

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

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.3685/Del/2018
Assessment Year: 2010-11

ACIT,
Central Circle-18,
New Delhi.

Vs Aqua Electronic & Solutions P. Ltd.,
239, Okhla Industrial Estate,
Phase-3,
New Delhi.

PAN: AAHCA4306R

(Applicant)

(Respondent)

Assessee by	: Shri S. Krishnan, Advocate
Revenue by	: Mrs. Sunita Verma, CIT, DR
Date of Hearing	: 05.03.2024
Date of Pronouncement	: 04.06.2024

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is preferred by the Revenue against the order dated 29.12.2017 of Commissioner of Income Tax (Appeals)-32, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.302/2017-18 arising out of an appeal before it against the order dated 30.12.2016 passed u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as 'the

Act') by the ACIT, Central Circle-18, New Delhi (hereinafter referred as the Ld. AO).

2. The original assessment in this case was completed u/s 143 (3) of the Act on 13.03.2013 at nil income and, subsequently, the assessment was completed u/s 143(3) r.w.s. 153A of the Act vide order dated 30.12.2016 at a total income of Rs.1,28,28,040/-. The order dated 30/12/2016 was rectified by order dated 04.07.2017 u/s 147/143(3) r.w.s. 153A of the Act. Subsequently, in appeal, the addition of Rs.125,77,00,000/- on account of unexplained share capital/share premium/share application money was made u/s 68 and Rs.2,51,54,000/- as unexplained expenditure u/s 69C of the Act were deleted by the Id.CIT(A) for which the Revenue is in appeal raising the following grounds:-

“1. Whether the Ld. CIT(A) has erred in law in relying on Kabul Chawla 61 taxman.com 412 (Delhi) and in holding that completed assessment could not be interfered by the AO without incriminating material without appreciating that Section 153A of the Act does not stipulates any such conditionality on A.O.

2. Whether on the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in deleting the addition of Rs.125,77,00,000/- made by the A.O. on account of unexplained credit towards Share Capital, Share Application Money and Share Premium.

3. Whether on the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in deleting the addition of Rs.2,51,54,000/- made by the A.O. on account of unexplained expenditure on Brokerage/Commission paid by assessee company.

4. Whether on the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in quashing the assessment proceedings and not deciding the appeal of the assessee on merit.

5. a) *The order of the CIT(Appeals) 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. Heard and perused the record.

4. The Id. DR has submitted that there was no error in the findings of the Id. AO. However, the Id. AR has relied on the order of the Ld. CIT(A) and particularly stressed on the ground no. 1, submitting that there was no incrimination material in present AY.

5. As we appreciate the material before us and the findings of Id.CIT(A) it comes up that of the two documents allegedly seized, the first indicates the fund flow among the group companies of which the assessee is one. The second document it is observed that the assessee has received share application money from 87 companies and has invested in Legend Power Pvt. Ltd. as well as transferred the shares to Induco Infradevelopers Pvt. Ltd. It further allotted shares to 44 companies which transferred shares to other companies. The first transfer is of 1/05/2010 to 31/05/2010 and thereafter to Induco Infradevelopers Pvt. Ltd. The Second transfer is of 15th to 20th October. There is no fault in the conclusion of the CIT(A) that the second document does not pertain to AY 2010-11 (FY 2009-10). Therefore, no cognizance of this document can be taken for the present case. As for the first document mentioned above, CIT(A)observed ;

“from the copies of the audited balance sheet as on 31/03/2010 and P&L a/c for 1/04/2009-31/03/2010 submitted at the assessment stage (as gathered from the Assessment Record) that the details of share application money including the share premium is already disclosed by the appellant therein. From the Schedules forming part of the balance sheet as on 31/03/2010, it is observed that the issued, subscribed and paid-up capital is Rs.2,51,54,000/- (Schedule - 1) and the share premium disclosed under Reserves & Surplus is Rs.122,76,46,000/- (Schedule - 2). Also, the share application made by the appellant in M/s. Legend Power Private Ltd. (pending allotment) is shown at Rs.117,35,00,000/- under Investments (Schedule - 4). Thus, the appellant’s contention that the ‘share application money received is disclosed’ is borne out from the available records.

Also, during the course of appellate proceedings the AR of the appellant argued that the issue regarding share application money received by the appellant during the relevant PY (Rs.125.28 or.) was already examined during the course of its assessment u/s 143(3). It is observed from records that the original assessment u/s 143(3) in the present case was completed on 13/03/2013. To further verify the appellant’s contention in this regard, the Assessment Record was requisitioned from the AO. In the Assessment Record marked as ‘Volume I’, it is observed from the office copy of the order u/s 143(3) dated 13/03/2013 (three pages) that while the assessment order per se consisted of 2 (two) pages, yet there is a third page titled ‘Office Note’. It is mentioned therein inter alia, “During the assessment year the assessee has made allotment of 25,05,400 nos of equity shares of Rs.500/- (face value Rs.10 plus premium of Rs.490/- per equity share) in favour of various parties totaling to Rs.125,27,00,000/-. During the course of assessment proceedings the assessee company has filed the requisite confirmations, copy of share application forms, bank statements of the shareholders, PAN details & audited financial statements in support of the genuineness of the transaction, creditworthiness of the shareholders, and their assessment particulars.

Notices u/s 133(6) were issued on 19/02/2013 (11 shareholders) & 01.03.2013 (5 shareholders) whereby the requisite information was called for from the shareholders. The response to all the notices have been received and placed on record. The details provided therein duly reconciles with the information furnished by the assessee company.

Sr. T.A. has been directed to pass on the information to the concerned AOs in respect of companies who have made investment in purchase of shares of assessee company.”

6. The settled proposition of law after the judgment of the Hon'ble Supreme Court in the case of **PCIT vs. Abhisar Buildwell (P) Ltd. (2023) 454 ITR 212 (SC)** is that in case of completed assessments addition can only be made on the basis of incriminating material found during search. Ld. DR could not counter the fact that it was case of completed assessment. The share application money details were already enquired in assessment u/s 143(3) of the Act. The two documents alleged to be incriminating material have been examined thread bare to conclude that one did not relate to the year under consideration and second had a flow chart showing infusion of capital with in group company which was already disclosed in audited financial statement, same cannot be called incriminating. Thus reliance of CIT(A) on judgment of ***Kabul Chawla 61 taxman.com 412 (Delhi)***, cannot be faulted. In fact, the ground no. 1 as raised, without relying a judicial decision to the contrary, is superfluous. We are of the considered view that there is no error in the findings of the ld.CIT(A) requiring any interference. Ground no. 1, has no merit.

7. Further, as ground no. 1, which goes to the root of exercise of jurisdiction, once decided against the revenue, makes rest of the grounds to be inconsequential. We also find substance in the contention of ld. AR that for the reason of exercise of illegal jurisdiction u/s 153A, the assessment has been

quashed and the appeal of the assessee was allowed by the Id.CIT(A) as the same is not a case of deletion of the additions made by AO. The deletion was only consequential to the conclusion drawn by the Id.CIT(A) that there was an illegal exercise of jurisdiction, for making addition, without there being any incriminating material found during search, the ground no 2 and 3 are rejected.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 04.06.2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 4th June, 2024.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi