

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.4842/Del/2017
निर्धारणवर्ष/Assessment Year: 2012-13

DCIT Central Circle-II, Faridabad.	बनाम Vs.	A2Z Powercom Ltd. Q-116, DLF Shopping Mall, Arjun Marg, New Delhi.
		PAN No. AAHCA0361N
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Shri Satpal Gulati, CIT DR
निर्धारितकीओरसे /Assessee by	None

सुनवाईकीतारीख/ Date of hearing:	30.12.2022
उद्घोषणाकीतारीख/Pronouncement on	30.03.2022

आदेश /ORDER

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-3, Gurgaon, dated 22.05.2017 for the AY 2012-13.

2. The Revenue has raised the following grounds: -
- i. *“Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in treating the unexplained income deemed to be surrendered u/s 68 of I.T. Act as income from ‘Business or Profession’ even when the assessee itself could*

not explain the source of such an income while recording his statement u/s 132(4).

- ii. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in allowing the set off the business loss of Rs. 13,98,90,298/- during the year under consideration from the deemed income u/s 68 of IT Act against which claim of expenses and any set off of losses is not permissible under I.T. Act and ignoring the findings done by the AO during the assessment proceedings.*
- iii. That the appellant craves leave to add or amend any ground of appeal before the appeal is heard or disposed off.”*

3. In spite of notice, none appeared on behalf of the assessee, nor any adjournment was sought. The Ld. DR submits that hearing notice indicating the date of hearing of appeal AS 30.12.2021 has been served upon the assessee by the Ld. DR through Assessing Officer. Thus, we proceed to dispose off this appeal on hearing the Ld. DR.

4. The Ld. DR submits that there was a search and seizure operation conducted ON 24.04.2012 in the residential as well as business/office premises of A2Z Group. Referring to the assessment order the Ld. DR submits that in the course of search it was found that the assessee was maintaining two versions of financial statements and they were seized. The Ld. DR submits that the documents reflected two versions of working of Revenue of the Company according to AS7. The Ld. DR submits that one version was marked as “For MD” and the other version was marked as “For accounts”. The Ld. DR submits that both these versions reflected

project wise calculation of Revenue as per AS7. The Ld. DR submits that these two documents revealed that there was suppression in total net sales to be booked of Rs. 15,65,53,738/-. When this fact was confronted to promoter of the Company Shri Amit Mittal at the time of recording the statement u/s 132(4), Shri Amit Mittal admitted that the version marked as “For MD” reflects the true financial position of the company while the version marked as “For accounts” was the basis on which the balance sheet was prepared. Ld. DR submits that Shri Amit Mittal also admitted that there is suppression of income on account of difference in Revenue recognized in the above two versions and ultimately Shri Amit Mittal surrendered this income however, since there was a loss in business the assessee has set off the surrendered income of Rs. 15.65 crores against the business loss in the return filed. The Ld. DR submits that the Assessing Officer while completing the assessment added 15.65 crores as deemed income u/s 68 of the Act and further the Assessing Officer did not allow set off of this income against the business loss as claimed by the assessee.

5. The Ld. DR submits that the Ld. CIT(A) held that the amount surrendered by the assessee is nothing but difference in net sales during the year under consideration and, therefore, it constitutes business income of the assessee. Ld. DR submits that since it was held to be business income the Ld. CIT(A) allowed the claim of set off such business

income against the business loss of the assessee. The Ld. DR strongly supported the orders of the Assessing Officer.

6. Heard the submissions of the DR and perused the orders of the authorities below. On perusal of the assessment order, we find that there was a search in the case of A2Z Group and in the course of search it was found that assessee was maintaining two sets off books of accounts. When it was confronted with Shri Amit Mittal, the promoter of the Company, he accepted that there were two sets off books of accounts and accordingly he surrendered the suppression of sales to the tune of Rs. 15,65,53,738/-. This amount was considered as deemed income u/s 68 by the AO while computing the assessment. He also did not allow set off of loss against this income which was surrendered by the assessee. The Ld. CIT(A) held that the assessee company offered this amount which is nothing but difference in net sales made during the current assessment year and it constitutes business income falling under the head "Business or Profession". He also allowed set off of loss against this income surrendered by the assessee. On perusal of the assessment order it is clear that assessee was maintaining two sets off books of account which are all related to the business of the assessee and they are maintained as per AS7. It is also not in the dispute that this income which was surrendered is nothing but difference in net sales as per these two set off books of account. In the circumstances, the income surrendered by the assessee is nothing but suppression in net sales and is assessable under th

head income from business and cannot be treated as deemed income u/s 68 of the Act. The Ld. CIT(A) has rightly held that this income is assessable under the head "Income from Business or Profession". Once this is assessed as business income the assessee is entitled for set off this income against loss. Thus, we uphold the order of the Ld. CIT(A) and reject the grounds raised by the Revenue.

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

Order pronounced in the open court on 30/03/2022

Sd/-
(G.S. PANNU)
PRESIDENT

Dated: 30/03/2022

**Kavita Arora, Sr. P.S.*

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi