

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.899/Del/2019
(ASSESSMENT YEAR-2014-15)**

M/s Mansarover Health Care (P) Ltd. 78, Mansarover Colony Sonepat Road, Rohtak Haryana-124 001 PAN-AAGCM 5167M (Appellant)	Vs.	Income Tax Officer Ward-3 Rohtak (Respondent)
---	-----	---

Appellant by	Sh. Naveen Kumar Goyal, CA
Respondent by	Adjournment application by Sr. DR

Date of Hearing	02/11/2023
Date of Pronouncement	11/12/2023

ORDER

PER YOGESH KUMAR U.S., JM:

The present appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-Rohtak, ["Ld. CIT(A)", for short], dated 22/01/2019 for Assessment Year 2014-15. Grounds taken in this appeal are as under:

- "1. The Ld. CIT(A) erred in law and on facts in upholding the assessment u/s 154 of the Act.*
- 2. The Ld. CIT(A) erred in law and on facts in not following the binding judicial pronouncements and CBDT guidelines.*
- 3. The Ld. CIT(A) erred in law and on facts in upholding the addition of Rs.25,00,000/-."*

2. The brief facts of the case are that the assessee declared total income of Rs.8,59,480/- in the return of income and the same was processed u/s 143(1) of the Income Tax Act ('the Act' for short). Later on, the case was selected manually for scrutiny being a survey case. The assessment order u/s 143(3) came to be passed on 09/12/2016 and in the addition of Rs.25,00,000/- on account of "surrender" made by the assessee voluntarily during the course of survey operation carried out in the business premises of the company on 28/06/2013 was discussed in para 5 of the Assessment Order.

3. The Ld. A.O. while exercising the power conferred under section 154 of the Act was of the opinion that, the said surrendered amount could not be taken to the total taxable income of the assessee due to an over sight, subsequently, the said mistake came to notice and to rectify the said mistake, notice u/s 154 of the Act to tax the amount of Rs.25,00,000/- was issued. The Ld. AO passed order u/s 154 of the Act at an income of Rs.37,27,290/- by making an addition of Rs.25,00,000/- on account of surrender made by the assessee during the survey u/s 133A of the Act.

4. Aggrieved by the order dated 31/03/2017 passed u/s 154 of the Act, the Assessee preferred the present appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) committed error in upholding the order passed u/s 154 of the Act without following judicial pronouncements and the CBDT Guidelines and thereby, committed error in upholding the addition of Rs.25,00,000/-. The Ld. Counsel for the assessee filed a brief synopsis and taken us through the materials available on record and submitted that the amount of Rs.25,00,000/- declared during the survey has been duly disclosed in the P&L Account and the copy of the ledger print of income declared of Rs.25,00,000/- has been provided during the assessment proceedings made u/s 143(3) of the Act. The AO had no doubt that the surrendered income is a business income, which was duly reflected in audited books of account. Therefore, the assessee is entitled to claim business expenditure or set off provisions of business losses from such income. Therefore, submitted that the A.O. committed an error in passing the order u/s 154 of the Act and the Ld. CIT(A) is also committed error in sustaining the disallowance.

6. Per contra, the Ld. DR relied on the Orders of the lower authorities.

7. We have heard both the parties and perused the materials available on record. During the assessment proceedings u/s 143(3) of the Act, the AO at para 4 & 5 of the assessment order while making addition of Rs.25,00,000/- on account of surrendered amount during the survey u/s 133A held as under:

“4. Assessee company during the year under consideration has been carrying on business of health care. Survey under section 133A was conducted on the business premises of the assessee on 28.06.2013 in which assessee surrendered an additional income of Rs.25,00,000/- (Twenty Five Lacs) on account of following discrepancies as per break up given below.

<i>i)</i>	<i>Furniture & Fixture</i>	<i>Rs.3,50,000/-</i>
<i>ii)</i>	<i>Air conditioner</i>	<i>Rs.3,00,000/-</i>
<i>iii)</i>	<i>Excess cash found</i>	<i>Rs.18,50,000/-</i>
	<i>Total</i>	<i>Rs.25,00,000/-</i>

5. Assessee has accounted for the amount of Furniture & Fixture, amount of Air Conditioner and cash in the accounted for in the computation of income and paid due advance tax on the surrendered income. The discrepancies as noticed during the course of survey operation has been examined during the assessment proceedings from the books of accounts maintained and found to be correct. Assessee came forward for surrendered of above income of Rs.25,00,000/- (Twenty Five Lacs) of his own sweet will when he was confronted with the above discrepancies during the survey. If surrender amount is deducted from the regular income, it comes to Rs.1,70,54,024/- only. In this way an addition of Rs.25,00,000/- on account of surrender amount during survey u/s 133A is made on account of above discrepancies to the regular income of the assessee for statistical purpose. I am satisfied that it is a fit case where penalty u/s 271(1)(c) can be initiated for concealment as well furnishing inaccurate particulars of income.”

As per the details reflected in the P&L Account of the assessee which has placed at page-3,7 & 8 of the paper book, during the year, gross receipt of the assessee was Rs.1,95,54,024/- which includes the normal receipt of Rs.1,70,54,024/- and declared receipts of Rs.2500,000/- and thereby net profit as books Rs.25,24,391/- (which includes normal profit of Rs.24,391/- and

declared income of Rs.25,00,000/-). The amount of Rs.25,00,000/- declared during the survey has been shown duly disclosed in the P&L Account and the copy of the ledger print of income declared of Rs.25,00,000/- has been provided during the assessment proceedings u/s 143(3) of the Act, which has been placed at page-9 of the PB. The Ld. CIT(A) observed that *'there is no dispute regarding the fact that Rs.25,00,000/- were surrendered by the Assessee on account of loose papers and excess unaccounted cash found during the survey'*. However, as per the survey statement placed at page-49 & 50 of PB, there is no excess unaccounted cash found, the amount surrendered only on account of loose papers, discrepancy in books of account maintained, those not accounted for in the books at the time of survey operations.

8. It is found that during the year under consideration, the gross receipts of the assessee were Rs 1,95,54,024/- (which includes normal receipts of Rs 1,70,54,024/- and declared receipts of Rs. 25,00,000/-) and thereby net profit as books Rs 25,24,391/- (which includes normal profit Rs 24,391/- and declared income of Rs. 25,00,000/-, thus in our opinion there is no scope for the A.O. for any rectification under Section 154 of the Act . Thus, the Ld. CIT(A) has committed error by upholding the addition of Rs. 25,00,000/- made by the A.O. u/s 154 of the Act. Accordingly, we allow the Grounds of Appeal of the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in open Court on 11th December, 2023.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 11/12/2023

Pk/R.N, Sr.ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI