

**IN THE HIGH COURT OF SINDH, KARACHI**

ITR Nos.255, 256 & 257 of 2005

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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*BEFORE: Irfan Saadat Khan,  
Zulfiqar Ahmad Khan, JJ*

M/s. Akhter Eye Hospital  
(Pvt), Ltd., Applicant : through Mr. Arshad Siraj,  
Advocate.

The Commissioner of  
Income Tax, Companies Zone-V,  
Respondent : through Mr. Zulfiqar Ali Khan  
Jalbani, Advocate.

Date of hearing : 13.01.2022

**JUDGMENT**

**Irfan Saadat Khan, J.** These three Income Tax References (**ITRs**) applications were admitted to regular hearing on 16.9.2005 to consider the following questions of law of Assessment years, 2000-2001, 2001-2002 & 2002-2003.

**ASSESSMENT YEAR 2000-2001**

1. Whether on the facts and on the circumstances of the case the learned Income Tax Appellate Tribunal was right in confirming the rejection of accounts on the basis of non-maintenance of registers under rules 27(3) and 29 of the Income Tax Rules 1982 (now repealed), although the Applicant/assessee is a private limited company and there was no change in the method of accounting regularly employed by the Applicant/assess company.
2. Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified in estimating the receipts of the Applicant/assessee at Rs.2,60,00,000/- as against declared receipts of Rs.2,58,11,933/-, without pointing out any defect in the method of accounts regularly employed by the applicant.

**ASSESSMENT YEAR 2001-2002**

1. Whether on the facts and on the circumstance of the case the learned Income Tax Tribunal was right in confirming the rejection of accounts on the basis of non-maintenance of registers under rules 27(3) and 29 of the Income Tax Rules 1982 (now repealed), although the Applicant/assessee is a private limited company and there was no change in the method of accounting regularly employed by the Applicant/assess company.
2. Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified in estimating the receipts of the Applicant/assessee at Rs.2,84,00,000/- as against declared receipts of Ra.2,82,24,584/-, without pointing out any defect in the method of accounts regularly employed by the applicant.

**ASSESSMENT YEAR 2002-2003**

1. Whether on the facts and on the circumstance of the case the learned Income Tax Appellate Tribunal was right in confirming the rejection of accounts on the basis of non-maintenance of registers under rules 27(3) and 29 of the Income Tax Rules 1982 (now repealed), although the Applicant/assessee is a private limited company and there was no change in the method of accounting regularly employed by the Applicant/assess company.
  2. Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified in estimating the receipts of the Applicant/assessee at Rs.2,80,00,000/- as against declared receipts of Ra.2,57,14,395/-, without pointing out any defect in the method of accounts regularly employed by the applicant.
2. Briefly stated the facts of the cases are that the assessee is an Eye Hospital. The years under consideration are assessment years 2000-2001, 2001-2002 & 2002-2003. The return of total income for the assessment year 2000-2001 was filed on 15.1.2001 by declaring a loss of Rs.14,47,157/-. The return for the assessment year 2001-2002 was filed on 15.1.2002 by declaring an income at Rs.322073/-. The return for the assessment year

2002-2003 was filed on 31.12.2002 by declaring an income at Rs.55143/-. The assessment for the year 2001-2002 was finalized on 30.5.2003 by assessing the income at Rs.45,27,035/-. The assessment for the year 2001-2002 was finalized on 11.6.2003 at an income of Rs.46,86,166/-. The assessment for the year 2002-2003 was finalized on 21.6.2003 by determining income at Rs.54,27,513/-. The Assessing Authority (AA) while assessing the income of the assessee found out that the assessee has failed to maintain proper books of accounts as required under Rules 28 & 29 of the Income Tax Rules, 1982 (hereinafter referred to as Rules 1982) and thereafter as against the declared receipts at Rs.2,58,11,933/- estimated the receipts at Rs.2,70,00,000/-, which resulted in addition of Rs.11,88,067/-, in the income for the year 2000-2001. Similarly for the assessment year 2001-2002 the declared receipts of Rs.2,82,24,584/-were estimated at Rs.2.95 Million resulting in an addition of Rs.1,27,54,416/-. In a similar manner the receipts for the assessment year 2002-2003 declared at Rs.2,57,14,395/- were estimated at Rs.2,80,00,000/- resulting in addition of Rs.22,85,605/-.

3. Appeals thereafter were preferred before the Commissioner Appeals against the assessment orders challenging the additions made in the trading results of the three years. The Commissioner Appeals then vide order dated 06.2.2004 observed that under the years under consideration the assessee has not maintained the record as per Rules 28 & 29 of the Rules and the AA has rightly rejected the declared version however reduced the estimated receipts from Rs.2,70,00,000/- to Rs.2,68,00,000/- for the year 2000-2001 from Rs.2,95,00,000/- to Rs.2,93,00,000/- for the year

2001-2002 and from Rs.2,80,00,000/- to Rs.2,78,00,000/- for the year 2002-2003. Appeals thereafter were then preferred before the Tribunal bearing ITA No.805/KB/2004, 806/KB/2004 and 807/KB/2004 for the assessment years 2000-2001, 2001-2002, 2002-2003 respectively. The Tribunal after hearing the matter vide order dated 25.6.2005 also upheld the rejection of accounts by the AA however they further reduced the Trading receipts to Rs.26 million, Rs.28.4 million and Rs.26 million for the assessment years 2000-2001, 2001-2002, 2002-2003 respectively.

4. Mr. Arshad Siraj, Advocate has appeared on behalf of the assessee in all these three cases and stated that whatever books of accounts were required for a hospital were duly kept and maintained by the assessee. He stated that the reason given by the AA for making the additions was with regard to non-availability of complete addresses and CNIC of each patient coming to the hospital, which according to him is practically impossible to be maintained however, complete names and the amounts billed and received from these patient was duly kept and maintained by the assessee. He stated that details of patient was furnished to the AA, which has been mentioned in the assessment orders by the AA. He stated that Rule 29 of the Rules 1982 was required to be maintained by the persons engaged in selling medicine whereas the applicant being a hospital has maintained proper books of accounts, which were required to be maintained by it under the relevant rules. He stated that when the assessee has kept proper record and has maintained the books of accounts as required under the law the AA was not justified in estimating the receipts in the three years under consideration and thus the Appellate

Authority and the Tribunal were not justified in reducing the trading additions rather than deleting the same in toto.

5. The learned counsel stated that from the assessment orders it could be seen that patient details alongwith the amount received from them was duly maintained and furnished before the AA, hence the insistence of the AA in not keeping complete addresses of the patients alongwith non-mentioning of the CNIC numbers was never a requirement of the law to be maintained by an OPD hospital, since the same, according to him, is practically impossible for the OPD of an eye hospital. Therefore, according to him, the additions made in the trading accounts were wholly illegal and uncalled for. He stated that the additions made in the three years may be deleted. In support of his above contentions the learned counsel has placed reliance on the following decisions *Messrs Ghazi Tanneries Ltd., Karachi..Vs.. Commissioner of Income Tax, Central Zone 'B' Karachi (2011 PTD 2161)*, *Commissioner of Income Tax, Companies-III, Karachi..Vs.. Krudd Sons Ltd., [(1993) 68 Tax 41 (S.C. Pak.)]*. He finally prayed that the questions of law raised in these ITRs may be answered in negative i.e. in favour of the applicant and against the department.

6. Mr. Zulfiqar Ali Khan Jalbani, Advocate has appeared on behalf of the department and at the very out set conceded that for an OPD hospital keeping complete addresses and mentioning the CNIC of the patients is neither required under the law nor is practically possible. He however, stated that since the applicant is engaged in medical profession, hence they are required to maintain their books of accounts as per Rules 27, 28 & 29 of the Rules, 1982. The learned counsel then read out these rules to

substantiate his submission and stated that when the applicant has not maintained their books of accounts, as per above referred rules, therefore, the department was left with no option but to make additions to the income/receipts of the assessee on estimated basis. He further submitted that substantial relief has already been given to the applicant by way of reducing the trading additions made by Appellate Authority as well as by the Tribunal hence according to him the grievance of the assessee seems to have been redressed substantially. He next stated that the law gives ample power to an AA to make additions to the income of an assessee in case proper books of accounts are not maintained and in case the details required are not provided /produced. He finally supported the orders of the three authorities below and prayed that the questions of law raised in these ITRs may be answered in affirmative i.e. in favour of the Department and against the Applicant.

7. We have heard all the learned counsel at length, have also perused the record and examined the case law cited before us. We have also made research on our own in the instant matter.

8. Before proceeding any further we would like to reproduce hereinbelow Rules 27, 28 & 29 of the Rules 1982, for a better understanding:

**27. Certain persons to maintain accounts in the prescribed manner.**- (1) Every person deriving income from profession such as a medical practitioner, a legal practitioner, an accountant, an auditor, an architect or an engineer, shall keep and maintain the book of accounts and other documents specified in rule 28 to rule 31, whichever rule is applicable to his case.

(2) Nothing contained in sub-rule (1) shall be construed as preventing an assessee from maintaining any books of accounts in addition to those specified in rule 28 to rule 31 or adding such further columns or particulars in the forms referred to therein as he may think fit to maintain or add to suit his own requirements.

(3) For the purpose of sub-rule (1)-

- (a) “**medical practitioner**” includes doctors, surgeons, physicians, dentists, psychiatrists, tabibs, homoeopaths, vaidas, veterinarians and persons practicing medicine under any other name;
- (b) “**legal practitioner**” includes an income-tax practitioner.

**28. Books of accounts and documents required to be maintained by the general medical practitioners.—**

In the case of every medical practitioner who does not make any separate charge for consultation but makes a charge only for the medicine supplied by him, the books of accounts and other documents referred to in rule 27 shall be the following, namely:-

- (i) A receipt and expenditure book in the following form namely:-

RECEIPT AND EXPENDITURE BOOK

[To be maintained by every medical practitioner who does not make any separate charge for consultation but makes a charge only for the medicines supplied by him.]

Page No..... Date .....

Receipts			Expenditure		
Serial No. of Patient slip issued [see rule 28 (ii)]	Amount charged	Particulars of expenditure	Voucher No. or cheque No.[see rule 28 (iii)]	Amount expended	Remarks
1	2	3	4	5	6

- (ii) machine-numbered patient slips in the following form, namely :--

Patient Slip

Date ..... No.....

1. Name of the patient
2. \*Diagnosis.

3. Medicines prescribed.
4. Amount charged.

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\*Where in the opinion of the medical practitioner disclosure of diagnosis amounts to violation of professional etiquette or conduct this information may be withheld by him.

(Signature of the Medical Practitioner); and

- (iii) original expenditure, vouchers or counterfoils of cheques issued in respect of expenditure, where the expenditure exceeds fifty rupees.

**29. Books of accounts and documents required to be maintained by medical specialists, etc.—**In the case of medical practitioners, other than those referred to in rule 28, the books of accounts and other documents referred to in rule 27 shall be the following namely:-

- (i) A case register in the following form, namely:-

#### CASE REGISTER

[To be maintained by medical practitioner, i.e., doctors, surgeons, physicians, dentists, psychiatrists, tabibs, homoeopaths, vaidis, veterinarians etc., (other than medical practitioners) who do not make any separate charge for consultation but make a charge for the medicine supplied by them.]

Page No.....

Date .....

Serial No.	Patient's name	Nature of treatment:- (a) Consultation (b) Surgical treatment (c) Injection (d) House visit, etc.	Treatment charges	Remarks
1	2	3	4	5

- (ii) a receipt and payment book in the following form, namely :-

#### RECEIPT AND PAYMENT BOOK

[To be maintained by medical practitioner, i.e., doctors, surgeons, physicians, dentists, psychiatrists, tabibs, homoeopaths, vaidis, veterinarians etc., (other than medical practitioners) who do not make any separate charge for consultation but make a charge for the medicine supplied by them.]

Page No.....

Date.....



Receipts

Date in Case Register	Amounts		Total	Remarks
	-----			
	Cash Cheque			
1	2	3	4	5

Disbursements

Particulars of expenses	Voucher No. cheque No. [see rule 29 (iv)]	Amounts		Total	Remarks or
		Cash	Cheque		
1		2	3	4	5

(iii) A receipt book in the following form, namely:-

RECEIPT BOOK

Book No.....	Page No.....	Book No.....	Page No.....
	Date.....		Date.....
Name and address of the client, etc.....		Name and address of the client, etc.....	
Page No. of Case Register .....	Page No. of Case Register .....	Page No. of Case Register .....	Page No. of Case Register .....
Page No. of Payment Book.....	Page No. of Payment Book.....	Page No. of Payment Book.....	Page No. of Payment Book.....
Amount Received Rs.....	Amount Received Rs.....	Amount Received Rs.....	Amount Received Rs.....
(Rupees.....)	(Rupees.....)	(Rupees.....)	(Rupees.....)
in cash <u>Cheque</u> No.....	in cash <u>Cheque</u> No.....	in cash <u>Cheque</u> No.....	in cash <u>Cheque</u> No.....
by bank draft	by bank draft	by bank draft	by bank draft
dated .....	dated .....	dated .....	dated .....
on .....	on .....	on .....	on .....
Signature.....	Signature.....	Signature.....; and	Signature.....; and

(iv) original expenditure vouchers of counterfoils of cheques issued in respect of expenditure where the expenditure exceeds fifty rupees.

9. Perusal of the law reveals that in case of medical practitioners who do not make any separate charge for consultation but make a charge for the medicines supplied by them are required to maintain the books of accounts as per Rule 28 of the Rules, whereas other than those referred to in Rule 28

are required to maintain their books of accounts as per Rules 27 and 29. It is an admitted position that the assessee is a hospital, which deals with OPD patients, who come to the hospital for their treatment. The registers maintained by the said hospital clearly show that the name of the patient, the Doctor whom the patients consulted and the amounts charged from them has duly been maintained and kept. It may be noted that a hospital is required to maintain its books of accounts as per Rules 27 and 29 of the Rules, whereas Rule 28 in our view does not apply to a hospital. Perusal of Rules 27 and 29 reveal that the persons falling under these two Rules are required to maintain a case register with patient's name, nature of treatment, treatment charges and the receipt and payment book.

10. In the instant matter it could be seen from the details furnished to the AA that in those details admittedly the names of the patients and the amounts charged from them have clearly been mentioned. It is not the requirement of either Rule 27 or Rule 29 to give addresses and the CNIC numbers of the patients as, in our view, asking from every patient coming to the hospital in OPD his full residential address and CNIC number is firstly practically impossible and secondly is not the requirement of law. The said Rules clearly depict that a register has to be maintained which shows patient's name, consultant's name and the amount billed /received which, in our view, has been maintained by the hospital. The insistence of the AA for providing complete address and the CNIC number of the patients, in our view, is requiring something beyond the mandate of law as it is a settled principle of law that where a law requires doing of something in a particular manner it

has to be done in the same manner and not otherwise. Reliance in this respect may be made to the decisions given by the Hon'ble Supreme Court of Pakistan in the cases of *Ajmir Shah, Ex-Sepoy Vs. The Inspector-General, Frontier Corps Khyber Pakhtunkhwa and another* (**2020 SCMR 2129**), *Muhammad Hanif Abbasi Vs. Imran Khan Niazi* (**PLD 2018 SC 189**) and *Shahida Bibi Vs. Habib Bank Limited* (**PLD 2016 SC 995**).

11. In the decision given in the case of PIMPA (Pvt.) Ltd., Karachi Vs. Commissioner of Income Tax, Companies-I, Karachi [(1993) 68 Tax 193 (H.C. Kar.)] it was observed that non-supply of full address of the person from whom purchases have been made cannot be taken as indicative of suppression of the production. In the case of R.B. Jessaram Fatehchand (Sugar Deptt.) Vs. Commissioner of Income-Tax, Bombay City II [(1974) 29 Tax 161], the High Court of Bombay has observed that accounts cannot be rejected on the basis of non-supply of the addresses of the purchasers in case of cash transaction. If the principle as enshrined in the above referred judgments are examined it could be seen that giving full address of the patients is firstly neither the requirement of the law nor trading results could be rejected merely on the basis of non-supply of complete addresses of the parties, in the instant matter that of patients. It is a settled proposition of law that without any substantial material or cogent reasons the accounting method employed by a person cannot be rejected. In the instant matter as could be seen that the AA has rejected the trading results and has estimated the trading receipts of the assessee merely on the ground that full addresses of the patients

have not been given and their CNIC numbers have not been mentioned, which view cannot be endorsed.

12. We, therefore, in view of what has been discussed above answer all the questioned referred to us in “Negative” i.e. in favour of the applicant /assessee and against the respondent /department.

All the instant ITRs stand disposed of in the above terms.

Let a copy of this judgment be sent to the Registrar, Income Tax Appellate Tribunal for doing the needful in accordance with law.

JUDGE

JUDGE

Karachi:

Dated: .01.2022.