

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

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

ITA No.6151/Del/2017
Assessment Year: 2015-16

ITA No.7834/Del/2019
Assessment Year 2016-17

ACIT,
Circle-3(1),
New Delhi.

Vs Apollo Fiege Integrated
Logistics Pvt. Ltd.,
Plot No.20, Sector-44,
Gurgaon,
Haryana – 122 002.
PAN: AALCA0748D

(Appellant)

(Respondent)

Assessee by : Shri Pradeep Dinodia,
Shri R.K. Kapoor &
Shri Harish Dhamija, CA's
Revenue by : Shri Zafarul Haque Tanweer, CIT- DR
Date of Hearing : 22.02.2024
Date of Pronouncement : 21.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 31.07.2017 of the Commissioner of Income Tax (Appeals)-I, New Delhi, (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.722/16-17 arising out of the appeal before it against the order dated

21.03.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the DCIT, Circle-3(1), New Delhi (hereinafter referred to as the Ld. AO).

2. The assessee company was incorporated on 31st October, 2012 as a joint venture between M/s Apollo Logisolutions Ltd. which owns 60% shareholding and M/s Fiege International Beteiligungs Gmbh which owns 40% of the shareholding. During AY 2015-16, the assessee company has issued 18 lakhs shares of M/s Apollo Logisolutions Ltd. and 12,010 shares of M/s Fiege International Beteiligungs Gmbh in proportion in proportion to their holding on the face value of Rs.10/- and premium of Rs.40/- thereof per share. Similarly, in AY 2016-17, the assessee had made allotment of equity shares to M/s Apollo Logisolutions Ltd. The ld. AO had made the additions u/s 56(2)(viib) r.w.r. 11UA in both the years. In AY 2015-16, a disallowance was also made u/s 14A r.w.r. 8D. In appeal, the ld.CIT(A) has deleted the additions for which the Revenue is in appeal raising the following grounds in AY 2015-16 and the same are reproduced below:-

“1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 7,20,00,000/- made u/s 56(2)(viib) of the Income Tax Act, 1961 on account of excessive premium received from domestic company namely M/s Apollo Logisolutions Limited on issue of equity shares ignoring the facts brought on record by the AO to justify the above addition.

2. On the facts and circumstances of the case, Ld. CIT(A) is not justified in holding that valuation of shares has been determined at Rs. 50/- per share as per DCF method and so no excess premium has been charged without appreciating the facts brought on record by the AO that the valuation of shares made by assessee as per DCF method is erroneous as

it is based on hypothetical figures and not based on true projection of future revenues and cash flows which is evident from perusal of financial statements for F.Y. 2014-15 & F.Y. 2015-16 in which total revenues are shown at Rs. 204.97 cr. & Rs. 206.95 cr. and profit before tax is at Rs. (-) 14.38 cr. and Rs.(-) 11.25 cr. respectively, whereas for the purpose of valuation of shares as per DCF method, the above items are taken at Rs. 157.80 cr. & Rs. 323.72 and Rs. 4.37 cr. and 6.55 cr. respectively.

3. On the facts and circumstances of the case Ld.CIT(A) is not justified in deleting the addition of Rs. 4,80,00,400/- made u/s 68 of Income-tax Act, 1961 on account of excessive premium received from M/s. Fiege International Beteiligungs GmbH.

4. The Ld.CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 1,22,925/- made u/s 14A read with Rule 8D of IT Act without properly appreciating the facts brought on record by AO while making disallowance.

5. 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.”

3. As for AY 2016-17, the grounds are similar except with regard to the figures involved in the additions made u/s 56(2)(viib) r.w.r. 11UA of the Act.

4. Heard and perused the record. It can be appreciated that in regard to the allotment of shares to M/s Fiege International Beteiligungs GmbH which owns 40% of the shareholding, the ld.CIT(A) has taken into consideration the fact that section 56(2)(viib) r.w.r. 11UA is not applicable to the shares issued to foreign companies on premium and the ld. DR could not dispute this fact and legal aspect.

5. As regards the allotment of shares to M/s Apollo Logisolutions Ltd., it can be appreciated from the order of the ld.CIT(A) that the valuation certificate obtained from an independent Chartered Accountant on the basis of Discounted

Cash Flow Method has been relied.. We are in agreement with the Id.CIT(A) that the Id. AO had arbitrarily discarded the report on the basis that in the subsequent years the revenue from operations did not match the valuation report. In this context, the settled proposition of law is that the valuation report adopted by the assessee has to be accepted unless the AO is able to establish that the same is not based on actual figures. Only because there was a difference in the financials subsequently to the report, that cannot be a basis to discard the valuer's report.

6. In regard to the disallowance of expenses made u/s 14A r.w.r. 8D of the IT Rules, admittedly, the investments were made in a subsidiary company and being a strategic investment the same could not have been taken up for making a disallowance u/s 14A of the Act. There is no infirmity in the findings of the Id.CIT(A). The grounds raised in both the appeals can not be sustained.

7. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 21.05.2024.

(G.S. PANNU)
VICE PRESIDENT

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: May, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi