

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**

**(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.5236/Del/2017, A.Y. 2014-15

ACIT, Circle-2 (2), New Delhi	Vs.	M/s. Amzen Machines Pvt. Ltd. Unit No. 724, 7 <sup>th</sup> Floor, DLF Tower-B, Jasola, New Delhi-110044
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	None
Revenue by	Shri T. Kipgen, CIT- DR

Date of hearing:	18.08.2022
Date of Pronouncement:	18.08.2022

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been filed by the Revenue against order dated 03.05.2017 in appeal no. 473/16-17 for the assessment year 2014-15 passed by Commissioner of Income Tax (Appeals)-1, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 23.03.2016 u/s

143(3) of the Income Tax Act, 1961 passed by DCIT, Circle-2(2), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The assessee had filed return of income declaring nil income with loss of Rs. 23,60,88,654/- and the case was selected for scrutiny. The assessee company is engaged in the business of manufacturing of auto-mobile and auto-parts. It also carries out sales and job work. The Ld. AO observed that funds were received by the company from corporate shares subscribers and considered the same to be unexplained cash credits had made an addition u/s 68 of the Act. Ld. CIT(A), however had set aside the addition. Further, Ld. AO had disallowed set off of unobserved depreciation and the same was also set aside.

3. The Revenue is now in appeal raising following grounds :-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs. 57,59,99,840/- made by the AO u/s 68 of the Income Tax Act, 1961 on account of unexplained share capital and share premium money.*

2. *On the facts and in the circumstances of the case the Ld. CIT(A) has erred in not confronting the AO, before considering the additional evidences submitted by the assessee as it amounts to violation of Rule 46A of I. T. Rules 1962.*

3. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

4. Heard and perused the records.

5. At the time of hearing, non-appeared on behalf of the assessee and the record shows that after institution of the appeal, when it was listed on 18.01.2021 since then none has appeared for the assessee and notices were issued repeatedly. Now a report is submitted on behalf of the revenue, through which notices were issued to be served, that when the Inspector of the office of Deputy Commissioner of Income Tax, Circle 1(1), New Delhi went to serve the notices at the address of company, no company was found at the given address. So no further notice is required.

6. Arguments of Ld. CIT-DR were heard who submitted that Ld. CIT(A) has fallen in error in allowing the appeal of assessee against assessment order by admitting evidence beyond the provisions of Rule 46A of the IT Rules, 1962.

7. It can be observed from the matter on record that in relevant para no. 9 Of its order the Ld. CIT(A) has mentioned specifically that during the appeal the assessee had brought on record, evidence explaining the source and source of source from which the assessee received the funds for his alleged expansion of business activities. While, the assessment order show that Ld. AO observed that the assessee could not provide any satisfactory explanation regarding identity, genuineness and creditworthiness of the sources and in spite of his efforts u/s 131 of the Act, the source could not be verified.

8. In the light of aforesaid, the Bench is of firm view that when the Ld. CIT(A) has taken on record, the evidences of facts, which need verification and no recourse is as such specifically taken under Rule 46A of the IT Rules, 1962 and the Assessing Officer was required to be given an opportunity to

verify the evidences brought in appeal. Accordingly, the Ld. CIT(A) has fallen in error in not doing so.

9. Consequently, the ground no. 2 is allowed and the issue as a whole is restored to the files of Ld. CIT(A) to give opportunity to the Ld. AO by calling for a remand report on the additional evidences and pass afresh order. The appeal is accordingly allowed for statistical purposes.

**Order pronounced in the open court on 18 August, 2022.**

**Sd/-**  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

*Date:- 18.08.2022*

**\*Binita, SR.P.S\***

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI