

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 2837/DEL/2014 (A.Y. 2008-09)

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| Sh. Devki Nandan Kapoor 30/30, Ground Floor East Patel Nagar, New Delhi-110008 PAN-AARPK9341D (APPELLANT) | Vs. | ACIT Circle- 33(1), New Delhi (RESPONDENT) |
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I.T.A. No. 2906/DEL/2014 (A.Y. 2008-09)

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| ACIT Circle- 33(1), New Delhi (APPELLANT) | Vs. | Sh. Devki Nandan Kapoor 30/30, Ground Floor East Patel Nagar, New Delhi-110008 PAN-AARPK9341D (RESPONDENT) |
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| Appellant by | Sh. Shashwat Bajpai, Kunal Bhari, Adv's |
| Respondent by | Sh. Surendra Meena, Sr.DR |

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| Date of Hearing | 07.08.2019 |
| Date of Pronouncement | 30.09.2019 |

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the Revenue and the assessee against the order dated 19.02.2014 passed by CIT (A)-XXVIII, New Delhi for A.Y. 2008-09.

2. The grounds of appeal are as under :

ITA No. 2837/Del/2014 (Assessee's Appeal)

1. *That the Ld. CIT (Appeal) has erred in law and on facts in not deciding the*

issue related to addition of Rs. 45,22,813/-in respect of creditors and referring back the matter to the AO for verification, which is beyond the jurisdiction of the Ld. CIT (Appeal).

2. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs. 1,20,882/-u/s 14A.

3. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs. 50,00,000/-in respect of investments in mutual funds despite the fact that the same is a duplication in the AIR information.

4. That the Ld. CIT (Appeal) has erred in law and on facts in not deciding the issue related to addition of Rs. 60,00,000/-in respect of investments in mutual funds and referring back the matter to the AO for verification, which is beyond the jurisdiction of the Ld. CIT (Appeal).

5. That the Ld. CIT (Appeal) has erred in law and on facts in confirming the addition of Rs. 10,00,000/-in respect of investments in mutual funds despite the fact that the same is a not correct in the AIR information.

6. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

7. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal.”

ITA No. 2906/Del/2014 (Revenue’s Appeal)

“1. The Ld. CIT (A) has erred by admitting the additional evidences under the Rule 46A without appreciating the fact that the assessee was given a number of opportunities for filing the details during the assessment proceedings.

2. The Ld. CIT(A) has erred by deleting the disallowance of Rs. 8,02,000/- made by AO on account of unsubstantiated rent expenditure without appreciating the fact that the assessee did not produce proof/document at the time of assessment.

3. The Ld. CIT(A) has erred in passing an order in favour of the assessee with respect to the addition of Rs. 45,22,813/- on account of bogus Sundry Creditors without appreciating the discrepancies pointed out by the AO in his remand report.

4. The Ld. CIT(A) has erred in passing an order in favour of the assessee with respect to the addition of Rs. 60,00,000/- made by AO on account of investment from undisclosed sources to the file for AO for verification without appreciating the facts reported by AO in the remand report.

5. The appellant craves leave to add, alter or amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

3. During the year the assessee's main source of income was from House Property/Business Income/Capital Gain and Income from other sources. Return of income declaring total income of Rs.4,35,42,516/- was filed by the assessee on 30.09.2008. The case was selected by CASS for scrutiny u/s 143(3). Accordingly, notice u/s 143(2) dated 06.08.2009 and 17.09.2009 were issued and served upon the assessee. Statutory notices under Section 143(2) and 142(1) along with questionnaire were issued. Necessary details were called for u/s 142(1). In response to the notices issued, CA and AR attended the proceedings on behalf of the assessee from time to time and filed details. Books of account and original bills and vouchers were called for and verified on test check basis. The assessee contended that during the course of assessment proceeding, particular of business premises used for business purpose and detail of rent amounting to Rs. 14,73,001/- charged to profit and loss account giving detail of person to whom rent was paid, amount of rent and the business premises for which rent is paid were provided to the Assessing Officer. All payment made through cheques after deducting tax at source at applicable rate. The Assessing Officer made disallowance of Rs. 8,02,000/- out of rent so paid at Rs. 14,73,001/- observing that rent expenditure is unsubstantiated in the absence of rent agreement. The Assessing Officer also made addition of Rs. 45,22,813/- in the absence of current confirmation of Rs.30,51,383/- in respect of EPCOS India Pvt. Ltd. and Rs. 14,71,430/- in respect of Epcos India Pvt. Ltd. relay and filter appearing as Sundry Creditors. As per account maintained by the assessee, investment in mutual fund as per Balance Sheet of 'System Controls and Switchgear' on 31st March, 2008 was Rs. 55 lakhs and on 31st March, 2007 is Rs. 26 lakhs. The assessee's own capital in the said concern on 31st March, 2008 was Rs. 8.94 crore and on 31st March, 2007 was Rs. 7.49 crore. The Assessing Officer computed the disallowance of Rs. 1,20,862/- under Section 14A of the Income Tax Act, 1961 read with Rule 8D of Income Tax Rules, 1962 in the assessment order but not included while computing assessed income. The Assessing Officer also made addition of Rs.

1,20,00,000/- as income from undisclosed sources on the ground that no source or evidence was submitted by the assessee.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted as regards Assessee's appeal is concerned, the Ld. AR has not pressed Ground No. 1, 2 and 4. As regards to Ground No. 3 is concerned the Ld. AR submitted that the CIT(A) erred in confirming the addition of Rs. 50,00,000/- in respect of investments in mutual funds despite the fact that the same is a duplication in the AIR information. As regards to Ground No. 5, the Ld. AR submitted that the CIT(A) erred in confirming the addition of Rs. 10,00,000/- in respect of investments in mutual funds despite the fact that the same is not correct in the AIR information. As regards to Revenue's appeal the Ld. AR submitted that as regards Ground No. 2, the CIT(A) has rightly deleted the rent expenditure disallowed by the Assessing Officer. As regards to Ground No. 3, the CIT(A) has given a detailed finding after going through the evidence submitted before the CIT(A) and obtaining the remand report from the Assessing Officer. As regards to Ground No. 4, the Ld. AR submitted that the same is under challenge by the assessee as well in the assessee's appeal as Ground No. 3 and 5.

6. The Ld. DR relied upon the Assessment Order and submitted that the duplication if any while calculating should be verified and to that extend the matter may be remanded back.

7. We have heard both the parties and perused all the relevant material available on record. First we take up Assessee's appeal, as regards Ground Nos. 1, 2 and 4 are not pressed, therefore, Ground Nos. 1, 2 and 4 of the assessee's appeal are dismissed. As regards to Ground No. 3 and 5 of the assessee's appeal, from the perusal of record it can be seen that there is duplication in the AIR information and hence the same needs to be verified by

the Assessing Officer inconsonance with the documents/evidences produced by the Assessee during the assessment proceedings as well as before the CIT(A). Therefore, both the issues are remanded back to the file of the Assessing Officer for proper adjudication. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. As regards the Revenue's appeal in respect of Ground Nos. 1, 2 are concerned the CIT(A) has given a detailed finding which does not require any interference. Hence, Ground Nos. 1 and 2 of the Revenue's appeal are dismissed. As regards the Ground No. 3 of the Revenue's appeal is concerned, the CIT(A) has taken into account the remand report and therefore, there is no need to interfere with the findings of the CIT(A). Hence, Ground No. 3 of the Revenue's appeal is dismissed. As regards Ground No. 4 is concerned, the same is related to Ground Nos. 3 and 5 of the assessee's appeal, therefore, Ground No. 4 is also remanded back to the file of the Assessing Officer with the same directions. Thus, both the appeals are partly allowed for statistical purpose.

8. In result, both the appeals are partly allowed for statistical purpose.

Order pronounced in the Open Court on 30th September, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 30/09/2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI