

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

**BEFORE SHRI SHAMIM YAHYA , ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 5363/DEL/2019  
A.Y. 2013-14**

Shivangi Remedies Pvt. Ltd., U-7, Green Park Extension, New Delhi-110016.  <b>PAN: AABCS8543</b>	<u>Vs</u>	DCIT, Circle-23(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Ved Jain, Adv. And Ms. Supriya Mehta, CA	
<b>Department represented by</b>	Shri Vivek Kumar Upadhyay, Sr. DR	
<b>Date of hearing</b>	18.09.2023	
<b>Date of pronouncement</b>	20.09.2023	

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The Assessee has come in appeal challenging the orders dated 06.05.2019 passed by the Commissioner of Income Tax(Appeals)-XXV, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in Appeal no. 10119/18-19, for the assessment year 2013-14, arising out of the assessment order dated 23.03.2016 u/s 143(3) of the Income-tax Act, 1961

(hereinafter referred as the “Act”), passed by the DCIT, Circle 23(1), New Delhi (hereinafter referred in short as “Ld. AO”).

2. The assessee is a private limited company and engaged in the business of trading of drugs/medicines. The return of income of Rs. 67,70,300/- was taken up for scrutiny by issuing notice u/s 143(2) of the Act on 2.9.2014. Learned AO examined the issue of sundry creditors and made addition of Rs. 2,88,636/- on account of unexplained sundry creditors from M/s Sun Pharmaceuticals Industries Ltd. and Aditya Medisales Ltd. Further, addition was made of Rs. 3,60,000/- by invoking section 14A, which were challenged before the learned CIT(A), who has dismissed the appeal of assessee for which assessee is in appeal before this Tribunal, raising following grounds:

*“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) is bad, both in the eye of law and on the facts.*

2. *(i) On the facts and circumstances of the case, the learned CIT(A). has erred both on facts & in law in confirming the addition of an amount of Rs.3,60,000/- made by AO invoking the provisions of Section 14A of the Act.*

*(ii) That the abovesaid addition has been confirmed despite the fact that no exempt income has been earned during the year.*

*(iii) That the addition has been confirmed ignoring the judicial precedents in this regard.*

3. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the addition of an amount of Rs. 1,48,756/-on account of difference in the balance of creditors.*

*(ii) That the above addition has been confirmed despite the fact that*

*the assessee has filed all the necessary documents as well as explanation to reconcile the differences.*

4. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the addition of Rs. 1,39,880/- on account of balance of M/s Sun Pharmaceuticals Industries Limited outstanding as on 31.3.2013*

*(ii) That the above addition has been confirmed rejecting the detailed explanations as well as evidences brought on record by the assessee in this regard.*

5. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3. Heard and perused the record and the ground-wise findings are as follows:

4. **Ground no. 2:** In regard to this ground it was submitted on behalf of the assessee by the learned AR that during the year assessee did not earn any exempt income. This fact could not be controverted by the learned DR.

4.1 It comes up from the order of learned CIT(A) that he has given preference to CBDT Circular as relied by learned AO instead of judicial pronouncements cited on behalf of the assessee. It is settled proposition of law now that Section 14A cannot be invoked where the assessee's own funds far exceed the investment made, as in the present case. It also comes up that there is no exempt income so there cannot be no disallowance. Reliance can be placed on **CIT v. Corrttech Energy Pvt Ltd., (2014) 223 taxmann 130 (Guj)** and **CIT v. Holcim India Pvt. Ltd., (2015) 57 taxmann.com 28 (Del)**. Thus, the finding of learned CIT(A) cannot be sustained and the **ground is allowed.**

5. **Ground nos. 3 & 4:** In regard to these grounds it comes up that learned AO has doubted the genuineness of the creditors, of which M/s Sun Pharmaceuticals Industries Limited is a prominent pharmaceutical company and learned AO has made addition on account of non-compliance of notice u/s 133(6) while in case of Aditya Medisales Ltd. on account of difference in the outstanding balances as per assessee and as per vendor, the learned AO had made the additions.

5.1 Learned AR has pointed out that reconciliation statement, reconciling the difference was submitted to the tax authorities and it was explained that the difference has subsequently been adjusted by the customer in A.Y. 2014-15 by way of credit note. A copy of ledger account of the assessee in the books of Aditya Medisales Ltd. has been submitted at pages 82 & 83 of the paper book.

5.2 The Bench is of the considered view that where nature of assessee's business of trading in medicines is not doubted and no specific defect is pointed out in the books of account with regard to purchase and sales, disbelieving sundry creditors of prominent companies, is not justified. Assessee has taken a specific plea that on account of medicines supplied to M/s ADG GMSD Chennai there was dispute of the quality as supplied by vendor Sun Pharma and so the payment of Rs. 1,39,880/- was stopped which has been settled by way of crediting the customer account and debiting the Vendor. At page no 56 to 72 relevant ledger entries of these transaction are provided, as also provided to Ld. CIT(A). However, Ld CIT(A) has not given any heed to same. **This addition is thus not sustainable.**

5.3 Reconciliation statement with regard to Aditya Medisales Ltd. have been made available on behalf of the assessee at page 58 of the paper book, in the form

of Reply given to the AO with audited financial of AY 2014-15 and copy of account of assessee in the books of Aditya Medisales. Copy of ledger of Aditya Medisales made available at Page no 82 and 83 of PB show adjustment however again same have not been considered by tax authorities and it will be justified to **restore this issue** to the file of learned AO for verification of the reconciliation statement. Accordingly, ground no. 3 is allowed for statistical purposes and ground no. 4 is allowed in favour of the assessee.

6. Consequently, **the appeal of the assessee is allowed** with consequences to follow as per the determination of the grounds, as above.

Order pronounced in open court on 20.09.2023.

**Sd/-**  
**(SHAMIM YAHYA )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI