IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No.6331/Del/2019
Assessment Year: 2015-16

UP Hotels Clarks Limited, 1/42, DDA Commercial Complex, Kalkaji, New Delhi – 110 019.	Vs	DCIT, Circle-27(1), New Delhi.
PAN: AAACU7152N		
(Appellant)		(Respondent)

Assessee by	:	Shri Malav Goswami, Advocate
Revenue by	:	Shri Amit Katoch, Sr. DR
Date of Hearing	:	28.10.2024
Date of Pronouncement	:	14.11.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 01.05.2019 of the Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.9/10217/18-19 arising out of the appeal before it against the order dated 12.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the ACIT, Circle 27(1), New Delhi (hereinafter referred to as the Ld. AO).

2. The assessee is a private limited company and its return of income for AY 2015-16 was taken up for limited scrutiny and assessment u/s 143(3) of the Act was completed by making an addition of Rs.32,28,764/- on the basis that as per the AO, it was noticed that in Form 3CD submitted by the assessee at Sl. No.21(d)(i) a sum being inadmissible u/s 36(1)(iii) of the Act is mentioned as the assessee has not met these liabilities, accordingly, it was disallowed. The assessee filed a rectification application u/s 154 of the Act which was also dismissed for which the assessee went before the ld.CIT(A) and, by the impugned order, the appeal was dismissed with the following relevant findings in para 5:-

> *"5. All grounds are effectively directed against the rejection of rectification application of the appellant u/s 154 against the addition of Rs 32,27,517/- u/s 36(1)(iii) of the IT Act. Brief facts as noted from the impugned order is that the assessment u/s 143(3) was completed on 12.12.2017 at an income of Rs. 95,38,370/- against the returned income of Rs. 63,09,310/- The appellant moved an application u/s 154 dated 30.04.2018. An opportunity was provided to the appellant vide letter dated 18.07.2018 to clarify the reasons. The appellant filed its written submission vide letter dated 27.07.2018. The AO held as under*
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> > *"The application and subsequent reply of the assessee is considered in the light of the facts of the case and finding of AO in her assessment order. After considering the same, it is found that it is not a mistake apparent from record as required u/s 154 of the IT Act, 1961 The AO in her order had specifically stated that addition u/s 36(1) (iii) of Rs. 32,27,517/- which should have been paid on or before the due date of furnishing of return of income as the same has not been paid by the assessee. Further, the same has also been declared as inadmissible by the statutory auditor of the assessee in his audit report/ Form 3CD at S. No. 21(d)(i). Therefore, it is not the case lies u/s 154 of the IT Act, 1961 and hence the application of the assessee is rejected."*
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> *5.1 I have gone through the impugned order passed u/s 154 of the Act and submission filed by the appellant. The undisputed fact noted in this*

matter is that in the Tax Audit Report at Serial no. 21(d)(i), an amount of Rs.3227517/- was reported to be inadmissible u/s 36(1)(iii) of the Act. The AO called for explanation from the assessee and after due consideration of the same, it made the impugned addition to the returned income of the assessee.

5.2 In its submission, the appellant's main contention is that there is no question of any disallowance u/s 36(1) (iii) of Rs. 32271217/- and that the impugned amount is with respect to provision of Income Tax at Rs. 1229644/-which has not been claimed as expenditure and that guest house rent at Rs. 1997873/- was disallowed and not claimed as expense. The appellant therefore submits the impugned addition is a mistake apparent from record liable for allowance.

5.3 Carefully considered the facts and submission. A qualification recorded in the tax audit report at serial no. 21(d) (i), regarding inadmissible expenditure at Rs.3227517/- has not been controverted by the appellant. It is not the case of the appellant that reporting so made by the tax auditor in the TAR is incorrect and that it provided due clarification to the auditor. It is also not the case of the appellant that the TAR so submitted is incorrect.

Under the circumstances, I am in agreement with the AO that the addition of impugned amount based on TAR cannot be regarded as a mistake apparent from record and therefore, the present case is not a mistake rectifiable u/s 154 of the Act. Accordingly, grounds are decided in negative to the appellant."

3. After going through the material before us and the submissions of the ld. AR, we are of the considered view that the ld. tax authorities below have not been fair to the assessee by not following the basic principles of disallowance u/s 36(1)(iii) of the Act. No disallowance can be made only on the basis of the tax audit report. The material before us establishes and is not disputed by the ld. DR that the amount which has been disallowed u/s 36(1)(iii) of the Act has not been claimed as an expense in the Profit & Loss Account. The tax authorities are quasi judicial authorities and are supposed to arrive at the calculation of tax in accordance with the law and only on the basis of any erroneous facts

mentioned in a tax audit report a tax liability cannot be created when otherwise the facts are made crystal clear during any stage of assessment. The ld. CIT(A) himself observes in the impugned order that the amount of Rs.32,27,517/- is on account of provision of income-tax to the extent of Rs.12,29,644/- or guest house rent of Rs.19,97,873/- and, thus, they have no relation with any actual or accrued interest payments by the assessee. Thus, invocation of section 36(1)(iii) of the Act was not at all justified. A fact which is apparent from the assessment record and established to be incorrect leading to change in the tax liability is certainly a rectifiable mistake u/s 154 of the Act and the ld.CIT(A) has fallen in error in not interfering with the impugned order u/s 154 of the Act holding that it is not a mistake rectifiable u/s 154 of the Act.

4. In the light of the aforesaid, the grounds raised in the appeal are sustained. The appeal is allowed with a direction to the AO to rectify the order in terms of the observations of this Bench as aforesaid.

Order pronounced in the open court on 14.11.2024.

Sd/- Sd/-

(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 14th November, 2024.

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi