

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 3473/Del/2017
(for Assessment Year : 2012-13)

DCIT Circle – 4(1) Gurgaon PAN No. APGPS 0640 K (APPELLANT)	Vs.	Sh. Shantanu Bhowmick 45, Espace Sector-50 Nirvana Country Gurgaon (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri H. K. Chaudhary, CIT(DR)

Date of hearing:	02.02.2022
Date of Pronouncement:	04.02.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order dated 16.03.2017 passed by the Commissioner of Income Tax (Appeals)-2, Gurgaon relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual who filed his return of income for A.Y. 2012-13 on 29.09.2012 declaring income of Rs. 65,20,580/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 19.02.2014 and the total income was determined at Rs. 3,97,80,590/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 16.03.2017 in Appeal No.41/2014-15 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now before us and has raised the following grounds:

1. *“Ld. CIT(A) has erred on fact and in law by deleting the disallowance of Rs. 1,83,520/- made under section 14A r.w. section rule 8D of Income Tax/rules.*
2. *Ld. CIT(A) has erred by deleting the disallowance of Rs. 5,71,708/- made by the Assessing Officer on account of Tour & Travelling Expenses.*
3. *Ld. CIT(A) has erred on fact and in law by deleting the difference of gross profit of Rs.2,01,93,190/- as calculated by the Assessing Officer as against the low GP shown by the assessee.*
4. *The Ld. CIT(A) has erred on fact and in law by deleting the addition of Rs. 1,18,61,591/- being undisclosed closing stock.*
5. *That the appellant craves for the permission to add, delete or amend grounds of appeal before or at the time of hearing of appeal.”*

4. On the date of hearing, none appeared on behalf of assessee though as per the office records, the notice intimating the date of hearing was served upon the assessee. The case records further reveal that in the past, the case was adjourned several times for the reason that there was no representation from the side of

assessee. In such a situation, we proceed to dispose of the appeals *ex parte qua* the assessee and after hearing the Learned DR.

5. **Ground No.1** is with respect to the disallowance u/s 14A r.w. Rule 8D.

6. During the course of assessment proceedings, AO noticed that assessee shown investment of Rs. 1,71,02,350/-. The assessee was asked to submit the source of investment and also asked to show-cause as to why disallowance u/s 14A r.w. Rule 8D be not made. Assessee *inter alia* submitted that he has not incurred any expense to earn the exempt income and further assessee has invested own fund and no interest on loan has been debited by the assessee in the Profit and Loss account. The submissions of the assessee was not found acceptable to AO. AO thereafter by following the methodology prescribed under Rule 8D worked out the disallowance u/s 14A r.w. Rule 8D at Rs.1,83,520/-.

7. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) while deleting the addition made by AO has given a finding that no exempt income has been earned by the assessee during the year under consideration and therefore by following the jurisdictional High Court order in the case of **CIT vs. Lakhani Marketing Inc. (Punjab & Haryana High Court), ITA**

No.970 of 2008 (O&M) dated 02.04.2014 deleted the addition. Aggrieved by the order of CIT(A), Revenue is before us.

8. Before us, Learned DR supported the order of AO.

9. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to the disallowance u/s 14A r.w.r 8D. AO by applying Rule 8D r.w Section 14A of the Act made disallowance of Rs.1,83,520/-. CIT(A) by following the decision of Hon'ble Punjab & Haryana High Court in the case of **CIT vs. Lakhani Marketing Inc. (supra)** noted that in the absence of any exempt income no disallowance u/s 14A of the Act is warranted. Before us, Revenue has not pointed to any contrary binding decision in its support nor has pointed to any fallacy in the findings of CIT(A). Thus we find no reason to interfere in the order of CIT(A) in this ground. **Thus the ground of Revenue is dismissed.**

10. **Ground No.2** is with respect to the disallowance of Rs.5,71,708/- on account of Tour & Travelling Expenses.

11. AO noticed that assessee has claimed Rs. 11,43,417/- on account of Tours & Travelling Expenses. AO noted that despite the assessee being asked to furnish the necessary supporting evidences, the same were not furnished by the assessee. AO

accordingly held 50% of the tour & travelling expenses to be not allowable and accordingly made addition of Rs.5,71,708/-.

12. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) deleted the addition made by AO. While deleting the addition, CIT(A) noted that AO has not pointed out any defect in the claim of expenses but had made an ad hoc disallowance of 50%. He has further noted that the assessee had *suo moto* disallowed 25% of the expenses while filing the return of income. He therefore held that since assessee has *suo moto* disallowed 25% of the expenses, no further disallowance was warranted more so when no specific defect has been pointed out by AO.

13. Aggrieved by the order of CIT(A), Revenue is now before us.

14. Before us, Learned DR supported the order of AO.

15. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to the deleting of addition made on account of tours & travelling expenses. We find that CIT(A) while deleting the addition has given a finding that AO had disallowed 50% of expenses on ad hoc basis though the assessee has *suo moto* already disallowed 25% of the expenses while filing the return of income. CIT(A) has further noted that no defect in the claim of

expenses has been found by AO. The aforesaid finding of CIT(A) has not been controverted by Revenue nor any fallacy in the finding of CIT(A) has been pointed by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

16. **Ground Nos. 3 & 4** are interconnected and with respect to the deletion of gross profit of Rs.2,01,93,190/- and Rs.1,18,61,591/- on account of addition to closing stock.

17. During the course of assessment proceedings, AO noted that for the period ended Sep 2011, on the sales of Rs. 5,43,27,604/-, assessee had shown gross profit of Rs. 2,94,49,361/- which works out to 54.20% of sales. He noted that for the period from Oct 2011 to March 2012 on sales of Rs. 4,55,51,974/- assessee has shown gross profit of Rs. 44,97,665/- which works out to 9.87% of sales. Assessee was asked to justify lesser profit in the period Oct to March and also asked to show-cause as to why the profit during that period not be estimated at the rate of gross profit earned in the period ending Sep 2011. AO noted that there was no justification furnished by the assessee. He accordingly, held that the assessee should have earned the profit @ 54.20% in the period Oct to March as against the gross profit @ 9.87% declared by assessee. According to AO, assessee has shown less gross profit to the extent of 44.33% of gross sales. He accordingly

worked out the gross profit for the period at Rs. 2,01,93,190/- and added to the income of the assessee.

18. AO on the analysis of month wise purchase & sales noted that in the month of March, assessee had made purchase of Rs.1,44,53,644/- and sale of Rs. 56,61,687/-. He noted that even after discounting the gross profit which was shown by the assessee @ 33.96% in the audit report, the purchase value of goods sold in the March worked out to Rs. 37,36,713/- and thus according to him there should have been closing stock worth Rs.1,07,16,930/- but assessee had shown no closing stock. Assessee was therefore asked to show-cause as to why an addition of Rs.1,07,16,930/- on account of undisclosed closing stock be not made. AO noted that there was no response from the assessee. He accordingly worked out the value of the closing stock at Rs.1,18,61,591/- and added it to the income of the assessee on account of undisclosed closing stock.

19. Aggrieved by the order of AO, assessee carried the matter before CIT(A).

20. CIT(A) after considering the submissions of the assessee, remand the report from the AO and assessee's response to the remand report, deleted the addition made by AO. While deleting the addition, CIT(A) noted that the assessee is a channel dealer of Arabia Sourcing Professional Software and is authorized to make

sale of web-based software belonging to Arabia. For the services rendered by the assessee, he is entitled to fee as per the agreement entered by the assessee with Arabia Sourcing Professional Software. CIT(A) has further noted that there cannot be closing stock in any web-based software because the software are installed or utilized by the purchaser on instant basis from the web itself after its authorized sale. CIT(A) also noted that in the business of the assessee, there cannot be opening stock as well as closing stock of software, the activity of the assessee are Service Segment, there cannot be any application of Gross Profit ratio because the assessee is being compensated as per Master Agreement. He has further given a finding that the AO without any basis has rejected explanation of the assessee. He accordingly deleted the addition made on account of closing stock as well as the gross profit. Aggrieved by the order of CIT(A), Revenue is now before us.

21. Before us, Learned DR supported the order of AO.

22. We have heard the Learned DR and perused the material available on record. We find that CIT(A) after considering the remand report and assessee's reply to the remand report has deleted the addition and the deletion was based on the finding that in the business of the assessee there cannot be opening stock or closing stock as the assessee was engaged in service segment and was compensated as per Master Agreement entered

by the assessee with Arabia Sourcing Professional Software. CIT(A) has further noted that the commodity in which the assessee could be dealing could not be equated with tangible goods having opening stock and closing stock. He has further noted that the remuneration of the assessee could not be determined only on the basis of actual sale made because the assessee was incapable of producing software of Arabia on its own. Before us, Revenue has not pointed to any fallacy in the findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A) and **thus both the Grounds of Revenue are dismissed.**

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

Order pronounced in the open court on 04.02.2022,

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 04.02.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI