

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.3622/Del/2015  
Assessment Year: 2010-11**

Global Health Pvt. Ltd., E-18, Defence Colony, New Delhi. (PAN: AACCG2681C)	<b>Vs</b>	DCIT, Circle-10(1), New Delhi.
Appellant		Respondent

**ITA No.4587/Del/2015  
Assessment Year: 2010-11**

DCIT, Circle-10(1), New Delhi.	<b>Vs.</b>	Global Health Pvt. Ltd., E-18, Defence Colony, New Delhi. (PAN: AACCG2681C)
Appellant		Respondent

**Assessee by : Shri Rahul Khare, Adv.  
Shri H.N. Mehrotra  
Department by: Shri G. Johnson, Sr. DR**

**Date of hearing : 15.03.2019  
Date of pronouncement : 18.03.2019**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:**

ITA No. 3622/Del/2015 is preferred by the assessee against the order dated 30.4.2015 passed by the Ld. CIT (Appeals) -4, New Delhi {CIT (A)} for assessment year 2010-11

whereas ITA No. 4587/Del/2015 is the department's cross appeal.

2.0 Brief facts of the case are that the assessee company is engaged in the business of providing health care facility through super-specialty hospital namely 'Medanta' at Gurgaon. The hospital started its operation w.e.f. 1.11.2009. The return of income was filed for the year under consideration declaring a loss of Rs.95,27,63,398/-. The case of the assessee company was selected for scrutiny under CASS norms. During the course of assessment proceedings, the Assessing Officer observed that the assessee company had appointed Dr. Naresh Trehan as its Managing Director w.e.f. 1.6.2007 but no remuneration was paid to him/provided in the financial statements in the earlier assessment years whereas in the year under consideration an amount of Rs. 9,33,33,333/- was shown as salary for the period 1.6.2007 to 31.3.2010. On being asked to explain, the assessee submitted that the company's Board of Directors had passed a resolution in September, 2009, whereby an amount of Rs. 6 crore was approved as salary to Dr. Naresh Trehan for the period 1.6.2007 to 31.10.2009. It was submitted before the Assessing Officer that the liability towards payment of

salary had crystallized only upon the passing of the relevant resolution approving the payment of salary by the Board of Directors and was, therefore, allowable in the year under consideration. It was also submitted that, although, the Medanta Hospital had started functioning from 1.11.2009 only, the assessee company had already been providing health care services w.e.f. 1.6.2007 by entering into arrangements with various hospitals including Apollo Hospital where all the cardiac operations were performed by a team led by Dr. Naresh Trehan. It was also submitted before the Assessing Officer that the salaries for other doctors had been fixed and paid w.e.f. 1.6.2007 which had been allowed by the Assessing Officer also in his order for assessment year 2008-09 but since the salary of Dr. Naresh Trehan could not be paid until the Board of Directors approved it, the same was claimed as an expenditure in the year under consideration. The Assessing Officer, however, was of the opinion that the salary of Dr. Naresh Trehan, he being the Chairman and the Managing Director, was paid for giving overall business directions/framing business policy which was in the development stage before November 2009 and, therefore, the salary for the period prior to November 2009 should have been

capitalized. Accordingly, the entire salary paid to Dr. Naresh Trehan for the period prior to 1.11.2009 was capitalized by the Assessing Officer which resulted in an amount of Rs. 8,23,52,900/- being treated as pre-operative expenditure which was amortized @10% and, accordingly, a net addition of Rs. 7,82,35,255/- was made.

2.1 Further, the Assessing Officer also observed that the assessee had claimed the additions to fixed assets under the Indian Companies Act, 1956 at Rs. 520,31,51,563/- whereas the additions to fixed assets as per the tax audit report, for the purposes of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), were shown at Rs. 521,10,97,834/- thereby giving rise to a difference of Rs. 79,46,271/-. The assessee filed a reconciliation chart before the Assessing Officer informing that some items which had been treated as inventory in the books had been considered as fixed assets while claiming depreciation under the Income Tax Act and also some assets which had been taken on lease, which had been treated as fixed assets in the books of accounts, were not treated as fixed assets under the Act. It was also submitted that the upfront fee also was not considered as part of the fixed assets for the purposes of

calculating the depreciation. However, the Assessing Officer did not accept the reconciliation as submitted by the assessee and added back excess depreciation @15% resulting in an addition of Rs. 5,95,970/-.

2.2 The Assessing Officer further observed that the assessee had capitalized repairs and maintenance expenses relating to engineering equipment amounting to Rs. 218,87,15,906/- towards addition/s to plant and machinery and a further amount of Rs. 8,44,63,990/- towards addition/s to computers. Apart from this, the Assessing Officer observed, that the assessee had also claimed repairs and maintenance expenses towards engineering equipment and repairs and maintenance of IT related equipment. The assessee was asked to explain as to why the repairs and maintenance expenses aggregating to Rs. 81,89,214/- may not be capitalized being pre-operative in nature. The assessee submitted before the Assessing Officer that out of this amount, an amount of Rs. 23,76,046/- was towards payment of Annual Maintenance Contract (AMC) for maintaining the IT facility and regarding the balance amount of Rs. 58,13,168/-, it was submitted that the same was in respect of the period starting from 1.11.2009 and, therefore, the same was

not pre-operative in nature. However, the Assessing Officer, on examining the relevant invoices, observed that part of the AMC expenditure was related to the period prior to November, 2009. The Assessing Officer also treated the entire repair expenses for IT engineering equipment as being pre-operative in nature. Also with regard to repairs and maintenance of engineering equipment, the Assessing Officer held that these expenses were in the nature of start-up expenditure and were, accordingly, to be capitalized on which depreciation was to be allowed at the applicable rate. A net addition of Rs. 40,40,103/- was made on this account.

