

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI B.P.JAIN, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 2498/Del /2014
Asstt. Year: 2006-07**

ACIT, Central Circle-8, New Delhi.	vs	ABV Alcohols Pvt. Ltd., 15, Pusa Road, New Delhi-110005
(Appellant)		(Respondent)

Appellant by : Shri Sudesh Garg, Adv.
Respondent by : Shri Surender Pal, Sr. DR

**Date of Hearing : 30.10.2017
Date of Pronouncement: 31.10.2017**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the department against the order passed by the ld. CIT(A)-XXXII, New Delhi for assessment year 2006-07 wherein vide order dated 29.1.2014, the assessee's appeal was partly allowed.

2. The brief facts of the case are that the return declaring income at nil was filed which was initially processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called the Act) and was

subsequently selected for scrutiny. However, the assessee did not respond to various statutory notices which were issued from time to time and subsequently the order was passed u/s 143(3) r/w section 144 of the Act ex parte the assessee after disallowing the loss of Rs.3,69,934/- claimed by the assessee in the Profit & loss account and after making an addition of Rs. 96,19,000/- as unexplained credit u/s 68 of the Act as there was an increase of this amount under the head share capital.

2.1 Aggrieved the assessee preferred an appeal before the Id. CIT(A) who deleted the addition of Rs. 96,19,000/- pertaining to addition under the head share capital on the ground that no share application money was received during the assessment year under consideration and during the year the assessee had only allotted the shares to the subscribers who had subscribed the share application money amounting to Rs. 9,61,900/- during earlier years. The Id. CIT(A) also deleted the disallowance of Rs. 3,69,934/- made on account of loss claimed by the assessee in the profit and loss account.

3. Now, the department has approached the ITAT and has challenged the deletion of these two additions by raising the following grounds of appeal:-

“1. That the ld. CIT(A) erred in admitting the additional evidence under Rule 46A.

2. That the CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 96,19,000/- made by Assessing Officer u/s 68 of I.T. Act, 1961.

3. That the CIT(A) erred in law and on facts of the case in deleting the addition of Rs. 3,69,934/- made by Assessing Officer on account of disallowance of loss claimed.

4. (a) The order of the CIT(A) is erroneous and not enable 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 hearing of the appeal.”

3.1 At the outset, the Ld. Departmental Representative submitted that the assessee had not submitted any documents during the course of assessment proceedings so as to enable the Assessing Officer to verify the genuineness of the share application money received. He pointed out that the assessment was completed u/s 144 of the Act due to the non-cooperation of the assessee. During the course of assessment proceedings, it was submitted that since the Assessing Officer did not have the opportunity to examine the claim of the assessee, the ld. CIT(A) was patently wrong in allowing the appeal of the assessee on this ground.

3.2 Ground no. 2 pertains to disallowance of expenses of Rs. 3,69,934/- which was also deleted by the ld. CIT(A). Reliance was placed on the findings of the Assessing Officer and it was submitted that since no details had been forthcoming from the assessee on this count also, the disallowance was justified.

4. In response, the ld. AR submitted that since share application money had not been received during the year under consideration, the provisions of section 68 were wrongly invoked by the Assessing Officer and it was beyond the purview of the Assessing Officer to bring to tax the share application money in the year under consideration as share application money had been received in earlier year and in this year, only shares had been allotted to the share applicants, thereby showing an increase in the share capital account. He placed reliance on the findings of the ld. CIT(A) in this regard and submitted that the deletion be upheld.

4.1 On the second ground relating to disallowance of expenses debited in profit and loss account, it was submitted the expenses debited pertained to accounting charges, auditor's remuneration, bank charges, remuneration to Company Secretary, ROC, filing fee, travelling & conveyance, depreciation etc. which were

incurred in connection with the carrying on of business. It was also submitted that the accounts of the assessee had been duly audited and, therefore, there was no reason to disallow these expenses. It was submitted that these disallowances deleted by the Id. CIT(A) had been correctly deleted by the Id. CIT(A) and that the order of the Id. CIT(A) be upheld.

5. We have heard the rival submissions and perused the material available on record. As far as the first issue pertaining to share capital is concerned, it is seen that the Id. CIT(A) has recorded the finding that as per records, her predecessor CIT(A) had specifically directed the Assessing Officer to examine the record and intimate as to whether the amount of share application money of Rs. 96,19,000/- was received during the assessment year 2005-06 i.e. the preceding assessment year as claimed by the assessee. It has been further noted that the Assessing Officer, instead of examining the assessment record and sending report on the specific direction of the predecessor CIT(A), simply repeated his observations as contained in the assessment order. The Id. CIT(A) further noted that she has gone through copies of audited balance sheet for financial years 2004-05 and 2005-06 relevant to assessment years 2005-06 & 2006-

07 and has found that no share application money was received during the assessment year under consideration and that the assessee had only allotted shares to the subscribers who had subscribed the share application money amounting to Rs. 96,19,000/- during the financial year 2005-06. The ld. CIT(A) proceeded to delete the addition on this account. After going through the order of the ld. CIT(A), we find that as the impugned amount was not received during the year under consideration, the same could not have been added back by the Assessing Officer as has been done in the assessment order. The Assessing Officer had been directed to examine the records for earlier years but he failed to do so although he had been specifically directed to do so in the order of the ld. CIT(A). It is our considered opinion that although the assessee has been grossly negligent in responding to the assessment proceedings, all the same, it cannot be put to a disadvantage when the departmental officers also failed to avail the opportunity even when directed to do so. As the ld. CIT(A) has examined the records of earlier years and has given a categorical finding that share application money had not been received during the year under consideration and has also noted the fact that the Assessing Officer did not examine the

issue when directed to do so, we find no cause of grievance on the part of the department. We accordingly find no reason to interfere and uphold the order of the Id. CIT(A) on this issue.

5.1 As far as ground no. 2 of the appeal is concerned, the Id. CIT(A) has given a finding that the expenses pertained to expenditure debited under various heads which were in the nature of having been incurred in connection with the carrying on of business. The Id. CIT(A) has also noted that the accounts were duly audited and has deleted the addition. However, since it is seen that the assessee had not produced any evidence in support of these expenses and the same do not seem to have been submitted before the Id. CIT(A) also, the deletion just based on the fact of the accounts having been audited does not appear correct to us. In the interest of justice, this issue needs to go back to the file of the Assessing Officer for the purpose of getting expenses verified. Accordingly, we restore this issue to the file of the Assessing Officer for de novo examination by the Assessing Officer after giving proper opportunity to the assessee.

6. In the result, the appeal filed by the department is partly allowed in terms of our observations.

Order is pronounced in the open court on 31st October, 2017.

Sd/-

(B.P. JAIN)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 31st OCTOBER, 2017
'GS'

Copy forwarded to:

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

TRUE COPY

By Order

ASSISTANT REGISTRAR