

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1933/Del/2023
Assessment Year: 2013-14

DCIT Central Circle -14 Delhi	Vs.	M/s. IRIS Computers Ltd. E-69, Vasant Marg, Vasant Vihar, New Delhi-110057 PAN No.AAACI9670H
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Anu Krishna Aggarwal, CIT DR
Respondent by	Sh. Ved Jain, AR Ms. Supriya Mehta, AR

Date of hearing:	15/07/2024
Date of Pronouncement:	31/07/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the revenue is directed against the order of the Commissioner of Income Tax (Appeals)-26, New Delhi [hereinafter referred to as "CIT(A)"] vide order dated 17.04.2023 pertaining to A.Y. 2013-14 and arises out of the assessment order dated 31.03.2016 under section 143(3) of the Income Tax Act 1961 [hereinafter referred as 'the Act'].

2. Aggrieved by the order of the lower authorities, the revenue is in appeal before us by raising the following grounds:-

(i) Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in deleting the addition made on account of increase in GP of Rs.17,84,29,863/-, unexplained creditors of Rs.5,00,00,000/- and disallowance of credit card commission and credit risk insurance expenses of Rs.1,59,17,692/- in the hands of assessee company by ignoring the facts and merits of the case.

ii. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the addition of Rs.5,00,00,000/- by not appreciating the fact that the assessee has willfully did not provide the complete details during assessment proceedings and prevented the A.O. from concluding independent enquiry by furnishing incomplete information at the fag end of time barring.

iii. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the addition of Rs.17,84,29,863/-

ignoring the fact that despite substantial increase in sales that is from Rs.1103 crore to Rs.1621, no substantial increase in GP was shown by the assessee.

iv Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the addition of Rs. 1,59,17,692/- on account of credit card and commission and credit card risk insurance paid ignoring the fact that no bills were submitted by the assessee evidencing the extra payment charged for payment of credit card commission and no evidences were submitted regarding the tenure of insurance policy & deduction of TDS on the same.

v.(a) Whether on law and facts of the case the order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.

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

3. The brief fact of the case is that the assessee company is engaged in the business of trading in computers, notebooks and

related soft wares and equipments. Turnover for the year under consideration has been declared at Rs.1621.18 crores. The assessee has shown fall in GP rate as well as NP rate in the year under consideration compared for the immediate preceding year.

4. The assessee company filed its return of income on 26.09.2013 declaring total income at Rs.14,56,46,900/-. The case was selected for scrutiny under CASS and the notice u/s. 143 (2) of the Act, dated 04.09.2014 was issued and served upon the assessee, but no compliance was made by the assessee. Thereafter, a notice u/s. 142 (1) asking for certain specific information was issued on 06.04.2015. This notice was served through Speed Post but on the date fixed no compliance was made again by the assessee. A show cause notice dated 18-11-2015 was issued by the AO to the assessee as under :-

"F.No.DCIT/Cir. 12 (2)/2015-16

Dated 18.11.2016

To,

The Managing Director

M/s IRIS Computers Ltd.

E-69, Vasant Vihar,

New Delhi-110 057

Sir/Madam,

Sub: Assessment proceedings for AY 2013-14-repeated non compliance

FINAL opportunity and show cause for ex-party assessment-regarding

Please refer to the pending assessment proceedings for AY 2013-14 in the case of the company,

2. It is noticed from the records that a notice u/s 142(1) was issued on 31.07.2015 calling certain specific Information as per enclosed questionnaire which was required to complete the pending assessment. Compliance was to be made on 12.08.2015 but only part information was filed and complete information as asked was not filed

Sh. P.K. Aggarwal CA appeared on 26.08.2015 when certain further specific Information was called vide entry made in the order sheet. However, no compliance was made on the adjourned date of 09.09.2015.

Thereafter, notice u/s 142(1) was issued on 29.09.2015 which was duly served through speed post on 06.10.2015 but again no compliance was made on the fixed date of 13.10.2015.

Fresh notice u/s 142(1) was once again issued on 15.10.2015 and sent through speed post which was duly served on 19.10.2015 but again on the fixed date of 23.10.2015 no compliance has been made.

In view of above, please show cause as to why ex-party assessment on the basis of material available on record be not made in the case of the company. If you have any objection, an explanation in this regard may be filed before the undersigned on 01.12.2015 at 11:00 am when these proceeding are finally fixed. You may also file any Information as asked vide notice u/s 142(1) dated 31.07.2015 and order sheet dated 26.08.2015 on that day which will also be considered before making any such order. In any case, this may be treated as final opportunity

(N.K. Bansal)

Dy. Commissioner of Income Tax,

Circle 12(2), New Delhi"

5. The AO by order dated 31-03-2016 has made the total addition of Rs 24,43,47,555/- on account of gross profit 4% at Rs 178429863/-, unexplained creditors at Rs 50000000/-and disallowance of credit cards Commission and Credit Risk Insurance expenses at Rs 1,59,17692/-. Aggrieved by the order of the AO the assessee has filed the appeal before the Ld CIT(A), who vide order dated 17-04-2023 allowed the appeal against which the Revenue is in appeal before us.

6. Ld DR has submitted that assessee did not provide the complete details during assessment proceeding and prevented the AO from independent enquiry. He has further submitted that the sales had increased for the assessment in question but, no substantial increase was shown in Gross profit by the assessee.

7. Ld counsel for assessee has submitted that the AO has rejected the books submitted by assessee without any corroborative material by giving an incorrect finding. The assessee has furnished all the details of advances before the AO. He has also submitted that the AO has no power to reject the books of account merely on the ground that the profit has declined although the sales were increased. In the support of his contention, he has filed a paper book containing page no 1 to 96, in which he has attached the copy of acknowledgment of

return of Income, copy of auditor's report along with audited financial statement, copy of taxed audit report, copy of notices, copy of letter issued by AO, copy of reply with the list of the creditors.

8. We have heard the parties and perused the materials available on record.

9. Perusal of the order of the Ld CIT(A) reveals that the assessee has filed the additional evidence under rule 46 A of the Act before the CIT(A), which was allowed and considered. The order of the Ld CIT(A) as under :-

“7. Admission of additional evidence under rule 46A of IT rules: *The appellant had submitted application for admission of additional evidences under rule 46A of the IT rules. The same were forwarded to the jurisdictional AO for his comments. The AO in his report dated 26.04.2019 has provided issue wise comments however, no comments were provided that whether the additional evidence produced during the appellate proceedings should be admitted. From the facts on record, it has been observed that the Assessing Officer had issued multiple notices u/s 142(1) during the course of assessment proceedings and the appellant has also given reply of these notices on several occasions. The appellant has submitted in its rejoinder to the remand report that on 14 occasions the appellant or its AR had attended the hearing or submitted the documents called for. Thus, it was claimed by the appellant that the*

assessee had attended the assessment proceedings on regular basis and filed the replies and documents from time to time, however, assessee was unable to submit certain documents during the course of assessment proceedings as these documents were either not called for specifically during the course of assessment or sufficient time was not allowed.

The appellant also submitted that upon perusal of dates of hearing, will also appreciate that there was no intention of the assessee to ignore the assessment proceedings, in fact, It has made its best efforts to submit all the documents during the course of assessment proceedings, however, due to certain circumstances beyond the control of the assessee, it could not submit certain documents during the assessment proceedings. Accordingly, it is requested before you that assessee was prevented by sufficient cause to submit these documents during the assessment proceedings and hence these documents should be accepted as these documents meets the root cause of allegations of the Id. Assessing officer. The appellant also relies upon the following judgments:

Kvaerner Boving Construction Ltd v. DY. CIT, [1996] 54 TTJ (Delhi - Trib.) 429

Encon Furnaces Private Ltd. Versus Assistant Commissioner., [1996] 56 ITD 14 (Delhi-Trib)

JK Chturvedi v. Asstt. CIT [2004] 3 SOT 456 (Ahd-Trib)

State of West Bengal v. Administrator, Howrah Municipality, AIR 1972 SC 749

G.M Geri & Sons v. Fifth ITO [1998] 96 Taxman 19 (Mum. - Trib)

Rainbow Agro Industries Ltd V. ITAT [2003] 132 Taxman 752 (Bom.)

The submission of the appellant and the remand report received from the AO is considered. It is found that the AO has commented upon the merits of the issues on which additions were made, however, no comments were provided on the admissibility of the additional evidence. Considering the above and on the fact that the additions were made on the basis of the documents which were submitted under rule 46A. The appellant had been a regular taxpayer and complying all the statutory requirements. The appellant has submitted that it was prevented by sufficient cause to submit the documents during the assessment proceedings and since these documents pertains to the root cause of allegations of the Ld. AO, these documents should be accepted. The term 'sufficient cause' needs to be construed liberally to ensure natural justice to the assessee considering the partial noncompliance observed in this case as bona fide. Considering the facts discussed above and the relevant judicial views on the above subject the additional evidence filed by the appellant is allowed and considered.”

10. Ground no (ii); Ld DR has submitted that the assessee had not provided the list with PAN number of the sundry creditors who were having balances more than five lakh. The liabilities shown in shape of sundry creditors are not genuine. The assessee has provided the list of creditors during the assessment proceedings but the AO had made no effort to verify the genuineness of these creditors. A remand report was called out by the Ld CIT(A) but the AO had not disclosed the mistake in the details of creditors submitted by the assessee. The AO had the opportunity to verify the PAN numbers when the

remand report was called out by the Ld CIT(A) but without verifying the details the reply was submitted by the AO. The Ld CIT(A) has rightly deleted the addition made by AO.

11. Ground no (iii)- Ld DR has submitted that the assessee has not produced the proper books of accounts along with stock register. He has further submitted that assessee has not proved the genuineness of the fall in Gross profit rate in spite of the fact that quantum of sales has increased for the year under consideration. The AO has rejected the books of account alleging that he was not satisfied with the correctness of books of accounts. The Ld. Counsel for the assessee has submitted that merely because the profit had declined the AO cannot reject the books of accounts. He has submitted the comparative chart of the financial performance of the assessee over a period of 3 years as under:-

Particulars /AY	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14
Sales	8,65,09,97,553	8,11,34,858	11,03,93,33,341	16,21,17,86,542
Purchases	8,41,15,18,790	7,83,84,00,244	10,60,35,70,022	15,74,17,44,943
Gross Profit (GP)	23,94,78,763	27,50,31,614	43,57,63,319	47,00,41,599
GP as a percentage of Sales	2.77%	3.39%	3.95%	2.90%
Net Profit	10,02,31,013	9,41,16,435	10,43,52,226	14,57,79,311

Before tax (NP)				
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12. The reliance has placed on the following judicial decisions

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1. *The Pr. Commissioner of Income Tax -9 Vs IBILT Technologies Ltd. 2018 (10) TMI 63 –Delhi High Court dated 12.09.2018*
2. *CIT Vs. Winner Constructions Pvt. Ltd. 2012 (5) TMI 394 –Delhi High Court, dated May, 3, 2012*
3. *ACIT, Circle – 63 (1), New Delhi Vs. Friends Medicos 2023 (10) TMI 1269 – ITAT Delhi, dated 10.10.2023*
4. *Mr. Girdhari Lal Meena Vs. ITO, NFAC, Delhi 2023 (10) TMI 302 – ITAT Jaipur dated 05.10.2023*
5. *DCIT, Circle – 25 (2) New Delhi Vs. M/s. TNG Retail Pvt. Ltd. 2022 (3) TMI 345- ITAT Delhi dated February 28, 2022*
6. *ITAT Delhi in the case of ACIT Vs. M/s. Ess Ell Cables Co. I.T.A. No.2792/Del/2013*
7. *The Pr. Commissioner of Income Tax-9 Vs. IBILT Technologies Ltd. 2018 (10) TMI 63 – Delhi High Court dated 12.09.2018*

13. From the perusal of order of the Ld CIT(A) it is evident that books of accounts were rejected by AO without any cogent reason. The assessee has not changed the accounting policy and explained the factors which led to fall in profit margins. The books of account cannot be rejected merely on the ground of the low profits. The assessee has maintained the books of accounts as per mercantile system. Books and accountant were audited as per Act which was filed by the assessee (PB page 5-36). The AO had rejected the books of accounts without any cogent

reasons when the assessee has explained the factors which led to a fall in profit margins.

14. Ground no (iv) – The Ld DR has submitted that assessee has not produced the evidence of expenditure incurred on credit card commission and credit risk insurance premium. Perusal of the order of Ld CIT(A) reveals that the assessee has duly explained the nature as well the business exigency for both the expenses. The AO has mentioned the only reason for disallowing the expenses that the assessee had not incurred such expenses in the immediately preceding year. On this sole reason the expenses cannot be disallowed. The revenue cannot decide the reasonable expenditure for the business purposes. In the case of **SA Builders Ltd vs Commissioner of Income Tax 2006(12) TMI 82** the Hon'ble Supreme court held as under :-

“35. We agree with the view taken by the Delhi High Court in CIT Vs. Dalmia Cement (B.) Ltd. [2002] 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the business man or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the

transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.”

15. From the above observation we are of the considered view that the Ld CIT(A) has rightly deleted the addition made by the AO. We do not find any reason to interfere with the findings of the Ld CIT(A). The appeal of the revenue is liable to be dismissed.

16. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 31.07.2024.

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

NEHA, Sr. PS

Date:-31.07.2024

Copy forwarded to:

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

Sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI