

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

श्री दुव्वूरु आरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.315/VIZ/2023
(निर्धारण वर्ष/ **Assessment Year: 2018-19**)

Chalasani Hospitals (P.) Ltd., D.No. 50-53-14, Gurudwara Lane Seethammadhara Visakhapatnam – 530013 Andhra Pradesh [PAN :AAECC0005G]	v.	Asst. Commissioner of Income Tax Central Circle – 1(1) Income Tax Office Direct Taxes Building MVP Colony, Visakhapatnam -530017 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

सी.ओ. नं./C.O.No. 02/VIZ/2024

[आई.टी.ए. संख्या से उत्पन्न / **ARISING OUT OF I.T.A. No. 315/VIZ/2023 (A.Y. 2018-19)**]

Asst. Commissioner of Income Tax Central Circle – 1(1) Income Tax Office Direct Taxes Building MVP Colony, Visakhapatnam -530017 Andhra Pradesh	v.	Chalasani Hospitals (P.) Ltd., D.No. 50-53-14, Gurudwara Lane Seethammadhara Visakhapatnam – 530013 Andhra Pradesh [PAN : AAECC0005G]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri G.V.N. Hari, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	24.07.2024
घोषणा की तारीख/Date of Pronouncement	:	12.08.2024

आदेश / O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal and cross objection are filed by the assessee and revenue respectively, against the order of Learned Commissioner of Income Tax (Appeals) [hereinafter in short "Ld. CIT(A)"], National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2023-24/1057516271(1) dated 30.10.2023 arising out of order passed Under section 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 15.02.2021 for the A.Y. 2018-19.

2. Brief facts of the case are that, assessee a hospital filed its return of income admitting a total income of Rs.4,79,69,260/- for the A.Y.2018-19. The return was summarily processed on 06.11.2019 under section 143(1) of the Act, after enhancing the total income at Rs.4,94,23,415/- with respect to disallowances on delayed payment of Employees Contribution to PF and ESI payments. Subsequently, the

case was selected for complete scrutiny for verifying the following issues: -

- i. Default in TDS & Disallowance for such Default*
- ii. Refund Claim*

3. Thereafter, statutory notices under section 142(1) and 143(2) of the Act were issued and served on the assessee calling for details in connection with the scrutiny proceedings. However, assessee failed to comply with the various notices of the Ld. Assessing Officer. Assessing Officer on perusal of the Profit & Loss Account noticed that assessee has claimed advertisement expenditure to the extent of Rs.36,52,061/- and requested assessee to explain the nature of expense and also to justify the claim with respect to restriction imposed and categorisation of such expenses under “unethical Acts” under the professional conduct, Etiquette and Ethics Regulations, 2002 of Indian Medical Council. Assessee failed to respond to the notices, in absence of any explanation from the assessee the Assessing Officer disallowed a sum of Rs.36,52,061/- under section 37(1) of the Act.

4. Aggrieved by the order of the Ld. Assessing Officer, assessee filed an appeal before the Ld. CIT(A). Before, First Appellate Authority

assessee filed documentary evidences with respect to the nature of expenses incurred and supporting bills and vouchers and the Ld. CIT(A) forwarded the additional documentary evidences submitted by the assessee to the Ld. Assessing Officer calling for Remand Report. Assessing Officer furnished the Remand Report on 08.03.2023. The Remand Report of the Assessing Officer was forwarded to the assessee for rejoinder which was submitted by the assessee. Considering the Remand Report and the Rejoinder and other explanations and information's provided by the assessee, the Ld. CIT(A) partly allowed the appeal of the assessee by restricting the disallowances to 50% of the expenses claimed by the assessee.

5. Aggrieved by the above order, assessee is in appeal before us by raising following grounds of appeal: -

- 1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The learned Commissioner of Income Tax (Appeals) is not justified in partly sustaining a sum of Rs.18,26,031 out of the total addition of Rs.36,52,061 made by the assessing officer u/s.37(1) of the Act towards disallowance of advertisement expenses.*

6. Ground No. 1 is general in nature, and needs no adjudication.

7. Ground No. 2 is with respect to sustaining of Rs. 18,26,031/- by the Ld. CIT(A). Ld. Authorized Representative [hereinafter in short "Ld.AR"] submitted that the assessee has provided the copies of documentary evidences for the expenditures incurred by the assessee with respect to the advertisement before Ld. CIT(A). Ld.AR further submitted that Remand Report submitted by the Assessing Officer does not discuss about expenses which are prohibited by law. It was submitted by the Ld.AR that the Assessing Officer has observed that the assessee has not produced ledger extract / bills / vouchers and has not deducted TDS on the advertisement expenditure as per the provisions of the Act. Ld.AR argued that the Assessing Officer in his Remand Report has not discussed about the allowability of such expenditure which are not permissible under the Guidelines of the Indian Medical Council Act, 1956. Therefore, he pleaded that these expenses are genuinely incurred in the nature of carrying out the business of the assessee and therefore entitled to be allowed under section 37(1) of the Act. He therefore pleaded that the balance 50% shall be allowed to the assessee.

8. Per Contra, Ld. Departmental Representative [hereinafter in short "Ld. DR"] relying on the order of the Assessing Officer stated that the Ld.CIT(A) has also accepted the fact that the assessee has not

substantiated the exact nature of expenditure and has not submitted any counter regarding the stand taken by the Assessing Officer on the violation of Indian Medical Council Act Regulations. He therefore pleaded that the Ld. CIT(A) erred in restricting the disallowances to 50% without any verification and providing reasons for such estimation of partial relief. Therefore, Ld. DR pleaded that the order of the Assessing Officer be upheld.

9. We have heard both the sides and perused the material available on record. It is the case of the Assessing Officer that assessee was specifically asked with respect to the claim of the advertisement expenditure during the assessment proceedings to substantiate the same that does not fall under "unethical Acts" under the professional conduct, Etiquette and Ethics Regulations, 2002 of Indian Medical Council. However, assessee has failed to respond to any of the notices during the assessment proceedings. Subsequently, during the First Appellate Proceedings, assessee submitted various documents before the Ld.CIT(A) for which the Remand Report was obtained from the Assessing Officer regarding verification of allowability of such expenditure. However, Assessing Officer in his Remand Report objecting to such expenditure which is an offence or which is prohibited

by law shall not be deemed to have been incurred for the purpose of business. Further, in addition to the above the Ld. Assessing Officer also objected to the non submission of bank statements to prove the payments made to the advertisers. Further, in the Remand Report we find that Assessing Officer has objected to the non-submission of details of TDS on the various payments made to the advertisers including the bank statements in support of the payments made to the advertisers. The Ld. Assessing Officer in the Assessment Order in Para No. 4.2 observed as follows: -

"4.2 As per the Indian Medical Council Act, 1956 (professional conduct & ethics) regulations, 2002, under Chapter 6, 'Unethical Acts', a physician shall not aid or abet or commit any of the following acts which shall be construed as unethical -

Advertising:

"6.1.1 Soliciting of patients directly or indirectly, by a physician, by a group of physicians or by institutions or organisations is unethical. A physician shall not make use of him / her (or his / her name) as subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or to his professional position, skill, qualification, achievements, attainments, specialities, appointments, associations, affiliations or honours and/or of such character as would ordinarily result in his self-aggrandizement. A physician shall not give to any person, whether for compensation or otherwise, any approval, recommendation, endorsement, certificate, report or statement with respect of any drug, medicine, nostrum

remedy, surgical, or therapeutic article, apparatus or appliance or any commercial product or article with respect of any property, quality or use thereof or any test, demonstration or trial thereof, for use in connection with his name, signature, or photograph in any form or manner of advertising through any mode nor shall he boast of cases, operations, cures or remedies or permit the publication of report thereof through any mode. A medical practitioner is however permitted to make a formal announcement in press regarding the following:

- 1. On starting practice.*
- 2. On change of type of practice.*
- 3. On changing address.*
- 4. On temporary absence from duty.*
- 5. On resumption of another practice.*
- 6. On succeeding to another practice.*
- 7. Public declaration of charges.....*

6.1.2 Printing of self photograph, or any such material of publicity in the letter head or on sign board of the consulting room or any such clinical establishment shall be regarded as acts of self advertisement and unethical conduct on the part of the physician. However, printing of sketches, diagrams, picture of human system shall not be treated as unethical....."

10. We also find that the assessee has not substantiated the claim of expenditure which are to be allowed under the Indian Medical Council professional conduct, Etiquette and Ethics Regulations, 2002.

11. Similarly, the Ld. CIT(A) has also observed that the assessee has not discharged onus that the said expenses are wholly and exclusively for the purpose of business under section 37 of the Act. Further, we find that the Ld.CIT(A) has arbitrarily without any categorical findings has observed as follows: -

"14. Besides this, further by not substantiating the exact nature of expenses, it has also not countered the stand of the AO regarding the violation of Indian Medical Council Act regulations and hence, looking into the overall submissions in the given situation, it would be reasonable to restrict the disallowances to 50%. .."

12. In this circumstances, we find that Ld. CIT(A) has also not adjudicated the case with respect to allowability of expenditure as per Indian Medical Council Guidelines, 2002. Chapter – 6 of the Indian Medical Council Act, 1956 professional conduct, Etiquette and Ethics Regulations, 2002 prohibits even the institutions and organizations to solicit patients either directly or indirectly. We are therefore of the considered view that the assessee has violated the provisions of Indian Medical Council Act 1956, professional conduct, Etiquette and Ethics Regulations, 2002. There is no merit in the arguments of the Ld. AR that the assessee has made public only the services offered by the assessee which in our opinion construes advertisement. Further, we

also find that Ld. CIT(A) has erred in estimating the disallowances and restricting to 50% of the expenditure claimed by the assessee without providing any valid reasoning and hence we are inclined to set aside the order of the Ld. CIT(A), thereby restoring the order of the Ld. AO on this issue. Accordingly the appeal of the assessee is dismissed.

13. With regard to the Cross Objection filed by the revenue, since the appeal of the assessee has been dismissed thereby restoring the order of the Ld.AO on this issue, the grounds in the Cross objection raised by the revenue is allowed.

14. In the result, appeal of the assessee is dismissed and the cross objection of the revenue is allowed.

Order pronounced in the open court on 12th August, 2024.

Sd/-

(दुव्वूरु आरएल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated :.12.08.2024

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : Chalasan Hospitals (P.) Ltd.,
D.No. 50-53-14, Gurudwara Lane
Seethammadhara
Visakhapatnam – 530013
Andhra Pradesh
2. राजस्व / The Revenue : Asst. Commissioner of Income Tax
Central Circle – 1(1)
Income Tax Office
Direct Taxes Building
MVP Colony, Visakhapatnam -530017
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT,
Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam