

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SMT. BEENA A. PILLAI, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 4641/Del/2014
(Assessment Year: 2005-06)**

Micromax Informatics Ltd. C/o Ved jain and Associates, 100, Babar Road, Opp Hotel Lalit New Delhi. PAN : AABCR8863N	Vs.	DCIT Circle Circle - 16 New Delhi
(Appellant)		(Respondent)

A N D

**ITA No. 4646/Del/2014
(Assessment Year: 2005-06)**

DCIT Circle Circle - 16 New Delhi	Vs.	Micromax Informatics Ltd. 90B, Sector -18 Gurgaon PAN : AABCR8863N
(Appellant)		(Respondent)

Assessee by : Sh. Ved Jain, Adv.
Revenue by : Ms. Nirupama Katru, CIT, DR
Date of hearing : 21.02.2017
Date of pronouncement : 27.02.2017

ORDER

PER BEENA A. PILLAI, J.M :

1. The present cross appeals have been preferred by assessee as well as revenue against order dated 13.05.2014 passed by Ld.CIT(A) 32, New Delhi for assessment year 2005-06 on the following grounds of appeal:

ITA No. 4641/Del/2014 (assessee's appeal)

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the appellant and the assessment framed under Section 153A/143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reference made for special audit under section 142(2A) is bad in law.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A and the assessment made in consequence thereto are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed under section 153A is untenable in the eye of law as the Act does not give power to the AO to re-appraise and/or review

the already settled issues and the assessment order passed under section 143(3) of the Act.

7. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of Rs.3,92,472/- made by the AO on account of sundry creditors.*

(ii) *That the above addition has been confirmed by arbitrarily rejecting the evidences and explanation submitted by the assessee.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs. 1,80,000/- made by the AO on account of expenses incurred on consumables.*

9 (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs.90,000/- made by the AO invoking the provision of Section 40A(3) of the Act.*

(ii) *That the abovesaid disallowance has been confirmed arbitrarily rejecting the explanation and evidences submitted by the assessee.*

10. *The appellant craves leave to add, amend or alter any of the grounds of appeal.*

ITA No.4646/Del/2014 (revenue's appeal)

1 *The CIT (A) has erred in law and on facts as well in deleting the addition of Rs. 7,00,000/- made by A.O. on account of share application money.*

2 *The CIT (A) has erred in law and on facts as well in deleting the addition of Rs.8,17,161/- made by A.O. on account of R & D expenses.*

3 *The CIT (A) has erred in law and on facts as well in deleting the addition of Rs. 11,43,000/- made by A.O. on account of unsecured loans.*

4 *The CIT (A) has erred in law and on facts as well in deleting the addition of Rs.2,26,48,252/- made by A.O. on account of G.P. Rate.*

5 *The CIT(Appeals) has erred in law and on facts as well in not invoking her power u/s 250(4) to cause an enquiry on the issue of bogus purchases so as to bring on record all material and relevant facts.*

6 *The CIT(A) has admitted additional evidence without calling for remand report from the Assessing Officer.*

7 (a) *The order of the CIT (Appeals) is erroneous and not tenable in law and on facts.*

(b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

ITA No. 4641/del/2014

2. The brief facts of the case are as under:

Assessee had filed its original return under section 139(1) of the Act on 18.10.2005 declaring total income of Rs.5,86,080/-. During the year under consideration, assessee is engaged in business of manufacturing of mobile telephones, tablet computer, 3G data card and LED Television. A search and seizure operation under section 132 of the Act was conducted by investigation wing on assessee group of cases on 10.02.2011. Simultaneously, assessee's premises were also searched. The case of assessee was thereafter, centralized and Ld. AO thereafter, issued notice under section 153A of the Act on 10.01.2012. In response to the notice, assessee submitted vide letter dated 13.02.2012 that its return already filed under section 139(1) of the Act on 18.10.2005 be treated as return in compliance to notice under section 153A of the Act. Subsequently notices under section 143(2) and 142(1) along with questionnaire was issued, and served upon assessee.

Assessee was asked to submit various installations and details during assessment proceedings and explanations were sought which were considered by assessing officer and case was discussed. Assessing officer completed assessment under section 153A read with 143(3) at a total income of Rs.2,65,56,970/- wherein following additions were made:

1. Addition on account of disallowance u/s 40A(3)	Rs. 90,000/-
2. Addition u/s 68 on account of unexplained share Application money	Rs. 7,00,000/-
3. Addition on account of unproved sundry creditors	Rs. 3,92,472/-
4. Addition on account of disallowance of R&D Expenses	Rs. 8,17,161/-
5. Addition on account of disallowance of expenses	Rs. 1,80,000/-
6. Addition on account of unsecured loans	Rs. 11,43,000/-
7. Addition on account of application of GP rate	Rs.2,26,48,252/-

3. Aggrieved by the order of assessing officer assessee preferred an appeal before Ld. CIT(A)'s who partly confirmed additions made by assessing officer.

4. Aggrieved by order passed by Ld. CIT(A) assessee as well as revenue is in appeal before us now.

5. Ld. AR submitted that ground No. 1 to 6 and ground No.8 is not pressed. Accordingly, these grounds are left unanswered and same are dismissed.

5.1. The only issue that is left for consideration in appeal filed by assessee is in respect of addition confirmed by Ld. CIT(A) on account of sundry creditors amounting to Rs.3,92,472/-.

6. Ld. AR submitted that details of creditors appearing in books of account of assessee are placed at page 109 to 111 of paper book. He submitted that information placed at page 110 and 111, carries names and details of creditors. It has been submitted that assessee has discharged the onus of

establishing the alleged amount that stood credited in the books of account.

7. On the contrary, Ld. DR placed her reliance upon orders of the authorities below.

8. We have perused submissions advanced by both sides in the light of the records placed before us.

9. It is observed that additions made by Ld. AO pertains to two creditors being:

<i>Vidur & Co.Pvt. Ltd.,</i>	<i>Rs. 60, 400/-</i>
<i>M/s. Vedanta</i>	<i>Rs. 3, 32, 372/-</i>

10. The only reason for addition of these amounts by Ld. AO is because assessee did not submit any bills and bank statement to show when cheques were cleared. It is observed that assessing officer has not disputed payments due to creditors. In the paper book assessee has provided with the confirmations from these two parties stating the transactions. Ld. AO does not have any material on record to show that these creditors were bogus and that assessee had not purchased materials from these parties against which payments were pending. In our view, these are trade creditors arising in the course of business. Merely on surmises assessing officer has made addition and it deserves to be deleted. Accordingly, addition made by Ld. AO amounting to Rs.3,92,472/-stands deleted

In the result the appeal filed by the assessee's stands partly allowed.

ITA No. 4646/del/2014**Ground No. 1:**

11. This ground has been raised against addition that has been deleted on account of share application money amounting to Rs. 7, 00, 000/-.

12. Ld. DR submits that Ld. CIT(A) deleted addition on the basis that assessee had submitted addresses and will PAN of the share applicants and thereby had discharged onus cast upon assessee under section 68 of the Act. She submitted that merely by filing details like name and addresses in respect of creditors, assessee does not get discharged with onus of proving identity, creditworthiness and genuineness of transaction. He she submitted that the amount of alleged share application money is not supported with confirmations from the share applicants. Before us Ld. AR submitted that no share money has been credited during the year therefore provisions of section 68 do not apply, for this he referred to the order of Ld. CIT (A) at page No. 31 to 33.

12. On the contrary Ld. AR submits that share application money has been arising from assessment year 2004-05. It has further been submitted that opening balance as on 01/04/2004 in respect of the share application money was Rs. 7 lakhs. He thus, submitted that no addition can be made under section 68 of the Act.

13. We have carefully perused the rival contentions and also orders passed by authorities below. Ld. CIT (A) has observed in para 33 that the said is appearing as on 31/03/2004 as

share application money and therefore it cannot be added in assessment year 2005-06. Ld. DR could not controvert the findings of Ld. CIT (A) and therefore we confirmed the findings of Ld. CIT (A). Accordingly ground No. 1 raised by the revenue stands dismissed.

Ground No. 2:

14. This ground has been raised by revenue against addition being deleted amounting to Rs.8,17,161/- on account of research and development expenses.

15. Ld. DR submits that assessee has not furnished any details in respect of expenses incurred for research and development. She submitted that addition made by Ld. AO may be sustained.

16. On the contrary Ld. AR submitted that R&D Expenses has been examined by Ld. AO and has assessee had submitted all necessary details as per questionnaire dated 13.02.2012. Ld. AO has referred to pages 53 of paper book Ld. DR submitted that assessee thereafter supplied all necessary information and documentation. He submitted that assessing officer has failed to appreciate evidences that were furnished in respect of expenditure incurred.

17. We have perused submissions advanced by both sides in the light of documents placed before us. On perusal of assessment order it is observed that assessing officer has not raised any allegations in respect of expenses being not genuine. He has also not specifically mentioned documents/evidences/details that were not submitted by

assessee. Ld. CIT(A) has observed that assessing officer was wrong in holding that no details or evidences were furnished in respect of expenditure incurred. It is observed from paper book that assessee vide letter dated 02.09.2013 placed at page 80 has provided ledger account of consumables and consumed stock for year under consideration which is research and development expenses. Ld. CIT(A) on verification of all relevant materials allowed claim of assessee. We do not find any need to interfere with findings of Ld. CIT(A) and same is upheld.

Accordingly this ground raised by revenue stands dismissed.

Ground No. 3

18. This ground is in respect of addition on account of loan to one Mr. Raghav Bansal that has been deleted by Ld. CIT (A).

19. Ld. DR submits that, assessee had not filed any confirmation from Sh. Raghav Bansal regarding loan. She submitted that loan was squared up during year and assessee had not submitted any details regarding the genuineness identity and creditworthiness of same. She submitted that assessee did not provide any detail and therefore, addition needs to be confirmed.

20. On the contrary is Ld. AR submitted that amount pertains to earlier year and is not received in the year under consideration. It has been submitted that assessee had submitted that loan M/s SFS Infinite Ltd., was fresh loan and loan from Sh. Raghav Bansal was received during preceding

assessment year was not received during year. It has been submitted by Ld. DR that loan of Sh. Raghav Bansal was paid off during year under consideration. Schedule 'C' to balance sheet placed at page 13 of paper book supports contention by assessee.

21. We have produced submissions advanced by both sides in the light of records placed before us.

22. Ld. CIT(A) on verification of balance sheet has allowed claim of assessee which is supported by balance sheet entries. We do not find any necessity to interfere with findings of Ld. CIT(A) and the same is upheld.

23. Accordingly ground raised by revenue stands dismissed.

Ground No. 4

24. This ground has been raised by revenue's for deleting addition made by assessing officer on account of the GP rate.

25. At the outset Ld. AR submitted that this issue stands squarely covered by decision of this Tribunal in assessee's own case for assessment year 2011-12. It is observed that Ld. AO had made addition due to various instances regarding improper maintenance of books of accounts made by special auditor and M/s KPMG India. On the basis of these reports assessing officer had recorded his dissatisfaction about correctness and completeness of books of account and thereafter had rejected the same.

Ld. CIT(A) has also observed as under:

I have considered the facts of the case, written submission of the appellant, findings of the Assessing Officer and perused the assessment

record. On going through the same, I find that the Assessing Officer rejected the books of account of the appellant on the basis of the observations made by the special auditor and M/s KPMG India. In this regard, I have also perused the report of the special auditor. On going through the same, it is noticed that the special auditors did not shown any dissatisfaction about the books of account. On the contrary the special auditors in their report gave a certificate that proper books of account as required by the law were maintained by the appellant. Further, they have stated that the books of account gave a true and fair view of the profit and loss account of the appellant for the period under consideration. Though the above observations of the special auditors were subject to the notes appended thereto whereby they clarified certain amounts which needed to be considered while computing the income, yet it cannot be said that the books of account were not maintained by the appellant property. There may be certain issues or discrepancies which needed to be considered while computing the income but that does not mean that the books of accounts be rejected in toto.

