

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos. 3264 & 3265/Del/2016
Assessment Years: 2006-07 & 2007-08

ITO Ward 2(1), New Delhi	vs.	M/s. Almodias Infratech P. Ltd. (Formerly Known as M/s. Aditya Antibiotics P. Ltd., 314-D, 1 st Floor, P-2, Mayur Vihar-1, Delhi PAN AADCA 6593 L
(Appellant)		(Respondent)

CO Nos. 76 to 77/Del/2019
In ITA Nos. 3264 & 3265/Del/2016
Assessment Years: 2006-07 & 2007-08

M/s. Almodias Infratech P. Ltd. (Formerly Known as M/s. Aditya Antibiotics P. Ltd., 314-D, 1 st Floor, P-2, Mayur Vihar-1, Delhi PAN AADCA 6593 L	vs.	ITO Ward 2(1), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri S. Krishnan, Adv. Shri Pratap Gupta, FCA
Revenue For :	Shri Vivek Vardhan, Sr. DR

Date of Hearing :	08.08.2023
Date of Pronouncement :	30.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

Above captioned appeals of revenue and cross objection of assessee have been filed against the order of CIT(A)-I, New Delhi dated 07.03.2016 for 2006-07 & 2007-08.

2. The Id. Senior DR submitted that the Assessing Officer made addition u/s. 68 of the Act as the explanation and reply of assessee was not found to be acceptable and

the onus to prove the sources of cash deposit in the said account has not been discharged by the assessee as cast upon it as per mandate of sec 68 of the Act. The Id. Senior DR pointed out that the Id. CIT(A) has granted relief to the assessee without any justified basis and reason therefore the first appellate order may kindly be set aside by restoring that of the Assessing Officer.

3. Replying to the above the Id. counsel submitted that the bank account to which cash was deposited was opened by Shri Rajeev Sharma prodanently for his benefit therefore the money deposited was to be added in the hands of Shri Rajeev Sharma who had owned up said bank account number 69202000000736 with Development Credit Bank, Preet Vihar, Delhi. He further submitted that Shri Rajeev Sharma who had owned up said bank account in the affidavit filed before the Assessing Officer during the course assessment proceedings for AY 2006-07 & 2007-08 and also confirmed said fact in the statement recorded u/s. 131 of the Act and the Assessing Officer was directed to add said amount in the hands of Shri Rajeev Sharma having PAN number AXZPX 66098 resident of 20A Vaishali, Sec -3, F-1, Ghaziabad, therefore the Id. CIT(A) was right in deleting the addition.

4. Placing rejoinder to the above, the Id. Senior DR submitted that the PAN number noted by the Id. CIT(A) in operative para at pages 20 to 22 particularly on page 22 is incorrect and there was no order before him to show that the impugned amount has been added in the hands of Shri Rajeev Sharma director of company. The Id. Senior DR also contended that if Shri Rajeev Sharma opened bank account fraudently in the name of company for his personal benefit then it was incumbent upon the company to immediately report the matter to the police and other competent authorities to establish that they have no connection with the said bank account in which impugned cash amount was deposited but there is no such action by the assessee company therefore merely because the Id. CIT(A) has issued directions to the Assessing Officer of assessee, without asserting the Assessing Officer having jurisdiction over Shri Rajeev Sharma, to add impugned in the hands of Shri Rajeev Sharma is not a valid and sustainable basis to delete the addition. Therefore appeal of revenue may kindly be allowed reversing the first appellate order.

5. On careful consideration of above submissions, we note that the Id. CIT(A) deleted the addition by observing that the bank account to which impugned cash was deposited was owned by Shri Rajeev Sharma by filing an affidavit and in his statements u/s. 131 of the Act and directed the Assessing Officer to delete the addition. But there is no documentary evidence or order before us showing that the impugned amount was added and taxed in the hands of Shri Rajeev Sharma. It is also pertinent to mention that the company alleges that the impugned bank account was opened by Shri Rajeev

Sharma in the name of assessee company and the same was used and operated by Shri Rajeev Sharma without any authority by the company and without knowledge of assessee company its directors or office barrers. But we are unable to see any document to demonstrate that the assessee company has reported the said fraudulent Act and Criminal Act of Shri Rajeev Sharma by filing any first information report to the police or any other competent authority this omission dilutes the stand of assessee company. It is also pertinent to mention that the Id. CIT(A) has noted at page 22 of his order PAN number of Shri Rajeev Sharma as '**AXZPX 66098**' which appears to be incorrect or incomplete as there is no last alphabet therein and digits are five only. These facts requires to be examined and verified by the Id. CIT(A) by calling a remand report from the Assessing Officer regarding taxability of impugned amount in the hands Shri Rajeev Sharma and action taken by the assessee company against Shri Rajeev Sharma about his Criminal and Fraudulent act. With these observations we have no hesitation to hold that the findings of Id. CIT(A) are not valid and sustainable and thus we set aside the same and matter is restored to his file for a fresh adjudication of grounds of assessee. Accordingly, ground of revenue is allowed for statistical purposes.

Revenue appeal ITA No. 3265/Del/2016 AY 2007-08 Ground no. 2

6. Since facts and circumstances pertaining to sole ground of revenue in AY 2006-07 are similar and identical to the facts of ground no. 2 of revenue for AY 2007-08 therefore our conclusion for AY 2006-07 will apply to AY 2007-08 mutatis mutandis and thus ground no. 2 of revenue is also restored to the file of Id. CIT(A) for a fresh adjudication after allowing due opportunity of hearing to the assessee and without being influenced with the earlier first appellate order. Accordingly, ground no 2 of revenue is also restored to the file of Id. CIT(A).

7. Apropos ground no.1 we have heard argument of both the sides. The Id. Senior DR supported the assessment order and the Id. counsel of assessee supported the conclusion drawn by the Id. CIT(A) in para 8 of his order.

8. On careful consideration of above submissions from para 8 of first appellate order we note that the Id. CIT(A) has restricted the disallowance to Rs. 1,80,000/- granting relief of Rs. 1,31,855/-. The Id. CIT(A) has concluded the issue with very reasonable and justified findings by observing that without purchases there cannot be any sale and for making sale some purchases has to be there and he restricted the disallowance to Rs. 1,80,000/- deleting the remaining amount of Rs. 1,31,855/-. We are unable to see any valid reason to interfere with the findings of Id. CIT(A) on this issue and hence we uphold the same. Accordingly, ground no. 1 of revenue for AY 2007-08 is dismissed.

Cross objection no. 76 & 77/Del/2019 of Assessee

9. In the cross objections the assessee has challenged validity of initiation of reassessment proceedings by alleging that the Id. CIT(A) was not justified in law and on facts under circumstances of the instant case in confirming the initiation of reassessment proceedings u/s. 147 of the Act without complying with the provisions of sec 147 to 151 of the Act. From the grounds raised by the assessee in Form no. 35 before the Id. CIT(A) it is clear that these grounds were not raised before the Id. CIT(A) and thus there is no adjudication in the first appellate order thereof. Therefore since the issue on merits has been restored to the file of Id. CIT(A) therefore the assessee shall be at liberty to raise these grounds before the Id. CIT(A) as additional legal grounds. Accordingly, cross objections of assessee are also allowed for statistical purposes.

10. In the result, the appeals of revenue are allowed for statistical purposes and cross objections of assessee are also allowed for statistical purposes.

Order pronounced in the open court on 30.08.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER
Dated: 30th August, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-
Copy forwarded to :
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi