

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

ITA No. 431/Jodh/2019
(ASSESSMENT YEAR-2011-12)

Mewar Hospital Pvt. Ltd. Bedla Road, Priyadarshani Nagar, Udaipur-313001.	Vs	Assistant Commissioner of Income tax , Central Circle-2, Income Tax Department, Mumal Tower, Saheli Marg, Udaipur-313001.
(Appellant)		(Respondent)
PAN:AADCM 7804 L		

Assessee By	Shri Amit Kothari (CA) & Shri Abhinav Kothari (CA)
Revenue By	Shri Abhimanyu Singh Yadav (JCIT-DR)
Date of hearing	18/03/2020
Date of Pronouncement	20/03/2020

ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of Ld. CIT(A)-II, Udaipur dated 24.09.2019 for the assessment year 2011-12 on the grounds mention hereinbelow:-

- “1. Under the facts and circumstances of the case and in law, the order dated 24.09.2010 passed by the Ld. CIT (Appeals)-II Udaipur u/s 250(6) of the Income Tax Act, 1961 is bad in law & illegal.*
- 2. Under the facts and circumstances of the case and in law, Ld. CIT (Appeals)-II Udaipur has erred in affirming the order of Ld. Assistant Commissioner of Income tax, Central Circle-2, Udaipur, passed U/s*

144 rws 144/143(3) of the IT Act, 1961 without giving reasonable opportunity being heard to the appellant therefore ex parte order passed by the Ld. AO is against the natural justice therefore action of Ld. CIT(Appeals)-II, Udaipur, is erroneous & bad in law and liable to be deleted.

- 3. Under the facts and circumstances of the case and in law, Ld. CIT (Appeals)-II Udaipur has erred in granting relief of Rs. 75,392/- only out of total addition of Rs. 3,87,730/- on account of suppression of x-ray receipt revenue based on ad-hoc estimation basis made by the Ld. AO, which unjustified, unwarranted & bad in law and liable to be deleted entirely.*
- 4. Under the facts and circumstances of the case and in law, Ld. CIT (Appeals)-II Udaipur has erred in granting relief of Rs.14,11,384/- only out of total disallowance of Rs. 18,81,845/- on account of discount claimed by the appellant on ad-hoc estimation basis made by the Ld. AO, which unjustified, unwarranted & bad in law and liable to be deleted entirely.*
- 5. The appellant prays for justice and the appeal deserves to be allowed.*
- 6. The appellant craves leave to add, alter, amend and modify any grounds of appeal on or before the date of hearing."*

2. At the time of hearing ground No. 1 and 2 of the appeal are not pressed by the Id. AR of the assessee. Therefore, these two grounds are dismissed as not pressed.

3. Ground No. 3 of the appeal relates to part addition sustained on account of X-Ray receipts. We have heard the rival contentions and carefully gone through the orders of the authorities below and found from the record that the AO made addition for Rs. 3,87,730/- which was sustained at Rs. 3,12,338/- and relief was allowed at Rs. 75,392/- by the Id. CIT(A). The AO observed that during the course of search, X-ray done during the period of 4

months from October, 2016 to January, 2017 it was found that X-Ray receipts were for 3839 whereas X-Ray consumed was 4530, and as such there was excess consumption of 691 films. On these hypothesis it was observed that X-rays receipt in total was 3.87%. On these facts for the search year for financial year 2017-18 suppression of receipts was estimated at Rs. 3,87,7301-. The CIT(A) allowed deduction for 3% on account of wastages and allowed relief of Rs. 75,392/- and sustained balance addition of Rs.3,12,338/-.

4. We also found from the record that the contention of the assessee is that the entire basis for addition was not justified. Based on the X-rays done during the 4 months period from October, 2016 to January, 2017, cannot be any basis for the addition in the year. Even various factors of wastages had not been considered, error of technician, package charges, scheme charges etc. has not been considered. Sometimes films are wasted due to calibration & technical issues and even repeat X- Rays are done, if the same is not done properly. The assessee also relied upon some judicial decisions in support that the estimated addition cannot be made.

5. We also observe that the addition is not based upon any material or evidence for the year under consideration and even during search nothing has been found related to the year. There is no basis for estimation of suppression of X-Rays. Even the technician during the search proceedings had stated that in every bundle certain X-Rays gets damaged, and further there are various other reasons by which X-Rays films can get damaged. There is no allegation

that some X-Rays having been done, and there is no receipts issued or there is any suppression of receipts. Therefore, in view of the above facts and circumstances of the case, we find no merit in the addition sustained by the Id CIT(A) at Rs. 3,12,338/-, hence we direct the A.O. to delete the same.

6. The next issue relates to addition for discounts. From perusal of the record, we found that the AO made addition for Rs. 18,81,845/- for discounts which was partly deleted by the Id. CIT(A) and 25% of the disallowance to the extent of Rs. 4,70,461/- was sustained on which the assessee is in appeal. The AO made addition on the ground that in the search year it was found that the appellant had claimed certain discounts which could not be verified. The AO also observed that during search some persons accepted discount and some did not accepted. Though there was no claim of discount during the year, the AO estimated the discount at Rs. 18,81,845/- and made addition thereof.

7. We also found that the Id CIT(A) observed that in the search year it was observed that discounts was being allowed and in earlier year the receipts were net of discounts. The assessee had changed the method of account of discounts. However, on the basis of conclusion drawn in the search year the CIT(A) observed that disallowance deserves to be made but the same was restricted to 25% of the total addition and accordingly addition of Rs. 4,70,461/- was sustained and balance addition was deleted.

8. We also observe that there is no claim of discount as such, and the addition was based on estimated discounts. In case there is no claim of such discounts the question of disallowance of any addition is uncalled for. There is no case of suppression of receipts by showing lesser receipts. Further if the receipts are shown net of discount the same cannot be said to be not verifiable as the same is directly linked to the corresponding receipts. The addition being made only on the basis of suspicion, therefore, we direct to delete the same.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20/03/2020.

Sd/-
(R.C.SHARMA)
Accountant Member

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Dated :. 20/03/2020

*Ranjan

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, Jodhpur
6. Guard File (ITA No. 431/Jodh/2019)

By order

Assistant Registrar
ITAT Jodhpur