

**अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस.सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.289/Viz/2019  
(निर्धारण वर्ष/Assessment Year:2012-13)**

M/s Ramya Hospitals  
D.No.9-11-130  
Gandhi Nagar  
Kakinada  
**[PAN : AAIFR4508G]**

Vs. Income Tax Officer  
Ward-2  
Kakinada

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR  
: Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 25.03.2021

घोषणा की तारीख/Date of Pronouncement

: 07.04.2021

**आदेश /ORDER**

**Per D.S.Sunder Singh, Accountant Member :**

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-11, Hyderabad in Appeal No.30/2018-19/CIT(A)-11 Hyderabad/18-19 dated 20.03.2019 for the Assessment Year (A.Y.) 2012-13.

2. The assessee has raised total 5 grounds in this appeal. Ground No.1 and 5 are general in nature, which do not require specific adjudication.
3. Ground No.2 is related to the validity of assessment made u/s 148 of the Income Tax Act, 1961 (in short 'Act').
4. Ground No.3 is related to the sustaining the addition by the Ld.CIT(A) relating to disallowance of deduction u/s 80IB(11C) of the Act.
5. Ground No.4 is with regard to charging of interest of Rs.3,66,804/- u/s 234B of the Act.
6. We take up ground No.2 first, which is related to the validity of assessment made u/s 148, since, it goes to the root of the assessment. In the instant case, the assessment was originally completed u/s 143(3) by an order dated 30/03/2015 and the same is furnished as page No.29 of paper book-2. Brief facts of the case are that the assessee has filed its return of income for the A.Y.2012-13 declaring total income of Rs.Nil. In the return of income filed, the assessee claimed deduction u/s 80IB(11C) of the Act amounting to Rs.17,20,290/-. The AO completed the assessment, accepting the income returned and allowed the deduction claimed u/s 80IB(11C). Subsequently, the case was reopened u/s 147 and the notice u/s 148 was

issued, with a reason that the hospital building was completed by March 2012 and hence viewed that the assessee has not satisfied the conditions for grant of deduction u/s 80IB(11C) for the Assessment year (AY) 2012-13. Therefore, AO believed that income chargeable to tax had escaped the assessment and hence reopened the assessment by issue of notice u/s 148 of the Act. Since, there was no response from the assessee, the AO issued show cause letter and in response to which the assessee furnished the details called for by the AO. After considering the details, the AO viewed that the assessee has not satisfied conditions laid down u/s 80IB(11C) of the Act for grant of deduction u/s 80IB(11C) with regard to completion of hospital building and the filing of certificate u/s 10CCBD and hence, held that the assessee is not entitled for deduction and accordingly disallowed the amount of Rs.17,20,290/- claimed by the assessee and levied the tax of Rs.8.98.370/-.

7. Against the order of the AO, the assessee filed appeal before the Ld.CIT(A), but not succeeded. Hence, the assessee is in appeal before us.

8. During the appeal hearing, the Ld.AR submitted that the assessee has complied with all the conditions laid down u/s 80IB(11C) of the for claiming the deduction u/s 80IB and hence, allowed the deduction in

original assessment after verifying the details. The Ld.AR submitted that the hospital building was completed within 3 years from the date of approval accorded by the municipal corporation i.e., the first day of 2011 i.e 01/01/2011. Since, there was no mention of the month in the completion certificate issued by Municipality, the present AO misunderstood that the building was not completed before December 2011. The assessee furnished the municipal tax receipts, but the AO did not take cognizance of the same. The Ld.AR explained that 1<sup>st</sup> day 2011 refers to 1<sup>st</sup> January 2011 and no other inference can be drawn since, it is very clear and there was no ambiguity. The Ld.AR further submitted that the assessee furnished the Form No.10CCBC and submitted that no objection was raised by the AO with regard to submission of 10CCBC instead of 10CCBD in the original assessment. The Ld.AR submitted that there was no difference in the information contained in Forms 10CCBC and 10CCBD. The Ld.AR further submitted that the information in both the certificates is identical and by mistake the assessee had furnished the Form 10CCBC instead of 10CCBD. The Ld.AR submitted that since it was a purely technical mistake and the AO did not raise any objection in original assessment, the assessee should be given the benefit and should not be made disentitled for deduction. The

contention of the Ld.AR is that the assessee has completed the building within the specified period as per 80IB(11C) and entitled for deduction u/s 80IB since, the hospital was operating during the year under consideration. In support of it's claim, the assessee has filed occupancy certificate, municipal plan approval and the details of number of beds etc. All the evidences were placed before the AO and demonstrated that the assessee had complied with all the requirements. All these issues were examined by the AO in the original assessment and completed the assessment allowing the deduction. The Ld.AR submitted that no fresh information was received by the AO to reopen the assessment. The AO revisited the same information which was already available in the file and taken different view and reopened the assessment. The assessee has taken our attention to paper book, the questionnaire issued by the AO, the assessment order made u/s 143(3) in original assessment and argued that reopening of assessment is nothing but difference of opinion. Therefore, argued that there is no reason to reopen the assessment and hence, requested to quash the assessment made u/s 143(3) r.w.s. 147 of the Act.

9. On the other hand, the Ld.DR supported the orders of the lower authorities.

10. We have heard both the parties and perused the material placed on record. In the instant case, the assessment was completed u/s 143(3) by an order dated 30.03.2015. In the return of income filed by the assessee, the assessee had claimed the deduction u/s 80IB (11C) amounting to Rs.17,20,289/- which was allowed by the AO. During the original assessment proceedings, the AO called for the necessary information in questionnaire as per page No. 25 of the paper book. The AO issued show cause notice vide letter dated 27.01.2015 and called for the details with regard to construction of hospital, number of beds, whether hospital building was constructed in accordance with the regulations or not? etc. and the audit certificate 10CCBC/10CCBD. After verifying the details submitted by the assessee, the AO completed the assessment u/s 143(3) by an order dated 30.03.2015. In this case, the initial year of assessment for claim of deduction u/s 80IB was assessment year 2010-11 and the AO completed the assessment u/s 143(3) in the initial assessment also after calling the necessary information required for grant of deduction u/s 80IB. The AO also referred the valuation of building to the departmental valuation officer and made addition of Rs.18,03,823/- towards unexplained investment in construction of the building in A.Y.2010-11. Thus, it is

evident that the hospital building was completed and operating from the A.Y.2010-11 itself. In the subsequent assessment year i.e. A.Y 2013-14 also, the AO allowed deduction u/s 80IB(11C). In the instant case, the AO examined the issue with regard to allowability of deduction u/s 80IB(11C) in the original assessment itself and allowed the deduction. With regard to completion of construction hospital, number of beds and the Accountant's certificate etc., the AO had examined the details in the initial assessment year as well as in the year under consideration and then allowed the deduction. Therefore, reopening of assessment was on the basis of information that was already available on record and no fresh information was received by the AO. Revisiting the same issue which was already considered in original assessment and taken the decision amounts to difference of opinion and on difference of opinion the reopening of assessment is not permissible. The AO mentioned in the assessment order that the assessee had claimed deduction u/s 80IB and filed Form No.10CCBC instead of 10CCBD. The Ld.AR submitted that there was no material difference in both the forms with regard to information and columns are the same. The AO in the original assessment did not raise any objection for submission of 10CCBC and there was no difference with

regard to information to be furnished in Form 10CCBC or 10CCBD, hence it was purely a mistake or misunderstanding. The Ld.DR also did not controvert the submission of the assessee with regard to difference of information in 10CCBC or 10CCBD. The AO had accepted the 10CCBC and allowed the deduction in original assessment. This Tribunal in assessee's own case for the A.Y.2011-12 in ITA No.119/Viz/2015 dated 28.03.2017, following the order of the Hon'ble jurisdictional High Court in ITTA No.114 of 2013 in the case of ITO Vs. Sri S.Venkatesh held that denying deduction u/s 80IB(11C) on technical issue is unjustified. Hence we, hold that the reopening of assessment is bad in law and accordingly, we quash the notice issued u/s 148 and annul the assessment made u/s 147 r.w.s 143(3) dated 26/12/2017 and allow the appeal of the assessee. Accordingly, we set aside the order of the Ld.CIT(A) and allow the appeal of the assessee.

11. In the result, appeal filed by the assessee is allowed.

**I.T.A. No.289/Viz/2019, A.Y.2012-13**  
**M/s Ramya Hospitals, Kakinada**

Order pronounced in the open court on 7<sup>th</sup> April, 2021.

Sd/-  
(एन के चौधरी)  
(N.K.CHOUDHRY)

Sd/-  
(डि.एस.सुन्दर सिंह)  
(D.S.SUNDER SINGH)

**न्यायिक सदस्य/ JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

Dated : 07.04.2021

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- M/s Ramya Hospitals, D.No.9-11-130, Gandhi Nagar, Kakinada
2. राजस्व/The Revenue - Income Tax Officer, Ward-2, Kakinada
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-11, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam