

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 3520/Del/2015
Assessment year: 2010-11**

Krishna Hospital and Research Centre, Gurunanak Pura, Haldwani. (PAN: AAHFK0230F)	vs	DCIT, Haldwani.
Appellant		Respondent

**Assessee by : Shri I.P. Singh, Adv.
Department by: Ms Ashima Neb, Sr. DR**

**Date of hearing : 27.05.2019
Date of pronouncement : 31.05.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-II, Dehradun {CIT (A) } vide order dated 12.2.2015 pertaining to assessment year 2010-11.

2.0 Brief facts of the case are that survey proceedings u/s 133A of the Income Tax Act, 1961 (hereinafter called 'the Act') were conducted on 15.09.2009 in the hospital premises being

operated by the assessee. Book of accounts like Receipt Register, Day Book Register and Printed Slip Register were inventoried. The statement on oath of Dr. J.S. Khurana, partner of the firm, was also recorded. In the said statement, the said partner agreed to declare additional income of Rs. 20 lakh on account of undisclosed investment on purchase of assets prior to the date of survey which was not said to be reflected in the books of accounts at the time of survey. Subsequently, the return of income was filed on 13.10.2010 declaring a total income of Rs. 18,95,580/-. The case was picked up for scrutiny under CASS. On perusal of the return of income filed, it was observed by the Assessing Officer that the assessee had not separately declared additional income of Rs. 20 lakh which the partner had agreed to surrender at the time of survey. The Assessing Officer was of the view that the partner of the firm had surrendered an amount of Rs. 20 lakh voluntarily on account of discrepancies pointed out during the course of survey proceedings as well as in view of his inability in explaining the investments made in acquiring the assets in the relevant financial year. He, therefore, proceeded to add an amount of Rs. 20 lakh to the income declared by the assessee and completed the assessment at Rs. 38,95,580/-.

2.1 Aggrieved, the assessee approached the Ld. Commissioner of Income Tax (Appeals) and challenged the addition. However, the assessee's appeal was dismissed and now the assessee is before this Tribunal (ITAT) and has challenged the upholding of addition by the Ld. Commissioner of Income Tax (Appeals).

3.0 The Ld. Authorised Representative (AR) submitted that during the course of survey, no discrepancy was found in the books of accounts and that there was no such adverse inference in the assessment order regarding such discrepancy being present. It was submitted that the surrender was made only because pressure had been put during the course of survey for making the said surrender. It was also submitted that all the same, to honour the surrender made, the assessee had shown the gross receipts at an increased figure. He drew our attention to a chart wherein it was demonstrated that the gross receipts during the year under consideration were Rs.43,281,430/- as compared to Rs. 33,122,988/- in assessment year 2009-10 and Rs. 29,411,035/- in assessment year 2008-09. It was submitted that the surrendered amount had been subsumed in the gross receipts. It was also further submitted that the assessee had

shown an addition of Rs. 22.87 lakh in the building under construction after the date of survey which was done so as to show the surrendered amount as having been spent towards the construction of the building and this amount represented the difference in the valuation of building under construction as per the assessee's admission and as per the estimate by the department. It was further submitted by the Ld. AR that the Assessing Officer had made the impugned addition on the premise that the profit shown by the assessee during the year was only Rs.18,95,850/- and, therefore, this could not have included the surrendered amount of Rs. 20 lakh and further that the Ld. Commissioner of Income Tax (Appeals) had also upheld the addition on this logic and reasoning. It was submitted that this reasoning and logic were incorrect inasmuch as there was a decrease in the net profit due to depreciation and interest and salary to partners which were debited to the profit and loss account as per the provisions of the Income Tax Act and the partnership deed.

3.1 As an alternate plea, the Ld. AR submitted that the statement recorded during the course of survey proceedings cannot be the sole basis for making an addition unless it is

backed by other corroborative evidence.

4.0 In response, the Ld. Sr. Departmental Representative (DR) submitted that it was evident from the statement of the partner of the firm, which was duly reproduced in the assessment order, that it was a voluntary surrender and, therefore, the Assessing Officer was within his powers to make the addition. It was further submitted that the assessee had failed to demonstrate by leading concrete evidence that the surrender made was subsumed in the net profit because although the gross receipts have increased, the net profit has decreased as compared to earlier assessment years. It was also submitted that the additions had been made on account of discrepancy on the date of survey i.e. 15.09.2009 and not after the date of survey and, therefore, the addition to building under construction account cannot be taken as part of surrendered amount.

4.1 The Ld. Sr. DR also placed reliance on the observations of the Ld. Commissioner of Income Tax (A) as contained in page 4 sub-para (iv) wherein the Ld. Commissioner of Income Tax (A) has observed that the assessee had failed to identify the entries or receipts in the gross receipts which were claimed to have been

entered in the books of accounts on account of surrendered income. It was pointed out that the Ld. Commissioner of Income Tax (A) has observed that the assessee had failed to establish that the increase in gross receipts was on account of surrendered amount of Rs. 20 lakh and not on account of natural course of business. The Ld. Sr. DR submitted that the assessee's appeal deserved to be dismissed.

5.0 We have heard the rival submissions and have also perused the material on record. Although, it is the observation of the both the lower authorities that the assessee could not demonstrate that the gross receipts included the surrendered amount, we do find that the claim of the assessee appears to be correct in this regard. This can be evidenced from the fact that the depreciation for AY 2008-09 was Rs. 23,51,596/-, Rs. 24,46,122/- in AY 2009-10 but it rose to Rs. 37,19,539/- in the year under consideration. Thus, there is an increase in the depreciation charge to the tune of Rs. 12,73,417/- in the year under consideration as compared to the immediately preceding assessment year. Similarly, the salary to partners rose from Rs. 20,00,960/- in AY 2009-10 to Rs. 30,68,370/- in the year under consideration thus resulting in an increase of Rs. 10,67,410/- as

compared to the immediately preceding year. Similarly, there is an increase in the interest to the partners in the year under consideration to the tune of Rs. 3,25,173/- as compared to the immediately preceding assessment year. These figures are undisputed and have also been recorded in the impugned order. It is also an accepted fact that the gross receipts have jumped from Rs. 33,122,988/- in AY 2009-10 to Rs. 43,581,430/- in the year under consideration thus showing a substantial increase of Rs. 10,458,442/- as compared to the immediately preceding assessment year. On such facts, we are of the considered opinion that the contention of the Ld. AR that the surrendered amount is subsumed in the gross receipts is to be agreed to. The fall in the net profit is also duly explained by the increase in depreciation, salary and interest to partners which works out to Rs. 26,66,000/-. Therefore, we are unable to concur with the findings of the lower authorities and we set aside the order of the Ld. CIT (A) and direct the AO to delete the addition.

6. In the final result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 31st May, 2019.

Sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 31st May ,2019
'GS'

Copy forwarded to: -

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

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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	