.P.Gnanasekaran
and P.Madhavan

J U D G M E N T

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

This appeal by the Revenue is against the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No. 2345/Mds/2015 for the Assessment Year 2012-13. The appeal has been admitted vide order dated 11.01.2017 on the following substantial questions of law:

- i. Whether on the facts and circumstances of the case and in law, Tribunal was right and justified in holding that machinery not listed in New Appendix-I Depreciation Schedule - Part-III (xia) of Income Tax Rules are also eligible for depreciation @ 40%?
- ii. Whether on the facts and circumstances of the case and in law, Tribunal was right and justified in allowing deduction on payments made to doctors for referring patients for diagnosis as they are illegal payments prohibited by Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ?
- iii. Whether on the facts and circumstances of the case, the tribunal was right in deleting the disallowance made under section 40A(3), holding that the turnover is huge and the expenses incurred by the assessee is meager and deleted the addition without giving any reasons ?

2. The respondent-assessee is a private limited company registered under the Companies Act, 1956 and runs a multi-speciality hospital and in particular, specializing in cancer treatment. The assessee filed revised return of income dated 25.09.2013 for the Assessment Year 2012-13 admitting taxable income of Rs.3,35,22,730/-. The case was selected for scrutiny and assessment was completed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), vide order dated 26.02.2015. In the said order, the Assessing Officer disallowed higher depreciation on Life Saving Equipments; disallowed ESI payments; disallowed expenses incurred for gift of gold coins to Doctors; and disallowed cash payment above Rs.20,000/- in a single day to the tune of Rs.3,25,000/- under

Section 40A (3) of the Act. Aggrieved by the said assessment order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) [in short 'CIT (A)'], who by order dated 30.11.2015 confirmed the order passed by the Assessing Officer. The assessee preferred appeal before the Tribunal and the Tribunal by the order dated 22.04.2016 allowed the assessee's appeal. This order is impugned before us.

3.We have heard Mr.M.Swaminathan, learned counsel for the appellant and M/s.P.Gnanasekaran and P.Madhavan, learned counsels appearing for the respondent-assessee.

4.Though the Assessing Officer had made disallowances under four heads, only three issues have been raised by the Revenue before this Court, on which substantial questions of law have been framed.

5.The first question to be decided is whether the Tribunal was right and justified in holding that machinery not listed in New Appendix-I Depreciation Schedule - Part-III (xia) of Income Tax Rules are also eligible for depreciation. The Assessing Officer held that the equipments on which depreciation at 40% was claimed are not listed in the list of Life Saving Medical Equipments under the new Appendix-I Schedule Part-III, (xia) of the Income Tax Rules. The Assessing Officer held that there is no provision in the Act for allowing depreciation for like or similar things and the word 'being' used while listing the Life Saving Equipments in the Act clearly shows that only equipments mentioned in the list alone can claim 40% depreciation.

6.The CIT (A) concurred with the Assessing Officer and pointed out that the assessee is not correct in stretching the claim for any item even though it may be attached to a life saving equipment, as such items claimed are not expressly stated in the definition of 'life saving equipments'.

7.On appeal before the Tribunal, the Tribunal analysed the information placed before it in the form of a paper book and the contention advanced by the assessee stating that the equipments purchased by the assessee are life saving equipments even though they may be slightly different from the items specified under the Rules prescribing the rates of depreciation. The Tribunal, after examining the paper book and submissions, held that the machines acquired by the assessee though may not be identical to the machinery mentioned in the Rules specifying the rates of depreciation, they appear to be similar in nature and since depreciation is a beneficial provision to the assessee, it has

to be broadly viewed and applied beneficially to the assessee and the equipments will either become obsolete in a short time or will have a short life span. Therefore, the Tribunal directed the Assessing Officer to allow the claim of depreciation at 40%.

8.Mr.M.Swaminathan, learned standing counsel, is right to the extent that the Schedule under the Income Tax Rules prescribing the rates of depreciation does not contain the items of machinery and equipments furnished by the assessee. The question would be as to how the entry requires to be interpreted. By way of illustration, if we take up one of the equipments listed in Part A III 3(xia) (d), the equipment is Cobalt Therapy Unit. It is submitted by the learned counsel for the assessee that the Cobalt Therapy Unit has no longer been used and much advanced technology has come into place for effective treatment of radiotherapy. It is the case of the assessee that they have procured the 5th generation linear particle accelerator and the entire write-up of the equipment were placed before the Assessing Officer as well as the CIT (A) and the specific case of the assessee was that the tabulated items furnished by the assessee were part of multi-speciality hospital and used in the life saving treatments provided for various patients. The tabulated items were part of life saving equipments used in the hospital and hence, should have been construed as part of such equipments thereby vitiating the decision in not granting a higher rate of depreciation. Further, the assessee pointed out that the items including the software were used as part and parcel of the Cobalt Therapy Unit, which equipment is used for providing radiation treatment and which equipment is finding place in the life saving equipment category for higher depreciation in the depreciation schedule. Though such a stand was taken by the assessee, no attempt was made by the appellate authority to examine the correctness of the statement nor perused the materials which were placed by the assessee before it. The CIT (A) merely went by the schedule of equipment as found in the Appendix to the Income Tax Rules.

9.In our considered view, the manner in which the Assessing Officer and the CIT(A) have dealt with the issue is incorrect. When the assessee takes a specific stand stating that all the equipments are forming part of the life saving equipments, the Department would not be justified to high-off few of the equipments stating that the computer software, server, etc., will not form part of life saving equipments. If such a narrow interpretation is to be given, then the purpose and purport of granting higher rate of depreciation at 40% itself would stand defeated. Furthermore, we find that the Assessing Officer nor the CIT (A) has rendered a finding that the stand taken by the

assessee stating that the tabulated items form part of the listed items in the schedule is either factually incorrect or a wrong submission. Thus, the Assessing Officer as well as the CIT (A) did not examine the issue from that point of view. This exercise was done by the Tribunal and the Tribunal has gone through the paper book submitted by the assessee running about 224 pages explaining the nature of equipment, purchase of equipment, various write-up of the equipments, bills, vouchers, etc., and after having been satisfied that they all form part of the life saving equipments, granted the relief. Thus, we find that the Tribunal was fully justified in granting the relief of depreciation at 40%. Hence, the finding rendered by the Tribunal on the said issue is confirmed.

10.The second issue for consideration is whether the Tribunal was justified in allowing deduction of payments made to doctors, who referred patients for diagnosis, as they are illegal payments and prohibited under the Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The Assessing Officer held that the assessee purchased gold coins by making payment in cash and the Authorised Representative (Chartered Accountant) during the personal hearing, stated that the gifts are given to doctors and it is the routine practice in medical industry. However, the list of details to whom such gifts were given were not furnished by the assessee. In this factual background, the Assessing Officer referred to the circular of the Central Board of Direct Taxes (CBDT) dated 01.08.2012 and held that freebies provided by pharmaceutical companies, diagnostic centres and others in medical business to doctors is illegal and accordingly, disallowed the expenses, which were classified as 'marketing expenses'.

11.The CIT (A), though referred to the contentions raised by the assessee, proceeded to confirm the finding of the Assessing Officer by referring to the Board's circular dated 01.08.2012.

12.On appeal before the Tribunal, the Tribunal held that there is no prohibition under the Act to make payments to doctors for the services rendered by them and the assessee has given gifts to doctors by way of gold coins in appreciation of their services and it can be construed as fees paid in kind for the services rendered by the doctors in the hospital and the presumption of the Assessing Officer that the payments are made to doctors for canvassing the patients cannot be accepted without any cogent evidence and accordingly, directed the Assessing Officer to delete the addition of Rs.71,62,741/- made on account of disallowance.

13. Before the CIT (A), the assessee contended that the disallowance of the expenses incurred especially the component of expenses relatable to providing gifts to medical doctors cannot be made straightaway by applying the Board's circular without examination of the income tax file of the beneficiary medical doctors and prayed that the CIT (A) may issue appropriate direction to the Assessing Officer for cross-verification. Further, the assessee submitted that the disallowance of such expenses should not be construed as automatic and the nature and circumstances of making/ incurring such expenses should be the paramount consideration for allowing such expenses as wholly and exclusively incurred for the purpose of business within the scope of Section 37(1) of the Act. Further, the assessee pointed out that the Assessing Officer has not ventured into examining the break-up of the marketing expenses and proceeded to disallow the sum in its entirety, which defies logic. Though such a stand was taken by the assessee before the CIT (A), the same was not even dealt with by the CIT (A). Before the Tribunal, similar contention was raised and it was stated that the gifts were given to doctors in appreciation of the services rendered to patients and such payments/gifts are not prohibited by any regulation and the assessee being a hospital is not prohibited to advertise their services they are capable of rendering to the public at large. Before us, the learned counsel for the assessee pointed out that the gifts were given to the doctors who are employed by the assessee and not for the purpose of canvassing the patients and the assessee is not a diagnostic centre, but a multi-speciality hospital specialising in cancer treatment.

14. In the light of the stand taken by the assessee, we are of the view that the CIT (A) ought to have made an exercise to verify the details and if necessary, directed cause of verification to the same. However, such exercise was not done by the CIT (A) nor by the Tribunal. Thus, we are of the view that the Tribunal was not justified in directing the Assessing Officer to delete the addition. The learned counsel for the assessee would submit that the assessee has got entire details with them and they are ready to produce the details before the Assessing Officer. In the light of the above, so far as the second question is concerned, we are of the view that the matter requires to be remanded to the Assessing Officer to consider the materials that will be placed by the assessee to establish their stand that gifts were given to their doctors and it is not a prohibited practice and it is not for the purpose of referring or canvassing patients. The assessing Officer shall afford an opportunity to the assessee and re-do the assessment under the said head.

15.The last issue for consideration is with regard to the disallowance made under Section 40A(3) of the Act. The Tribunal allowed the assessee's appeal solely on the ground that the expenditures were negligible considering the turnover of the assessee being Rs.39.00 crores. However, the Tribunal failed to note that the assessee themselves stated that they have incurred expenses towards consumables, repairs and maintenance, for which bills and vouchers are available. Therefore, the Tribunal should have remanded the matter for fresh consideration to examine the documents available with the assessee towards the expenditures and ought not to have straightaway deleted the disallowance by referring to the turnover for the relevant assessment year. Therefore, the disallowance under Section 40A (3) is required to be re-done by the Assessing Officer.

16.For the reasons stated above, the Tax Case Appeal filed by the Revenue is partly allowed on the following terms:

- (1)The first question of law is answered against the Revenue and in favour of the assessee;
- (2)As regards the second question of law, the finding rendered by the Tribunal is set aside and the matter is remanded to the Assessing Officer to consider the materials that will be placed by the assessee to establish their stand that gifts were given to their doctors and it is not a prohibited practice and it is not for the purpose of referring or canvassing patients. The Assessing Officer shall afford an opportunity to the assessee and redo the assessment in accordance with law. The substantial question of law is left open.
- (3)As far as the third question of law is concerned, the finding of the Tribunal is set aside and the matter is remanded to the Assessing Officer for fresh consideration and to examine the documents available with the assessee towards the expenditures and after affording an opportunity of personal hearing to the assessee, re-do the assessment in accordance with law. The substantial question of law is, thus, left open.

No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
'A' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals),
121, Mahatma Gandhi Road,
Chennai 600 034.

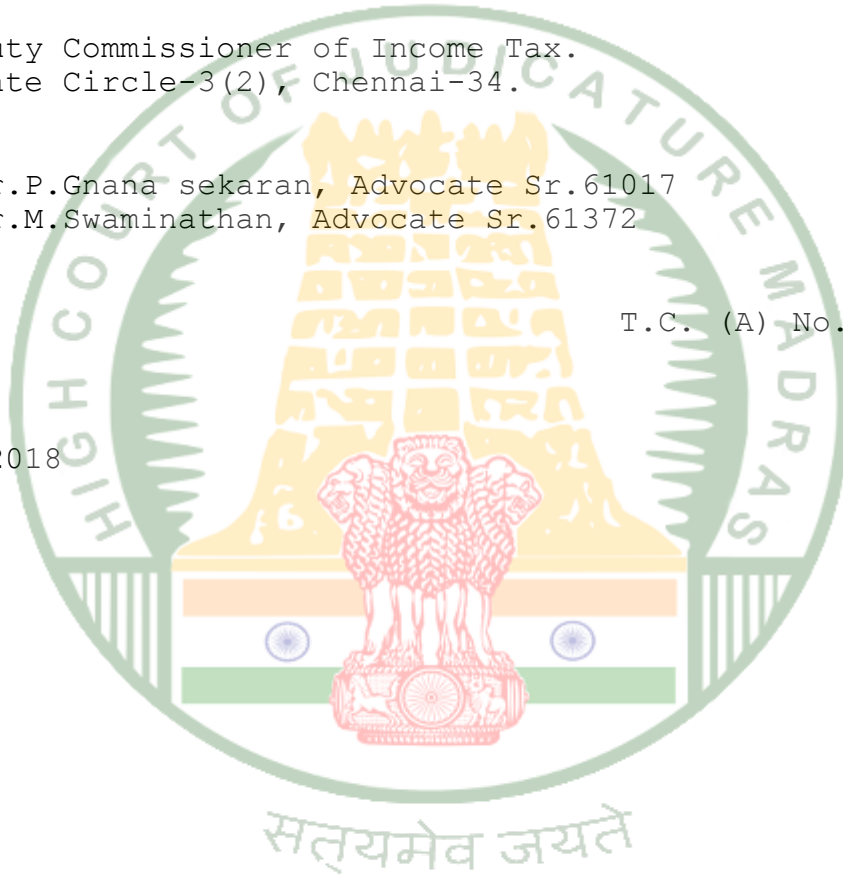
3.The Deputy Commissioner of Income Tax.
Corporate Circle-3(2), Chennai-34.

+3cc to Mr.P.Ghana sekaran, Advocate Sr.61017

+1cc to Mr.M.Swaminathan, Advocate Sr.61372

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srg 1/10/2018



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