

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

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 6707/DEL/2017
Assessment Year: 2012-13**

ACIT, Circle-4(2), New Delhi.	<u>Vs</u>	M/s Best Auto Ltd., C-5/21, Safdarjung Development Area, New Delhi-110016. PAN-AABCB9642F
APPELLANT		RESPONDENT
Assessee represented by	Shri Satish Khosla, Adv.; Shri Manish Malik, Adv.; & Shri Pankaj Jain, ITP	
Department represented by	Shri Javed Akhtar, CIT(DR); & Shri Vivek Vardhan, Sr. DR	
Date of hearing	08.03.2024	
Date of pronouncement	28.03.2024	

ORDER

PER ANUBHAV SHARMA, JM:

The Department has come in appeal against the order dated 30.06.2017 passed by the Commissioner of Income Tax (Appeals)-2, New Delhi (hereinafter

referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. 62/15-16, for the assessment year 2012-513, arising out of the assessment order dated 26.03.2015u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the DCIT, Circle-4(1), New Delhi (hereinafter referred in short as “Ld. AO”).

2. The assessee company is manufacturing company, engaged in the business of processing of raw-material, such as molding, stamping, plating, welding, casting and assembling. The assessee filed return declaring income of Rs. 64,63,216/-. The case of the assessee was selected for scrutiny under CASS. During the scrutiny assessment proceedings learned AO examined the increase of Rs. 43 lacs and Rs. 5.88 crores respectively under the head share capital and reserves of surplus. Learned AO examined the issuance of redeemable preference shares to various parties. The shares were issued at face value of Rs. 10/- and premium of Rs. 140/- per share. The AO examined the identity, creditworthiness of the parties and genuineness of the transaction by issuing notices to 7 parties. There after based upon the reports of the notices in the financials, the learned AO was of the view that the transactions were not genuine. Learned AO also took into consideration the statement of Shri Deepak Patwari, recorded by DDIT, Investigation Wing, Kolkata u/s 130 of the Act, wherein he had admitted that he was operating various

companies and was involved in providing accommodation entries. Statement of Deepak Patwari was provided to the learned AR of the assessee and after taking response made addition of Rs. 63,00,000/- on account of share capital received.

2.1 The learned AO also questioned the genuineness of purchases and being unsatisfied with the response made the addition of Rs. 2,39,60,322/-.

2.2 Further, the loan of Rs. 48,82,670/- from M/s Skylark Commerce Pvt. Ltd. and interest paid to it of Rs. 8,20,356/- was also questioned on the basis of statement of Shri Deepak Patwari and the addition of Rs. 57,03,026/- was made.

2.3 Learned AO also examined undisclosed receipts. As per Form 26AS, assessee had received Rs. 10,12,63,036/- from various parties after deduction of TDS u/s 194A and 194C. However, on perusal of P&L a/c the learned AO found that total revenue of the assessee was Rs. 9,37,17,720/- only and rejecting explanation, difference of Rs. 75,45,316/- was added.

2.4 Lastly, learned AO made addition on account of section 14A observing that expenses relating to exempt income are liable to be disallowed and thus invoking Rule 8D made the addition.

3. Learned CIT(A) has, however, deleted these additions against which the Revenue is in appeal, raising following grounds:

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of

unexplained cash credit u/s 68 of IT Act of Rs. 6,30,00,000/- without appreciating the fact that:-

b. Despite providing several opportunities to assessee during the assessment proceedings, the assessee has failed to justify the genuineness of transaction and creditworthiness of parties from whom share capital and share premium received during the relevant financial year.

b. The companies from whom share capital and share premium received are only involved in giving share capital and also they do not have sufficient profit to invest in the assessee company.

c. The totality of facts associated with introduction of share capital.

d. The onus to prove the genuineness of transaction on assessee but the assessee has failed to do.

2. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition made by the AO on account of purchase of Rs. 2,39,60,322/- without appreciating the fact that:-

a. The assessee has not provided plausible explanation with regard to said purchases during the assessment proceeding as well as at the time of filing additional evidence before the Ld. CIT(A)

b. The onus to prove the genuineness of purchases lies on the assessee but the assessee has failed to do so.

c. In her remand report, the AO had specifically mentioned the reason for non acceptance of additional evidence.

d. The Confirmation submitted before the Ld. CIT(A) as additional evidence remain unverifiable on the basis that (i) confirmation do not bear signature, (ii) do not bear stamp, (iii) do not bear date, (iv) the name of the consignee is not clear, (v) do not match the ledger produced, (vi) Address mentioned in confirmations is the same from

where notices u/s 133(6) were unserved and (vii) the confirmations from purchase party do not mention PAN, copy of ITR for A.Y. 2012-13, details of debtors.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of increase in unsecured loan of Rs. 57,03,026/- without appreciating the fact that:-

a. The statement recorded u/s 131 of the Income Tax Act, 1961 is standalone evidence for making assessment.

b. The company M/s Skylark Commerce Pvt. Ltd. is managed by the entry provider who provides accommodation entry in the form of share capital and share premium.

c. The company M / s Skylark Commerce Pvt. Ltd. does not have sufficient funds to give loan.

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of undisclosed receipts as per 26AS of Rs. 75,45,316/- without appreciating the fact that the assessee during the assessment as well as during the appellate proceeding did not quantified the amount of excise duty, VAT, service tax etc.

5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of disallowance u/s 14A r.w.s. 8D amounting to Rs. 2,16,623/- ignoring CBDT's circular No. 5/2014 dated 11.02.2014 wherein it has clarified that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

6. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

4. Heard and perused the record.

4.1 Learned DR has relied the order of learned AO and has submitted that learned CIT(A) has fallen in error in not appreciating the detailed inquiry of Investigation Wing and the admissions of Mr. Deepak Patwari.

5. Learned AR, however, supported the findings of learned CIT(A).

6. The ground-wise findings are as follows.

7. **Ground no. 1:** In regard to this ground it comes up that learned CIT(A) appreciated the fact that share capital was shown to be from 17 companies but learned AO has randomly issued notices to 7 parties and based upon the non-service of notices on two parties, discredited all the transactions. Learned CIT(A) has appreciated the fact that assessee had provided voluminous details and evidences and without creating any doubt on the veracity of these documents the addition was made. Learned CIT(A) has taken into consideration that there is no allegation that the assessee's money is routed into the companies through these transactions.

7.1 We are of the considered view that learned AO had primarily proceeded to doubt the transactions on the basis of lack of postal services of notices in regard to three companies. Learned AO by very general references has drawn a conclusion that the financials of these investment companies is not satisfactory. At the same time the voluminous evidences filed were not discredited by any specific reference.

It appears that learned AO was more influenced by the statement of Mr. Deepak Patwari recorded by Investigation Division. However, again learned AO has not examined any specific entry from the alleged accommodation entry providing entities to connect it to the assessee. Thus, there is no error in the finding of learned CIT(A) and the ground has no substance and is rejected accordingly.

8. **Ground no. 2:-** In regard to this ground, it comes up that before learned CIT(A) additional evidences were filed which were forwarded to learned AO for response. The additional evidence included confirmation from parties from whom purchases were made, copies of books and the bills. Learned AO had made disallowance merely on the basis of non service of notices. Learned CIT(A) examined the additional evidences and found that all the parties had valid VAT registration and the invoices were valid as per law. Learned CIT(A) has specifically taken note of the fact that in remand report the learned AO has not countered the evidences by any observations. Thus, we find that the order of learned CIT(A) requires no interference. Ground no. 2 is accordingly decided against the Revenue.

9. **Ground no. 3:** In regard to this ground it comes up that learned CIT(A) has taken note of the fact that the AO again relied the statement of Mr. Deepak Patwari without examining the evidences independently. Learned CIT(A) has taken note of the fact that unsecured loans have been received from non-banking

financial company and all the evidences with regard to genuineness of the activities of NBFC were filed but without appreciating the same the learned AO had made the addition. There is no error in the finding of learned CIT(A) as the creditworthiness and identity of the creditor which is a non-banking financial company was duly established. The ground has no substance, accordingly disallowed.

10. **Ground No. 4:** In regard to this ground, it comes up from the order of learned CIT(A) that reconciliation was filed by the assessee between the two documents, Form 26AS and the P& L A/c. The difference was explained by reference to the fact that assessee had taken value of basic sales while in 26AS statement the amounts considered are aggregate of basic sale value, excise duty, VAT, service tax etc. We are of the considered view that the reconciliation relied by learned CIT(A) requires no interference. Ground is decided against the Revenue.

11. **Ground no. 5:** In regard to this ground it comes up admittedly that the exempt income earned during the year is only Rs. 130/-. That being the case there is no justification on the part of the learned AO to segregate the expenses relatable to earning of this income. Learned AO had fallen in error in not appreciating that in the absence of any substantial exempt income no disallowance is warranted. This ground has no substance, accordingly disallowed.

12. Ground no. 6 is general, needs no adjudication.

13. As all the grounds of the Revenue are decided against the Revenue. **Appeal of Revenue is dismissed.**

Order pronounced in open court on 28.03.2024.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

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