

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA.No.3278/Del./2017  
Assessment Year 2012-13

Income Tax Officer Ward-1(3) New Delhi	vs.	Accentor Infotech Pvt Ltd., 14 B, First Floor, Rohtak Road, Delhi 110026 PAN AAKCA0931F
(Appellant)		(Respondent)

For Revenue :	Shri Kanv Bali, Sr.DR
For Assessee :	None

Date of Hearing :	28.11.2022
Date of Pronouncement :	17.01.2023

**ORDER**

**PER ANIL CHATURVEDI, A.M. :**

This appeal filed by the Revenue is directed against the Order of the Ld. CIT(A)-1, New Delhi, dated 23.03.2017 in Appeal No.449/14-15 relating to the A.Y. 2012-13.

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

2.1. Assessee is a company who electronically filed its return of income for A.Y. 2012-13 on 27.09.2012 declaring loss of Rs. 65,539/-. The case of the assessee company was selected for scrutiny and thereafter, assessment was framed under section 143(3) of the I.T. Act, 1961, determining the total income of Rs. 7,95,30,000/-

2.2. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 23.03.2017 in Appeal No. 449/14-15 granted partial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal and has raised the following grounds:-

1. *Deleting the addition of Rs. 7,95,30,000/- made u/s. 68 of the IT Act, 1961 being non genuine/unexplained share capital/share premium introduced in the same of 9 shell companies.*

*2. 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. The case file reveals that the matter was listed for the first time on 3<sup>rd</sup> Feb 2021 but the same was adjourned as none was present on behalf of the assessee. Thereafter the matter was listed on various dates but on all those dates the matter was adjourned on account of non appearance of the assessee or any adjournment application from its side. The case file also reveals the notices sent through RPAD have also been returned undelivered by postal authorities with the remarks that “left”. The notice for hearing sent through the Revenue authorities could not be served on the assessee due to the non availability of the assessee at the address available on records. Assessee has not filed any document informing the change of address. In the absence of any co-operation from the side of the assessee in helping to decide the appeal, we don't find any reason to keep the matter pending before us. Considering the aforesaid facts, we have

no option except to dispose of the appeal on merits, after hearing the Ld. D.R.

5. During the course of assessment proceedings A.O. noticed that assessee had issued 19,08,825 shares having a face value of Rs.10 at a premium of Rs. 390/- each. The A.O. issued a letter u/s. 133(6) for verification to the persons who had invested the shares at premium (the list of which is tabulated at page 2 and 3 of the order). The A.O. has noted that assessee was asked to produce the directors of the company who had invested in the assessee company. The A.O. noted there was no compliance by the assessee. On the basis of the notices issued u/s. 133(6), A.O. noted that in case of some of the companies, the letters were received back unserved with the comment of the postal authorities that no company with such name existed at that the given address. In few of the cases no reply were received and in case of two companies A.O. noted that the annual income of the investor companies was around of Rs. 3000/- . The A.O. therefore for the detailed reasons noted in the order held that assessee had failed to prove the identity of

the creditor, credit capacity of the creditors to advance money and the genuineness of the transaction. He therefore, following the decisions cited in his order, held the aggregating amount of Rs. 7,95,30,000/- received by the assessee as share capital to be unexplained cash credit to u/s. 68 and made its addition. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who decided the issue in favour of the assessee by directing the deletion of addition made by AO. Aggrieved by the order of CIT(A), Revenue is now before us.

6. Before us, Ld. D.R. took us through the order of A.O. and further pointed out that during the course of appellate proceedings before the CIT(A), CIT(A) had called for remand report (which is reproduced by CIT(A) in his order from page 11 to 17). From the extract of remand report, he pointed to the fact that A.O. in case of each of the investor companies had noted that the investor companies were having minimal income and did not have the capacity to invest. He further pointed out that the required evidences to justify the credits were also not furnished by those

companies. He therefore submitted in such a situation the A.O. was fully justified in making the addition and Ld. CIT(A) has erred in deleting the addition. Ld. D.R. also placed reliance on the decision in the case NRA Steel [2019] 218 ITR 161 (SC), the decision of Delhi High Court in the case of Indus Valley Promoters Ltd. 305 ITR 202, Nova Promoters & Finlease (P) Ltd. 342 ITR 169 (Delhi High Court), Precision Finance Pvt. Ltd. 208 ITR 465 (Calcutta High Court) and Swati Bajaj 139 taxmann.com 352 (Calcutta High Court).

7. We have heard the Ld. DR and perused the material on record. The issue in the present ground is with respect to addition u/s. 68 of the Act, on account of share premium by 9 investor companies that was made by AO but deleted by CIT(A).

8. AO in the assessment order has noted that the notices sent by him calling for the information from the investors was returned undelivered by the postal authorities with the remark that no company existed at the given address. We find that AO vide para 6 of his order has

analysed the bank statements of the investor companies and after analysing the pattern of deposits/withdrawals concluded that the bank accounts revealed a peculiar pattern namely heavy deposits, immediate heavy withdrawals of nearly equal amount and negligible balance in the bank accounts. He had further concluded that multiple layering was done in the bank account before the amount finally reached the assessee's bank account. AO vide para 7 of the order has noted that assessee had also offered the investments made by the share applicants to be added to the taxable income. When the matter was carried before the CIT(A), CIT(A) had called for the remand report from the AO.

9. We find that CIT(A) has not considered the observation made by A.O. in the remand report and he for the reasons stated in the order has deleted the addition. In such a situation we are of the view that the matter needs to be restored back to CIT(A) for re-adjudication. We therefore restore the issue back to CIT(A) and direct him to decide the issue afresh after considering the observations made by

A.O. in the remand report, the submissions of the assessee if any and in accordance with law. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties. Thus the **ground of Revenue is allowed for statistical purposes.**

**10. In the result, appeal of the Revenue is allowed for statistical purposes.**

Order pronounced in the open Court on 17.01.2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 17<sup>th</sup> January 2023.  
NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.