

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri B. Ramakotiah, Accountant Member**

**ITA No.1690/Hyd/2016**  
(Assessment Year: 2012-13)

M/s. Pitti Electrical Equipment Private Ltd Hyderabad PAN: AACCP8334P <i>(Appellant)</i>	Vs	Income Tax Officer Ward 16 ( 4 ) Hyderabad  <i>(Respondent)</i>
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**ITA No.150/Hyd/2017**  
(Assessment Year: 2012-13)

Dy. Commissioner of Income Tax, Circle 16(2) Hyderabad  <i>(Appellant)</i>	Vs	M/s. Pitti Electrical Equipment Private Ltd Hyderabad PAN: AACCP8334P <i>(Respondent)</i>
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For Assessee :	Shri Laxmi Nivas Sharma
For Revenue :	Smt. N. Swapna, DR

Date of Hearing:	04.04.2018
Date of Pronouncement:	11.04.2018

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

Both are cross appeals by the assessee as well as the Revenue against the order of the CIT (A)-4, Hyderabad, dated 1.11.2016.

2. Brief facts of the case are that the assessee company, engaged in the trading of lamination and Die-cast Rotors filed, its return of income for the A.Y 2012-13 on 26.9.2012 admitting an

income of Rs.41,43,330. During the assessment proceedings u/s 143(3) of the Act, the AO called for various details. After examining the details furnished by the assessee, the AO observed that the assessee has invested Rs.13,66,33,500 in M/s. Pitti Laminations Ltd by purchase of 34,90,000 shares @ Rs.39.15 per share. He observed that the income from such investment in shares is receivable in the form of dividend which is exempt from tax. Therefore, according to him, the expenditure debited to the P&L A/c of Rs.1,38,300 towards payment of listing fee to SEBI for purchase of "Pitti Laminations Ltd" shares; Rs.7,72,100 incurred towards "professional consultancy fees" paid to "BOB Capital Markets Ltd" for handling of the open offer agreement of shares belonging to M/s. Pitti Laminations Ltd and the amount of Rs.2,38,254 towards expenditure of statutory advertisements for open offer related advertisements in newspapers given by Concept Communications Ltd, need to be disallowed u/s 14A of the I.T. Act r.w. clause (a) of Rule 8D of the I.T Rules. He accordingly disallowed under Rule 8D(2) a sum of Rs.11,48,654. Thereafter he also proceeded to compute the disallowance and made a total disallowance of Rs.68,62,774.

3. The AO also perused the P&L A/c and observed that under the head "Professional Consultancy fee" the assessee has debited an amount of Rs.13,78,234 and from the details furnished by the assessee, the AO observed that the assessee has paid a sum of Rs.6.00 lakhs to Smt. Madhuri S. Pitti towards business administration consultancy fee for the year from which TDS of Rs.60,000 was also made. Observing that she is a family member of the promoter, he invoked provisions of section 40A(2)(b) and observing that the assessee could not substantiate

the necessity of such charges and the nature of the services rendered by Ms. Pitti, he disallowed the said sum and brought it to tax.

4. Further, the AO also observed from the annexure to the 3CED report, that there was an increase in the paid up share capital of the assessee during the financial year relevant to the A.Y 2012-13. Therefore, the assessee was asked to give the details of the shareholders. The assessee furnished the list of 12 shareholders in 'A' category and 8 shareholders in 'B' category. The AO addressed letters to the companies to whom the shares were allotted, in order to verify the genuineness of the share allotment, calling for information u/s 133 (6) of the Act. Only 3 parties and furnished confirmation of the investment while there was no response from other 4 parties. The AO therefore, observed that the assessee company has failed to prove the genuineness of the investment and also the creditworthiness of the Investors and accordingly treated the share capital of Rs.1,85,00,000 as unexplained cash credit and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A), who deleted the additions made u/s 68 of the Act and also u/s 14A of the Act and confirmed an addition of Rs. 6.00 lakhs. Against the relief granted by the CIT (A), the Revenue is in appeal while the assessee is in appeal before us, against the confirmation of the addition of Rs.6.00 lakhs being the amount paid to Smt. Madhuri S. Pitti. The grounds of appeal raised by the assessee are as under:

*"1. The CIT (A) erred in facts and law while passing assessment order u/s 143(3) of the Income Tax Act, 1961.*

*2. The learned AO is not justified in making addition of Rs.6,00,000 towards professional charges paid to Smt.*

*Madhuri S. Pitti, a specified person u/s 40A(2)(b) of the I.T. Act, 1961 without considering the legitimate need of business and service to the company and her experience”.*

5. The learned Counsel for the assessee, submitted that Smt. Madhuri S. Pitti was a person with wide business experience and has rendered services to the assessee which have been detailed in her business profile submitted before the CIT (A). He therefore, justified making payment of Rs.6.00 lakhs to her and prayed for deletion of this addition.

6. The learned DR however, submitted that these details were not furnished before the AO or before the CIT (A).

7. Having gone through the submissions of both the parties, we find that the contentions of the assessee that Smt. Madhuri S. Pitti is an Entrepreneur since 1980 and that she has been doing various businesses since then and that her experience has helped the company to increase its business need to be verified by the AO. Further, the submission of the assessee that Ms. Pitti has offered this income in her hands and therefore, bringing the same into tax again in the hands of the company would amount to double taxation of the same amount also needs verification. We, therefore, deem it fit and proper to remit this issue to the file of the AO for verification of the assessee's claim in accordance with law. The assessee's appeal is therefore, treated as allowed for statistical purposes.

8. The Revenue has raised the following grounds of appeal:

*“1. On the facts and in the circumstances of the case and in Law, the CIT (A) erred in deleting the disallowance made u/s 14A by holding that assessee did not earn any exempt income.*

*2. On the facts and circumstances of the case and in Law, the learned CIT (A) erred in deleting the addition made u/s 68.*

*3. The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the AO be restored.*

*4. The appellant craves leave to amend or alter any grounds or add a new ground, which may be necessary”.*

9. As regards Grounds of appeal No.1, we find that the assessee has not earned any dividend income during the relevant A.Y and the CIT (A) has followed the decision of the Coordinate Bench in the case of Pratista Industries Ltd vs. DCIT in ITA No.1302/Hyd/2015 dated 29.4.2015 to delete the disallowance on this ground. The Hon'ble Delhi High Court in the case of Cheminvest Ltd reported in (2015) 378 ITR 33 (Del.) and the Hon'ble Madras High Court in the case of Redington (India) Ltd vs. Add. CIT in T.C.A.No.520 of 2016, dated 26<sup>th</sup> June, 2015 have held that the disallowance 14A cannot be made where there is no exempt income during the relevant A.Y. Therefore, we see no reason to interfere with the order of the CIT (A) on this issue.

10. As regards the deletion of the addition of Rs.1,85,00,000 u/s 68 of the Act, we find that the CIT (A) has deleted the same by accepting the contentions of the assessee without any verification. We find that before us the assessee has not filed the copies of any of the documents which are referred to in Para 8.2 of the CIT (A)'s order. In view of the same, we are not able to accept the contentions of the assessee about the creditworthiness and the genuineness of the transactions. The PAN of the companies only prove their existence, and nothing else which is required u/s 68 of the Act. The learned DR has relied upon the

following decisions to contend that all the three conditions of section 68 have to be fulfilled for deleting the addition:

1. *Hon'ble Delhi High Court in the case of Pr.CIT-7 vs. Bikram Singh reported in (2017) 399 ITR 407.*

2. *Hon'ble Delhi High Court in the case of CIT vs. Nova Promoters & Finlease (P) Ltd reported in (2012) 342 ITR 169.*

3. *Hon'ble Delhi High Court in the case of CIT vs. Navodaya Castles (P) Ltd reported in (2014) 367 ITR 306.*

4. *Hon'ble High Court of Calcutta in the case of Rajmandir Estates (P) Ltd vs. Pr. CIT reported in (2016) 386 ITR 162 (Cal.)*

11. In view of the law laid down in the above decisions, we deem it fit and proper to remit this issue also to the file of the AO with a direction to reconsider the issue in the light of the evidence filed by the assessee in support of the investment made by the four companies in the assessee's company. Ground of appeal No.2 is thus treated as allowed for statistical purposes.

12. In the result, Revenue's appeal is partly allowed and the assessee's appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 11<sup>th</sup> April, 2018.

**Sd/-**  
**(B. Ramakotaiah)**  
**Accountant Member**

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 11<sup>th</sup> April 2018.  
**Vinodan/sps**

Copy to:

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- 2 Income Tax Officer, Ward 16(4) Hyderabad
- 3 Dy.CIT,Circle 16(2) Hyderabad
- 4 CIT (A)-4 Hyderabad
- 5 Pr. CIT – 4 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*