2.3 The Assessing Officer further observed that the assessee had made certain payments during the year towards testing fees paid to Artermis Hospital in excess of Rs. 20,000/- in cash. The assessee was required to explain as to why a disallowance u/s 40A (iii) of the Act may not be made. In this regard, the assessee's explanation was that these payments had been made for the purpose of carrying out certain basic medical/blood tests and the payment had to be made in cash as at that point of time, there was no written agreement between the assessee and Artermis Hospital and also due to business

expediency. However, the Assessing Officer proceeded to make a disallowance of Rs. 1,39,980/- u/s 40A(iii) of the Act.

2.4 The Assessing Officer also observed that the assessee had claimed an amount of Rs. 1,05,92,174/- towards miscellaneous expenditure out of which details of only Rs. 45,47,763/- had been provided to the Assessing Officer. It was further observed by the Assessing Officer that out of this amount, an amount of Rs. 14,59,122/- had been spent towards community outreach programme while an amount of Rs. 14,29,613/- had been shown as paid towards nursing hostel expenses in addition to an amount of Rs. 39,62,381/- which had already been transferred from pre-operative expenses to the Profit & Loss account. The Assessing Officer was of the opinion that these expenses were incurred prior to November 2009 and he, accordingly, capitalized the aforesaid expenses aggregating to Rs. 68,51,116/-.

2.5 On perusal of the details relating to research and development expenditure amounting to Rs. 1,08,33,341/-, the Assessing Officer observed that such expenses were also incurred prior to 1.11.2009. The Assessing Officer, in absence of the particulars of the employees who were engaged in the research

and development activities, proceeded to treat an amount of Rs. 93,35,841/- as being capital in nature and, thereafter, after allowing depreciation thereon, a total disallowance of Rs. 1,04,58,266/- was made.

2.6 While examining the details of Recruitment expenses amounting to Rs. 1,93,55,261/-, the Assessing Officer observed that the same included an amount of Rs. 96,91,023/- in respect of various invoices issued on 31.3.2010 but pertaining to FY 2010-11. The Assessing Officer held that an amount of Rs. 18,94,197/- was preoperative in nature while an amount of Rs. 21,32,683/- was revenue in nature. Accordingly, after allowing benefit depreciation at the applicable rate, an addition of Rs. 1,14,90,580/- was made to the total income after treating the expenses of Rs. 96,91,093/- as pertaining to assessment year 2011-12.

2.7 The Assessing Officer further held that the interest on term loan amounting to Rs. 1,28,00,000/- had also an element of pre-operative expenses and, accordingly, an addition of Rs. 1,21,60,000/- was made on this account. Further, the Assessing Officer observed that the assessee had paid bank charges towards importing certain plant and machinery which, in the

opinion of the Assessing Officer, should have been capitalized to the cost of fixed assets. An addition of Rs. 3,28,57,503/- was made to the total income on this account.

2.8 Aggrieved, the assessee preferred an appeal before the Ld. CIT (Appeals) who partly allowed the assessee's appeal by adjudicating the issues before him as under:-

- i) With respect to the issue of disallowance of salary of Rs. 6.00 crores pertaining to the period 1.6.2007 to 31.10.2009 of Dr. Naresh Trehan, the Ld. CIT (Appeals) held that 20% of salary received by Dr. Naresh Trehan for the period 1.6.2007 to 31.10.2009 was to be capitalized which was eligible for depreciation. The balance salary of Rs. 4.80 crore was held to be revenue in nature. The Ld. CIT (Appeals) also held that for the remaining amount of Rs. 3.33 crore for the period 1.11.2009 to 31.3.2010 was to be allowed in assessment year 2011-12 because the Board Resolution to pay the amount of Rs. 3.33 crore was taken on 28.9.2010. The Assessing Officer was also directed to allow the salary of Rs. 3.33 crore in

assessment year 2011-12. Thus, the disallowance was confirmed to the extent of Rs. 4.53 crore.

- ii) With respect to depreciation disallowance amounting to Rs. 5,95,970/-, the Ld. CIT (Appeals) held that the Assessing Officer had no reasonable basis for making the disallowance of depreciation keeping in mind the reconciliation chart filed by the assessee in this regard. Accordingly, the assessee's ground was allowed and the disallowance was deleted.
- iii) On assessee's challenge to the capitalization of repair and maintenance expenses of IT and engineering equipment, with respect to the Annual Maintenance Charges (AMC), the Ld. CIT (Appeals) held that only a proportionate amount for a period of 15 days was preoperative in nature, thereby resulting in capitalization of Rs. 2,16,004/- only. The assessee was granted relief in respect of the balance amount of AMC. With respect to the other component of Rs. 58,13,168/- in respect of repair and maintenance of engineering equipment, the Ld. CIT (Appeals) held that the Assessing Officer had capitalized the same without

support of any evidence which would suggest that any specific engineering equipment had come into existence. The Ld. CIT (Appeals) proceeded to delete the remaining addition of Rs. 58,13,168/- on this account.

