

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-3769/Del/2017
(Assessment Year:2012-13)**

Addl. CIT
Special Range-4
New Delhi.

Global Health (P) Ltd.
Vs. E-18, Defence Colony
New Dlehi.

Appellant **PAN No. AACCG2681C**
Respondent

Revenue by Sh. Gaurav Dudeja, Sr. DR
Assessee by Sh. Rahul Khare, Adv.

Date of hearing: 30.12.2020
Date of Pronouncement : 30.12.2020

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 15/2/2017 in appeal No. 256/2016-17 passed by the learned Commissioner of Income Tax (Appeals)-39, New Delhi ("Ld. CIT(A)") in the case of M/s Global Health Private Limited ("the assessee") for the assessment year 2012-13, Revenue preferred this appeal stating that the expenses towards fees to HUDA is a one-time expenditure and the benefit arising out of this expenditure is of enduring in nature, and therefore it is not Revenue expenditure in its nature.

2. Assessee is a private limited company incorporated on 30/08/2004 with an aim to establish and Manage Medanta The Medicity to provide all

types of health, pathology and medical facilities. For the assessment year 2012-13 they have filed their return of income on 30/9/2011 declaring nil income after setting of brought forward losses to the tune of Rs. 48, 89, 23, 321/-under normal provisions and income of Rs. 72, 28, 29, 359/-under section 115 JB of the Income Tax Act, 1961 (for short "the Act"). During the assessment proceedings, learned Assessing Officer noticed that the assessee has debited Rs. 3, 48, 02, 652/-from the P&L account on account of leasing fee paid to HUDA and stated that such fee was paid towards charges for obtaining admission to lease out to build a property constructed on land allotted by HUDA, according to the norms the property owner can give the property on rent after making payment of Rs. 400 per square meters. Basing on that learned Assessing Officer inferred that the assessee company has itself admitted that it is one-time payment to HUDA, a charge for obtaining permission for renting out a portion of the property and therefore, in terms of the judgement of the Hon'ble Apex Court in Arvind Mills Ltd vs. CIT 197 ITR 422 (SC) such capital expenditure would not become Revenue expenditure merely by reason that it was incurred in connection with the illness activities which ultimately resulted in efficiently carrying on day-to-day business. On this premise learned Assessing Officer brought the said amount of Rs. 2, 22, 77, 740/-to tax, after allowing 5% thereof towards depreciation.

3. When the assessee carried the matter in appeal, Ld. CIT(A) apprised the entire material before him in the light of the law laid down by the high courts and found that in Arvind Mills Ltd (supra) has no application to the facts of the case and on the other hand the decision of the Hon'ble Supreme Court in the case of Empire jute company limited vs. CIT (1980) 5 TMI 1 (SC)

is applicable to the facts of the case. Basing on such legal position, Ld. CIT(A) reached a conclusion that the payment made by the assessee to HUDA is Revenue expense in nature and allowable towards deduction.

4. It is the argument of the Ld. DR that the one-time expenditure made by the assessee to HUDA use enduring benefit to the assessee over a period of time and therefore it has to be classified as capital expenditure and not allowable as Revenue expenditure and on that score the finding of the Ld. CIT(A) suffers legal infirmity; whereas it is the submission on behalf of the assessee by the Ld. AR that the facts of Aravind Mills Ltd ((supra) are completely different from the facts involved in this case and the Ld. CIT(A) rightly followed the decision of the Hon'ble Apex Court in the case of Empire Jute Company Limited (supra), and therefore the same cannot be disturbed.

5. We have gone through the record in the light of the submissions made on either side. It was the submission of the assessee before the assessing officer that the one-time payment to HUDA as charge for obtaining permission for renting out the property was made and this is a charge on the income levied by HUDA in the form of leasing fee which is on the lines of cess or tax collected by the government; and that the fees charged by the government whether one-time or yearly granting permission to an income is an allowable deduction under section 27 (vi) of the Act. It's not the case of the Revenue that the one-time payment made to HUDA would in any way increase the value of the land, but on the other hand it is only for the purpose of improvements effected on the land. Ld. CIT(A) also found that the fee paid to HUDA is to secure permission to lease a part of the area for a food court, a pharmacy and parking area, which

clearly indicates that the government's permission is required as the hospital is on a leasehold land and the assessee does not have the right to alienate, which is the ultimate test for ownership. Ld. CIT(A) further found that this expenditure is directly related to the day-to-day running of the business of the assessee in connection with the running of the hospital because the patients and doctors as well as the paramedical and administrative staff from the vertex around which the activities/business of the hospital operates.

6. In Arvind Mills Ltd (supra), as rightly culled out by the Ld. CIT(A), the Hon'ble court held that in deciding whether an expenditure is a capital or Revenue expenditure, the question of voluntary and/or involuntary payment becomes immaterial and it is only the nature of expenditure that determines the issue, and in such case the owner got the advantage of betterment of land in question and there was no manner of doubt that the valuation of the land had increased because of the improvements effected on the land, but such payments had no direct nexus with the day-to-day running of the business. However insofar as the case on hand are concerned, there is no dispute as to the facts recorded by the Ld. CIT(A) that it is only to lease out a part of the area in which the hospital is run, for running a food court, a pharmacy and parking area the fees paid and such payment is directly related to the day-to-day running of the business of hospital by the assessee. Inasmuch as the assessee is not the owner of the land, the question of assessee getting the benefit of enhancement of value of the property does not arise. Ld. CIT(A) rightly applied the ratio of the decision rendered by the Hon'ble Apex Court in the case of Empire Jute Company Limited (supra) to the facts of this case.

7. Since the Ld. CIT(A) rightly appreciated the facts in the light of the corrective position of law laid down by the Hon'ble Apex Court in the case of Empire Jute Company Limited (supra), where of the considered opinion that the impugned order does not suffer any legal infirmity nor does it invite any interference in this appeal. We, therefore, uphold the findings of the Ld. CIT(A) and dismiss the grounds of appeal of the Revenue.

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

Order pronounced in the open court immediately after the conclusion of the hearing in the Virtual Court on 30/12/2020.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
Dated: 30.12.2020
*Kavita Arora, Sr. PS

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI