

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No. 6960/Del/2018
(Assessment Year : 2012-13)

ITO Ward – 16(4) New Delhi PAN No. AABCM 4732 D (APPELLANT)	Vs.	Metal Tech Motors (Pvt.) Ltd., A-50, Road No.4, Mahipalpur Extn. New Delhi-110 037 (RESPONDENT)
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Assessee by	Shri Umang Sahai Aggarwal, Adv.
Revenue by	Shri Vipul Kashyap, Sr. D.R.

Date of hearing:	25.08.2022
Date of Pronouncement:	31.08.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 09.07.2018 passed by the Commissioner of Income Tax (Appeals)-33, New Delhi relating to Assessment Year 2012-13.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of Automobile Dealership and service centers and also authorized

dealer of Swaraj Majda Automobile. Assessee filed its return of income for A.Y. 2012-13 on 29.03.2013 declaring income of Rs.10,59,100/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 24.03.2015 determining the total income at Rs.1,83,66,960/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 09.07.2018 in Appeal No.196/16-17 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *The Ld CIT(A) has erred in reducing the addition on account of difference in receipt as per 26AS and return of Income to Rs.27,000/- from Rs.2,70,000/- and deleting the addition of Rs.2,43,000/-.*
2. *The Ld CIT(A) has erred in deleting ad-hoc disallowance of certain expenses amounting to Rs.4,92,180/-.*
3. *The Ld CIT(A) erred in treating the interest on FDR as income from business instead of income from other sources.*
4. *The Ld CIT(A) erred in deleting the addition of Rs.95,64,000/- on account of share premium u/s 68.*
5. *The Ld CIT(A) erred in deleting the addition of Rs.58,01,000/- on account of unsecured loans u/s 68.*
6. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

4. **Ground No.1** is with respect to the reducing the addition on account of difference in receipt and return of income to Rs.27,000/-.

5. During the course of assessment proceedings, AO noticed that as per the return of income, assessee had claimed TDS of

Rs.4,59,856/- whereas as per 26AS the amount of TDS was Rs.4,65,256/- resulting to a difference of Rs.5400/-. The assessee was asked to reconcile the difference and submit a reconciliation statement. AO noted that assessee did not reconcile the difference but only submitted a copy of form 26AS. AO noted that assessee was generally getting income from service charges on which TDS was deducted @2%. He thereafter applying the applicable rate of TDS to be 2% worked out the income to be Rs.2,70,000/- in respect of the difference of TDS of Rs.5,400/-. He thus treated the sum of Rs.2,70,000/- as being not accounted by the assessee as income and made its addition.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) after considering the submissions of the assessee noted that the entire turnover cannot be considered income of the assessee but the only income embedded in the turnover can be taxed. In the absence of necessary details, CIT(A) considered the gross profit @ 10% on Rs.2,70,000/- and accordingly granted relief to the extent of Rs.27,000/- and upheld the addition of balance Rs.2,43,000/-. Aggrieved by the order of CIT(A), Revenue is now before us.

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

8. On the other hand, Learned AR reiterated the submissions before the lower authorities and supported the order of CIT(A).

8. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the relief of income granted by CIT(A). We find that CIT(A) after considering the totality of the facts had presumed the gross profit on the estimated turnover of Rs.2,70,000/- at 10% and accordingly, confirmed the addition of Rs.27,000/- and granted relief of the balance amount. Before us, Revenue could not point out 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 the ground of Revenue is dismissed.**

9. **Ground No.2** is with respect to deleting the ad-hoc disallowance of certain expenses amounting to Rs.4,92,180/-.

10. During the course of assessment proceedings, AO notice that assessee debited various expenses in the Profit and Loss account on account of Sales Promotions, business development/promotion expenses, staff welfare expenses etc. On verification of the bills and vouchers, he was of the view that there was a probability that the assessee has debited some personal expenses and the personal elements cannot be ruled out. He accordingly considered 10% of the total expenses aggregating to Rs.49,21,788/- to be not allowable on account of personal use and accordingly made its additions.

11. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) while deleting the addition noted that AO has failed to point out any item of expenditure which was personal in nature and the disallowance has been made without any material on record to support the contentions of the expenses being personal in nature. He accordingly deleted the addition. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

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

13. On the other hand, Learned AR supported the order of CIT(A).

14. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of 10% of expenditure by holding it to be personal in nature. We find that the disallowance has been made by AO at 10% on ad-hoc basis by holding the expenditure to be personal in nature. We find that CIT(A) while deleting the addition has noted that AO has not placed any material on record to support its contention about the expenditure being personal in nature. Considering the totality of the facts and in the absence of any proof of expenditure to be personal in nature and in the absence of any fallacy being pointed

by Revenue, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

15. **Ground No.3** is with respect to treating the interest on FDR as income from business instead of income from other sources.

16. During the course of assessment proceedings, AO noticed that assessee received a sum of Rs.3,23,815/- as interest on FDR which was reflected under the head "Income from Business or Profession". AO was of the view that interest income was chargeable under the head "Income from Other Source". He accordingly considered it to be an income from other sources.

17. Aggrieved by the order of AO, assessee carried the matter before CIT(A). Before CIT(A), it was *inter alia* submitted that the interest income earned from the FDR was from the FDRs which had been taken by the assessee for providing the bank guarantee, to avail of bank limit for the purpose of business. After considering the submissions of the assessee, CIT(A) noted that AO has not placed any material on record to demonstrate that the FDRs taken by the assessee was not for the purpose of guarantee and for the purpose of business. He therefore, held the change of head made by AO to be not sustainable and accordingly allowed the ground of assessee. Aggrieved by the order of CIT(A), Revenue is now before us.

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

19. Learned AR on the other hand supported the order of lower authorities.

20. We have heard the rival submissions and perused the material available on record. We find that before CIT(A) it was *inter alia* submitted that the interest was earned from the fixed deposits which assessee was required to take for obtaining bank guarantees for the purpose of working capital and for the purpose of business. Before us, Revenue has not placed on record any material to controvert the findings of CIT(A). We therefore find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

21. **Ground No.4 & 5** are interconnected and considered together and is with respect to the deletion of addition made u/s 68 of the Act.

22. During the course of assessment proceedings, AO noticed that assessee had issued 2,39,100 equity shares of Rs.10/- each at Share Premium of Rs.40/- per share and had thus collected Rs.95,64,000/- on account of share premium. AO noted that assessee was asked to furnish complete details of the applicants who applied for the shares and justify the receipt of premium. AO noted that assessee had only furnished the list of applicants who

had applied for shares and number of shares applied, allotted to them but had not furnished the complete postal addresses of the share applicant nor had furnished their ITR and bank accounts to prove their creditworthiness. AO therefore held that the assessee could not prove the identity and creditworthiness of the investors. He accordingly, treated the share premium account aggregating to Rs.95,64,000/- as income from undisclosed sources and made its additions u/s 68 of the Act.

23. AO also noted that assessee had also received unsecured loans of Rs.58,01,000/-. AO noted that assessee did not furnish the complete postal address of the lender to prove the identity and nor had produced the copy of their ITRs and bank accounts. He accordingly treated the sum of Rs.58,01,000/- to be income from undisclosed sources and made its addition u/s 68 of the Act.

24. 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 with respect to Rs.58,01,000/- being the loan, CIT(A) after considering the submissions of the assessee, remand the report received from the AO and the assessee's reply to the remand report noted that out of the addition of Rs.58,01,000/-, Rs.27,69,000/- was old loan and only fresh loan of Rs.30,32,000/- was received during the year from the Directors of the Company and their family members. He has further noted

that before him, assessee had furnished additional evidences in the form of ledger accounts of the lenders, their confirmations, full postal addresses along with the PAN No. He has further noted that in the remand report AO has not commented adversely on the genuineness of the lenders and the confirmation letters. He further noted that the unsecured loans were obtained from the Directors of the Company and their family members who are assessed to tax and thus the assessee had thus discharged the burden of proof cast on it. He accordingly, deleted the addition of Rs.58,01,000/-.

25. With respect to the addition on account of share application money, CIT(A) noted that assessee had filed additional evidences in the form of Balance sheet, copy of ledger account, confirmation of the share applicants and which was also forwarded to AO for his comments but no adverse comments have been made by AO. He has further noted that the shares were allotted to the persons against the share applicant money pending allotment received in earlier financial years. He has further given a findings that newly inserted provisions of 56(2)(viib) of the Act which is inserted by Finance Act, 2012 w.e.f 01.04.2013 was not applicable for the year under consideration. He accordingly deleted the addition of Rs.95,64,000/-.

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

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

28. Learned AR on the other hand reiterated the submissions made before the CIT(A) and supported his order.

29. We have heard the rival submissions and perused the material available on record. The issue in the present appeal is with respect to the addition made by AO on account of share premium and loans but deleted by CIT(A). We find that CIT(A) after considering the additional evidences submitted by assessee, the comments of the AO on the additional evidences and with respect to share premium has given a finding that share application money was not received in the year under consideration and but was received in the earlier financial year but only the allotment was done in the year under consideration. He has further given a finding that all the share allottees have been identified and creditworthiness has been proved.

30. With respect to the addition on account of loan, we find that CIT(A) after considering the material on record given a finding that out of the total addition of Rs.58,01,000/-, Rs.30,32,000/- was new loan received by the assessee, the loan was received from the Directors who are tax payer, their identities have been proved as they have given their confirmation along with the postal address and PAN No. Before us, no fallacy in the findings of

CIT(A) has been pointed out by Revenue. We therefore find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

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

Order pronounced in the open court on 31.08.2022

Sd/-

**(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 31.08.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI