

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 5649/DEL/2013
Assessment Year: 2010-11.**

ACIT, Central Circle-9, New Delhi.	<u>Vs</u>	Acme Auto Pvt. Ltd., 305, Aggarwal Arcade Plot No. 6, Sector-12, Dwarka, New Delhi. PAN-AACCA4888R
APPELLANT		RESPONDENT
Assessee represented by	Dr. Rakesh Gupta, Adv.; & Shri Somil Agarwal, Adv.	
Department represented by	Shri Sanjay Pandey, CIT(DR)	
Date of hearing	04.04.2024	
Date of pronouncement	09.04.2024	

ORDER

PER SAKTIJIT DEY, V.P.:

This is an appeal by the Revenue against order dated 31.07.2013 passed by learned Commissioner of Income-tax (Appeals)-XXXII, New Delhi for the assessment year 2010-11.

2. At the outset learned counsel appearing for the assessee submitted that all the issues arising in the appeal are squarely covered by the decision of the Coordinate Bench in assessee's own case in assessment years 2008-09 and 2009-

10. A copy of the order dated 28.03.2024 in ITA nos. 5647 & 5648/Del/2013 was also placed on record.

3. Though, learned Departmental Representative agreed that the issues arising in the appeal are covered by the decision of the Tribunal, however, he dutifully relied upon the observations of the Assessing Officer.

4. We, hereinafter, deal with the grounds raised by the Revenue.

5. In ground no. 1, the Revenue has challenged acceptance of additional evidence by the first appellate authority under rule 46A of the Rules. It is observed, while deciding identical issue in assessee's own case for A.Y. 2008-09 and 2009-10, the Coordinate Bench has held as under:

“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.”

5.1 There is no dispute between the parties that the factual position in the impugned assessment year is pari materia to assessment years 2008-09 & 2009-10. Therefore, respectfully following the decision of the Coordinate Bench we dismiss the ground.

6. In ground no. 2 the Revenue has challenged the deletion of addition of Rs. 30,00,000/- on account of unexplained expenditure on salary/wages. It is observed, in course of search & seizure operation, certain loose-sheets were found and seized which are marked as Annexure A11, A12 & A14. On examining the seized material along with books of account in course of assessment proceedings, the Assessing Officer found that the amount claimed by the assessee in the return of income did not tally with the amount actually mentioned in the wages and salary

and loose-sheets found at the time of search. Therefore, he made addition of Rs. 30,00,000/- as unexplained salary/wages.

6.1 However, in course of proceedings before the First Appellate Authority, Assessing Officer has submitted a remand report wherein he has specifically observed that after verification of the books of account and seized documents, the wages paid appearing in seized documents stand reconciled with the figures recorded in the books of account and no discrepancy is noticed. Thus, in our view once the Assessing Officer has accepted the fact that figures appearing in the seized documents stand reconciled with the books of account, learned First Appellate Authority was justified in deleting the addition. Accordingly, we uphold the decision of learned First Appellate Authority by dismissing the ground.

7. In ground no. 3 the Revenue has challenged deletion of disallowance of personal expenses amounting to Rs. 5,88,063/-.

7.1 We have considered rival submissions. We find that the issue is squarely covered by the decision of the Coordinate Bench in assessee's own case for assessment years 2008-09 & 2009-10 (supra). That being the case, we uphold the decision of First Appellate Authority by dismissing the ground.

8. In ground no. 4 the Revenue has challenged the addition of Rs. 2,36,66,500/- on account of accommodation entries provided by Aseem Kumar Gupta.

8.1 On perusal of record it is observed that in remand report submitted before learned First Appellate Authority, the Assessing Officer has accepted the transaction to be genuine. This fact has been clearly reflected in para 20 of learned First Appellate Authority's order. It is further relevant to observe, identical addition was made by the Assessing Officer in assessment years 2008-09 & 2009-10 as well. However, while deciding the issue, the Tribunal, in the order referred to above, has upheld the decision of learned First Appellate Authority in deleting the addition. Factual position concerning the addition in the impugned assessment year being pari materia, we uphold the decision of learned First Appellate Authority. Ground raised is dismissed.

9. In ground no. 5, the Revenue has challenged deletion of addition of Rs. 2,50,00,000/- on account of non-genuineness of security rent.

9.1 Briefly, the facts are, in course of assessment proceedings, while verifying the seized documents, the Assessing Officer noticed that the assessee had taken security rent from five parties aggregating to Rs. 2,50,00,000/-. In response to the summons issued by the Assessing Officer u/s 131 of the Act, the concerned parties appeared and denied of having made any such payment to the assessee. Alleging that the assessee failed to establish the genuineness of payment received, the Assessing Officer made addition of Rs. 2,50,00,000/-.

9.2 In the remand report furnished before learned First Appellate Authority the Assessing Officer, after examining the issues in the context of evidences furnished by the assessee, has stated that nothing adverse is noticed, which may substantiate the addition of Rs. 2,50,00,000/-. Taking note of such observation of the Assessing Officer in the remand report, learned First Appellate Authority has deleted the addition. That being the factual position on record, we do not find any infirmity in the decision of the First Appellate Authority. Ground raised is dismissed.

10. In ground no. 6 Revenue has challenged deletion of addition of Rs. 1,40,00,000/- on account of undisclosed income. Facts are, on examination of seized documents the Assessing Officer formed an opinion that amounts aggregating to Rs. 1,40,00,000/- have not been accounted for in the books of account. Therefore, he called upon the assessee to explain, whether the amount in dispute was accounted for in the books of account. Alleging non-compliance by the assessee, the Assessing Officer added back the amount to the income of the assessee. However, in course of First Appellate proceedings, the Assessing Officer furnished a remand report stating that the figures appearing in the loose documents found at the time of search and seizure operation, are not co-related with any figures in any account of the assessee or with any other seized material available on record. He observed, it is difficult to say exactly what this figure represented. Taking note of the aforesaid observations of the Assessing Officer, learned First

Appellate Authority has deleted the addition by observing that there is no concrete/positive or cogent evidence with the assessing Officer which could establish that the figures mentioned in the seized documents constitute the undisclosed income of the assessee.

10.1 Nothing has been brought on record by the Revenue to controvert the aforesaid factual finding of learned First Appellate Authority. In view of the aforesaid, we uphold the decision of learned First Appellate Authority by dismissing the ground.

11. Ground nos. 7 & 8 being general in nature are dismissed.

12. Resultantly, appeal is dismissed.

Order pronounced in open court on 09.04.2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

