

आयकर अपीलिय अधिकरण, दिल्ली न्यायपीठ 'सी', नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT**

**&**

**DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.6460/Del/2015

निर्धारण वर्ष / Assessment Year 2011-12

ACIT,

Circle-6(2), New Delhi

.....अपीलार्थी / Appellant

vs

M/s Conwood Medipharma Pvt. Ltd.,

1506, Hemkunt Chambers, 89,

Nehru Place, New Delhi

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Ms. Paramita M. Biswas, CIT DR

प्रत्यर्थी की ओर से / Respondent by: Sh. Rajat Jain & Sh. Akshat Jain, CAs

सुनवाई की तारीख / Date of Hearing : 05.03.2020	घोषणा की तारीख / Date of Pronouncement: 07 .03/2020
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, VP**

*REVENUE*

The present appeal filed by assessee is against order of CIT(A)-2, New Delhi dated 31.08.2015 relating to assessment year 2011-12 against order passed under section 143(3) of the Income Tax Act, 1961.

2. The Revenue has raised following grounds of appeal which read as under:

1. Whether the Ld. CIT (A) has erred on facts and in law in deleting the addition of Rs. 10,20,64,174/- on account of amount credited in bank

account of the assessee in excess of receipts as per books of account and also allowing the assessee appeal against the rejection of the books of accounts of the assessee.

2. Whether the Ld. CIT (A) has erred on facts and in law in deleting the addition of Rs. 23,02,705/- made on account of difference in brokers' account submitted by assessee and party wise gross receipts in assessee's books of accounts.

3. Whether the Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs. 2,76,200/- made on account of non deduction of TDS on professional charges.

4. Whether the Ld. CIT(A) has erred on facts and in law in deleting the disallowance of Rs. 6,25,265/- made as per rule 8D (i) (ii) & (iii) r/w/s 14A of the Act.

3. The Revenue has also raised an additional ground of appeal which reads as under:-

1. The Ld. CIT(A) has erred in admitting additional evidences without affording any opportunity to the AO which is violation of Rules 46A.

4. Briefly in the facts of the case, the assessee had furnished return of income declaring income of Rs. 42,43,39,960/-. The case of the assessee was selected for scrutiny. The assessee was engaged in the business of equity trading, derivatives trading and in real estate investment. The AO noted from the perusal of bank statement that the amount credited into bank account of the assessee was Rs. 59,71,35,900/- whereas the receipts of the year amounted to Rs. 49,50,71,726/-. The AO also analyzed the withdrawals made by the AO and the share transactions entered into by the assessee with different brokers and added the difference of 10,20,64,174/- between the deposits in the bank and the receipts shown by the assessee and further added difference of Rs. 23,02,705/- i.e. the difference between the broker's statement and the receipt shown in the

books of accounts of the assessee. The AO on the basis of certain information was of the view that the assessee was not trading in shares but was only an entry operator hence addition of Rs. 10,43,66,879/- was made.

5. The next addition made in the hands of the assessee was on account of deemed dividend under section 2(22)(e) of the Act at Rs. 29,27,178/-. The assessee had claimed ROC expenses of Rs.2,50,91/- for enhancing its authorized share capital. However, the same was disallowed. The AO also disallowed the deduction claimed on account of professional fee paid of Rs. 2,76,200/- for non deduction of tax at source. Another addition made in the hands of the assessee was the disallowance under section 14A of the Act at Rs. 6,25,265/-.

6. Before the CIT(A), the assessee furnished written submissions and the CIT(A) dealt with each of the issue. The first issue which was decided was the addition made after rejection of books of accounts. The CIT(A) from para 3.0 to 3.1.9 dealt with the aforesaid issue and was of the view that the rejection of books of accounts was not sustainable.

7. Coming to the consequent addition made of Rs. 10,20,64,174/- on account of alleged difference in receipts as per the bank account of the assessee and receipts as per its books of account. The contention of the assessee in this regard was noted vide para 4.1.3, which reads as under:-



Credit entries appearing into bank along with narration	Amount deposited into Bank Account of the appellant	Capital Receipts and revenue receipts shown in B/s and P&L A/c during the year against amount deposited into bank	Difference added by the assessing officer	Explanation on difference which is corroborated from the bank statement, etc.
	A	B	A-B	
Cash deposited	10,000		10,000	Cash deposited in previous year on 25.11.2009
<b>Capital Receipts shown in Balance sheet</b>				
Indo Gulf Diagnostics & Research Centre Pvt. Ltd.	77,600,000	69,650,000	7,950,000	Amount received as loan and shown in balance sheet under the head "Loans & advances"
Unibros Manufacturing Company Pvt. Ltd.	40,000,000		40,000,000	Rs. 40,000,000 - is refund of loan given to M/s Unibros Manufacturing Company Pvt. Ltd. Of Rs 150,000,000 on 25.08.2010 shown under Loans & advances.
Roc Exp. (Company Secretary)	202,850		2,02,850	Contra Entry on account of DD cancelled us shown in bank account on 09.08.2010
Revenue from Trading in Equity (F&O) and commodity derivative (net)				
Zaljog Commodities Trade Pvt. Ltd.	132,667,277	121,667,277	10,500,000	Rs. 10,500,000/- (Rs 50,00,000 + Rs 55,00,000) dated 05.07.2010 Contra entry as shown in bank statement on account of Cheque dishonored on 06.07.2010
<b>Difference of amount appeared in bank account on account of cash deposit, contra entry, loan received back, loans &amp; advances given duly accounted into books of accounts</b>			<b>58,662,850</b>	
Zaljog Commodities Trade Pvt. Ltd.			5,00,000	Rs 5,00,000/- paid as Margin money on 26.06.2010 by the appellant which is received back and not considered as part of revenue or expense
R. K. Commodities Services Pvt. Ltd.	189,994,543	189,494,543	500,000	Rs. 500,000 paid as Margin money on 05.07.2010 by the appellant which is received back and not considered as part of revenue or expense
Kumar Share Brokers Ltd.	14,000,000	13,593,195	5,00,000	Rs 500,000 paid as Margin money on 12.07.2010 by the appellant which is received back and not considered as part of revenue or expense
			(89,246)	Rs 89,246 Debit closing balance as shown in Balance sheet under the head "Advance to Parties".

			(3,950)	Rs 3,950 other charges shown separately in Profit & loss account
Capital Wizard Stock Broking Pvt. Ltd.	22,155,231	22,155,231		
<b>Difference of amount received from Brokers with whom trading in Equity (F&amp;O) and Commodity Derivative is done</b>			<b>14,06,805</b>	
	<b>Total revenue from trading</b>	<b>346,910,246</b>		
<b>Revenue from Real Estate</b>				
Supertech Limited	120,506,000	70,506,000	50,000,000	Rs. 50,000,000/- given advance against booking to M/s Supertech Limited hence, net revenue considered in P&L A/c while total receipts shown in bank account
<b>Total Difference without considering interest accrued</b>			<b>110,069,655</b>	
<b>Revenue from Interest Income</b>				
Interest income not actually received into bank		8,005,480	(8,005,480)	Interest accrued on loan credited in Profit & loss account not received in bank
<b>Net difference added by the learned assessing officer</b>	<b>597,135,900</b>	<b>49,50,71,726</b>	<b>102,064,174</b>	

8. The CIT(A) further observed as under:-

4.1.6 In my considered view, addition made of Rs 10,20,64,174/- on account of amount credited in bank account of the appellant in excess of receipts as per books of account is not sustainable in view of documentary evidences already available on record to substantiate the said difference. The AO has failed to make any sincere effort regarding the same and made addition only on the basis of doubt, suspicion, conjecture or surmises without affording proper opportunity of being heard to the appellant which is in violation of principles of natural justice. Hence, considering the entire facts and circumstances of the case of the appellant, addition made by AO is liable to be deleted.

9. The learned DR for the Revenue has failed to controvert the findings of CIT(A) in this regard. We find no merit in the issue raised vide ground of

appeal no. 1. Before parting, we may also point out that no additional evidence was produced before the CIT(A) and hence there is no merit in the additional ground of appeal raised by the Revenue.

10. Now coming to next issue i.e. against addition of Rs. 23,02,705/- made on account of alleged difference in brokers' accounts and party wise gross receipts submitted by the appellant. The assessee duly explained the said difference and the tabulated details read as under:-

Name of Party	As per Accounts of Broker submitted by Assessee	As per Party - wise detail of Gross receipts(net off loss before deducting STT)	Difference income not disclosed	Explanation /Remarks
R.K. Commodities Services Pvt. Ltd.	19,00,94,585  (Correct Fig Rs. 19,01,50,957 gross receipts)	18,94,94,592	5,99,993  Actually Rs 6,56,365	6,56,365 = (5,00,000 paid as Margin Money and not a part of gross consideration + 1,56,365 Loss not considered by AO)
Zaljog Commodities Trade Pvt. Ltd.	12,22,67,276  (Correct Fig Rs 12,21,67,276 net of loss)	12,16,67,276	6,00,000  (Actually Rs 5,00,000)	Rs 5,00,000 paid as Margin Money and not a part of gross consideration
Kumar Share Brokers Ltd.	1,41,47,171  (Correct Fig Rs 1,44,16,594 gross receipts)	1,39,16,593	2,30,578  A dually Rs 5,00,000)	Rs 5,00,000 paid as Margin Money and not a part of gross consideration
Capital Wizard Stock Broking Pvt. Ltd.	2,36,55,328 (net of loss and STT)	2,27,83,194	8,72,134	Rs 8,72,134 = (Rs 15,00,000 contra entry on account of DD cancelled as shown in ledger account of M/s Capital Wizard less Rs 6,27,867 STT not deducted in gross receipts by appellant)
<b>Total</b>	<b>35,01,64,360</b>	<b>34,78,61,655</b>	<b>23,02,705</b>	

11. The CIT(A) deleted the said addition made by the AO observing that the said difference in party wise detail and brokers' account is due to Margin Money and STT. In view of the findings of the CIT(A) with regard to the aforesaid addition, we find no merit in the grounds of appeal no. 2 raised by the Revenue and the same is dismissed.

12. Now coming to the next issue of the deletion of addition of Rs. 2,76,200/-, the CIT(A) noted that the assessee had not claimed the said professional expenses in its profit & loss account and had capitalized the same under work in progress i.e. "Building under Construction" in fixed assets schedule. The CIT(A) thus deleted the addition. We find merit in the order of the CIT(A) and uphold that the provisions of section 40(a)(ia) of the Act are attracted only if expenses are claimed in the profit & loss account and not when the same are capitalized.

13. The last addition made in the hands of the assessee was on account of disallowance made under section 14A r.w.r. 8D. The CIT(A) noted that the assessee had made investment only in share application money of Rs. 2.69 Crores as on 31.03.2011 and hence there was no merit in invoking the provisions of section 14A of the Act. We uphold the order of CIT(A) in this regard and dismiss the ground of appeal no. 3 raised by the Revenue.

14. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on <sup>27</sup> ~~27~~ <sup>April</sup> March, 2020.

**Sd/-**

**(B.R.R.KUMAR)**

लेखा सदस्य/ACCOUNTANT MEMBER

दिल्ली / दिनांक Dated : March, 2020

SH

**Sd/-**

**(SUSHMA CHOWLA)**

उपाध्यक्ष/VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण, दिल्ली  
Assistant Registrar, ITAT, Delhi

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