

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”: NEW DELHI**

**BEFORE
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3256/Del/2019
Asstt. Year: 2015-16

M/s. Umano Healthcare Pvt. Ltd., FC/B-1, (Extension) Mohan Co op Indl. Estate, Mathura Road, New Delhi – 110 044. PAN AABCU3733E (Appellant)	Vs.	ACIT, Circle-27(1), New Delhi. (Respondent)
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Assessee by:	Shri Pratap Gupta, CA
Department by :	Ms. Indu Bala Saini, Sr. DR
Date of Hearing :	16.03.2023
Date of pronouncement :	24.03.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order of Ld. Commissioner of Income Tax, (Appeals) -9, New Delhi (“**CIT(A)**”) dated 25.01.2018 pertaining to Assessment Year (“**AY**”) 2015-16.

2. The assessee has raised the following grounds of appeal:-

- “1. That Ld. CIT(A) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in

confirming the addition of Rs. 544537/- on account of ROC fee paid for increasing the authorized share capital, under section 37(1) of the Income Tax Act, 1961.

2. *The Ld. CIT(A) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in confirming the addition of Rs. 300000/- made by ld assessing officer under section 37(1) of the Income Tax Act, 1961 on account of software expenses.*
3. *That ld CIT(A) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in confirming the addition of Rs. 1008708/- made by ld. assessing officer on account of sundry creditors outstanding as on last day of balance sheet, on suspicion basis, in the absence of non receipt of reply of notice u/s 133(6) of the Income Tax Act, 1961.*
4. *That Ld. CIT(A) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in confirming the addition of Rs. 395918/- made by ld assessing officer on account of alleged difference in sales reported by appellat assessee and confirmation sent by sundry debtors without confronting the same to the appellat assessee.”*

3. Briefly stated the facts are that the assessee company is engaged in the business of trading of medicines. For AY 2015-16, it filed its return electronically on 26.09.2015 declaring loss of Rs. 1,78,94,169/-. The case was selected for scrutiny. Notice under section 143(2) of the Income Tax Act, 1961 (**the “Act”**) dated 27.06.2016 was issued and duly served upon the assessee. In response, the assessee filed submissions and necessary details.

4. During assessment proceedings, the Ld. Assessing Officer (**“AO”**) found that the assessee has paid Rs. 5,44,537/- as ROC fees for increase in authorised share capital. The Ld. AO required the assessee to show cause why the same be not disallowed. The assessee submitted that it is revenue expenditure and should not be disallowed relying on the decision in CIT vs. Kishenchand Chellaram (India) Pvt. Ltd. 130 ITR 385 and Warner Hindustan Ltd. vs. CIT 171 ITR 224 (AP). The Ld. AO did not consider the explanation satisfactory. Treating the expenditure as capital in nature, the Ld. AO

disallowed the same under section 37(1) of the Act and added it to the income of the assessee.

5. Similarly, software expenses of Rs. 3,00,000/- were treated as capital expenditure as against claim of the assessee that it is revenue expenditure. This amount was added back to the income of the assessee under section 37(1) of the Act.

6. Letter under section 133(6) sent by the Ld. AO to AFFY Pharma Pvt. Ltd. (sundry creditor) in whose name Rs. 10,08,708/- was outstanding was not replied by the party. The Ld. AO sought explanation which was submitted vide assessee's reply dated 15.12.2017 which was not, in the opinion of the Ld. AO, satisfactory. Doubting the assessee's claim the Ld. AO added the same to the income of the assessee.

7. Likewise, letters under section 133(6) were issued by the Ld. AO to Anand Pharma and Gupta Medicos India Pvt. Ltd. (sundry debtors) to whom assessee has sold medicines for Rs. 5,52,214/- and Rs. 18,07,460/- respectively, confirmed sales to them of Rs. 6,62,129/- and Rs. 20,93,463/- respectively. The Ld. AO therefore added the difference of Rs. 3,95,918/- in sales made to the above parties, to the income of the assessee.

8. The Ld. AO also added interest of Rs. 3200/- received by the assessee on refund of Rs. 35,240/- to the income of the assessee.

9. Accordingly, the Ld. AO completed the assessment on total loss of Rs. 1,56,41,810/- on 19.12.2017 under section 143(3) of the Act.

10. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and made very exhaustive and detailed submissions in respect of each and every addition made by the Ld. AO which have been reproduced by the Ld. CIT(A) in para 4.1, 5.1, 6.1, 7.1 and 8.1 of his appellate order. The Ld. CIT(A) allowed relief of Rs. 3200/- being interest on refund which he found to have

been disclosed by the assessee under the head 'discount received'. Rest of the additions have been confirmed by the Ld. CIT(A).

11. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds of appeal relate thereto.

12. Before us, the Ld. AR did not advance any arguments on merits of the case. He drew our attention to pages 74 to 77 of the Paper Book which were filed before the Ld. CIT(A) containing request for admission of additional evidence as stipulated under Rule 46A of the Income Tax Rules, 1962 and pages 56-73 consisted of the additional evidence which could not be filed before the Ld. AO. The Ld. AR submitted that the Ld. CIT(A) did not consider the additional evidence filed before him. The Ld. AR also invited our attention to the order sheet entry (page 10-11 of Paper Book) made by the Ld. AO to emphasis that the adequate opportunity to present its case was not allowed by the Ld. AO during assessment proceedings. The Ld. AR urged that the matter be restored to the file of the Ld. AO for fresh adjudication. The Ld. DR had no objection thereto.

13. We have perused the orders of the Ld. AO/CIT(A). In our opinion, it is necessary to look into the submissions of the assessee made before the Ld. CIT(A) in the light of the material / document (additional evidence) placed before the Ld. CIT(A) which he has not considered in his appellate order. Since both the parties agree that the matter be sent back to the Ld. AO, we set aside the orders of the lower authorities and restore the matter back to the file of Ld. AO with direction to him to consider the material already on the records and hold further inquiry if need be and decide the issues afresh in the light of the result of the inquiry. This, in our view, shall meet the ends of justice. The Ld. AO, shall of course afford reasonable opportunity of being heard to the assessee in the fresh assessment proceedings. We order accordingly.

14. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 24th March, 2023.

sd/-

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 24/03/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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	