

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

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

**ITA No. 5647/DEL/2013      [A.Y. 2008-09]  
&  
ITA No. 5648/DEL/2013      [A.Y. 2009-10]**

Asstt. Commissioner of Income-tax, Central Circle-9, New Delhi.	<u>Vs</u>	M/s Acme Auto Pvt. Ltd., 305, Aggarwal Arcade Plot No. 6, Sector-12 Dwarka, New Delhi-110075.  <b>PAN- AACCA4888R</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>		Dr. Rakesh Gupta, Adv.; Shri Somil Agarwal, Adv.; & Shri Shrey Jain, Adv.
<b>Department represented by</b>		Sh. P. Parveen Sidharth, CIT(DR); & Sh. Vivek Vardhan, Sr. DR
<b>Date of hearing</b>		08.03.2024
<b>Date of pronouncement</b>		28.03.2024

**ORDER**

**PER ANUBHAV SHARMA, JM:**

In ITA No. 5647/DEL/2013, the Revenue has come in appeal against the order dated 31.07.2013 passed by the Commissioner of Income Tax (Appeals)-

XXXII, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in Appeal no. 264/2011-12, for the assessment year 2008-09, arising out of the assessment order dated 30.12.2011 u/s 143(3) read with Section 153A of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Asstt. Commissioner of Income-tax, Central Circle 9, New Delhi (hereinafter referred in short as “Ld. AO”).

2. A search and seizure operation was conducted by the Directorate of Intelligence on 26.03.2010 in M/s Aseem Gupta group of cases at various premises of Aseem Kumar Gupta, CA, who was allegedly providing accommodation entries to several beneficiaries. Notice u/s 153 of the Act was issued on the assessee on 20.04.2011, upon which assessee filed return of income for A.Y. 2008-09 on 16.05.2011 declaring income at Rs. 17,92,760/-. The assessee had earlier filed return u/s 139 of the Act declaring the similar income, which was processed u/s 143(1) of the Act. During assessment proceedings learned AO observed in assessment order that assessee failed to appear despite repeated notices and even penalty u/s 271(1)(b) had to be imposed for non-compliance.

2.1. The assessee company is engaged in manufacturing of automobile parts and learned AO has examined following issues:

2.2. The first issue is regarding addition on account of unexplained

expenditure/ out of books expenditure. Learned AO observed that during search of premises of assessee various registers and loose-sheets were found, which has been annexurized. The amount of salary and wages actually claimed by the assessee did not match with amount mentioned in the salary and wages register and the loose-sheets containing details of actual payments of salary and wages. Statement of Shri Rajeev Dhingra, director of assessee company, was recorded wherein he stated that part of the payment made has not been recorded in the books of accounts. Although the statement was retracted, however, learned AO observed that assessee failed to reconcile salaries and wages as appearing in the material seized. Further inquiry was made by summoning workers and employees, who failed to appear. Accordingly, the learned AO proceeded to make addition of Rs. 18,00,000/- u/s 69C of the Act.

2.3 The second issue examined by learned AO was disallowance of personal expenditure under the head telephone expenses, vehicle running & maintenance; and vehicle depreciation, for which assessee had failed to produce log book etc. Learned AO had disallowed 1/5<sup>th</sup> of the expenses in that regard to the extent of Rs. 4,19,190/-.

2.4 The third issue examined by the learned AO was in regard to unexplained sums credits in the books of assessee in the form of share capital and share

premium.

9. During the year, the assessee has received Rs.5,00,000/- as share capital and Rs. 4,95,00,000/- as share premium. The assessee was asked to furnish the name and address of the share holder along with documentary evidences in support of identity, capacity of the share holders from whom the assessee/received the said amount of share capital and share premium vide notice dated 09.09.2011 issued u/s 142(1). The assessee was also asked to establish genuineness of these transactions. The assessee filed a list showing name, address and PAN no. of share holders from whom it has received amount which include bogus concerns of Shri Aseem Kumar Gupta namely M/s Moderate Credit [ Corporation Ltd, M/s SAM Portfolio Pvt. Ltd. and Shreya Infra Developers Pvt. Ltd.

10. The assessee failed to file the bank statement or the ITR of new share holder to establish their capacity and genuineness of the transactions of share capital and share premium.

11. It has been established, during assessment proceedings of Shri Aseem Kumar Gupta and assessment proceedings of M/s Moderate Credit Corporation Ltd, M/s SAM Portfolio Pvt. Ltd. and Shreya Infra Developers Pvt. Ltd., u/s **153C**, that M/s M/s Moderate Credit Corporation Ltd, M/s SAM Portfolio Pvt. Ltd. and Shreya Infra Developers Pvt. Ltd. did not have any real business activity. They were fictitious entities fully controlled and managed by Shri Aseem Kumar Gupta for providing accommodation entries as admitted by Shri Aseem Kumar Gupta in his statements recorded on 26.03.2010 at the time of search and survey and again in the statement recorded on 23.11.2011 in this office.

12. During the search &' seizure operation, statement of Sh Aseem Kumar Gupta was recorded on oath in which he admitted that he has provided accommodation entries to several companies on demand with the help of several entities (proprietary concern & companies) owned or fully controlled by him.

2.5 Learned AO examined Shri Aseem Kumar Gupta u/s 131 and thereupon relying the material seized from the office premises of Shri Aseem Kumar Gupta

observed that assessee had failed to give plausible explanation regarding the alleged accommodation entries and accordingly made addition u/s 68 to the extent of Rs. 5,00,000/-.

2.6 Lastly, learned AO made addition to the income of the assessee as inferred from the material seized during search and survey.

31. Page 63 and page 64 of Annexure A-9 seized from premises of assessee reflect amount due of Rs. 445892/- and amount received of Rs.306000/-. The assessee vide show cause notice dated 07.12.2011 was inter alia asked, " You have not explained, with evidences, the entries appearing on Pg no.63 and page no.64 of Annexure-A9 seized from your premises. You have also not established that these amounts have been accounted for in your books. You are requested to show cause as to why the amounts of Rs.4,45,892/- and Rs.3,06,000/- should not be added to your income".

32. The assessee was given opportunity till 15.12.2011 to file its reply in this regard. The assessee failed to furnish any reply in this regard. Therefore, a sum of Rs.751892/- is hereby added to the income of the assessee as the same has not been reflected in the books of the assessee

2.7 Learned CIT(Appeals) had called for remand report on the additional evidence and based upon the same had partly allowed the appeal of assessee for which the Revenue is in appeal raising following grounds:

*"1. The commissioner of Income Tax (Appeals) erred in law and on facts by accepting additional evidences in contravention of rule 46A.*

*2. The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of Rs. 18,00,000/- on account of unexplained expenditure on salary/wages (out of books) when no such employees or*

*persons were examined for their genuineness.*

3. *The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of Rs. 4,19,190/- on account of personal expenses which being 1/5<sup>th</sup> of the total expenditure was a reasonable estimate.*

4. *The Ld. Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs. 5,00,00,000/- on account of unexplained / bogus Share Capital & Share Premium.*

5. *The Ld. Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs. 7,51,895/- on account of unexplained entries reflected in the seized documents. The addition was made on the basis of seized documents.*

6. (a) *The order of the CIT (A) is erroneous and not tenable in law and on facts.*

(b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

3. In ITA No. 5648/Del/2013 for AY 2009-2010 though issues are substantial same still for convenience the grounds are reproduced below;

“1. *The commissioner of Income Tax (Appeals) erred in law and on facts by accepting additional evidences in contravention of rule 46A.*

2. *The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of Rs. 18,00,000/- on account of unexplained expenditure on salary/wages (out of books) when no such employees or persons were examined for their genuineness.*

3. *The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of Rs. 4,90,744/- on account of personal expenses which being 1 / (5 ^ (th)) of the total expenditure was a reasonable estimate.*

4. *The Ld. Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs. 2,47,81,560/- on account of bogus unsecured loan from M/s Ravnet Solutions Pvt. Ltd.,*

5. (a) *facts. The order of the CIT (A) is erroneous and not tenable in law and on*

*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

4. Heard and perused the record. We first proceed to decide the grounds in ITA no 5647/Del/2013.

4.1. At the time of hearing, primarily learned DR has stressed a lot on the fact that learned CIT(A) has erred in admitting the additional evidences. Learned DR has taken the Bench across the various observations of the learned AO in the assessment order and the remand report to submit that assessee was given adequate opportunity during the assessment proceedings but he had failed to bring on record necessary evidences and claimed that without justification additional evidence are admitted at appellate stage. Learned DR has relied the decision of Delhi Bench of the ITAT in the case of DCIT Vs. M/s E-4 Entertainment (P) Ltd. ITA no. 4491/Del/2010, order dated 24/08/2010. Ld. DR otherwise relied the findings of Ld. AO.

4.2 Learned AR, on the contrary, has submitted that there were no adequate opportunities and the learned CIT(A) had justified himself in admitting the additional evidences. It was also submitted that even otherwise when remand report is called, there is no prejudice to the Department. Learned AR relied on the

judgment of Bombay High Court in the cases of CIT Vs. Suretech Hospital & Research Centre Ltd. 293 ITR 53 (Bom); Delhi Bench of ITAT in the case of Electra Jaipur (P) Ltd. Vs. Inspecting Assistant Commissioner 26 ITD 79 (Asr); Hon'ble Kerala High Court in CIT Vs. K. Ravindranathan Nair 265 ITR 217 (Ker); and Hon'ble Delhi High in CIT Vs. Virgin Securities and Credits P. Ltd. 332 ITR 396 (Delhi).

4.3 We have given thoughtful consideration to the material on record and we find that certainly during the assessment proceedings assessee was given opportunity, which has been mentioned in the assessment order. However, before learned CIT(A) when additional evidences were filed assessee had tried to plead that adequate opportunity was not given and particularly submitting that during assessment proceedings when Authorized Representative of the appellant company went to the office of AO on 22.12.2011 to furnish the evidences, the AO had refused to accept the same. Accordingly, these evidences were sent by the appellant company on 22.12.2011 with its reply dated 21.12.2011 through speed post to the learned AO. In the remand report the learned AO has accepted receiving this reply by speed post of 23.12.2011 on 26.12.2011. Learned AO admitted that the details of expenses under the head repair/maintenance of vehicles and telephone expenses were filed with reply dated 28.11.2011, which was also filed

with additional evidences. Similarly, with regard to other issues, the assessee has relied on the reply dated 21.12.2011 and those evidences which were part of the reply submitted on 21.12.2011 were otherwise provided at the time of appellate proceedings.

4.4 Considering the nature of issues involved we are of the considered view that voluminous evidences of the assessee were required to be examined by the learned AO. The AO certainly admits that relevant evidences were received. However, the assessment order takes no cognizance of any of the evidences in a substantial manner. There is no error in CIT(A) admitting additional evidences, especially when the powers of learned CIT(A) are coterminous and the evidences produced were one which were desired by the learned AO for the inquiry and he had opportunity to respond by way of remand report additional evidences filed before learned CIT(A) could not be ignored. We find no force in the ground of Revenue challenging to admit the additional evidences and accordingly ground no. 1 is decided against the Revenue.

5. **Ground No. 2:** In regard to this ground it comes up that in the first appellate proceedings when remand report was called, the AO admitted that Annexure A11, A12 & A14 did not pertain to the assessment year under consideration and there is no seized material relating to the assessment year under

reference with regard to salaries and wages, allegedly paid by the appellant out of books. That being a state of affairs, there is no substance in the ground of appeal of Revenue challenging the deletion of addition. Thus, ground is decided against the Revenue.

6. **Ground No. 3:** In regard to this ground, it comes up that again on additional evidence when remand report was called, the AO has admitted that appellant has paid fringe benefit tax (FBT) on these alleged personal expenses under the head of vehicle depreciation, repair and maintenance of vehicles and telephone expenses. That being the state of affairs, no separate disallowance is attracted. The relief granted by learned CIT(A) requires no interference. Ground no. 3 is decided against the Revenue.

7. **Ground no. 4:** In regard to this ground, it comes up that primarily learned AO had relied on the statement of Shri Aseem Gupta, who had allegedly given the accommodation entries. However, before learned CIT(A) it was established that the entries were received from around twenty parties and the evidence with regard to names of shareholders, application for share, Certificate of incorporation, PAN/ITR, bank statement, company master detail and resolution were provided. It was established that the amounts were received through banking channel. Learned AO had not accepted the evidences. Learned AO merely focused

on the share premium of Rs. 1,15,00,000/- received from three companies and on the basis of report received on the notices u/s 133(6) of the Act, discredited the receipts from all the twenty companies. In fact only three companies Moderate Credit Corporation Ltd.; M/s SAM Portfolio Pvt. Ltd.; and M/s Shreya Infra Developers Ltd. were found to be associated with the seized material as per the statement of Shri Aseem Gupta and in the remand report learned AO accepted that Aseem Gupta has not made any statement that he provided accommodation entries to the appellant as the beneficiary and this fact was verifiable as the list of beneficiary did not contain the name of the appellant company. Thus, based upon aforesaid learned CIT(A) has made the deletion.

8. We are of the considered view that without there being any specific inquiry and evidences merely on the general statement of Aseem Gupta, it was not justified to make the addition u/s 68 when otherwise with regard to identity and credibility of the investing companies, the assessee had provided substantial evidences. The findings of learned CIT(A) with regard to ground no. 4 require no interference. Ground is decided against the Revenue.

9. **Ground No. 5:** In regard to this ground it comes up that in the written submissions of the appellant in the remand report called in regard to additional evidences it was established that out of total amount, Rs. 4,55,892/- contained in

incriminating document page no. 63; and an amount of Rs. 3,06,000/- entries contained in incriminating document no. 64, totaling to Rs. 7,51,892/-. The learned AO examined the additional evidences by reconciliation and admitted the addition should be Rs. 96,000/- only. That being the state of affairs the ground has no substance and the issue is decided against the Revenue.

**ITA No. 5648/Del/2013:**

10. In ITA No. 5648/Del/2013 for AY 2009-2010 it comes up that the factual background to the assessments is similar except the difference in amounts and the ground nos. 1,2 & 3 are similar and cover for determination all issues arriving from these grounds in A.Y. 2008-09. Therefore, findings in ITA no. 5647/Del/2013 for A.Y. 2008-09 apply *pari materia* to ground nos. 1, 2 & 3 in the case of ITA no. 5648/Del/2013 for A.Y. 2009-10.

11. In regard to ground no. 4 it comes up that learned CIT(A) again relied the additional evidences which were examined by the learned AO and observed in para 25 as follows:

*“It is pertinently mentioned here that the additional evidence filed by the appellant was examined by the Assessing Officer and it was found by him that the addition had been made in the hands of the appellant company of the funds received by M/s. Ravnet Solution Pvt. Ltd. and the said funds had been taxed in the hands of M/s. Ravnet Solution Pvt. Ltd. Therefore, the Assessing Officer commented in his report that the source of the funds in the hands of the appellant company can be considered as explained, as the entire transaction has been routed through banking channels only and is supported by the confirmed copy of the ledger account of M/s. Ravnet Solutions (P) Ltd. and the same is verifiable from the bank account of the*

*lender company. In the rejoinder filed, the appellant also submitted that the Assessing Officer examined the identity and capacity of the creditor regarding the source of the loan. Having considered all the facts and evidence on record, I find no reason and justification to sustain the addition made by Assessing Officer amounting to Rs.2,47,81,560/- u/s 68 of the I.T. Act, 1961 which deserves to be deleted. Hence, the addition of Rs.2,47,81,560/- is hereby deleted.”*

11.1 As Ld. CIT (A) has merely accepted the admissions of Ld. AO in remand proceedings, we find no error in the findings of learned CIT(A). This ground is decided against the Revenue.

12. As a consequences of above, both the appeals of the Revenue are dismissed.

Order pronounced in open court on 28.03.2024.

**Sd/-**  
**(G.S. PANNU)**  
**VICE PRESIDENT**  
**Dated: 28.03.2024.**

\*MP\*

Copy forwarded to:

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

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI