

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.1564/Del./2018
(Assessment Year : 2008-09)**

M/s. Rolax Auto Pvt. Ltd., vs. ITO, Ward 21 (4),
B – 77, Mayapuri Phase – I, New Delhi.
New Delhi – 110 064.

(PAN : AABCR0545D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rajesh Mahna, Advocate
REVENUE BY : Ms. Kirti San Kratyayan, Senior DR

Date of Hearing : 07.09.2021
Date of Order : 24.09.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Rolax Auto Pvt. Limited (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 01.12.2017 passed by the Commissioner of Income - tax (Appeals)-38, New Delhi qua the assessment year 2008-09 on the grounds inter alia that:-

“1. The Ld. Assessing Officer, has erred in law and on facts in passing assessment order u/s 148 / 144 of the Income Tax Act, 1961 without serving notice to the Assessee Company as prescribed in the act. The order which does not comply with the

requirement of Section 147 /148 of Income Tax Act, 1961 is nullity as the order of Assessment was passed U/s 144 of the Income Tax Act, 1961.

2. The Ld. Assessing Officer, erred in law and on facts in passing assessment order u/s 148/144 of the Income Tax Act, 1961 without giving opportunity of being heard to the Assessee. The CIT(A) has further erred in law in partly allowing the appeal but by maintaining substantial additions on account of Sundry Creditor and other grounds.

3. That the CIT (A) failed to appreciate the submissions and production of evidence of transaction w.r.t. Sundry Trade Creditors and maintained the difference in Opening and Closing Balance of suppliers as income of the assessee as Rs.86,71,196/-. The observation and addition are illegal and deserves to be set aside.

4. That, the CIT (A) failed to appreciate the fact that the assessee made donations and paid through cheques to charitable institution and also submitted information of the recipient society and CIT(A) has upheld the addition.

5. Further the CIT (A) erred in law and fact and upholding the addition of Interest Income amounting Rs.70,762/- received from M/s Intec Securities as appearing the Income and Expenditure A/c as part of business income of the Assessee Company.

6. Further the CIT (A) erred in law and fact and partly allowing the appeal of assessee in ignoring the explanation before him and evidences placed on records at the time of hearing before CIT(A).”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of information received through Non-filers Monitoring System of i-taxnet, AO noticed cash transaction exceeding Rs.10,00,000/- during Assessment Year 2008-09, for which assessee has not filed any ITR. Proceedings under section 147/148 of the Income-tax Act, 1961 (for short ‘the Act’) were initiated by issuing a notice u/s 148 of the Act. Due to

non-appearance of the assessee despite service, AO proceeded to frame assessment under section 144 of the Act.

3. Assessee is into manufacturing of auto-parts. AO noticed from the documents available on record that there is an increase in the sundry creditors during the year under assessment to the tune of Rs.86,71,196/-. AO proceeded to make addition thereof on the ground that since detail of sundry creditors has not been filed by the assessee, increase in the sundry creditors has been treated income of the assessee from undisclosed sources. AO also made addition of Rs.70,762/- on account of interest received from M/s. Intec Securities Ltd. on which tax at source has been deducted under section 194A of the Act. Accordingly, AO framed the assessment u/s 148/144 at an income of Rs.1,63,73,063/-.

4. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has partly allowed the same. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1, 2 & 4

6. Ground No.1, 2 & 4 are dismissed having not been pressed during the course of arguments.

GROUND NO.3

7. AO made addition of Rs.86,71,196/- being the income from undisclosed sources on the ground that details of sundry creditors have not been filed by the assessee as there is an increase in the sundry creditors during the year under assessment to the tune of Rs.86,71,196/-. This addition has been upheld by the ld. CIT (A).

8. Ld. AR for the assessee challenging the impugned addition contended that he has supplied complete details of the sundry creditors to the AO as well as ld. CIT (A), which is available at pages 22 to 24 of the paper book, and has also referred to written submission filed with ld. CIT (A), which are available at pages 1 to 14 of the paper book. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR contended that since assessee has been negligent through-out in supplying the details, addition is liable to be confirmed.

9. When we peruse the order passed by the AO which carries the categorical observation made by the AO that, *"It is observed that the assessee is engaged in the manufacturing of auto parts. Copies of the bank statement of the accounts maintained by the assessee*

company are available on record. Copy of 'audited' Balance Sheet, P&L account with Form No.3CD were also obtained. But the authenticity of the audit report could not be established due to paucity of time and moreover, no address of the auditor/CA has been mentioned on the papers signed by the auditor/CA.", the addition has been made on the basis of surmises in haste.

10. Even the findings returned by Id. CIT (A) that, *"In the course of appeal proceedings the appellant has submitted that "...the parties are such where even the confirmation are not readily available being old records..." In this situation there is no choice but to uphold the action of assessing officer. The addition of Rs.,87,71,196/- on account of Sundry Creditors is accordingly confirmed.*" are cryptic and we are unable to comprehend if the issue canvassed before the Id. CIT (A) was discussed and decided in right earnest.

11. In these circumstances, we are of the considered view that when the entire detail was brought on record by the assessee during the first appellate proceedings, though assessee was negligent in appearing before the AO, adequate opportunity of being heard is required to be given to the assessee to decide the issue once for all. Since entire evidence brought on record by the assessee requires initial scrutiny, it would be in the interest of justice to remit this

case to the AO. Consequently, this issue is remitted back to the AO to decide afresh after providing adequate opportunity of being heard to the assessee. So, ground no.3 is determined in favour of the assessee for statistical purposes.

GROUND NO.5

12. AO made addition of Rs.70,762/- after noticing from 26AS details of Individual Transaction statement of the assessee company which shows that assessee received interest of Rs.23,162/- and Rs.47,600/- totaling Rs.70,762/- from M/s. Intec Securities Ltd. on which tax has also been deducted at source u/s 194A of the Act and treated the same as interest income of the assessee. At the same time, ld. CIT (A) decided the issue by returning following findings:-

“5.2.5.1 I have carefully considered the submissions of the appellant and the assessment order on this issue. It is clear that appellant has received interest income from M/s. Intec Securities which should have been offered to tax. However, for reasons which are at variance with the Income Tax Act, 1961, the same has not been offered to tax by appellant. Addition of Rs.70,762/- by AO is accordingly upheld.”

13. Again, ld. AR for the assessee contended that he has brought on record the entire details viz. P&L account with Form 3CD, audited balance sheet, bank statements, which is evident from para 3 of the assessment order, as well as before the ld. CIT(A), but no cognizance has been taken of the documents. Since all these

documents are required to be examined by the AO, this issue is also remitted back to the AO to decide afresh after providing adequate opportunity of being heard to the assessee. So, Ground No.5 is determined in favour of the assessee for statistical purposes.

14. Ground No.6 being general in nature does not require any adjudication.

15. Resultantly, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in open court on this 24th day of September, 2021.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of September, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-38, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**