- iv) With respect to the disallowance made u/s 40A(iii) of the Act pertaining to cash payments made to Artermis Hospital towards special medical tests etc., the Ld. CIT (Appeals) was of the view that the case of business expediency was not successfully made out by the assessee and he, therefore, proceeded to confirm the disallowance of Rs. 1,39,980/-.
- v) With respect to capitalization done by the Assessing Officer with respect to miscellaneous expenditure, the Ld. CIT (Appeals) held that out of Rs. 14,29,613/- spent towards nursing hostel expenses, Rs. 5,10,761/- were allowable. With respect to the second component of miscellaneous expenditure amounting to Rs. 33,00,281/- , the Ld. CIT (Appeals) held that expenses amounting to Rs. 19,21,341/- were preoperative in nature and the disallowance to this extent was

sustained. Further, with respect to amount of Rs. 14,59,122/- spent on community outreach programme, the Ld. CIT (Appeals) held that capitalization only to the extent of Rs. 2,48,939/- was to be sustained as only this amount had been spent prior to 31.10.2009.

- vi) With respect to the disallowance of Rs. 1,04,58,266/- being salaries paid under research and development expenditure, the Ld. CIT (Appeals) held that since no specific details had been filed either before the Assessing Officer or before him, the capitalization was in order. Accordingly, this ground was dismissed.
- vii) With respect to the action of the Assessing Officer in treating the recruitment expenditure amounting to Rs. 1,14,90,580/- as capital expenditure, the Ld. CIT (Appeals) held that out of this expenditure, Rs. 96,91,023/- had been incurred by M/s Ifan Global India Pvt. Ltd. and as per the agreement with this company and the related invoices, the payment had been made for providing recruitment services during the year under consideration. Accordingly, an amount

of Rs. 96,91,023/-, disallowed by the Assessing Officer, was allowed. With respect to the balance amount of Rs. 18,94,197/- the Ld. CIT (Appeals) held that this addition was to be upheld as the same pertained to a period prior to October 2009.

- viii) With respect to the capitalization of interest on bank loan and bank charges amounting to Rs. 1,28,60,000/- and Rs. 3,28,57,503/- respectively, the Ld. CIT (Appeals) held that as far as the interest on term loan was concerned, the impugned amount pertained to a period prior to October 2009 and since the loan had been taken for the construction of Medanta Hospital, the same had to be capitalized which had rightly been done so by the Assessing Officer. Accordingly, this ground was dismissed by the Ld. CIT (Appeals). With respect to the bank charges disallowed by the Assessing Officer, the Ld. CIT (Appeals) held that bank charges on credit card receipts from patients amounting to Rs. 13,886/- were revenue in nature and were to be allowed. Further, it was held that one time bank charges for issuance of

letter of credit and letter of credit confirmation charges, which were incurred towards import of medical equipment, related to import of fixed asset prior to installation and, therefore, the same needed to be capitalized but depreciation could be granted at the applicable rates. With respect to annual bank charges towards issuance of bank guarantee etc., the Ld. CIT (Appeals) held that the same should be bifurcated and the charges paid by the assessee prior to installation and put to use of the assets needed to be capitalized whereas the charges paid subsequent to the assets having been put to use should be allowed as revenue expenditure.

2.9 Now, both the department as well as the assessee has approached the ITAT against the order of the Ld. CIT (Appeals).

2.10 The following grounds have been preferred by the assessee:-

*“1 (a) The learned CIT (A) erred in fact and in law in treating part salary of Dr. Naresh Trehan amounting to Rs 1.20 crore as capital expenditure which is not only incorrect but also against the facts and circumstances of the case.*

*(b) The learned CIT(A) erred in fact and in law in giving direction to DCIT To allow the salary amounting to Rs*

*3.33 crore in subsequent year ( A.Y 2011-12) in spite of the fact that this was not the subject matter of appeal.*

*(c) That Direction of CIT(A) as per ground 1.(b) is not only illegal but void ab initio because no notice u/s 251 (2) was issued.*

*2. The learned CIT(A) erred in fact and in law in treating a sum of Rs 19,21,341 under the head misc expenditure as pre operative expenditure which is not only incorrect but also against the facts and circumstances of the case.*

*3. The learned CIT(A) erred in fact and in law in treating a sum of Rs 2,48,939 under the head out reach programme as pre operative expenditure which is not only incorrect but also against the facts and circumstances of the case.*

*4. The learned CIT(A) erred in fact and in law in treating a sum of Rs. 11,81,500 out of Rs 1,04,58,266 under the head research and development as pre operative expenditure and confirmed the disallowance of Rs 93,35,841 which is not only incorrect but also against the facts and circumstances of the case.*

*5. The learned CIT(A) erred in fact and in law in treating a sum of Rs. 18,94,197 under the head Research and Development in the nature of recruitment expenses as pre operative expenditure which is not only incorrect but also against the facts and circumstances of the case.*

*6. The learned CIT(A) erred in fact and in law in treating a sum of Rs 1.28 crore under the head Interest as pre operative expenditure which is not only incorrect but also against the facts and circumstances of the case.*

*7. The learned CIT(A) erred in fact and in law in treating bank charges on issuance of bank guarantee for EPCG License as pre operative expenditure which is not only incorrect but also against the facts and circumstances of the case.”*

2.11 Grounds of appeal raised by the revenue are as under:-

*“1. The Ld, CIT-A has erred in estimating the salary of Dr. Naresh Trehan towards the cost of hospital at 20%, ignoring the fact that Dr. Naresh Trehan was not only paid for doctor's profession but remuneration was paid for overall business directives which are for performing business practices and policies of upcoming hospital project which was in development stage before November 2009.*

*2. The Ld. CIT(A) has erred in allowing depreciation on value of fixed Assets of Rs. 521,10,97,834/- ignoring the fact that the assessee company has shown the value of fixed Assets of Rs. 520,31,51,563/- in their balance sheet.*

*3. The Ld. CIT(A) has erred in allowing the addition of Rs.58,13,168/- &Rs.21,60,062/- made on account of Repair & Maintenance, Installation, Commissioning & towards I.T Equipment's ignoring the fact that these expenses are inadmissible being Prior Period Expenses.*

*4. The Ld. CIT(A) has erred in allowing expenses amount of Rs.45,28,499/- out of total disallowances of Rs.65,08,856/- ignoring the AO's finding that these pertain to period prior to November, 2009 and are inadmissible being pre-commencement of business expenditure.*

*5. The Ld. CIT(A) has erred in allowing the expenditure of Rs.96,91,093/- out of total disallowances of Rs. 1,14,90,580/- ignoring the fact that the assessee failed to substantiate its claim that these pertain to the assessment year under consideration and also the fact that these have been raised during the next F.Y.: 2010-11*

*6. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”*

3.0 With respect to the assessee's appeal bearing caption ITA No. 3622/Del/2015, the Ld. AR made ground wise submissions as under:

3.1.1 With respect to ground no. 1 (a) that the learned CIT (A) had erred in fact and in law in treating part salary of Dr. Trehan amounting to Rs. 1.20 crore as capital expenditure which is not only incorrect but also against the facts and circumstances of the case, the Ld. AR submitted that out of Rs.6,00,00,000/- the Ld. CIT(A) has allowed Rs. 4,80,00,000/- as revenue expenditure and has capitalized 20% of the salary on an *ad hoc* basis (being Rs. 1,20,00,000/-) towards the cost of the hospital project and also held it as being eligible for depreciation . It was submitted that this ground relates to ground no. 1 of the Revenue's appeal also. it was submitted that this *ad hoc* disallowance was made without bringing on record any fact to support the reasoning behind capitalization @ 20%. It was further submitted that the last remuneration drawn by Dr. Naresh Trehan from Escorts Heart Institute was Rs 8.40 crores per annum as against Rs 6.00 crores in Global Health Pvt. Ltd. although he was not involved in the day

to day management while he was in the Escorts Heart Institute. The Ld. AR also placed reliance on numerous judicial precedents to support his contention that *ad hoc* capitalization @ 20% without any sound reasoning and factual accuracy was not sustainable and in fact the entire disallowance by capitalization was to be deleted.

3.1.2 With respect to ground no. 1(b) that the learned Commissioner of Income Tax (A) had erred in fact and in law in giving direction to the AO to allow the salary amounting to Rs. 3.33 crore in subsequent year (A.Y. 2011-12) in spite of the fact that this was not the subject matter of appeal, the Ld. AR submitted that interest of justice would be met if the AO is directed to comply with this direction of the Ld. CIT (A).

3.1.3 Ground no. 1(c) was not pressed.

3.2 Ground No. 2 was not pressed.

3.3 With respect to ground no. 3 stating that the learned CIT (A) had erred in fact and in law in treating a sum of Rs. 2,48,939/- under the head outreach programme as pre-operative expenditure which was not only incorrect but was also against the facts and circumstances of the case, the Ld. AR submitted that the business activity was undisputedly started w.e.f. 1/06/2007

whereas the Ld. CIT (A) has made this disallowance based on an incorrect assumption that since this amount was spent before 31/10/2009 whereas the business of the assessee was started w.e.f. 1/11/2009. It was submitted that the Ld. CIT (A) took this incorrect view in spite of the fact that the AO, while passing the assessment orders for A Y 2008-09 and 2009-10, had accepted that the business activity was being carried out through Apollo and other Hospitals. The Ld. AR placed on record copies of Assessment orders for A.Y 2008-09 and 2009-10 in support of this contention.

3.4 With reference to Ground No. 4 which stated that the Ld. Commissioner of Income Tax (A) had erred in fact and in law in treating a sum of Rs. 11,81,500/- out of Rs. 1,04,58,266/- under the head 'Research and Development' as preoperative expenditure and confirmed the disallowance of Rs. 93,35,841/-, it was submitted by the Ld. AR that this confirmation was not only incorrect but was also against the facts and circumstances of the case. It was submitted that the Ld. CIT (A) had confirmed the disallowance of Rs 93,35,841/- on the ground that no details were filed in this regard. It was submitted that this expenditure pertained to expenditure relating to specialist doctors who were

employed by the assessee company and who not only performed their medical related functions including surgery etc. but also carried out research work which was a part and parcel of the medical activity. It was submitted that the assessee company had not employed separate Doctors for doing research related activities and a portion of their remuneration is transferred from Salary account to Research and Development account on a *pro rata* basis. It was further submitted that this methodology was followed in A.Y. 2008-09 and 2009-10 also where in the AO, while passing the orders, had accepted the claim and no disallowance was made. Our attention was drawn to page 169 of the paper book to demonstrate Rs. 65,04,461/- was claimed in A.Y 2009-10 and Rs. 40,79,384/- was claimed in A.Y 2008-09.

3.5 Ground No. 5 states that the Ld. Commissioner of Income Tax (A) erred in fact and in law in treating a sum of Rs. 18,94,197/- under the head Research and Development in the nature of recruitment expenses as pre-operative expenditure which is not only incorrect but also against the facts and circumstances of the case. The Ld. AR submitted that the Ld. CIT (A) has upheld the order of the AO and has disallowed the amount of Rs.18,94,197/- treating the same as capital expenditure being

in the nature of pre-operative expenses. The Ld. AR reiterated that the business activity of the assessee company had duly started w.e.f. 1/06/2007 but the CIT (A) had made this disallowance based on the wrong assumption that since this amount was spent before 31/10/2009, it was pre-operative. It was submitted that this was done while completely disregarding the fact that the AO, while passing the assessment orders for A.Y 2008-09 and 2009-10, had duly accepted that the business activity of the company was being carried out through Apollo and other Hospitals and that these expenses were towards recruitment of nurses the process of which was going on since 01/06/2007 and identical expenses were allowed in A.Y. 2008-09 and 2009-10.

3.6 With respect to Ground No. 6 which stated that the Ld. Commissioner of Income Tax (A) had erred in fact and in law in treating a sum of Rs. 1.28 crore under the head interest as pre-operative expenditure which is not only incorrect but also against the facts and circumstances of the case, it was submitted that the Commissioner of Income Tax (A) has upheld the order of the AO on the issue and treated interest on term loan amounting to Rs. 1,28,00,000/- as capital expenditure. In this regard it was submitted by the Ld. AR that interest can be capitalised but

direction be given that the interest pertaining to term loan on machinery which were mainly surgical instruments and fell under the category of life saving devices attracting higher rate of depreciation, be allowed depreciation at the higher rate.

3.7 Ground No. 7 was not pressed.

3.8 It was prayed that the assessee's appeal deserved to be allowed.

4.0 The Ld. AR submitted that with respect to the department's appeal bearing ITA No. 4587/Del/2015 he would, likewise, make ground wise submissions. His submissions in this regard were as under:

4.1 Regarding the first ground of the department's appeal that the learned CIT (A) had erred in estimating the salary of Dr. Naresh Trehan to be capitalized @ 20%, ignoring the fact that Dr. Naresh Trehan was not only paid for services rendered in the capacity of a doctor profession but remuneration was also paid for giving a direction to the overall business activities, it was submitted that this *ad hoc* disallowance was made without bringing on record any fact to support the reasoning behind capitalization @ 20%. It was further submitted that the last remuneration drawn by Dr. Naresh Trehan from Escorts Heart

Institute was Rs 8.40 crores per annum as against Rs 6.00 crores in Global Health Pvt. Ltd. although he was not involved in the day to day management while he was in the Escorts Heart Institute. The Ld. AR also placed reliance on numerous judicial precedents to support his contention that *ad hoc* capitalization @ 20% without any sound reasoning and factual accuracy was not sustainable and in fact the entire disallowance by capitalization was to be deleted. It was further submitted that this ground was connected with ground no.1 of the assessee's appeal also and detailed arguments had already been made on the issue while arguing the assessee's appeal.

4.2 With regard to the second issue being agitated by the Revenue regarding allowing of depreciation on value of fixed assets of Rs. 521,10,97,834/- ignoring the fact that the assessee company had shown the value of fixed assets of Rs.520,31,51,563/- in their balance sheet, the Ld. AR submitted that in all fairness he was conceding this ground.

4.3 With regard to the third ground of the Revenue's appeal pertaining to the act of the learned CIT (A) in allowing the addition of Rs. 58,13,168/- and Rs. 21,60,062/- made on account of Repair & Maintenance, Installation, Commissioning

and towards IT equipment, the Ld. AR submitted that in this regard the Ld. CIT (A) has recorded a finding of fact. It was submitted that out of Rs. 23,76,047/- the Ld. CIT (A) held that the proportionate amount for the period of 15 days between 16.10.2009 to 31.10.2009 amounting to Rs. 2,16,004/- was to be treated as pre-operative expenses and the balance i.e. Rs. 21,60,062/- being amount pertaining to the period from 1/11/2009 to 31/3/2010 was treated as revenue expenditure being AMC of various medical equipments. It was submitted that no interference was required on this issue and the assessee was also not agitating this issue. With respect to the disallowance of Rs. 58,13,168/-, it was submitted that the Ld. CIT (A) had again given a categorical finding that these expenses pertained to the period 1/11/2009 to 31/3/2010 and, therefore, no interference was called for on this issue also.

4.4 With regard to the Revenue's ground that the learned CIT (A) had erred in allowing expenditure amount of Rs. 45,28,499/- out of the total disallowance of Rs.65,08,856/- ignoring the AO's finding that these pertained to period prior to November, 2009 and were inadmissible being pre-commencement of business expenditure, it was submitted by the Ld. AR that even

on this issue, the Ld. CIT (A) had allowed only a part relief to the assessee after recording a factual finding in this regard and had held that out of Rs 65,08,499/- only Rs 21,61,280/- was to be treated as pre-operative and the balance was to be allowed as revenue expenditure. It was submitted that no interference was called for as this again was a pure finding of fact.

4.5 With respect to ground no. 5 raised by the Revenue that the learned CIT (A) had erred in allowing the expenditure of Rs. 96,91,093/- out of the total disallowance of Rs.1,14,90,580/- ignoring the fact that the assessee had failed to substantiate its claim that these pertained to the assessment year under consideration and also the fact that these have been raised during the next financial year i.e. 2010-11, it was submitted by the Ld. AR that out of the total disallowance of Rs 1,14,90,580/- pertaining to Recruitment expenses, the Ld. CIT (A) had allowed Rs. 96,91,023/- only as revenue expenditure after duly verifying the agreement with the service provider M/s IFAN Global India Pvt. Ltd. and, therefore, in view of the categorical finding recorded after due verification by the Ld. CIT (A), no interference was called for.

4.6 It was prayed that the departmental appeal deserved to be dismissed.

5.0 In response to the arguments of the Ld. AR, the Ld. Sr. DR with respect to the assessee's appeal placed extensive reliance on the concurrent findings of both the Ld. First Appellate Authority as well as the Assessing Officer and vehemently argued that the additions/disallowances had been rightly upheld/made. It was submitted that the additions were based entirely on pure findings of fact and, therefore, they deserved to be upheld.

6.0 With respect to the department's appeal, the Ld. Sr. Dr placed extensive reliance on the observations and conclusions of the Assessing Officer and also submitted that the Ld. CIT (A) had given relief to the assessee without considering and without giving due weightage to the observations of the Assessing Officer and also after ignoring the fact that in most of the additions, the relevant details had not been filed by the assessee before the Assessing Officer. It was prayed that the department's appeal deserved to succeed as the order of the Ld. CIT (A) had not considered the relevant facts in totality.

7. We have heard the rival submissions and perused the material available on record. Now we take up the appeals one by one.

**ITA No. 3622/Del/2015**

7.1.1 In this appeal of the assessee, the first ground in dispute pertains to the action of the Ld. CIT (A) in treating a part of the salary of Dr. Naresh Trehan amounting to Rs. 1.20 crore as capital expenditure. It is seen that the assessee had claimed a total amount of Rs. 9,33,33,333/- as salary paid/due to Dr. Naresh Trehan and the Assessing Officer had made a proportionate disallowance out of the salary on the ground that the Medanta Hotel project was in the development stage before November 2009 and, therefore, the same should be capitalized. This resulted in the Assessing Officer treating the salary amounting to Rs. 7,82,35,255/- as being disallowed as revenue expenditure. On appeal, the Ld. CIT (A) held that out of salary of Rs. 6 crore, pertaining to the period 1.6.2007 to 31.10.2009, only 20% of the salary should have been capitalized and the remaining salary was directed to be allowed as deduction in assessment year 2011-12 as this salary pertained to the period 1.11.2009 to 31.3.2010 but got ascertained only on 28.9.2010

when the Board Resolution approving the salary was passed. Thus, the issue before us has two limbs. The first issue is whether the Ld. CIT (A) was justified in directing that 20% of the salary pertaining to period 1.6.2007 to 31.3.2010 was to be capitalized as capital expenditure and the second limb is the action of the Ld. CIT (A) in holding that the salary of Rs. 3.33 crores was to be allowable in assessment year 2011-12 as the Board Resolution was passed in assessment year 2011-12. As far as the first limb is concerned, the perusal of the order of the Ld. CIT (A) shows that the Ld. CIT (A) has not given any cogent reason for holding that 20% of the salary expenses were to be capitalized. The Ld. CIT (A) has also noted that the assessee company was engaged in the business of providing health care services right from the inception by entering into agreement with other hospitals on 2.6.2007 and for which purpose, the company had made huge salary payments to more than 165 doctors even prior to the commencement of operation of the Medanta Hospital on 31.10.2009. The Ld. CIT (A) has also noted that it could not be held that the assessee company had started its business only w.e.f. 1.11.2009 i.e. when the super-specialty hospital 'Medanta' started its operation. The Ld. CIT (A) has also given a categorical

finding that the assessee company was already engaged in the business of providing health care services through agreements with other hospitals and Dr. Naresh Trehan being a leading cardio vascular surgeon was paid on account of services rendered to the assessee company which had resulted in significant income from health care services for the assessee in Financial Years 2007-08, 2008-09 and 2009-10 i.e. even prior to the commencement of operation of Medanta hospital. However, after giving such categorical finding, the Ld. CIT (A) went on to hold that an estimated 20% of salary received by Dr. Naresh Trehan for the period 1.6.2007 to 31.10.2009 needs to be capitalized. However, the Ld. CIT (A) has not given any reasoning as to how this *ad hoc* percentage of 20% was arrived at. Thus, the findings of the Ld. CIT (A) are contradictory inasmuch as on one hand, the Ld. CIT (A) has given a categorical finding that it could not be said that the assessee company was not having any kind of business operation prior to 31.10.2009 and on the other hand, the Ld. CIT (A) has proceeded to estimate the capital cost component in the salary at 20%. It is settled law that *ad hoc* additions/disallowances cannot be sustained without the tax authorities pointing out any specific defect in the books of

accounts of the assessee. Therefore, we are unable to accept the reasoning of the Ld. CIT (A) in directing that only 20% of the salary should be disallowed as being capital in nature. Once it is accepted that the business operations of the company had commenced prior to 31.10.2009, there remains no basis for making a disallowance for estimated capital component without basing the finding on any cogent finding of fact and/or evidence. Accordingly, in view of the overall circumstances of the case and the categorical observation of the Ld. CIT (A) in this regard, it is our considered opinion that the Ld. CIT (A) was incorrect in holding that 20% of the salary out of Rs. 6 crore was to be capitalized. Accordingly, we allow ground no. 1(a) of the assessee's appeal and hold that no part of the salary out of Rs. 6 crore requires any capitalization in view of the fact that the business of the assessee company had already commenced prior to 31.10.2009. This also takes care of Revenue's ground No. 1 and we dismiss the same by holding that no portion of the salary of Rs. 6 crores needs to be capitalized in view of the specific acceptance of the department in earlier assessment years that the business activity of the assessee company had started w.e.f. 01/06/2007.

7.1.2 Coming to the second limb of the disallowance wherein the Ld. CIT (A) has held that the remaining salary of Rs. 3.3 crore was to be allowed in assessment year 2011-12 as the Board Resolution was passed in assessment year 2011-12, it has been submitted by the Ld. AR that the assessee accepts the finding of the Ld. CIT (A) and has only prayed that the AO may be directed to give effect to this direction. The Department is not in appeal against this direction. Accordingly, we direct the AO to give effect to the direction of the Ld. CIT (A) that the balance amount of Rs. 3.33 crores be allowed as deduction in AY 2011-12. Thus, ground no. 1(b) stands dismissed but subject to our directions.

7.1.3 Coming to ground no. 1(c) of the assessee's appeal, since the Ld. AR has stated that this ground is not being pressed, the same is dismissed as not being pressed.

7.2 With respect to Ground no. 2 of the assessee's appeal, since the Ld. AR has stated that this ground is not being pressed, the same is also dismissed as not pressed.

7.3 Coming to ground no. 3 of the assessee's appeal wherein the assessee has challenged the action of the Ld. CIT(A) in treating an amount of Rs. 2,48,939/- spent on outreach

programme as preoperative expenditure on the ground that this amount was spent before 31.10.2009, we are of the considered opinion that since the Ld. CIT(A) has himself accepted, while dealing with the assessee's ground relating to remuneration to Dr. Naresh Trehan, that the assessee's business operations had commenced prior to 31.10.2009, there remains no basis for making/confirming any disallowance on account of preoperative expenditure. We also note that the Assessing Officer, while passing assessment orders for assessment year 2008-09 and 2009-10, has also accepted that the business activities of the assessee company were being carried out through Apollo and other hospitals. Therefore, we are unable to agree with the Ld. CIT (A) on this issue and we, while setting aside the order of the Ld. CIT (A) on this issue, direct the Assessing Officer to allow the entire expenditure. Thus, ground no. 3 stands allowed.

7.4.1 Coming to ground no. 4 which challenges the action of the Ld. CIT (A) in confirming disallowance of Rs. 93,35,841/- under the head research and development expenditure, we note that both the lower authorities in this regard have noted that no details were filed before them so as to substantiate that this amount was spent towards research and development activities.

The Ld. CIT (A) has noted that the assessee could not provide details regarding the persons who had been employed for the purposes of research and development. It is the contention of the assessee that the specialized doctors who were employed with the assessee not only performed their regular medical activities but also did research work. It has been accepted by the assessee that no separate doctors have been employed for conducting the research activity and the expenditure has been apportioned between the salary and the research and development expenditure on *pro rata* basis. It has also been submitted that the Assessing Officer had accepted this apportionment in assessment year 2008-09 and 2009-10 and no adverse inference had been drawn. However, the fact remains that the assessee had not been able to provide any details in the year under consideration. However, since the Assessing Officer has allowed similar expenditure in assessment years 2008-09 and 2009-10, which remains undisputed, in our considered opinion, interest of justice would be served if this issue is restored to the file of the Assessing Officer to examine it afresh and decide the issue after duly examining and verifying the *pro rata* apportionment after giving due opportunity to the assessee to present its case and

also keeping in mind the assessee's claim that the same methodology for apportionment was applied by the assessee in assessment years 2008-09 and 2009-10 which had been allowed by the Assessing Officer. It is ordered accordingly.

7.4.2 The second limb of ground no. 4 is challenging the action of the Ld. CIT (A) in treating an amount of Rs. 11,81,500/- as preoperative expenses out of research and development expenses. As the Ld. CIT (A) has already noted that the business operations had started prior to 31.10.2009, which remains uncontroverted, we find that the Ld. CIT (A) had no basis for treating this expenditure as preoperative expenditure. Accordingly, we delete the disallowance of Rs. 11,81,500/- which has been confirmed by the Ld. CIT (A) as being preoperative in nature.

7.5 Ground no. 5 challenges the action of the Ld. CIT (A) in treating an amount of Rs. 18,94,197/- under the head recruitment expenses as preoperative expenditure. It is seen that this disallowance has been upheld by the Ld. CIT (A) on the ground that since this amount was spent before 31.10.2009, therefore, the same was preoperative in nature. However, in view of the Ld. CIT (A)'s categorical finding while adjudicating the

assessee's ground on remuneration paid to Dr. Naresh Trehan that the business operations of the assessee company had commenced before 31.10.2009, there is no reason for him to have upheld this disallowance. A perusal of the assessment orders for assessment years 2008-09 and 2009-10 also shows that the assessee company had been carrying on business activities through Apollo and other hospitals in earlier years also and this fact remains uncontroverted. Therefore, we are unable to concur with the findings of the Ld. CIT (A) on this issue also and while setting aside his order, we direct the Assessing Officer to allow the impugned amount of Rs. 18,94,197/- as revenue expenditure.

7.6 Coming to ground no. 6 of the assessee's appeal, which challenges the action of the Ld. CIT (A) in treating the interest on term loan amounting to Rs. 1.28 crore as capital expenditure, the Ld. AR has stated that the assessee has no objection in the treatment of the impugned amount as capital expenditure but has prayed that direction may be given that the interest pertaining to term loan on machinery which falls under the category of life saving devices attracting higher rate of depreciation should be allowed higher rate of depreciation. The

Ld. Sr. DR also has no objection to this prayer of the assessee. Accordingly, while dismissing ground no. 6 of the assessee's appeal, we direct the Assessing Officer to allow depreciation at the applicable rates on life saving devices in accordance with law after affording due opportunity to the assessee.

7.7 With respect to Ground no. 7 of the assessee's appeal which challenges the action of the Ld. CIT(A) in treating the bank charges on issuance of bank gurarantee for EPCG Licence as preoperative expenses, it has again been stated by the Ld. AR that this ground is not being pressed, however, with the prayer that for the expenditure which pertains to term loan on machinery falling under the category of life saving device attracting higher rate of depreciation it may be directed that higher rate of depreciation be given on such expenditure. As the Ld. Sr. DR has no objection to the prayer of the Ld. AR, while dismissing ground no. 7, we direct the Assessing Officer to allow depreciation at the applicable rates on the life saving devices after giving proper opportunity to the assessee.

8. In the result, the appeal of the assessee stands partly allowed.

9. **ITA No. 4587/Del/2015**

This is the department's appeal and ground no. 1 challenges the action of the Ld. CIT(A) in estimating the *ad hoc* disallowance of salary @ 20% being expenses in the nature of capital expenditure. Since this ground is identical to ground no. 1 of the assessee's appeal which we have already decided in favour of the assessee by holding that the Ld. CIT (A) had erred in sustaining an estimated disallowance out of salary expenses of Rs. 6 crore to the tune of 20% on account of being capital expenditure in nature, on the same reasoning, we dismiss ground no. 1 of the department's appeal.

9.2 Ground no. 2 of the department's appeal challenges the action of the Ld. CIT (A) in allowing depreciation on value of fixed assets. The Ld. AR in this regard has fairly accepted that this ground may be allowed in favour of the department. Accordingly, in view of the assessee conceding this ground, we allow the department's ground and set aside the order of the Ld. CIT (A) and restore the order of the AO on this issue. Accordingly, ground no. 2 stands allowed.

9.3.1 In Ground no. 3, the department has challenged the action of the Ld. CIT (A) in deleting the additions of Rs.

58,13,168/- and Rs. 21,60,062/- made on account of repairs and maintenance, installation, commissioning of IT equipment. In this regard, it is seen that the Ld. CIT (A) had discussed the issue at length on pages 26 and 37 of the impugned order. Out of the total payment of Rs. 23,76,047/- paid towards annual maintenance contract to M/s Hewlett Packard India Sales Pvt. Ltd., the Ld. CIT(A) has given a categorical finding that out of the total expenditure, only a period of 15 days fell between 16.10.2009 and 31.10.2009 and it was held that a proportionate amount of Rs. 2,16,004/- being preoperative in nature, needed to be capitalized. The Ld. Sr. DR could not substantiate with any evidence to the contrary that this categorical finding of the Ld. CIT (A) was factually incorrect and, therefore, we have no other option but to dismiss the ground raised by the department. Accordingly, we find no reason to interfere with the findings of the Ld. CIT (A) that only an amount of Rs. 2,16,004/- was to be treated as capital expenditure and the rest was allowable as revenue expenditure being payment made towards annual maintenance contract for various medical equipments.

9.3.2 The second limb of ground no. 3 of the department's appeal challenges the action of the Ld. CIT (A) in deleting repair

and maintenance related expenses of engineering equipment to the tune of Rs. 58,13,168/-. The Ld. CIT (A) has given a specific finding that the Assessing Officer had no cogent adverse evidence to hold that the impugned expenses were for installation of engineering equipment and that they did not pertain to engineering expenses. The department also could not point out any factual infirmity in this finding of the Ld. CIT (A) and, therefore, there is no reason for us to interfere with the findings of the Ld. CIT (A) in this regard. Accordingly, we dismiss ground no. 3 of the department's appeal.

9.4 Ground no. 4 challenges the action of the Ld. CIT (A) in deleting the addition of Rs.45,28,499/- out of the total disallowance of Rs. 65,08,856/- as being expenses pertaining to a period prior to November 2009. In this regard again, it is seen that the Ld. CIT (A) has given a categorical finding on page 33 of the impugned order that only Rs. 21,61,280/- pertained to a period prior to 31<sup>st</sup> October, 2009 and, therefore, the balance amount of Rs. 45,28,499/- was allowable. The Ld. Sr. DR could not substantiate with any evidence to the contrary that this categorical finding of the Ld. CIT (A) was factually incorrect and, therefore, we have no option but to dismiss the ground raised by

the department in this regard and, accordingly, based on the findings of the Ld. CIT (A), which the department has not been able to controvert, we dismiss ground no. 4 raised by the department.

9.5 Ground no. 5 pertains to department's challenge to the action of the Ld. CIT (A) in holding that out of total disallowance of Rs. 1,14,90,580/- pertaining to recruitment expenses, Rs. 96,91,093/- pertained to the year under consideration and therefore, the same were allowable in this year under appeal. It is seen that the Ld. CIT (A) has discussed and adjudicated this issue on page 39 of the impugned order wherein he has noted that he perused the agreement with M/s Ifan Global India Pvt. Ltd. as well as the relevant invoices from which it was evident that the said party had been providing recruitment services for the company during the year under consideration. The Ld. CIT (A) has also noted that as per the mercantile system of accounting, the income and expenses are to be booked for the period during which the relevant services were rendered. Thus, the Ld. CIT (A) has given a categorical finding in this regard which the department has not been able to controvert by leading any evidence to the contrary. Apparently, it is not the case of the

department that the services were not rendered in terms of the contract and the only dispute is regarding the year of allowability of expenditure. Since the Ld. CIT (A) has given a categorical finding in this regard after duly referring to the recruitment services agreement, we find no reason to interfere with the order of the Ld. CIT (A) on this issue also and we dismiss ground no. 5 of the department's appeal.

10. In the result, the appeal of the department stands partly allowed.

11. In the final result, both the appeals i.e. of the assessee as well as of the department stand partly allowed.

Order pronounced in the open court on 18.03.2019.

**Sd/-**

**(G.D. AGRAWAL)  
VICE PRESIDENT**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 18<sup>th</sup> March, 2019  
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	