

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No. 116/DEL/2021 [A.Y. 2016-17]

M/s Inch Automation Pvt Ltd  
Plot No. 164, Sector -6, IMT,  
Manesar, Guragon

Vs.

The Dy. C.I.T  
Circle 2(1),  
Gurgaon.

PAN : AAICM 1149 D

(Applicant)

(Respondent)

Assessee By : Shri Amrin Pathan, CA

Department By : Ms. Anupama Singla, Sr. DR

Date of Hearing : 13.06.2022

Date of Pronouncement : 13.06.2022

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the Id.  
CIT(A) - 2, Gurgaon dated 18.02.2020 pertaining to Assessment Year  
2016-17.

2. The grievances of the assessee read as under:

1. That the CIT(A) erred in dismissing the appeal of the appellant without affording proper opportunity in the facts and circumstances of the appellant.
2. That the CIT(A) erred in dismissing the appeal without proper service of notice in either physical mode or to principal contact given on portal or email given in Form 35 submitted to him. He has served notice only to secondary contact who was not in contact with the appellant company at that point of time.
3. That the CIT(A) erred in dismissing the appeal ex-parte without appreciating that provisions of Section 68 was not applicable in the fact & circumstances of appellant.
4. That the CIT(A) erred in dismissing the appeal ex-parte without appreciating that share were issued to existing nonresident shareholder who has brought foreign direct investment after taking proper approval from Reserve Bank of India and provisions of Section 68 are not strictly applicable in the fact & circumstances of appellant.
5. That the CIT(A) erred in upholding addition in respect receipt of share capital of Rs. 6,60,000/- and share premium of Rs. 3,29.34,000/- from existing nonresident shareholder after accepting that valuation of share premium was correct. He has wrongly observed that appellant has not proved genuines and

creditworthiness of the transaction despite of the fact that in the company, investor already have 50% of shareholding.

6. That the CIT(A) erred in upholding the addition in respect receipt of share capital of Rs. 6,60,000/- and share premium of Rs. 3,29.34,000/- from existing nonresident shareholder without appreciating that AO has not made any independent enquiry to ascertain the creditworthiness of existing shareholder before making addition u/s 68 of the Act. He has also failed to appreciate the proviso of Section 68 in respect of non-resident investor.
7. That the CIT(A) erred in upholding the addition in respect receipt of share capital of Rs. 6,60,000/- and share premium of Rs. 3,29.34,000/- from existing nonresident shareholder without appreciating that no doubt was raised the earlier receipt of share capital from same shareholder in 2012 and accepted the corporate entity of the appellant on the basis of shareholding of the same nonresident shareholder.
8. That the CIT(A) erred in ignoring the wrong computation of tax payable on the basis of addition made in assessment order. He fails to appreciate that total addition made by AO in assessment order is Rs. 3,35,94,000 whereas while computing the tax it was taken as Rs.6,71,88,000 which resulted in double tax liability.

9. That the CIT(A) erred in ignoring the wrong computation of surcharge, cess and interest u/s 234B of the Act without appreciating that same was computed on wrong tax payable.
  10. That each grounds mentioned hereinabove are independent and without prejudice to each other.
  11. That the Appellant craves leave to alter, amend, modify, delete, vary and/or add any grounds of appeal at any time hereinafter."
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3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee company has received share capital of Rs. 6.60 lakhs from its foreign director at a premium of Rs. 3,29,34,000/-.
  4. The assessee was asked to explain the transaction in light of provisions of section 68 of the Act.
  5. The assessee furnished valuation report and necessary evidences in support of share premium.

6. The Assessing Officer was not satisfied with the explanation of the assessee. The Assessing Officer was of the opinion that the assessee has failed to establish the genuineness and credit worthiness of the investor and proceeded by making an addition of Rs. 3,35,94,800/-

7. The assessee carried the matter before the ld. CIT(A) but for some reason, could not attend the proceedings before the appellate authority.

8. Referring to the decision of the Hon'ble Supreme Court in the case of B.N. Bhattachargee and Others 118 ITR 461, the ld. CIT(A) observed that the assessee is not interested in pursuing its appeal and went on to confirm the addition made by the Assessing Officer.

9. Before us, the ld. counsel for the assessee vehemently stated that the assessee has furnished all necessary evidences in support of genuineness of transaction. It is the say of the ld. counsel for the assessee that the assessee has also furnished details regarding capacity of foreign director to make the impugned payment.

10. Per contra, the ld. DR fairly stated that the ld. CIT(A) has not examined any evidence but has confirmed the assessment.

11. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that none appeared before the ld. CIT(A) who was convinced that the assessee did not want to pursue the appeal and, therefore, drew support from the decision of the Hon'ble Supreme Court in the case of B.N. Bhattachargee and Other [supra].

12. We are of the considered view that the first appellate authority ought to have considered the documentary evidence brought on record by the assessee. Therefore, in the interest of justice and fair play, we deem it fit to restore the appeal to the file of the CIT(A). The ld. CIT(A) is directed to decide the appeal afresh after affording reasonable and sufficient opportunity of being heard to the assessee.

15. In the result, the appeal of the assessee in ITA No. 116/DEL/2021 is allowed for statistical purposes.

The order is pronounced in the open court on 13.06.2022 in the presence of both the rival representatives.

Sd/-

**[YOGESH KUMAR U.S.]**  
**JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 13<sup>th</sup> June, 2022.

VL/

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

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| Date of dictation   |  |
| Date on which the typed draft is placed before the dictating Member                   |  |
| Date on which the typed draft is placed before the Other Member                       |  |
| Date on which the approved draft comes to the Sr.PS/PS                                |  |
| Date on which the fair order is placed before the Dictating Member for pronouncement  |  |
| Date on which the fair order comes back to the Sr.PS/PS                               |  |
| Date on which the final order is uploaded on the website of ITAT                      |  |
| Date on which the file goes to the Bench Clerk  |  |
| Date on which the file goes to the Head Clerk   |  |
| The date on which the file goes to the Assistant Registrar for signature on the order |  |
| Date of dispatch of the Order   |  |