

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2054/Del./2014
(ASSESSMENT YEAR : 2009-10)**

M/s. Pranidhi Holdings Pvt. Ltd., vs. ITO,
(now known as Plus Corporate Ventures Pvt. Ltd.) Ward 14 (4),
L – 7, Green Park Extension, New Delhi.
New Delhi – 110 016.

(PAN : AACCP7899K)

**ITA No.2222/Del./2014
(ASSESSMENT YEAR : 2009-10)**

ITO, vs. M/s. Pranidhi Holdings Pvt. Ltd.,
Ward 14 (4), (now known as Plus Corporate Ventures Pvt. Ltd.)
New Delhi. L – 7, Green Park Extension,
New Delhi – 110 016.

(PAN : AACCP7899K)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri K.C. Singhal, ITP
REVENUE BY : Shri Deepak Garg, Senior DR**

Date of Hearing : 26.09.2017

Date of Order : 03.10.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Present cross appeals filed by the assessee as well as by the revenue are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, M/s. Pranidhi Holdings Pvt. Ltd. (hereinafter referred to as 'the assessee company'), by filing the present appeal, sought to set aside the impugned order dated 30.01.2014 passed by the Commissioner of Income-tax-XVII, New Delhi qua the assessment year 2009-10 on the grounds inter alia that :-

"1. That disallowance U/S 14A of the I. T. Act 1961 is illegal and without jurisdiction in as much as satisfaction contemplated under the above section had not been recorded by the AO before invoking the provisions of said section.

2. That the Ld. CIT (A) has erred in law in rejecting the contention of the appellant that the expenditure incurred in relation to the business of dealing in shares cannot be disallowed U/S 14A of the I. T. Act 1961 in view of the judgment of the Hon'ble Karnatka HC in the case of CCI Ltd. The Ld. CIT(A) ought to have followed the said judgment.

3. Without prejudice to the above grounds, the Ld. CIT (A) has grossly erred in law in not excluding the interest relatable to shares on which no dividend was received particularly when her predecessor had excluded such interest while computing disallowance U/S 14A in the preceding year. The disallowance, if any, could be restricted only to interest in relation to shares on which dividend was received and not the entire interest.

4. That Rule 8D (i) provides that interest directly relatable to exempted income is to be determined but the CIT (A) failed to make such exercise.

5. That no part disallowance of depreciation could be made in respect of flat purchased."

3. The appellant, Income Tax Officer, Ward 14 (4), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal, sought to set aside the impugned order dated 30.01.2014

passed by the Commissioner of Income-tax-XVII, New Delhi qua the assessment year 2009-10 on the grounds inter alia that :-

“1. On the facts and circumstances of the case, the ld. CIT(A) erred in directing the AO to exclude stock in trade of shares from investment for working out 'average of investments' for the purpose of disallowance under rule 8D(iii) without giving any reasons”

2. On the facts and circumstances, the ld. CIT(A) erred in deleting the addition of Rs.1 crore and Rs.19.45 lakhs made by the AO on account of unexplained cash credit in respect of M/s. Udgam Commercial Ltd and M/s. One Touch Solution India Pvt Ltd. ignoring the fact that the assessee was not able to establish the identity of the creditors.

3. On the facts and circumstances of the case, the ld. CIT(A) has erred in not appreciating the facts that the onus of establishing the identity of the creditors lies with the assessee and not on the AO.”

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer noticed from the balance sheet that the assessee has made substantial investment as well as stock-in-trade and has earned dividend income amounting to Rs.44,14,607/- and has suo motu disallowed a sum of Rs.4,13,678/- under section 14A of the Income-tax Act, 1961 (for short ‘the Act’) and proceeded to disallow an amount of Rs.55,31,601/- u/s 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (for short ‘the Rules’). AO further proceeded to made addition of Rs.1,00,00,000/- and Rs.19,45,000/- on account of taking unsecured loan from M/s. Udgam

Commercial Limited and M/s. One Touch Solution India Pvt. Ltd. respectively.

5. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has confirmed the addition of Rs.55,31,601/- u/s 14A read with Rule 8D but deleted the addition of Rs.1,00,00,000/- and Rs.19,45,000/- made by the AO as unexplained cash credits. Feeling aggrieved, the assessee company as well as Revenue have come up before the Tribunal by way of filing cross appeals.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

ITA NO.2054/DEL/2014 (FILED BY THE ASSESSEE)

GROUND NO.1, 2, 3, 4 & 5

7. The Id. AR for the assessee by relying upon the decision rendered by Hon'ble Delhi High Court in case cited as *Cheminvest Ltd. vs. CIT – (2015) 378 ITR 33 (Del.)* and Hon'ble Punjab & Haryana High Court in case cited as *Pr.CIT vs. State Bank of Patiala – (2017) 391 ITR 218 (P&H)* contended that the assessee is into the business of trading in shares and has suo motu

disallowed an amount of Rs.4,13,678/- u/s 14A on the earned dividend income of Rs.44,14,607/- and the AO without recording his dis-satisfaction made further disallowance of Rs.55,31,601/- and as such Rule 8D is not applicable. Ld. AR for the assessee further contended that in case Rule 8D is found to be not applicable then only taxable income can be taxed. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR that when the assessee has himself applied the Rule 8D, it cannot challenge the impugned order.

8. Assessee by suo motu disallowed the amount of Rs.4,13,678/- u/s 14A as per computation given before AO as under:-

<i>1 Expenditure directly relating to Income</i>		
<i>2 Expenditure by way of interest not attributable to any particular income or receipt</i>		
<i>A) Financial charges</i>	<i>18,56,508.00</i>	
<i>B) Average value of investment, income from which does not form part of total income</i>		

Opening investment	<u>344,85,096.31</u>	
Closing Investment		
C) Average value of total assets in the balance	<u>172,42,548.16</u>	
	2,460,53,382.21	
Opening assets	<u>1,668,85,804.48</u>	
Closing assets	<u>2,064,69,593.35</u>	
		155,039.43
		<u>258,638.22</u>
3 1/2% of Avg. Investment		<u>413,677.65</u>
Total		

9. However, on the other hand, AO proceeded to compute the disallowance under Rule 8D(2)(ii) by taking average investment at Rs.10,70,21,956/- as against the average investment taken by the assessee at Rs.1,72,42,548.16, as under :-

“5. As discussed above, the correct amount of average investments for the purpose of calculation disallowance u/s 14A r. w.r. 8D is calculated as under:-

		Rs.
Investment as on 01.04.2008	(total investments - share application money-investment in land)	5,44,85,097/-
	Stock in trade comprising of shares	10,11,85,153/-
		15,56,70,250/-
Investment as on 31.04.2003	(total investments - share application money-investment in land)	3,67,77,200/-

	<i>Stock in trade comprising of shares</i>	<i>2, 15,96,463/-</i>
		<i>5,83, 73,663/-</i>
<i>Average Investments</i>		<i>10,70,21,956/-</i>

6. Further, in its computation of disallowance u/s 14A, the assessee has taken the amount of interest expenditure at Rs.18,56,508/- only which has been paid to the three unsecured loan creditors. However, it has omitted to take into account the interest paid to two broker concerns M/s. Aashmavir Finance (P) Ltd. (Rs.51,24,847/-) and M/s. Edlweiss Securities Ltd. (Rs.25,56,060/-). The assessee has camouflaged interest amounting @ Rs.76,80,907/- paid to these two broker concerns under finance charges, whereas, these are nothing but interest charges paid to these two concerns. As the assessee is holding substantial average stock-in-trade (consisting of shares) amounting to approx RS.6.14 crores which are also to be included in investments for the purpose of calculating disallowance u/s 14A, the finance charges paid to these two broker concerns can not be excluded from the amount of interest incurred in relation to the earning of exempt dividend income from investments and stock-in-trade. Hence, total amount of Rs.95,37,415/- is being taken as interest expenses incurred during the year which can not be specifically and directly attributable to any particular income or receipt for calculating disallowance under rule 80(2)(ii).

<i>S.No.</i>	<i>Head</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>(i)</i>	<i>Expenses Directly relatable to Income in total income</i>	<i>50% of bank/demat charges debited to P&L account</i>	<i>52,845</i>
		<i>Disallowance under (i)</i>	<i>52,845</i>
<i>(ii)</i>	<i>Interest paid not directly relatable to any</i>	<i>(a) Interest Paid other than incl. (i) above</i>	<i>95,37,415</i>

	<i>income</i>		
		(b) Investments as on 01.04.2008	15,56,70,250
		(c) Investments as on 31.03.2009	5,83,73,663
		(d) Average value of Investments	10,70,21,956
		(e) Total assets of Balance Sheet as on 01.04.2008	24,60,53,381
		(f) Total assets of Balance Sheet as on 31.03.2009	16,68,85,802
		(g) Average of total assets of Balance sheet	20,64,69,592
		Disallowance under (ii)	49,43,647
(iii)	0.5% of the Average value of Investment	Rs.10,70,21,956 x 0.50% = Rs.5,35,109	5,35,109
		Disallowance under (iii)	5,35,109
		Aggregate disallowance u/r 8D r.w.s. 14A for AY 2009-10	55,31,601

10. Assessee's contention that it held the shares as stock-in-trade and dividend income was only the bye-product of the trading activity and as such, there is no relation between the expenditure by way of interest and exempted income and that all the quoted shares have been shown as stock-in-trade and unquoted shares as investment because there is no ready market available for unquoted

shares. To reply this question, the AO relied upon the decision rendered by Delhi Bench of the Tribunal in case cited as *Vidyut Investment – 910 SOT 284*.

11. However, Hon'ble High Court of Punjab & Haryana in judgment cited as *Pr.CIT vs. State Bank of Patiala* (supra) set this issue at rest by holding that when assessee has not held securities to earn dividend or interest but traded in them and dividend or interest accruing thereon was only a bye-product thereon or an incidental benefit arising thereof, the same would not be subjected to provisions of section 14A of the Act.

12. Hon'ble Delhi High Court in case of *Cheminvest Ltd. vs. CIT* (supra) also held that to attract section 14A, there should have been actual receipt of income which is not includible in total income and section 14A will not apply where no exempt income is received or receivable during the relevant previous year.

13. Both the judgments relied upon by the assessee are applicable to the facts and circumstances of the case and the issue is required to be decided afresh by the AO by keeping in mind that there is a distinction between stock-in-trade and investment. In case, motive behind sale and purchase of shares is to earn profit then the same cannot be treated as trading profit and when the object is to derive income by way of dividend then the profit would

have been accrued from the investment as has been clarified by Circular No.18 dated 02.11.2015. All these facts are required to be verified by the AO and then decide the issue in accordance with the judgment cited as *Cheminvest Ltd. vs. CIT* and *Pr.CIT vs. State Bank of Patiala* (supra). Consequently, grounds no.1, 2, 3, 4 & 5 are determined in favour of the assessee for statistical purposes. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

ITA NO.2222/DEL/2014 (FILED BY THE REVENUE)

GROUND NO.1, 2 & 3

14. AO made an addition of Rs.1,00,00,000/- and Rs.19,45,000/- as unsecured cash credit claimed as unsecured loan availed of by the assessee from M/s. Udgam Commercial Limited and M/s. One Touch Solution India Pvt. Ltd. respectively on the ground that assessee has failed to furnish, address, PAN of the creditors.

15. However, assessee sought to bring on record additional evidence in the form of confirmation of account; copy of bank statement of M/s. Udgam Commercial (P) Ltd. (lender); copy of bank statement of the appellant company reflecting the transactions; copy of income tax return filed by the lender for the

AY 2009-10; copy of Memorandum and Articles of Association of the lender; and copy of the audited financials of the lender for the year ended 31st March 2009, by moving an application u/s 46A. Before proceeding further, Id. CIT (A) called remand report from the AO vide letter dated 18.03.2013 and then issued reminder dated 31.07.2013 and then again issued reminder for 30.10.2013 to file his comment by 11.11.2013. But on failure of the AO, the Id. CIT (A) admitted the additional evidence filed under Rule 46A.

16. It is settled principle of law that the Id. CIT (A) has co-terminus powers to conduct a discreet enquiry as to the genuineness and creditworthiness of the transactions. From the documents brought on record in the form of confirmation of account; copy of bank statement of M/s. Udgam Commercial (P) Ltd. (lender); copy of bank statement of the appellant company reflecting the transactions; copy of income tax return filed by the lender for the AY 2009-10; copy of Memorandum and Articles of Association of the lender; and copy of the audited financials of the lender for the year ended 31st March 2009, the Id. CIT (A) made himself satisfied that the assessee has duly established the creditworthiness of the creditors and genuineness of the transaction.

17. Moreover, when the assessee has brought on record all the documents necessary to establish the creditworthiness of the creditors and genuineness of the transaction and the AO has not preferred to file any comment, we find no scope to interfere into the findings returned by Id. CIT (A). Moreover, perusal of the assessment order also goes to prove that the AO has not even preferred to summon the parties to make complete enquiry so as to establish the creditworthiness of the creditors and genuineness of the transactions. In these circumstances, judgments cited as *CIT-II vs. M/s. Jansampark Advertising and Marketing (P) Ltd. ITO 525/2014 dated 11.03.2015* and *CIT(Central)-I vs. Manish Buildwell Pvt. Ltd. – ITA 928/2011 dated 15.11.2011* relied upon by Id. DR are not applicable to the facts and circumstances of the case.

18. In view of what has been discussed above, appeal being ITA No.2222/Del/2014 filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 3rd day of October, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 3rd day of October, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.