

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.604/Ind/2017**

**Assessment Year 2013-14**

|                      |     |  |
|----------------------|-----|--|
| DCIT-2(1),<br>Indore | Vs. | M/s. Dthri Health Care<br>Pvt. Ltd (M.P),<br>PU-4, Scheme No.54,<br>Near A.B. Road, Indore |
| (Appellant)          |     | (Respondent )  |
| PAN No.AABCD4095N    |     |  |

|                       |   |
|-----------------------|---|
| Revenue by            | Shri R.P. Mourya, Sr.DR                           |
| Assessee by           | S/Shri Sumit Neema, Sr.Adv &<br>Gagan Tiwari, Adv |
| Date of Hearing       | 17.12.2018  |
| Date of Pronouncement | 02.01.2019  |

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeal is filed at the instance of Revenue pertaining to Assessment Year 2013-14 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Indore dated 20.06.2017 which is arising out of the order u/s 143(3)/147 of the Income Tax Act 1961(In short the 'Act') dated 30.12.2016 framed by ACIT-2(1), Indore.

2. Revenue had raised following grounds of appeal;

*“1. Whether on the facts and in the circumstances of the case, learned CIT(A) has erred in deleting the addition of Rs. 2,30,53,039/- by ignoring the statement recorded of Shri Sunil Jain dated 16.06.2012 and issues which are discussed in assessment order of A.Y. 2013-14 in the case of assessee.*

*2. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in deleting the addition of Rs. 19,70,923/- for disallowance of set off of above expenses in view of section 115BBE of act and ignoring the findings in assessment order.*

*3. That the appellant craves right to add, delete and alter any of the grounds”.*

3. Briefly stated the facts as culled out from the records are that the assessee filed his return of income for Assessment Year 2013-14 on 21.9.2013 declaring total income at Rs.1,91,64,270/-. A survey action u/s 133A of the Act was conducted on 15.06.2012 in the premises of BCM Health Island and M/s. Total Diabetes Hormone Institute of the assessee. During survey Shri Sunil Jain, Director of the assessee admitted undisclosed income of Rs.4,41,88,232/- in hands of M/s. DTHRI Health Care Pvt.Ltd for A.Y. 2013-14 on account of out of books income from health camp receipts and expenses. Proceedings u/s 147 of the Act were

initiated by issuing notice u/s 148 of the Act dated 15.2.2016 duly served upon the assessee after recording reason of satisfaction for reopening the case that income has escaped assessment within the meaning of section 147/148. During the course of reassessment proceedings Learned Assessing Officer (In short 'Ld. A.O') observed that as against the admitted undisclosed income of Rs.4,41,88,232/- the assessee has only declared income of Rs.2,11,29,807/- and the reasons for less disclosure was sought from the assessee. It was submitted before the Ld. Assessing Officer that there was an arithmetical error in admitting the income against the particular sheet on the basis of which undisclosed income was admitted. There were three figures of which one was the income from the health camp of Rs.3,20,00,730/- and the remaining two figures at Rs. 65,19,150/- and Rs.50,68,352/- appearing in the loose paper No. B-1-13 were related to the expenses incurred in organizing the health camp. Inadvertently during the course of survey, while admitting undisclosed income the two figures representing expenditure were added to the gross receipt from health camp which were required to be reduced from the gross receipt. The actual income from the undisclosed health

camp was only at Rs.2,11,29,807/- but assessee wrongly admitted it at Rs.4,41,882,232/-. Ld.A.O however was not convinced with the submissions of the assessee and he gave only the benefit of deduction for web-site advertisement at Rs.53,086/- and made addition for the remaining income admitted during the survey as against income declared in the income tax return at Rs.2,30,53,039/- in the hands of the assessee. Ld.A.O also did not allow the set off of the expenses claimed at Rs.19,17,923/- against the income disclosed on account of survey proceedings observing that such set off is not allowed u/s 115BBE. Income assessed at Rs.4,41,88,232/-.

4. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and succeeded.
5. Now aggrieved revenue is in appeal before the Tribunal.
6. We will first take up Ground No.1.
7. Ld. Departmental Representative vehemently supported the orders of Ld.A.O.
8. Per contra Ld. Counsel for the assessee supported the findings of Ld. CIT(A).

9. We have heard rival contentions and perused the records placed before us. Through this ground revenue has challenged the finding of Ld. CIT(A) deleting the addition of Rs.2,30,53,039/- alleging that Ld. CIT(A) has ignored the statement of Shri Sunil Jain recorded on 16.06.2012 admitting the undisclosed income at Rs.4,41,88,232/-. We find that Ld. CIT(A) deleted the impugned addition of Rs.2,30,53,039/- observing as follows;

5. Ground Nos.3 to 6:- These grounds of the appellant are being taken up first as these go to the root of the dispute, All the above grounds of the appellant are directed against the addition of Rs, 23053039/- The detailed facts of the case as per the assessment order are reproduced at Para No,2 above and the detailed submissions of the appellant are reproduced at Para No.3 above.

5.1 Briefly stated the facts of the case are that action u/s 133A of The Act was carried out at the premises of the appellant on 15/06/2012. During the course of survey certain loose papers were found which were identified as 81-13. As per the above papers Page Nos, 5 to 8 contained the details of receipts from organizing of Health Camp for the period relevant to A,Y. 2013-14 and these receipts were not recorded in the books of the appellant company, Page Nos. 9 to 25 and Page Nos, 26 to 29 contained the details of expenses incurred which also were not recorded in the books of accounts. During the course of survey a statement of the director Dr. Sunil Jain was recorded which has been reproduced by the AO at Page Nos. 2 to 6 of the assessment order and has also been reproduced in Para No, 2 Page Nos, 3 to 5 above, On

perusal of the statement, it is seen that the director Dr. Sunil Jain admitted that page Nos, 5 to 8 of B1-13 contained the details of receipts from the Health Check-up Camps organized by the appellant which total to Rs.32600730/- and these receipts were not recorded in the regular books of account and were accepted as representing undisclosed income of the appellant, Similarly, it was stated by Dr. Sunil Jain that Page Nos, 9 to 25 of B1-13 contained the details of expenses of Rs.6519150/- which were also not recorded in the regular books of account of the appellant company. Further, it was also stated that the Page Nos, 26 to 29 also contained details of expenses of Rs. 5068352/which also remained to be recorded in the regular books of account of the company. Dr. Sunil Jain during the course of recording of statement further stated that the Health Check-up Camps were started by the company in the year under consideration only and the receipts and expenses were not recorded in the regular books of account and hence in view of the above noted discrepancies, it was further admitted that the undisclosed income over and above the regular income for the year was Rs.44188232/- and due taxes on the same will be paid.

5.2 However, in the return of income filed for the year under consideration, the appellant had shown only income of Rs. 21129807/-. AO therefore noted that the income shown was Rs.23058425/- less than the income admitted during the course of survey of Rs.44188232/-, Appellant was also asked clarify the reason for difference. The appellant submitted that receipts .on account of health Camps organized was Rs.32000730/- against which expenses incurred in organizing the health camp were Rs.6319150/- and expenses on material used for organizing the health camp was Rs.5068352/- and thus the total of receipts and expenses was Rs..44188232/-. During the course of survey while recording the statement, additional income on the basis of health camp receipt and expenses as incurred on organizing the camps were both

inadvertently added and accordingly total amount of additional income was admitted as under:-

| S.No. | Nature of income                           | Amount (Rs.) |
|-------|--|--------------|
| 1     | Income on the basis of health camp receipt | 3200730      |
| 2     | Income on account of health camp expenses  | 11587502     |
|       | Total                                      | 44188232     |

5.3 Thus at the time of survey instead of reducing the amount of expenses Incurred in organizing the Health Camp, the amount of expenses were wrongly added to the Health Camp receipt which resulted in double addition of Rs.11587502/ -. The correct amount of additional income which was required to be considered at the time of survey is Rs. 21129807/-, calculated as under:-

| S.No. | Particular  | Amount (Rs.) |
|-------|---|--------------|
| 1     | Health camp receipt   | 32600730     |
| Less  | Expenses as actually incurred in conducting the health camp | 11470923     |
|       | Net amount of additional income                             | 21129807     |

Therefore, the net income as earned In organizing the Health Camp was of Rs.2112980/- only and not of Rs.44188232/- as considered at the time of survey.

5.4 Appellant also pointed out that a letter dated 12/03/2013 was also filed before the AO and copy of the same was also forwarded to the office of the JCIT and CIT wherein the above facts were stated and the return of income was accordingly filed taking the correct income as deduced

from the papers found at the time of survey. It was further explained that the error was on account of the fact that the director Shri Sunil Jain was a Doctor by Profession and was not conversant with the technical Implication of income and accepted the entire amount noted in the papers as the undisclosed income as these were not recorded in the books of account.

5.5 AO however, rejected the explanation of the appellant by observing that Shri Sunil Jain was educated enough to understand that if the expenses are related to the same receipts these are to be deducted in order to arrive at income subject to tax and ,hence it cannot be said that there was any mistake / error in admitting the undisclosed income. It was also pointed out by the AO that the statement was given under oath and had evidentiary value and the letter clarifying the mistake dated 12/03/2013 was filed after 8 months and was therefore only an after thought as it was not supported by any other documentary evidences. It was also argued by the AO that even otherwise the expenses were unexplained expenses and hence were deemed to be income u/s 69C of The Act and also were not eligible for deduction in view of the provisions of section 115BBE of The Act. AO also pointed out that no nexus has been established by the appellant between the income and the expenses and no documentary evidence were filed that the expenditure was incurred as Health Camp expenses. AO also doubted not only the expenditure incurred, in the absence of documentary evidences to establish that such expenses were actually incurred at the time of organizing the Health Camps, but also doubted the fact of holding of the Health Check-up Camps by observing that no evidences were filed to show that permission etc were taken for holding such large Camps. AO therefore rejected the claim of deduction of expenses and treated the entire receipt and expenses as the undisclosed income of the appellant During the course of appellate proceedings, the appellant has reiterated

what was stated before the AO and has relied extensively on various judgments in support of its arguments.

5.6 From the above it is thus evident that the addition IS the result of action u/s 133A of The Act and the basis for the addition is the material found at the time of survey which has been identified as B1-13 Page Nos. 5 to 8, Page Nos. 9 to 25 & Page 26 to 29. The entire addition has been made on the basis of these papers and there is no other independent information or enquiry to support or disprove the contents of the papers found except for the statement of Dr. Sunil Jain Director of the appellant Company. Scrutiny of the papers s how that on the one hand the papers record the receipts which are not accounted and on the other hand the papers record the details of expenditure relatable to the receipts as recorded in the papers found The unaccounted receipts are shown to be from holding of Health Check-up Camps and the unaccounted expenditure is shown to be on account of holding of such camps. The above facts are not disputed. Appellant has therefore argued that since the receipts and expenses are both noted in the papers found only the net income should have been taken as the undisclosed income and the statement given at the time of survey was thus erroneous as it did not take in to consideration this accounting principle as Dr. Sunil Jain who was a medical professional was unaware of such technicality.

5.7 AO has however rejected the above contentions by observing that Dr. Sunil Jain was sufficiently educated and hence such mistake was not an error on his part and the amount of Rs.44188232/ - admitted by him as the undisclosed income was the correct figure of income which had not been declared in the books of accounts and the explanation was merely a ruse to reduce the amount admitted as it was tendered after 7-8 months of the survey. AO held that the statement was recorded on oath and was thus binding and had evidentiary value. AO also noted that no nexus

was established between the income and the expenses admitted as noted in the loose papers and there was no documentary evidence to support that expenses were relatable to the income. AO also doubted the very fact of holding of Health Camps and incurring of expenses for such camps.

5.8 As has already been stated above the entire case revolves around the papers found at the time of survey and the statement of Dr. Sunil Jain. There is no other material which has been relied upon. The papers clearly show that the unaccounted receipts were from holding of Health Check-up camps and the expenditure was on organizing these camps which included reimbursement of expenses, T.A./D.A. and payment of salary/fee' to field staff/Doctors, Medicines provided to patients, Tent and Local publicity expenses and other miscellaneous expenses. It is a well settled legal position that the documents have to be considered in entirety and not choosing only the parts which were beneficial to the revenue Appellant has relied on the decision in the case of Chander Mohan Mehta vs. ACIT 71 ITD 245 (Pune), wherein it has been held that the contents of the loose papers are to be accepted in toto. Otherwise also the income has to be taxed and not the gross receipts. When seen in the light of the above it cannot be inferred from the papers found that the gross receipts of the appellant were Rs.44188232/- the gross receipts as per the papers are only Rs.32600730/-. No doubt that in the statement it was admitted that the undisclosed income was Rs.44188232/- however, such statement was later modified pointing out that the gross receipts were only Rs,32600730/- and not Rs.44188232/-. The difference  $(44188232 - 32600730 = 11587502)$  i.e Rs.11587502/- represented expenses out of the total receipts. No doubt both were unaccounted and hence the statement of Dr. Sunil Jain that these represented unaccounted income. The statement has evidentiary value no doubt and it is an established legal principle that an admission is the best evidence that an opposing party can rely upon and though not

conclusive, is decisive of the matter unless successfully withdrawn or proved erroneous. In the light of the above AO was justified in holding that statement was binding however, it is to be noted that the statement made during the course of survey was modified by way of letter filed by the appellant explaining the mistake made at the time of recording of statement in the light of the papers found at the time of survey. The statement was therefore to be read with the papers found at the time of survey. As has been discussed and which is also an admitted fact that the total receipts as per the papers found were only RS.32600730/- and not Rs.44188232/-. There is no dispute about this fact and there are no other independent evidences to show that gross receipts were more than or less than Rs. 32600730/- or to show that expenses were not incurred from the gross receipts. The Supreme Court in the case of CIT Vs. Durga Prasad More 82 ITR 540 (SC) has made the following observations:-

"In a case where party relied on self-serving recitals in documents it was for the party to establish the truth of these recitals. - The taxing authorities were entitled to look: into the surrounding circumstances and find out the reality of such recitals. "

The facts of the case when seen in the light of the above observation lead to the inference that the statement of Dr. Sunil Jain given at the time of survey was modified by way of letter and instead of the amount of Rs.44188232/- declared at the time of survey as the undisclosed income Rs.21129807/- was stated to be the undisclosed income. The reason for this modification was stated to be on account of non appreciation of the technicalities of accounting and taxation principles at the time of making of statement by Dr. Sunil Jain who being a medical professional was unaware of these principles. AO has rejected the contention without taking note of the fact that the entire case rests on the papers found and the papers support the contention of the appellant that the gross

undisclosed receipts were Rs.32600730/- and not RS.44188232/-. No other surrounding circumstances or material is brought on record to disprove the contention of the appellant as to the actual quantum of the undisclosed receipts. In the case of CIT Vs. P. D. Abraham 349 ITR 442 (Ker.) has given the finding as under:-

"When the department relies on the seized record for estimating undisclosed income there is no reason why the expenditure stated therein should be disbelieved merely because there is no written agreement and that payments were not made through cheques or demand drafts.

This also leads to the inference that the undisclosed income has to be arrived at by considering the seized documents in toto and there can be no pick and choose in the matter. It is also relevant to take note of the decision of the jurisdictional High Court in the case of Manmohan Sadani Vs. CIT 304 ITR 0052 & that of CIT Vs. Balchand Ajit Kumar 263 ITR 610 wherein the court has held that the total sale cannot be regarded as the profit and the sale proceeds cannot be added as income. Considering the above the AO was not justified in holding that the entire receipts were income of the appellant.

5.9 AO has also held that the expenditure is undisclosed and unexplained and hence is deemed to be income u/s 69C of The Act. A reference to the provision of section 69C of The Act is therefore useful which is reproduced below:-

"Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him. is not, in 'the opinion of the AO, satisfactory, the amount covered by such expenditure or part. thereof, as the case may be,

may be deemed to be the income of the assessee for such financial year.

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income”.

From the facts of the present case it is seen that both the receipts and expenses are not recorded in the books of accounts but these are recorded in the papers found at the time of survey. The explanation regarding the source of the expenses has been given by the appellant as being from the receipts recorded in the papers found at the time of survey. It therefore cannot be said that the appellant has failed to offer any explanation regarding the source of the expenses. AO has rejected the above explanation that the appellant failed to establish the nexus between the receipts and expenses and that there was no documentary evidence to support the claim. that the expenses were incurred for the purpose of holding health check up camps and has even doubted the fact of holding the camps. The objections the AO are thus in the realm of presumptions and conjectures, It is to be noted that if this view is subscribed to then there is no basis to even hold that the appellant had any income, If there were no health check up camps there was no income as no other evidence is on record other than the papers found at the time of survey which categorically record the receipts being from holding of health check up camps and side by side the expenses on the check up camps so organized which has been duly admitted in the statement of Dr. Jain, Considering all the above facts and the contention of the appellant and the judicial position as brought out in the various judgments cited it cannot be upheld that the expenditure recorded in the papers found at the time of survey was unexplained as to the source of

such expenditure and was covered 'within the scope of section 69C of The Act.

5.10 AO has also invoked the provisions of 115BBE of The Act in rejecting the claim of the appellant for set-off of expenses against the gross receipts, A reference may be made to the provisions of section 115BBE of The Act which are reproduced below:-

"(1) Whether the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of-

(a) The amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty percent; and

(b) The amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a),

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1)."

From the above it is thus evident that provisions of section 115BBE of The Act are attracted only if any additions are made to the total income under sections 68, 69, 69A, 69B, 69C & 69D of The Act. From the facts and circumstances of the present case which are already discussed above, it is seen that the impugned income has been assessed on the basis of certain papers found during the course of survey, The gross receipts and the expenses noted in the papers have been added as

income and both the receipts and the income are admitted to be not recorded in the books of accounts, As has already been held above gross receipts cannot be considered as income and the income has to be arrived at by considering the details recorded in the papers found in toto, Therefore, the expenses recorded in the papers are to be first deducted from the gross receipts to arrive at the income, The deeming provisions of the various sections cited above are therefore not attracted, It has also been held that provisions of section 69C of The Act are not applicable to the fact of the case, In view of the above the provision of section 11SBBE of The Act are also not attracted in the case, The AO was therefore not justified in disallowing the claim of set-off of expenses u/s 115BBE of The Act. In view of the above discussion the addition of Rs. 23053039/- is directed to be deleted. These grounds of the appellant are therefore allowed. - Rs.23053039/ - deleted”

10. The above detailed finding of Ld. CIT(A) has not been controverted by the Ld. Departmental Representative. The facts discussed above squarely reveals that during the course of survey loose paper forming part of B-1-13 referred to certain details of health camp income and expenditure. Admittedly there were three figures having following particulars;

1. Income on account of health camp Rs.3,26,00,730
2. Expenses incurred in organizing  
the health camp Rs. 65,19,150



14. Per contra Ld. Counsel for the assessee supported the findings of Ld. CIT(A).

15. We have heard rival contentions and perused the records placed before us. Revenue is aggrieved with the finding of Ld. CIT(A) alleging the set off of expenditure of Rs.19,70,923/- against the unaccounted income admitted during the course of survey. We find that the impugned disallowance was deleted by Ld.CIT(A) of claim of set off of the expenditure of Rs.19,70,923/- observing as follows;

“6. Ground Nos.7 & 8:- Both these grounds are directed against the disallowance of claim of set-off of loss of the year under consideration of Rs.1970923/ - against the unaccounted income admitted during the course of survey and shown in the return of income at RS.21135193 / -. The detailed facts of the case as per the assessment order are reproduced at Para No.2 above and the detailed submissions of the appellant are reproduced at Para No.3 above.

6.1 As seen from the assessment order the AO has disallowed the claim of set-off by holding as under:-

"Such set-off cannot be allowed as the income offered during the survey proceedings is treated as income from unexplained sources u/s 68 of The Act and deemed income u/s 69C of The Act through which unexplained expenditure has been made. Therefore even setoff these expenses against the offered income cannot be allowed u/s 115BBE. Hence an addition of Rs.19, 70,923/ - is also being made to the total income of assessee."

6.2 A detailed discussion on the issue has already been made in Para No. 5.1 to Para No. 5.10 above while discussing the addition of Rs 23053039/- It is worthwhile to reiterate that the addition was based on papers found at the time of survey giving details of receipts and expenses. Both the receipts and expenses were not recorded in the books of accounts. There was therefore no credit in the books of accounts. The appellant has admitted that the net of receipts and expenses represented his income which was not disclosed in the books of accounts and has shown the same in the return filed. The credit therefore stands explained as to the source; the source being the receipts from Health Check-up Camps. The provisions of section 68 of The Act therefore are not applicable to the fact of the case. further, it has already been held that the disallowance of expenses and treating the gross receipts as income was also not in accordance with the provision of the Act considering the extant legal position and therefore invoking of provision of section 69C of The Act was also not in accordance with the law In view of the above it cannot be said that the income offered by the appellant was within the purview of section 115BBBE of The Act and therefore the disallowance of the claim of set-off of loss of RS.1970923/- was not justified by invoking provision of section 69C and section 115BBE of The Act. The income which has been admitted by the appellant is on account of organizing Health Check-up Camps. The expenditure of Rs.1970923/which is recorded in the books of accounts is consisting of salary paid to the Staff including major payment as salary to Director Dr. Sunil Jain which has been duly reflected in the return of income of Dr. Sunil Jain who is also subject to tax at the maximum rate. Further, it is to be noted that during the' year the appellant has not carried out any other activity except organising Health Check-up Camps in which professional services were rendered by Dr. Sunil Jain for which services he was paid the above salary. The expenditure was thus directly related to the income admitted from Health Check-up Camps. In view of the above the claim of set-off of

such expenses is therefore allowed. Both these grounds are therefore allowed.”

16. The above finding of fact has not been controverted by the Ld. Departmental Representative and the undisputed fact is that the alleged expenditure of Rs.19,70,923/- have been thoroughly explained by the assessee before the lower authorities and the impugned account mainly includes salary paid to Shri Sunil Jain and others at Rs.17,97,199/- which have been duly offered to tax by Shri Sunil Jain and others in their respective return of income tax. It is also discernable from the records that the impugned expenditure of Rs.19,70,923/- have been claimed against the income from organizing health camp which is also the part of the business activity of the assessee company. We therefore do not find any infirmity in the finding of Ld.CIT(A) and the same needs to be confirmed. In the result Ground No.2 of the revenue stands dismissed.

17. In the result appeal of the revenue is dismissed.

The order pronounced in the open Court on 02.01.2019.

Sd/-

Sd/-

**( KUL BHARAT )  
JUDICIAL MEMBER**

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

दिनांक /Dated : 2<sup>nd</sup> January, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore