

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.2311 to 2313/Mum/2023
(A.Ys. 2013-14 to 2015-16)**

DCIT, Central Circle 2(4) Room No. 802, 8 th Floor, Prathishtha Bhavan, M.K. Road, Churchgate, Mumbai – 400020	Vs.	Carlisle Trading & Manufacturing India Private Limited Plot No. A9, SIPCOT INDUSTRIAL ESTATE PILLAIPAKKAM, SRIPERUMBUDUR Mathur B.O Mathur, Kanchipuram, 29-Tamil Nadu, 91-India, 602105
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AADCC5521C		
Appellant	..	Respondent

Appellant by :	H.M. Bhatt
Respondent by :	Ashik Shah

Date of Hearing	14.11.2023
Date of Pronouncement	29.11.2023

आदेश / O R D E R

Per Bench:

All these appeals filed by the revenue are directed against the common order of Id. CIT(A) for assessment year 2013-14 to AY. 2015-16. Since, common issue and identical facts are involved in all these appeals, therefore, for the sake of convenience all these appeals are adjudicated together by taking ITA No. 2312/Mum/2023 as a lead case

and its finding will be applied mutatis mutandis to the other appeals wherever it is applicable.

ITA No.2312/Mum/2023

- “1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in admitting the additional evidence submitted by the assessee, considering that the case of the assessee did not fulfill any of the conditions mentioned in sub-rule (1) of Rule 46A of the Income-tax Rules, 1962.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in admitting the additional evidence submitted by the assessee without recording his reasons for doing so as provided in sub-rule (2) of Rule 46A of the Income-tax Rules, 1962.*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the AO on the issue of share premium treated as unexplained cash credits, considering that the assessee was unable to establish identity, creditworthiness and genuineness in respect of said transaction, during the assessment proceedings.*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of 20% of Advertisement and Sales Promotion expenses made by the AO, considering that the assessee company has a global brand and therefore, advertisement cost incurred by the assessee company attributable to its global image should not be claimed as an expense.*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of 25% of the travelling expenses, considering that the assessee company did not submit any details to substantiate these expenses during the course of the assessment proceedings.”*

2. Fact in brief is that return of income declaring total income of Rs.1,70,93,875/- was filed on 29.11.2014. The case was selected for scrutiny and notice 143(2) of the Act was issued on 31.08.2015. The assessee company and its group entity M/s Carlisle Europe B.B.(CEBB) are the globally diversified company in the field of design, manufacturing and market range of product that serve a broad range of niche markets. Further fact of the case are discussed while adjudicating ground of appeal filed by the revenue.

Ground No. 1 to 3: Deleting addition of share premium and admitting of additional evidence as provided in sub-rule (2) of Rule 46A of the Income Tax Rule 1962 by the ld. CIT(A):

3. During the assessment the assessing officer noticed that assessee has received share capital/premium to the amount of Rs.2,23,92,400/- from its Netherland entity M/s Carlisle Europe BV (CUBV) by issuing of share at a face value of Rs.10 and premium of Rs.90 per share. The assessee was asked to prove the identity of the party, genuineness of the transaction and creditworthiness of the party. In response the assessee has filed copy of Board Resolution of allotment of shares, valuation report of the chartered accountant, certificate from Company Secretary under FEMA Act, copy of FIRC, KYC and copy of intimation of receipt of money. However, the AO has not agreed with the submission of the assessee and stated that assessee has not filed proof of the source of share capital/premium received by it, and identity creditworthiness and genuineness of the transaction could not be proved. Therefore, amount of Rs.2,23,92,400/- was treated as unexplained cash credit in the hands of the assessee company u/s 68 of the Act.

4. The assessee filed the appeal before the ld. CIT(A). The assessee has also submitted additional evidences under Rule 46 of the Income Tax Rule vide letter dated 22.08.2022 before the ld. CIT(A). The ld. CIT(A) called remand report from the assessing officer and the assessing officer vide letter dated. 22.11.2022 submitted a remand report before the ld. CIT(A). The ld. CIT(A) had deleted the impugned addition. The relevant extract of the decision of the ld. CIT(A) is reproduced as under:

*“6. **Decision on Ground No. 1:** In the ground of appeal no. 1, the appellant argued that the AO has erred in considering the share capital and premium of Rs. 2,23,92,400/- received by the appellant as unexplained cash credits taxable in the hands of the appellant u/s. 68 of the Act. It is further argued that the provisions of Section 68 are applicable only in case of amounts received from resident and the same should not apply to the share premium received by the appellant from issue of its equity to non-resident investors.*”

6.1 I have carefully considered the submissions filed by the Appellant, facts mentioned by the AO in the assessment order and the other materials on record on this issue. I have found from the records that appellant during the year under consideration has issued 223924 shares to Netherland entity M/s Carlisle Europe BV (CUBV) at a face value of Rs. 10/- and premium of Rs. 90/- per share. The appellant company has received share capital/premium to the tune of Rs. 2,23,92,400/-. In this regard, the AO has called for details i.e. to prove the identity of the party, genuineness of the transaction and creditworthiness of the party from the appellant. It was further asked by AO from the appellant to furnish various details such as receipt of foreign exchange, certificate alongwith RBI permission, details of share premium with documentary evidence, nature and source of share premium received.

6.2 I have found from the records that the appellant has filed a chart showing number of shares allotted, copy of Board's resolution for allotment of shares, valuation report of the Chartered Accountant, certificate from Company Secretary under FEMA Act, copy of FIRC, KYC and copy of intimation of receipt of money before the AO. However, the appellant has not furnished confirmation of the said party, copy of any balance sheet and financial of CUBV and no evidence regarding the source of funds invested in its books of account has been furnished by the appellant.

6.3 As the appellant has failed to prove the creditworthiness of the party (CUBV) and also could not explain the genuineness of the transactions, as per AO, the onus of which was cast upon the appellant to explicitly prove the same as per Section 68 of the Act, did not discharge. As during the assessment proceedings, the appellant could not establish the source of the investment in the form of share capital/premium as such the identity, creditworthiness and the genuineness of the transactions, the AO has added sum of Rs.2,23,92,400/- as unexplained cash credit in the hands of appellant u/s. 68 of the Act.

6.4 During the appellate proceedings, the appellant has submitted details wherein it is stated that the details in respect of the issue of share premium sought by the AO have been duly submitted during the assessment proceedings and no further notice calling for details or proposing the addition, was issued by the AO. The appellant was under an impression that the details submitted has satisfied the requirement of the AO and no further detail was required in this regard. However, the addition was made by the AO. Now, during the appellate proceedings the appellant has submitted the details which the AO purported to have not been provided by the appellant in assessment order.

6.5 I have found from the submissions filed by appellant wherein following documents have been submitted:

- i. Copy of Certified copy of the resolution passed at the meeting of the Board of Directors of Carlisle Trading and Manufacturing (1) Pvt. Ltd.
- ii. Copy of Certificate of Foreign Inward Remittance of Rs. 2,23,92,400/ (S.No. 034883) by Bank of America, Chennai.
- iii. Copy of Certificate from M/s. Jain K. Gupta & Co., C.A. regarding examination of the books of accounts and other related records of appellant company.

- iv. Copy of Certificate to be filed by the Company Secretary of the Indian Company accepting the investment Neelam Rangwala.
- v. Copy of reporting of remittance received towards shares application by appellant to Bank of America.
- vi. Copy of Bank statement of appellant showing amount of share premium received.
- vii. Copy of Annual accounts i.e Balance Sheet and Profit & Loss A/c. of Carlisle International BV for the year 2013.
- viii. Copy of letter dated 08.08.2016 issued by RBI to appellant company regarding issue of shares - application in Form FC GPR.

6.6 I have duly considered the rival contentions and gone through the record carefully. Section 68 of the Act contemplates that where any sum found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee for that previous year. A plain reading of section 68 would indicate that when any money is found to be credited in the books of the assessee, then, it is the assessee who has to offer an explanation about the nature and source thereof. The Assessing Officer found a credit of Rs.2,23,92,400/- in the books of the assessee in the shape of share application money. It is for the assessee to explain the source of share application money and its nature. In order to fulfill such conditions, the assessee has to prove the identity of the share applicants, genuineness of the transactions and creditworthiness of the share applicants. The assessee has submitted name of the persons to whom shares were allotted along with their addresses as per its record and their income tax particulars. The appellant has also produced copy of the return filed with the Registrar of Companies indicating the shares allotted by it. It has filed confirmations from the share applicants. It has filed copy of the bank accounts of the share applicant showing the payment for the share application money to the appellant company. It has also filed copy of its bank account showing receipt of share application money. It has filed acknowledgement of income tax return for the assessment year in which share application money was received by the assessee. On the strength of these documents, it was contended by the assessee that it has proved identity of the share applicants by producing their confirmations and the details of their income-tax returns. On the strength of bank statements, it was contended that transactions were genuine. On the strength of income-tax particulars and the status of share applicant company, it was contended that they have contributed the money through remittances by Bank channel and it suggests that they are worthy of credence. The Assessing Officer did not find the force in the claim of the assessee on the ground that details submitted by the assessee were merely available on papers. In fact, these share applicant companies are not working as claimed by the assessee. The contentions of the Id. Counsel for the appellant before me are that assessee has proved the identity and it has demonstrated the genuineness of the transactions.

6.7 From the above, it is very much clear that amounts aggregating to Rs.2,23,92,400/ have flowed to the appellant from the remittance through Banking Channel of M/s. Carlisle International BV. and it is the money of M/s Carlisle International BV. that has come to the appellant and M/s Carlisle

International BV had the capacity to invest this much of amount with the appellant during the F.Y. 2013-14. Thus, credit worthiness of M/s. Carlisle International BV, also stands established. Since all the ingredients as are required to be satisfied for accepting the deposit as genuine u/s 68 are fulfilled in respect of this investment of Rs. 2,23,92,400/- by M/s. Carlisle International BV. with the appellant company, in my considered view Assessing Officer was not justified in drawing adverse inference in respect of this amount under reference

6.8 *The appellant has also submitted various decisions on the above identical issue. One of the decision of Hon'ble Bombay in the case of M/s Vodafone Services Pvt. Ltd. Vs. Union of India & Others (2014) 368 ITR 01 (Bom HC) wherein it is held that:*

“for all the above reasons, we find that in the present facts issue of shares at a premium by the Petitioner to its non-resident holding company does not give rise to any income from admitted International Transaction, wherein the Court has held, inter alia, that the premium on hare issue was on account of capital account transaction and does not give rise to income.”

6.9 *I find that the Union Cabinet has decided to accept the order of Hon'ble High Court of Bombay in the case of M/s. Vodafone India Services Pvt. Ltd. dated 10.10.2014. The CBDT Instruction No. 2/2015 dated 29.01.2015 is reproduced as under:*

*“Instruction No. 2/2015
F. No. 500/15/2014-APA-1
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes Foreign Tax & Tax Research-1 Division
APA-1 Section New Delhi,
dated the 29th January, 2015*

To All Principal CCsIT/DsGIT and CCsIT/DsGIT

Madam/Sir

Subject: Acceptance of the Order of the Hon'ble High Court of Bombay in the case of Vodafone India Services Pvt. Ltd.-reg.

In reference to the above cited subject. I am directed to draw your attention to The decision of the High Court of Bombay in the case of Vodafone India Services Pvt Ltd for AY 2009-10 (WP No. 871/2014), wherein the Court has held, inter alia, that the premium on share issue was on account of a capital account transaction and does not give rise to income and, hence, not liable to transfer pricing adjustment

2. It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition, in view of the acceptance of the above judgment, it is directed that the ratio decidendi of the judgment must be adhered to by the field officers in all

cases where this issue is involved. This may also be brought to the notice of the ITAT, DRPs and CITS (Appeals)

3. This issues with the approval of Chairperson, CBDT.

*Yours faithfully,
(Anchal Khandelwal)*

Under Secretary to the Govt. of India

6.10 Considering the totality of above facts, I hereby delete the addition of Rs.2,23,92,400/- made by the AO and hence this ground no. 1 raised by the appellant is Allowed.”

5. Heard both the sides and perused the material on record. During the year under consideration the assessee had issued 223924 share of Rs.10 each to its holding company M/s Carlisle Europe B.V.(CUBV) at issue of price of Rs.100 per share including a premium of Rs.90 per share. During the course of assessment the assessee submitted various documentary proof along with RBI permission, detail of share premium, copy of certificate of foreign inward remittance by bank of America, Chennai, copy of bank statement of the assessee showing amount of share premium received copy of annual report i.e balance sheet and profit and loss account of M/s Carlisle Europe B.V.(CUBV), copy of letter issued by RBI to assessee regarding of issue of share application in the form of FCGPR etc. However, the AO has treated the amount received by the assessee from its holding company as unexplained cash credit u/s 68 on the ground that source of funds has not been explained. We find that assessee has explained before the ld. CIT(A) that it has submitted the relevant details as sought by the assessing officer during the course of assessment proceedings and no further any notice was received for calling any other details. Therefore, the assessee has further submitted the following details before the ld. CIT(A) as additional evidences under Rule 46A of the Income Tax Rule.

- “1. Ground 1-Share Capital and Premium received considered as Unexplained Cash Credit taxable under Section 68 of the Act:

- i. Financial Statements of Carlisle International B.V (CIBV) for the year ending December 31, 2013.
- ii. Acknowledgment from the Reserve Bank of India (RBI) for the receipt of filings made by the Appellant for the shares issued.
- iii. The extract of business register from the Netherlands Chamber of Commerce indicating the status of CIBV
- iv. CIBV's Bank statement extract reflecting the transactions of investment into the Appellant.
- v. Permanent Account Number of CIBV.”

Under the aforesaid circumstances the ld. CIT(A) has rightly admitted the same as additional evidences. We find that the assessing officer has not contrary disproved the genuineness of the various documents as discussed in the finding of the ld. CIT(A). The assessee has demonstrated from the supporting documents indicating that the transactions of investment in the share capital by the Netherland Holding company was carried out in accordance with the regulations made by the Reserve Bank of India and assessee has filed relevant supporting document in this regard. The ld. CIT(A) has elaborated in his finding the relevant supporting document furnished by the assessee which categorically established the identity, genuineness and creditworthiness of the transactions. Further the ld. CIT(A) has also referred the CBDT instruction 2/2015 dated 29.01.2015 that premium on share issue was on account of capital account transaction and does not give rise to income and, hence not liable to transfer pricing adjustment as held by the Hon'ble High Court of Bombay in the case of M/s Vodafone Services Pvt. Ltd. Vs. Union of India & Others (2014) 368 ITR 01 (Bom HC). During the course of appellate proceedings the ld. Counsel has also referred the decision of ITAT in the case of ITO 6(2)(4) Vs. Chiripal Poly Films Ltd. vide ITA No. 2671/Mum/2016 dated 19.02.2019 wherein held that the assessee complied with the requirements of RBI guidelines by filing FIRC with RBI and also filed Unique Identification number received from RBI. Further it had also filed FCGPR with RBI that the assessee was having sufficient authorised share capital to issue shares to investor then no

addition could be made u/s 68 of the Act. In view of the above facts and finding we don't find any error in the decision of Id. CIT(A). Therefore, these ground of appeal of the revenue stand dismissed.

Ground Nos. 4 & 5: Deleting of disallowance of 20% of advertisement and Sales promotion expenses and deleting of disallowance of 25% of travelling expenses:

6. During the course of assessment the assessing officer noticed that assessee has debited advertisement and sales promotion expenses to the amount of Rs.46,07,829/- in the profit and loss account. The AO pointed out that assessee has provided details for an expenditure of Rs.31,22,565/- however, not filed any detail for the expenses to the amount of Rs.14,85,262/-. The AO was of the view that assessee had claimed these expenses without actually incurring such expenses. Therefore, the claim of deduction of Rs.14,85,262/- was disallowed. In respect of balance expenditure the assessing officer stated that assessee has not furnished the consolidated turnover of the entire Carlisle Group. Therefore, 20% of the expenditure of advertisement and sales promotion to the amount of Rs.21,09,775/- was disallowed and added to the total income of the assessee. The assessing officer also noticed that assessee has debited an amount of Rs.1,68,56,669/- in the profit and loss account under the head travelling expenses. The assessing officer has asked the assessee to furnish detail of the persons who have visited the place, purpose of visit, amount paid for the tickets boarding and lodging and justification that such expenses were incurred for the purpose of business. Since, no details has been provided by the assessee therefore 25% of the travelling expenses (25% of Rs.168,56,669/-) was disallowed and added to the total income.

7. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has deleted the adhoc addition made by the assessing officer

under the head advertisement and traveling expenses. The relevant part of the decision of Id. CIT(A) is reproduced as under:

“7.1 I have carefully considered the submissions filed by the Appellant, facts mentioned by the AO in the assessment order and the other materials on record on this issue. The AO has stated on the issue of advertisement and sale promotion expenditure that during the assessment proceedings, the submissions made by the appellant is not acceptable as the appellant has furnished party-wise details of the expenditure incurred on advertisement and sales promotion. It is pertinent to mention here that Carlisle is a global brand and this expense has correlation with both the appellant as well as Carlisle brand. The AO further stated that though the appellant has furnished part-wise details of expenditure incurred however, it has not furnished the consolidated turnover of the entire Carlisle Group. As no response of the appellant on the deduction claimed, the AO has made addition of Rs. 21,09,775/- on account of disallowance out of advertisement and sales promotion. Further, the appellant has claimed expenses to the tune of Rs. 1,68,56,669/- under the head travelling expenses, the AO has asked to furnish the details of travelling expenses alongwith details of persons who visited the place, purpose, amounts paid for tickets, hoarding and lodging and justification that such expenses were incurred for the purpose of business. In this regard, no details have been filed by the appellant, but a letter dated 21.12.2016 submitted wherein it was stated that "with the available resources and time frame, we are unable to provide employee wise travel details to the extent of place of travel, number of days, stay, etc." Hence, the AO as per his observation contained that there is huge increase in expenses claimed under this head as compared to the preceding year. However, the business expediency cannot be ruled out. Hence, the AO has disallowed 25% of expenditure claimed of Rs. 1,68,56,669/ which comes to Rs. 42,14,167/ and added back to the Income of appellant

7.2 I have also carefully considered the submissions filed by appellant during the appellate proceedings. The appellant has submitted statement of details of expenses incurred on its employees under the head advertisement & sales promotion and travelling expenses alongwith certain sample of invoices and TDS deducted in connection to expenses. The appellant further stated that such expenses are bonafide including payments of reimbursement to the employees for the out-of-pocket expenses incurred by them for official purposes and thereby incurred wholly and exclusively for the purposes of the business of the appellant. It is urged by appellant that the A) has made disallowances purely on presumptions even though the appellant furnished the details called for.

7.3 In light of the material produced by appellant, I find that the addition on account of advertisement & sales promotion and travelling expenses were totally based on surmises and conjectures Assessing Officer has not brought on record any cogent basis as to why these expenditures were to be disallowed it is not the case that expenditures were considered to be bogus or any shortcoming in the vouchers in this regard was observed by the AO. Under the circumstances, I hold that estimated addition without any basis cannot be sustained. In this regard, the case law of Hon'ble Supreme Court relied upon by the appellant in the case of PCIT Vs. R. G. Buildwell Engineers Ltd. [2018] 99 taxmann.com 284 (sc) is germane. In the case, the Hon'ble Supreme Court

dismissed the SLP filed by revenue against the order of Hon'ble Delhi High Court and the AO was directed to delete the ad-hoc disallowance made on the grounds that sufficient evidence was not produced. It was observed that the AO has not expressly rejected the books of accounts of the assessee and such expenditure has been consistently allowed in prior scrutiny assessments and in this scenario, an ad-hoc disallowance cannot be sustained. Accordingly, in the background of the aforesaid discussions and precedent, I hold that the addition of Rs. 21,09,775/ and Rs. 42,14,167/- on account of advertisement & sales promotion and travelling expenses respectively is liable to be deleted. In view of the above discussion, the grounds of appeal no. 2 and 3 are allowed."

8. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated in the finding of Id. CIT(A) during the course of assessment the assessee has submitted detail of expenses incurred under the advertisement and sale promotion and travelling expenses with relevant supporting sample of invoices alongwith tax deducted at source relating to such expenses. However, the assessing officer has disallowed the expenditure on estimated basis without considering the aforesaid details furnished by the assessee. The assessee explained that advertisement and sale promotion expenditure were related to the marketing of Carlisle Brand of products which had global presence and this expenditure incurred on year to year basis and such expenditure constitutes only of small proportion of the revenue of the assessee. Further in respect of travelling expenses the assessee submitted that it has reimbursed the claim of its employee for incurring expenses for business travel and such expenses comprised incidental expenses towards meals refreshment and travel expenses for which it is not feasible to furnish invoices and vouchers for all such expenses. The Id. CIT(A) has elaborated in his finding that assessing officer has not brought on record any cogent basis for disallowing such expenditure without considering the percentage of expenditure compared to the revenue generated by the assessee company.

9. During the course of appellate proceedings before us the Id. Counsel has also referred decision of Hon'ble Supreme Court in the case

of Pr. CIT Vs. R.G. Buildwell Engineers Ltd. (2018) 99 taxman.com 284 (SC) wherein the decision of Hon'ble High Court was upheld for not making adhoc disallowance of expenses without rejecting the books of account. In view of the above facts and finding we don't find any infirmity in the decision of Id. CIT(A), therefore all these grounds of appeal of the revenue are dismissed.

ITA No. 2311/Mum/2023

10. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal vide ITA No. 2312/Mum/2023 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2312/Mum/2023 as mutatis mutandis this ground of appeal of the revenue is also dismissed.

ITA No.2313/Mum/2023

11. Since the facts and the issue involved in this ground of appeal is similar to the facts and issue involved in the appeal vide ITA No. 2312/Mum/2023 as adjudicated supra in this order, therefore, applying the finding of ITA No. 2312/Mum/2023 as mutatis mutandis this ground of appeal of the revenue is also dismissed.

12. In the result, all these appeal of the revenue are dismissed.

Order pronounced in the open court on 29.11.2023

Sd/-
(Aby T Varky)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 29.11.2023
Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR,
ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
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आयकर अपीलीय अधिकरण/ **ITAT, Bench,
Mumbai.**