

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITAs No.2965 & 2966/Del/2019
Assessment Year: 2013-14

ACIT,
Central Circle-20,
New Delhi.

Vs. Alchemist Aviation Pvt. Ltd.,
Sonari Airport,
PO Sonari, Jamshedpur,
Jharkhand – 831011.

PAN: AABCT2688P

CO No.133/Del/2022
(ITAs No.2965/Del/2019)
Assessment Year: 2013-14

Alchemist Aviation Pvt. Ltd.,
Sonari Airport,
PO Sonari, Jamshedpur,
Jharkhand – 831011.

Vs. ACIT,
Central Circle-20,
New Delhi

PAN: AABCT2688P

(Appellant)

(Respondent)

Assessee by	:	Shri R.S. Singhvi, Advocate & Shri Satyajit Goel, Advocate
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	08.02.2023
Date of Pronouncement	:	21.02.2023

ORDER

PER C.M. GARG, JM:

These appeals filed by the assessee are directed against the separate orders dated 17.01.2019 of the CIT(A)-27, New Delhi, relating to Assessment Year 2013-14.

The CO filed by the assessee is against the appeal of the assessee in 2965/Del/2019

which has been filed against the order of the CIT(A) dated 17.01.2019 passed u/s 144 of the Income-tax Act, 1961 (for short, 'the Act')

2. Ground No.3 of the assessee is general in nature which requires no adjudication. The remaining effective grounds No.1 and 2 of the assessee read as follows:-

"1. Whether in law and on facts of the case Id. CIT(A) has erred in allowing relief in respect of addition of Rs.2,09,56,752/- on account of unexplained cash credit u/s 68 of Income Tax Act, 1961.

2. Whether in law and on facts of the case the Id.CIT(A) has erred

(i) In allowing relief in respect of net profit of Rs.8,43,809/- estimated at 8% by the AO as against 5% admitted by the assessee & disallowance of loss of 3,99,84,206/- after rejecting books of accounts which have been restricted to Rs.1,80,85,675/- being 40% of total expenses by Id.CIT(A)."

3. Apropos ground No.1, the Id. Sr. DR, supporting the assessment order, submitted that the assessee failed to discharge the onus explaining the increase of Rs.2,09,56,752/- in the unsecured loan amounts, therefore, the AO rightly treated the difference of amount of unsecured loan as unexplained cash credit u/s 68 of the Act and added to the total income of the assessee. The Id.CIT-DR submitted that the Id.CIT(A) has granted relief to the assessee without any basis, therefore, the impugned first appellate order may kindly be set aside by restoring that of the AO.

4. Replying to the above, the Id. Assessee's representative (Id. AR) drew our attention to summary of loan taken by the assessee from M/s KDS Corporation Pvt. Ltd. (KDSCPL) from AY 2011-12 to 2015-16 and submitted that it is a continuous loan account with the said entity with the assessee and neither in the earlier assessment years nor in the subsequent assessment years the AO has not made any addition

accepting the genuineness of the loan transactions of the assessee with KDSCPL and the AO only disputed the transaction in AY 2013-14 which was rightly deleted by the Id.CIT(A). The Id. AR submitted that in para 9.2, the Id.CIT(A) has dealt with the issue in detail and, thereafter, concluded that even during the search no evidences of any bogus loan leading to addition u/s 68 of the Act on account of unsecured loan from KDSCPL has been found which is an existing assessee filing its return of income. Therefore, the Id.CIT(A) was right in deleting the addition. Therefore, the ground of the Revenue on this issue may kindly be dismissed.

5. On careful consideration of the above rival arguments, we are of the considered view that the AO merely made addition of difference of opening balance of unsecured loan and closing balance of unsecured loan and this issue is revolving around the unsecured loan account of the assessee with KDSCPL entity. It is no a case of the AO that the assessee has taken bogus loan leading to invoking of section 68 of the Act and the loans from same entity has been treated as genuine in the preceding and succeeding assessment years, then the addition made by the AO u/s 68 of the Act has no legs to stand on the touchstone of provisions of section 68 of the Act. We also note that all required elements such as identity and credit worthiness of lender as well as genuineness of the transaction has been satisfied by the assessee then the loan received by the assessee during the relevant financial period cannot be treated as bogus or sham or non-genuine. Therefore, the Id.CIT(A) was right in deleting the addition on this count. Accordingly, ground No.1 of the Revenue being bereft of merit is dismissed.

6. Apropos ground No.2, the Id. Sr. DR submitted that the Id.CIT(A) has erred in allowing relief in respect of net profit of Rs.8,43,809/- estimated at 8% by the AO estimated @ 8% of the total receipts/turnover as 5% admitted by the assessee. The Id. Sr. DR also pointed out that the AO has made disallowance of loss after rejecting books of accounts which have been restricted to Rs.1,80,85,675/- being 40% of total expenses by the assessee without any justified reason and basis. Therefore, the order of the AO may kindly be upheld setting aside the first appellate order on this count.

7. Replying to the above, the Id. AR submitted that in the assessment order passed u/s 144 r.w. section 145(3) of the Act, the AO disallowed loss of Rs.3,99,84,206/- and estimated the income of Rs.8,43,809/- being 5% of the turnover/gross receipts without any basis which was rightly deleted by the Id.CIT(A) as there was no requirement of rejection of books of account of the assessee and estimating of profit. The Id. AR submitted that however, the disallowance of 40% of the total expenses claimed by the assessee is very excessive as against the 20% made by the AO himself in the preceding and succeeding assessment years, but, the assessee, to buy peace of mind, is not disputing the same. The Id. AR also pointed out that the Id.CIT(A) while dealing with grounds No.2 and 3, rightly held that there was nothing abnormal in the year under consideration to conclude that this year had abnormal claim of expenses except normal business fluctuations. The Id. AR submitted that the Id.CIT(A) has covered all possible leakage of Revenue by disallowing 40% of total expenses. Therefore, no interference is called for in the findings of the Id.CIT(A) in this regard.

8. On careful consideration of the above rival arguments, we observe that the Id.CIT(A) has decided grounds No.2 and 3 of the assessee with the following observations and findings:-

"8.2 The details of revenue and expenses collated by the appellant for the years assessed u/s 153C shows that there is not much change in the pattern of revenue and expenses over these years. The deferred revenue expenses from the year under consideration have been claimed in the P & L account instead of being deferred, resulting in more loss from the AY under consideration onwards. Further the expenses disallowed in the 153C assessments as percentage of total expenses after GP for the proceeding & succeeding years have been perused. These were in the range of 12.77% to 20.46%. The disallowance of expenses for the year under consideration, on the principle of expenses disallowed in proceeding & succeeding years work out at Rs 64,93,472/- which is 14.36% of total expenses claimed after GP. The assessment was initially completed u/s 144 due to non compliance by the appellant and in the later assessment u/s 153C for this year, the decision taken in assessment u/s 144 was repeated (copy pasted the order). There is nothing abnormal in the year under consideration to conclude this year had abnormal claim of expenses except normal business fluctuations. The AO was right in estimating the profits in the absence of compliance from the appellant, but there was no basis adopted for estimation of income u/s 144. The various courts have held that best judgment assessment must be reasonable, real and on sound basis. There should be proper application of mind to ascertain the probable profits of the appellant. Although at the time of making assessment u/s 144, the AO did not had any reference of assessed profits, but at the time of making assessment u/s 153C, he had the assessed profits of preceding and succeeding years apart from the findings of material found during the search on the group. Probably the AO could not have disturbed the decision made u/s 144, being subjudice at that time, but AO should have utilised the opportunity to examine the books/documents etc during the remand report proceedings. The AO opted to comment on the basis of assessment made u/s 144 instead of determining the exact position based on records. In these circumstances, I am left with no alternative but to decide the issue on the basis of available data. The estimation made by the AO in the assessment u/s 144 had no basis, but now the reasonable basis of estimation of income can be the assessments completed u/s 153C in preceding and subsequent years. There are not much extraordinary items in P & L account for the 5 years data collated & submitted by the appellant. The disallowances across all these years except the year under consideration are of similar nature & made on same principle under three heads u/s 153C assessments. These disallowances work out to be in the range of 12.77% to 20.77%. There is no material on record found during search to suggest

that expense disallowance would be much more in this year compared to preceding and succeeding years. Considering the non verification of expenses, the best estimation in the interest of revenue can be to disallow 40% of the total expenses (appx. 100% more than the highest disallowed). Thus on the basis of assessments completed u/s 153C in preceding and succeeding AY's, disallowance of expenses @40% of total expenses amounting to Rsl,80,85,675/- is estimated instead of estimation of 8% of net profit assessed by the AO. Without prejudice to it, the AO had not given effect of brought forward business losses while estimating the income of the appellant. The set of losses of current year against any income may be given as per law. The final assessed business loss will not allowed to be carried forward as there is substantial change in management & control of the company."

9. In view of the above findings recorded by the Id.CIT(A) and after considering the rival submissions of both the sides, first of all we are in agreement with the conclusion drawn by the Id.CIT(A) that the AO was right in estimating the profits in absence of compliance from the assessee, but, there was no basis adopted for estimation of income u/s 144 of the Act @ 8% of total receipts/turnover. Thereafter, the Id.CIT(A) noted that the best judgement must be reasonable and on sound basis based on proper application of mind to ascertain the probable profits of the assessee. The Id.CIT(A) held that the estimation made by the AO in the assessment u/s 144 had no basis, but the reasonable basis of estimation of income can be the assessments completed u/s 153C of the Act for the preceding and subsequent assessment years. The Id.CIT(A), after being satisfied with the disallowances made during the earlier and subsequent assessment years, held that the disallowances worked out to be in the range of 12.77% to 20.77% and there was no material on record found during the search to suggest that the disallowance would be much more in the year under consideration compared to preceding and succeeding assessment years. Thereafter, the Id.CIT(A) considered the factum of non-verification of expenses and applied his wisdom based estimation of disallowance keeping in view the interest of the Revenue

and covering of all possible leakage of revenue and disallowed 40% of total expenses which is almost double of the disallowance of 20.77% in the case of the assessee. On careful consideration of basis taken by the AO and observations and findings arrived at by the Id.CIT(A), we are of the view that the Id.CIT(A) was right in disallowing the expenses @ 40% of the total expenses amounting to Rs.1,80,85,675/- setting aside the estimation of net profit @ 8% of gross receipts which was calculated by the AO at Rs.8,43,809/-. The Id.CIT(A) was also right in allowing losses increased by the assessee during the relevant financial period and did not allow to be carried forward by holding that there is a substantial change in the management and control of the company. The above noted facts have not been controverted by the Id. Sr. DR in any manner.

10. In view of the foregoing and on logical evaluation of the findings recorded by the AO as well as by the Id.CIT(A), we are of the considered opinion that there is no ambiguity, perversity or any other valid reason to interfere with the findings recorded by the Id.CIT(A) on ground No.2. Therefore, we decline to interfere with the same and consequently, ground No.2 of the Revenue being devoid of merits is dismissed.

11. In the result, the Revenue's appeal No.2965/Del/2019 is dismissed.

ITA No.2966/Del/2019 (AY 2013-14)

12. The Revenue has taken identically worded grounds in this appeal to the grounds taken by the Revenue in ITA No.2965/Del/2019 as the Id.CIT(A) simply allowed the appeal by observing in para 4.3 that the addition in this case has been based on the addition made in the assessment order made u/s 144 of the Act.

Therefore, the appeal effect of the said order dated 16.03.2016 be given. Since we have dismissed both the grounds of the Revenue in ITA No.2965/Del/2019, our findings recorded in the earlier part of this order would apply, *mutatis mutandis*, to the present case also. Resultantly, the appeal of the Revenue in ITA No.2966/Del/2019 for AY 2013-14 is dismissed.

The assessee's CO No.133/Del/2022

13. The Id. AR submitted that the assessee does not want to press its cross objection. Therefore, the same is dismissed as not pressed.

14. To sum up, both the appeals of the Revenue as well as the CO of the assessee are dismissed.

Order pronounced in the open court on 21.02.2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated:21st February, 2023.

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Copy forwarded to :

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

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi