

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

**(THROUGH VIDEO CONFERENCE)**

**BEFORE  
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
and  
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.185/Del./2019  
ASSESSMENT YEAR : 2010-11**

Addl. CIT,  
Special Range-3  
New Delhi

Vs.

M/s. Escorts Heart Institute and  
Research Centre Ltd.  
Okhla Road, Okhla  
Delhi-110025

**(PAN : AAACE8731F)**

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Sh.R.M.Mehta, CA  
REVENUE BY : Sh. Maninder Kaur, Sr. DR**

**Date of Hearing : 22.09.2021**

**Date of Order : 22.09.2021**

**ORDER**

**Per Sanjay Gurg, Judicial Member :**

Appellant, Addl. CIT, Special Range-3, New Delhi (hereinafter referred to as 'the revenue'), by filing the present appeal sought to set aside the impugned order dated 08.11.2018 passed by the Commissioner of Income-tax (Appeals)-34, New Delhi , qua the assessment year 2010-11 on the grounds inter alia that :-

*“1. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting*

*the disallowance of excessive depreciation of Rs. 1,47,53,950/- made by the Assessing Officer.  
2. The appellant craves, leave, modify, add or forego in any ground(s) of appeal at any time before or during the hearing of this appeal.”*

2. The revenue in this appeal has agitated against the action of the CIT(A) in setting aside the order passed by the Assessing Officer u/s 154 of the Income Tax Act.

3. The brief facts of the case are that the assessee hospital claimed depreciation @ 40% on Medical Equipments which was allowed by the Assessing Officer in the assessment order passed u/s 143(3) of the Income Tax Act vide order dated 20.03.2013. Subsequently, the Assessing Officer passed a rectification order u/s 154 of the Income Tax Act dated 28.11.2017 allowing the depreciation @ 15% on medical equipments as against 40% earlier allowed by him. The Assessing Officer in this respect observed that certain medical equipments were not life saving equipments, therefore, depreciation @ 40% was wrongly allowed, which was a mistake apparent on record. He accordingly revised the rate of depreciation to 15%.

4. In appeal, the Ld. CIT(A) relied upon the decision of the ITAT in the case of appellant itself for assessment year 2003-04 in

ITA No. 874/Del/2014 dated 28.12.2017 and held that whether the depreciation was to be allowed @ 15% or 40% was a debatable issue. That it was not a case of mistake apparent on record and it required examining of new facts and deliberations thereupon. Relevant part of the order of the CIT(A) is reproduced as under:-

*“5.3 It is contended by the appellant that depreciation @ 40% had been claimed and allowed in the preceding and succeeding AYs in assessments framed u/s 143(3) of the Act. The question of rate at which depreciation is to be allowed raises a debate and is therefore not amenable to the proceedings for rectification u/s 154 of the Act. It is further submitted by the appellant that this issue is also covered in favour of the appellant by the order of Hon’ble ITAT in its own case for assessment year 2003-04 in ITA No. 874/Del/2014 dated 28.12.2017.*

*Appellant has also taken a plea that the question of depreciation had been examined both by the AO in original assessment framed u/s 143(3) and thereafter by the CIT(A). As per sub-section (1A) of the section 154, there was a clear bar to invoking the said provision in respect of matters which have been considered and decided in appeal. Appellant has placed reliance in support of its contention on decisions of various High Courts.*

*5.4 I have considered the assessment order, written submissions and oral arguments of the appellant. The issue involved in the case of the appellant of claim of depreciation on medical equipment, according to AO, rate of depreciation as per Income Tax Act was 15% and they do not fall under the category of life saving equipments. Appellant has claimed the depreciation @ 40% treating them as life saving equipments. In the case of the appellant, similar issue of depreciation came before Hon'ble ITAT, Delhi for AY 2003-04. After considering the facts of the case, Hon'ble ITAT in ITA No. 874/Del/2014 dated 28.12.2017, held that allowing the depreciation at the lesser rate is a debatable issue which outside the purview of provision of section 154 of the Act. It will also amount to examining the new facts which will not make the correction as mistake apparent from record. It is further held by the Hon'ble ITAT that claim of depreciation was not at all examined in original assessment proceedings by the assessing officer. The Hon'ble Supreme Court in the case*

*of CIT Vs Hero Cycles Ltd. 228 ITR 463 has held that the point which was not examined on fact or law cannot be dealt as mistake apparent on record. Hon'ble ITAT has quashed the order passed by the AO u/s 154 of the IT Act.*

*5.5 Considering the above facts and finding of the Hon'ble ITAT in the case of the appellant, rate of depreciation could not be rectified by invoking provisions of section 154 of the Act. It is a debatable issue whether medical equipments are covered in life saving devices or not and eligible for depreciation @ 40% or @ 15%. Mistake is not apparent from the record could not be rectified u/s 154. Moreover, this issue was not considered by the AO at the time of original assessment proceedings and therefore it could not be considered that mistake could be rectified u/s 154 treating it as mistake apparent from record. Keeping in view the above facts, addition made by the AO on account of disallowance of depreciation at Rs. 1,47,53,950/- is not sustainable and it is hereby deleted.*

*5.6 This ground of the appeal of the appellant is allowed.”*

5. After hearing the Ld. Representatives of the parties, we do not find any reason to interfere in the order of the CIT(A) on this issue. In our view, the Ld. CIT(A) rightly held that the issue involved relating to the rate of depreciation was a debatable issue which required examining of facts and deliberation thereupon. It is not a case of any mistake apparent on record. There is no merit in the appeal of the revenue and the same is accordingly dismissed.

**Order pronounced in open court on this 22<sup>nd</sup> day of September, 2021.**

**Sd/-**

**(ANIL CHATURVEDI)**

**ACCOUNTANT MEMBER**

Dated the 22<sup>nd</sup> day of September, 2021

**Sd/-**

**(SANJAY GARG)**

**JUDICIAL MEMBER**

**Binita**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.