

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

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER  
AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.189/PUN/2021  
निर्धारण वर्ष / Assessment Year: 2015-16

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|--|-----|--------------------------|
| Fidelity Diagnostics P. Ltd.,<br>E-302, Marvel Diva,<br>Magarpatta Road, Hadapsar,<br>Pune-411028.<br>PAN : AABCF5899A | Vs. | DCIT, Circle-1(2), Pune. |
| Appellant  |     | Respondent               |

Assessee by : Shri Sumit Jain  
Revenue by : Shri Ramnath P. Murkude

Date of hearing : 08.09.2022  
Date of pronouncement : 26.09.2022

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre, Delhi [‘the CIT(A)’] dated 18.03.2021 for the assessment year 2015-16.

2. The appellant raised the following grounds of appeal :-

- “1. On the facts and circumstances of the case, the Assessing Officer & CIT(A) has erred in disallowing the genuine business expenditure.
2. The appellant craves leave to add, alter or amend any of the grounds before or during the hearing of the appeal.”

3. Briefly, the facts of the case are as under :

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of medical diagnostics services. The Return of Income for the assessment year 2015-16 was filed on 30.11.2015 declaring loss of Rs.1,97,90,141/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-1(2), Pune ('the Assessing Officer') vide order dated 27.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at loss of Rs.97,44,751/-. While doing so, the Assessing Officer disallowed a sum of Rs.99,79,768/- by holding that the appellant company had paid referral fees to doctors and nursing homes in violation of provisions of Medical Council (Professional Conducts, Etiquettes and Ethics) Regulation Act, 2002.

4. Being aggrieved by the above addition, an appeal was filed before the Id. CIT(A), who vide impugned order confirmed the addition placing reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Kap Scan and Diagnostic Centre (P.) Ltd, 25 Taxman.com 92 (P&H).

5. Being aggrieved by the decision of the Id. CIT(A), the appellant is in appeal before us in the present appeal.

6. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to allowability of referral fees paid to doctors and nursing home by the appellant

company. The Assessing Officer was of the opinion that the payment of referral fees to doctors and nursing home would amount to violation of the provisions of Medical Council (Professional Conducts, Etiquettes and Ethics) Regulation Act, 2002. Therefore, squarely hit by the Explanation 1 to section 37 of the Act. We find that an identical issue was dealt by the Hon'ble Apex Court in the case of Apex Laboratories (P.) Ltd. vs. DCIT, 442 ITR 1 (SC), wherein, the Hon'ble Apex Court held that gifting freebies, and payment of referral fees etc. is clearly prohibited by law and cannot be allowed as deduction u/s 37(1) of the Act.

7. In the light of authoritative pronouncement of law by the Hon'ble Supreme Court on the issue on hand, we are of the considered opinion that referral fees paid to doctors and nursing home cannot be allowed as deduction while computing the business income of an assessee. Accordingly, we confirm the orders of the lower authorities. Thus, we do not find any merit in the ground of appeal filed by the appellant-assessee.

8. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on this 26<sup>th</sup> day of September, 2022.

**Sd/-**  
**(S. S. GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> September, 2022.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-NFAC, Delhi.
4. The Pr. CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.