

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H": NEW DELHI  
BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 8542/Del/2019  
(Assessment Year: 2016-17)

ACIT, Circle-27(1), New Delhi  (Appellant) <b>PAN: AAACU4023E</b>	Vs.	Usha Breco Ltd, 701, Surya Kiran Building, Kasturba Gandhi Marg, New Delhi  (Respondent)
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Assessee by :	Ms. Sangeeta Sigh, CA Ms. Priyanka Jain,
Revenue by:	Ms. Sapna Bhatia, CIT DR
Date of Hearing	20/03/2024
Date of pronouncement	04/06/2024

**ORDER**

**PER ANUBHAV SHARMA, J. M.:**

1. This appeal in hand has been preferred by the revenue against the order dated 16.08.2019 of Ld Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 10477/18-19 arising out of an appeal before it against the order dated 24.12.2018 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the Ld ADdl/JCIT, Special Range-9, New Delhi (hereinafter referred as the Ld. AO).

2. The case of the assessee was selected for complete scrutiny for following reasons:-

1. Mismatch in amount paid to an employee as bonus or commission reported in audit Report and ITR
  2. High interest expenses relatable to exempt income
  3. Lower amount disallowed u/s 40A(7) in ITR
  4. Tax Credit claimed in ITR is less than tax credit available in 26AS
  5. Large outward remittances to a non-resident not being a company or to a foreign company
  6. Mismatch between income/receipt credited to P & I account considered under heads of income and income from heads of income other than business/profession
3. There upon after taking the response of the assessee the Id AO has made following additions:-

Addition/Disallowance	Rs.25,67,02,825/-
Addition/Disallowance	Rs.2,99,70,447/-
Addition/Disallowance	Rs.24,10,00,000/-

4. The assessee had challenged before the CIT(A) and after taking into consideration the additional evidences filed the CIT(A) deleted the additions for which the revenue is in appeal before us raising following grounds:-

*"1. "Whether on facts and in the circumstances of the case the Ld. CIT(A) has erred on facts and in law while allowing the appeal of the assessee and in admitting the additional ground evidence without appreciating the fact that the assessee was given various opportunities through notices on ITBA as mentioned throughout in the assessment order date-wise. to furnish the detail during the course of assessment proceedings and the details were deliberately not filed by the assessee as verifiable from ITBA portal available to CIT(A)."*

2. *"Whether on facts and in the circumstances of the case the Ld. CIT(A) has erred in overlooking the fact mentioned in the assessment order that a number of notices were sent to the assessee during the assessment proceedings through compulsory ITBA portal and accepted the additional evidence on the same issue and not verifying himself as directed to the first appellate authority in the light of settled judgement of the jurisdictional Delhi High Court in the case of Janampark Advertising 375 ITR 373."*

3. *"Whether on facts and in the circumstances of the case the Ld. CIT(A) has erred on fact and in law, in allowing the relief against the addition made by the AO under section 68 of the Act on account of Sundry Creditors without verification and appreciating the fact that repayment of any amount in subsequent years does not satisfy requirement of section 68 of the Act while stating the same in adjudicating this issue."*

4. *"Whether on facts and in the circumstances of the case the Ld. CIT(A) has erred on fact and in law, while allowing the relief against the addition made by the AO under section 68 of the Act on account of unsecured loans without verifying the facts and without appreciating that the lenders companies does not have the credit- worthiness to advance the loans are evident from their returns of income"*

5. *"Whether on facts and in the circumstances of the case the Ld. CIT(A) has erred in not following the decision of the jurisdictional Delhi High Court in the case of PCIT-07 vs Bikram Singh (ITA No. 55 of 2017). Seema Jain v. ACIT (ITA No. 273 of 2018) and the famous decision of High Court of Himachal Pradesh in the case of Virbhadra Singh vs. DCIT (CWP No. 3072, 3078 and 3080 of 2018) regarding additions under section 68 due to absence of credit- worthiness of lenders."*

6. *"Whether on facts and in the circumstances of the case the Ld. CIT(A) has erred on fact and in law while allowing the appeal of the assessee without independently verifying the details and solely relying upon the remand report, though having having co- terminus power the the A.O.. as per the principle laid by the Delhi High Court in the case of Janamspark Advertising."*

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

5. Heard and perused the record.

6. The Id DR had laid a lots of stress on ground No. 1 submitting that additional evidences were admitted and considered sacrosanct without any enquiry from the AO himself or even the CIT(A) which could exercised co-terminus powers. However, in regard to consequence of these evidence the Id DR could not defend the orders of the CIT(A) much.

7. The Id AR on the contrary relied on the findings of the CIT(A).

8. After taking into consideration the material available on record and submission it comes up that the three additions made by the Id AO were examined by the CIT(A). Assessee had filed additional evidences for which remand report was called from AO. The CIT(A) then examined the issue and from the impugned order following facts have come up.

8.1 The AO disallowed the claim of Rs.25,67,02,825/- on the ground that the appellant was not able to furnish the entire details in the format given by him and that the expenditure were actually incurred wholly and exclusively for the business of the assessee. Appellant submitted that the entire expenditure of Rs.25,67,02,825/- pertained to various heads of account and which are allowable under the law. That none of the expenditure has been disallowed in any of the preceding years therefore, disallowance made is absolutely arbitrary and unjustified. In remand proceedings all the bills and vouchers were filed which were examined by AO.

8.2 Addition of Rs.2,99,70,447/- being the outstanding sundry creditors as on 31.03.2016 added under section 68 of the Act by the AO, which

assessee had claimed were current liabilities and paid in subsequent period. In remand proceedings AO had verified the purchase and input services.

8.3 Addition of Rs.24,10,00,000/- being unexplained credit under section 68 of the Act for which the assessee had claimed that same was loan raised during the year. The assessee company has furnished all the evidences to establish genuineness as well as credit worthiness of company in respect of all the inter-company deposits received. The AO has made this addition of Rs.24,10,00,000/- for loans from fourteen parties. In remand proceedings notices u/s 133(6) of the Act were issued by AO and lenders had verified the loans. Further relevant evidences of genuineness of transaction were also not doubted by AO.

9. After giving a thorough consideration to the findings of the CIT(A), we are of the considered view that the additional evidence admitted under Rule 46A, remand report of the AO on the additional evidence and the rejoinder filed by the assessee in response to the remand report form the basis of adjudication by the CIT(A).

10. The Id AR has pointed out in fact all the evidences were before the AO also, as initially DCIT, Circle-27(1), Delhi was the AO and the pursuant to the order passed u/s 127 of the Act the assessment was transferred to the Id AO/ ACIT, Special Range-9, Delhi. It has been submitted that the notices were also served by DCIT, Circle-20(1), Delhi and were duly responded but after transfer on 19.11.2018, the ACIT, Special Range-9, Delhi issued a notice seeking response from the assessee by 27.11.2018 and the assessee was unable to respond to that due to insufficient time and the order was passed on 24.12.2018.

11. After taking into consideration the aforesaid facts and circumstances, we are of the considered view, that there is no substances in the contention

of the Id DR that the AO or the CIT(A) has fallen in error in making relevant enquiries for verification of the genuineness or the authenticity of the documents filed by the assessee at the remand stage or at first appellate stage, respectively. We are of firm view that once, the remand report is submitted that it has to be presumed that the AO had given due consideration to the relevancy, admissibility and evidentiary value of the evidences filed as additional evidences. Alleging, lack of inquiry at the end of the AO and CIT(A) cannot be basis for challenging of the order the Id First Appellate Authority by the AO himself. Thus, the grounds raised by the Revenue have no substance.

12. The appeal of the Revenue is dismissed.

Order pronounced in the open court on 04/06/2024.

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

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

Dated: 04/06/2024  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**ASSISTANT REGISTRAR**  
**ITAT, New Delhi**