आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री पी.एम. जगताप, लेखा सदस्य, एवं श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

आयकर अपील सं. / ITA no. 2923/Mum./2011
(निर्धारण वर्ष / Assessment Year : 2006–07)

Income Tax Officer
Ward–11(2)–4, Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

……………….. अपीलार्थी /
Appellant

बनाम v/s

Kurla Maternity & Surgical Nursing Home
New Excelsior Building
A.K. Nayak Road, Fort
Mumbai 400 021

……………….. प्रत्यर्थी /
Respondent

स्थायी लेखा सं./ Permanent Account Number – AAAFK1385J

राजस्व की ओर से / Revenue by : Mr. S.K. Singh
निर्धारिती की ओर से / Assessee by : Mr. Subhash S. Shetty

सुनवाई की तारीख / Date of Hearing – 08.08.2012	आदेश घोषणा की तारीख / Date of Order – 24.08.2012

आदेश / ORDER

अमित शुक्ला, न्यायिक सदस्य के द्वारा /
PER AMIT SHUKLA, J.M.

The present appeal preferred by the Revenue, is directed against the impugned order dated 3rd January 2011, passed by the learned Commissioner (Appeals)–III, Mumbai, for assessment years 2006–07, on the following grounds:–

> *"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-3, Mumbai erred in directing the AO to substitute the addition of Rs. 13,39,030/- made on account of undisclosed sales of*

> *medicines by the amount of gross profit compute @15% of the amount of medicines utilized.*
>
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-3, Mumbai erred in directing the A.O. to substitute the addition of Rs.13,39,030/- made on account of undisclosed sales of medicines by the amount of gross profit computed @ 15% of the amount of medicines utilized since it is in contradiction of the findings of the facts and conclusion drawn thereon by her that the A.O's conclusion of the sale of medicines was reasonable.*
>
> *3. The appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the Assessing Officer restored."*

12. Brief facts of the case are that the assessee is a partnership firm, which runs maternity and surgical hospital under the name and style *"M/s. Kurla Maternity & Surgical Nursing Home".* The Assessing Officer, during the course of assessment proceedings, on perusal of the books of account and Profit & Loss Account, noticed that the assessee has debited medicines purchased at ₹ 20,85,280, under the following heads:-

S.no.	*Particulars*	*Amount (₹)*
1.	*ECG Material*	*9,001*
2.	*Medicines*	*11,74,378*
3.	*O.T. Material*	*4,29,212*
4.	*Pathology Re Agent*	*3,58,100 (Pathology Medicine)*
5.	*Sonography Material*	*17,375*
6.	*X–Ray Material*	*97,212*

3. On verification of ledger account of income and receipts, he observed that the medicines purchased have been used against professional receipts. However, with regard to the medicines purchased for ₹ 11,74,374, the assessee has not shown use of these medicines against any of the professional use. He, therefore, came to the conclusion that the assessee is running a medical store in the nursing home wherein no receipts / details with regard to the sale have been disclosed in the books of account. Thus, after considering the profit margin of 15% in the sale of medicines, he made an addition of ₹ 13,39,030, as undisclosed business income. The learned Commissioner (Appeals) conceded with the findings of the Assessing Officer that

sales of medicine to the extent of 11,64,378, is sales outside the books. However, he held that the Assessing Officer has not disputed the purchase of medicines, therefore, the learned Commissioner (Appeals) directed the Assessing Officer to re-compute the total cost of medicine purchased and utilized during the year from the details of opening stock plus purchases minus closing stock and apply the gross profit margin of 15%.

4. Learned Departmental Representative submitted that the sale of medicines is, admittedly, outside the books of account, therefore, the addition made by the Assessing Officer on the entire sales is wholly justified.

5. Learned Counsel for the assessee relied on the findings of the Commissioner (Appeals).

6. After carefully considering the rival contentions and the findings of the Commissioner (Appeals) as well as the Assessing Officer, we do not find any reason to deviate from the findings of the Commissioner (Appeals) as he has rightly held that only a gross profit margin of 15% should be added after taking into consideration the opening stock, purchases and closing stock. Since there is no dispute regarding the purchase, the reasoning given by the Commissioner (Appeals) is factually and legally correct. Thus, we do not find any substance in the ground taken by the Revenue.

7. परिणामतः राजस्व की अपील खारिज की जाती है ।

10. In the result, Revenue's appeal is dismissed.

आदेश की धोषणा खुले न्यायालय में दिनांकः 24th August 2012 को की गई ।
Order pronounced in the open Court on 24th August 2012

Sd/-	**Sd/-**
पी.एम. जगताप	**अमित शुक्ला**
लेखा सदस्य	**न्यायिक सदस्य**
P.M. JAGTAP	**AMIT SHUKLA**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

मुंबई MUMBAI, दिनांक DATED: 24th August 2012

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

(1) *निर्धारिती / The Assessee;*

(2) *राजस्व / The Revenue;*

(3) *आयकर आयुक्त(अपील)/ The CIT(A);*

(4) *आयकर आयुक्त / The CIT, Mumbai City concerned;*

(5) *विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / The DR, ITAT, Mumbai;*

(6) *गार्ड फाईल / Guard file.*

सत्यापित प्रति / True Copy
आदेशानुसार / By Order

प्रदीप जे. चौधरी / Pradeep J. Chowdhury
वरिष्ठ निजी सचिव / Sr. Private Secretary

उप / सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai