

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.1332/Ahd/2019
Assessment Year: 2013-14**

Income Tax Officer,
Ward – 4(2)(1), Ahmedabad.

vs.

Shri Dipen M. Desai,
Diva Hospital,
17, Parimal Society,
DCB Bank Lane,
Ahmedabad – 380 006.
[PAN – ACYPD 2742 A]
(Respondent)

(Appellant)

Assessee by : Shri S.N. Divatia, AR &
Shri Samir Vora, AR
Revenue by : Shri Sanjay Jain, Sr. DR

Date of hearing : 02.03.2023
Date of pronouncement : 17.03.2023

ORDER

This appeal is filed by the Revenue against order dated 03.06.2019 passed by the CIT(A)-4, Ahmedabad for the Assessment Year 2013-14.

2. The Revenue has raised the following ground of appeal :-

“1. That the Ld. CIT(A) has erred in law and on the facts in allowing an amount of Rs.4,98,225/- under Section 37(1) of the Income Tax Act, 1961 being payment made for referral fees.”

3. The original return of income was filed by the assessee on 30.09.2013 declaring total income of Rs.11,03,970/-. The Assessing Officer observed that the assessee debited an amount of Rs.4,98,225/- towards referral fees. This payment is made to different Doctors/Institutions who have referred patients to the assessee for various investigations. The Assessing Officer observed that the said expenditure was nothing but commission paid to Doctors for referring patients which is not allowable under explanation to Section 37(1) of the Income Tax Act, 1961. After taking cognisance of the assessee’s reply and the relevant documents, the Assessing Officer made addition of Rs.4,98,225/- and disallowed the expenses in respect of referral fees.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in allowing the amount of Rs.4,98,225/- under Section 37(1) of the Act being payment made for referral fees. Ld. DR submitted that the assessee's claim that initially patients contact to the Doctors and the Doctors come to his Hospital to perform surgery using facilities available in the Hospital of the assessee but instead of those Doctors paying fees to the assessee's Hospital the assessee is incurring referral fees which is contrary to the stand. The Ld. DR further submitted that the assessee only submitted name of the Doctor who have used facilities and, therefore, not given detailed evidences and not filed any confirmation of Doctors/patients who consulted these Doctors. Therefore, the Ld. DR submitted that the addition made by the Assessing Officer thereby disallowing the referral fee expenses should be sustained.

6. The Ld. AR relied upon the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is an undisputed fact that the assessee has made payment of Rs.4,98,225/- to the Doctors as their professional fees and the same cannot be termed as referral fees. In fact, the Id AR at the time of argument submitted that the terminology of referral fees was wrongly interpreted and it is a professional fees which have been paid to those Doctors. The assessee is having an Ophthalmology Hospital wherein various ophthalmologists conduct the surgery for which certain equipments are required for the Eye Specialists. The assessee was providing these facilities through his Hospital but the patients and Doctors who approach the assessee for professional assistance. In fact, for Assessment Year 2010-11 to 2013-14 similar expenses were allowed by the Revenue. Therefore, the CIT(A) has rightly allowed these expenses and deleted the addition.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 17th day of March, 2023.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th day of March, 2023

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*