23.13 Further I noticed that the Assessing Officer has applied the average gross profit rate of assessment years 2010-11 and 2011-12. There is no reason why the gross profit rate of subsequent years should be applied to the preceding years. Simply because G. P. Rate of Subsequent years is higher it cannot be a ground for enhancing the GP rate of earlier years.

26. Further this Tribunal in assessee's own case vide order dated 20.02.2005 in ITA No. 6135/Del/2014 and ITA no. 5829/Del/2014 has observed as under:

23.6. Our findings

On consideration of rival contentions we are of the considered view that the rejection of books of accounts is bad in law for the following reasons:

The assessee has maintained regular books of accounts and these have been audited by the tax auditors as well as by the special auditors appointed by the AO. Both these auditors have certified that the assessee was maintaining proper books of accounts. The AO seems to have based his opinion on the report of KPMG India. This report was a due diligence report obtained by the prospective investors. Such due diligence reports cannot lead to formation of an opinion that proper books of accounts have not been kept by the assessee. The assessee also maintained quantitative details of inventory. Similarly on the issue of swap units while disposing of ground nos. 8, 9 and 10, we have dealt with the issue and from our observations it is clear that this cannot be a basis for rejection of books of accounts. Addition on account of difference in credit notes cannot also form a ground for rejection of books of accounts for the reason that we have come to a conclusion that the addition itself is arbitrary and deleted the same. In fact the AO relied on these very books of accounts and to make huge additions during the course of assessment. On the one hand the AO seeks to rely on the books of accounts and on the other hand the AO rejects the books of accounts for estimated profits on adhoc basis. This in our view is not permissible.

The rejection of the books of accounts cannot be done in a light hearted manner. Section 44AA of the Income Tax Act mandates that every person carrying on business or profession shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute this income in accordance with the provisions of this Act. Thus, the requirement is to maintain such books of accounts as may enable the Assessing Officer to compute its total income. It is only when the books of accounts are

maintained in such a manner which makes it difficult for the Assessing Officer to compute its total income then only the books of accounts can be rejected. This is not the case here. Even if, there are certain discrepancies or errors which are not so crucial so as to disable the Assessing Officer to compute the total income of the appellant, then the books of account cannot be rejected but such discrepancies can be taken into consideration while computing the total income.

Further, the rejection of books of accounts is not justified when mistakes in the books of accounts are of general or technical nature. The remarks given by the Assessing Officer in the appellant's case are neither sufficient for rejecting the duly audited books of accounts nor the Assessing Officer has shown that how these remarks would have a bearing in giving a finding that true income cannot be computed on the basis of books of accounts maintained by the appellant on day to day basis in regular course of business.

As already stated there is no ground whatsoever which justifies the AO to reject the books of accounts. Thus we agree with the contentions of the assessee and revert the order of the AO as upheld by the DRP. Accordingly, this ground of appeal of the assessee is allowed.

As we have held that the rejection of books of accounts is bad in law the question of enhancement of gross profit on estimate basis does not arise. The AO is directed to adopt the profits as declared by the assessee in its books of accounts. In view of the above, we delete this addition and this ground of appeal of the assessee is allowed.

27. Respectfully following the same we do not find it necessary to interfere with findings of Ld. CIT(A) has same is upheld. Accordingly, this ground raised by revenue stands dismissed.

28. Ld. DR did not submit any arguments with respect to ground No. 5, 6 and 7 of the appeal filed by revenue and therefore these grounds are dismissed.

In the result appeal filed by revenue stands partly allowed for statistical purposes.

Order pronounced in the open court on 28th February, 2017.

Sd/-

Sd/-

(PRASHANT MAHARSHI)

ACCOUNTANT MEMBER

Date: 28.02.2017

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(BEENA A. PILLAI)

JUDICIAL MEMBER