

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.62/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Prasanna Purple Mobility Solutions
Private Limited,
396, Near Ahilyadevi High School,
Shaniwar Peth,
Maharashtra – 411 030.

..... अपीलार्थी /
Appellant

PAN : AAACO9763H.

बनाम v/s

The Dy.Commissioner of Income Tax,
Circle – 4, Pune.

..... प्रत्यर्थी /
Respondent

आयकर अपील सं / ITA No.367/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

The Dy.Commissioner of Income Tax,
Circle – 4, Pune.

..... अपीलार्थी /
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बनाम v/s

Prasanna Purple Mobility Solutions
Private Limited,
396, Near Ahilyadevi High School,
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..... प्रत्यर्थी /
Respondent

PAN : AAACO9763H.

Assessee by : Shri Nikhil Mutha.

Revenue by : Shri Vodral Raj Singh.

सुनवाई की तारीख / Date of Hearing : 01.08.2019	घोषणा की तारीख / Date of Pronouncement: 16.10.2019
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आदेश / ORDER**PER ANIL CHATURVEDI, AM :**

1. These cross-appeals filed by assessee and Revenue emanate out of the order of Commissioner of Income-Tax (A) – Pune – 3, dated 24.11.2017 for A.Y. 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Private Limited Company stated to be engaged in the business of running, operating, managing, maintaining and letting on hire various fleet of buses and other vehicles. Assessee electronically filed its return of income for A.Y. 2013-14 on 30.09.2013 declaring total loss of Rs.2,71,97,713/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.26.02.2016 and the total loss was determined at Rs.1,60,85,130/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.24.11.2017 (in appeal No.CIT(A), Pune-3/10121/2016-17) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee and Revenue are now in appeal before us.

3. The ground raised by the assessee in ITA No.62/PUN/2018 for A.Y. 2013-14 reads as under :

“On the facts and in the circumstances of the case and in law, the Hon’ble CIT(A) has erred in upholding the disallowance of INR 22,15,000 at an ad-hoc rate of 2% of certain expenses under section 37(1) of the Act without appreciating the same were incurred for the purpose of business.”

4. On the other hand, the grounds raised by the Revenue in ITA No.367/PUN/2018 reads as under :

“1. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the entire addition of Rs. 88,97,580/- made on account of disallowance of interest expenses u/s 36(1)(iii) of the IT Act, ignoring the fact that the assessee did not submit any documentary evidence to prove that interest free funds were available with it at the time (date) when the amounts were advanced to its sister concerns.

2. On the facts and circumstances of the case, the ld. CIT(A) erred in not appreciating the fact that the assessee had already made investments in fixed assets, other loans and advances and certain other investments as evidenced from the balance sheet and thus, the assessee was not having any owned/interest free funds to be given as loan to its 3 subsidiaries and to a partnership firm 'Ramjyoti Travels' to the extent of Rs. 4,89,73,646/- and Rs. 1,19,07,769/- respectively.”

5. We first proceed to decide the assessee's appeal in ITA No.62/PUN/2018 for A.Y. 2013-14.

5.1. During the course of assessment proceedings on perusing the Profit & loss account, AO noticed that assessee has debited expenses on various accounts aggregating to Rs.11,07,50,032/-, the details of which are tabulated at Para 5 of the assessment order. The assessee was asked to justify the expenses by producing the relevant documentary evidence. The assessee has filed the copies of bills and vouchers. On perusing the bills and vouchers furnished by the assessee, AO noted that the expenses were not fully verifiable by bills and vouchers and few of the vouchers were not having the name and signature of the recipients. AO was therefore of the view that the probability of non-business expenses cannot be ruled out. He accordingly, on adhoc basis, disallowed 2% on aggregate expenses and thus made disallowance of Rs.22,15,000/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO.

Aggrieved by the order of Ld.CIT(A), assessee is now before us.

6. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that assessee had produced all the bills and vouchers and the other relevant documents. He submitted that AO has proceeded to disallow the expenses on adhoc basis and has not pointed out the single instance where the expenses are not for the purpose of business. He further submitted that the disallowance was made only on the basis of surmises by concluding that probability of non-business use of expenses cannot be ruled out. He further submitted similar disallowance was made by the AO in A.Y. 2012-13 but when the matter was carried before Ld.CIT(A), the disallowance was deleted by Ld.CIT(A). He further submitted that no disallowance has been made in subsequent years in the assessment framed u/s 143(3) of the Act and in support of which he pointed to the copy of the assessment order for A.Y. 2014-15 dt.30.12.2016 which is placed at Pages 104 & 105 of the Paper Book. He further submitted that on identical facts in subsequent years no disallowance has been made and the disallowance only for the year under consideration was not justified. Ld. D.R. on the other hand, supported the order of lower authorities.

7. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to disallowance of expenses on ad-hoc basis. It is an undisputed fact that the assessee had furnished the requisite documents before the AO and produced the books of accounts. AO has proceeded to make a general statement about the expenses being not verifiable as some of the vouchers are self-made and they do not bear name and signature of the recipients. He on the basis of such surmises had concluded that the probability of the expenses for non-business purpose cannot be ruled out and

accordingly, he disallowed Rs.2% on aggregate amount on ad-hoc basis. We find that no instance of the expenses being for non-business purpose has been pointed out by the AO in the assessment order. Further, before us, Ld.A.R. has contended that no disallowance of expenses has been made either in subsequent years nor in earlier years. Considering the totality of the aforesaid facts, we are of the view that in the present case, no disallowance of expenses is called for. We therefore direct the deletion of addition made by the AO. **Thus, the ground of the assessee is allowed.**

8. In the result, the appeal of assessee is allowed.

9. Now we take up the appeal of Revenue in ITA No.367/PUN/2018 for A.Y. 2013-14.

9.1. Both the grounds raised by the Revenue are inter-connected and therefore considered together.

10. During the course of assessment proceedings, AO noticed that assessee had given interest free of loan at Rs.4,89,73,646/- to three of its subsidiaries and Rs.1,19,07,769/- to a partnership firm "Ramajyoti Travels" in which assessee is a Partner and thus having lent aggregate amount of Rs.6,08,81,415/-. He also noticed that assessee had borrowed funds and paid interest to an extent of Rs.2,20,79,653/- The assessee was asked to establish the business expediency and purpose of loans and also to show cause as to why equivalent interest should not be disallowed. The submissions made by the assessee were not found acceptable to the AO. AO was of the view that assessee has failed to establish that the funds were utilized for the purpose of

business and accordingly disallowance of proportionate amount of interest has to be made u/s 36(1)(iii) of the Act. He thereafter worked out the proportionate interest disallowance at Rs.88,97,580/- as per the details tabulated at Para 4.3 of the assessment order and made its disallowance. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who after considering the submissions of the assessee deleted the addition made by the AO at Para 6.3.1 of his order and while deleting the addition he has also given a finding that assessee has sufficient interest free funds to advance to its sister concerns and it is not a case of diversion of interest bearing funds to the sister concerns.

Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

11. Before us, Ld. D.R. supported the order of AO and Ld. A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further submitted that on identical facts in A.Y. 2012-13, Revenue had carried the matter before the Tribunal and the Tribunal had dismissed the appeal of Revenue vide order dt.23.01.2019 in ITA No.158/PUN/2017. He placed on record the copy of the order at Pages 106 to 113 of the Paper Book. He further submitted that no disallowance of interest has been made in subsequent years and further when the assessee has adequate interest free funds then a presumption is made that the borrowed funds are not diverted for the purpose of business and for this proposition, he relied on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Reliance Industries Ltd., reported in (2017) 86 taxmann.com 24 (Bom). He further submitted that against the order of Reliance Industries Ltd., (supra), Revenue had filed SLP before the Hon'ble Apex Court and the Hon'ble Apex Court has upheld the order of Hon'ble High Court. He

placed on record the copy of the order which was reported in (2019) 410 ITR 466 (SC) at Pages 114 to 116 of the Paper Book. He thus supported the order of Ld.CIT(A).

12. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to proportionate disallowance u/s 36(1)(iii) of the Act. It is Revenue's case that assessee has diverted borrowed funds to its sister concerns and for which no interest has been charged. We find that Ld.CIT(A) after considering the factual position has given a finding that assessee had sufficient interest free funds and it was not the case of diversion of funds to its sister concerns. To arrive at the aforesaid conclusion, Ld.CIT(A) also relied on the submissions of the assessee in the case of Reliance Utilities (supra). Before us, no fallacy in the findings of Ld.CIT(A) has been pointed out. We therefore find no reason to interfere with the order of Ld.CIT(A). **Thus, the grounds of Revenue are dismissed.**

13. **In the result, the appeal of Revenue is dismissed.**

14. **To sum up, the appeal of assessee is allowed and the appeal of Revenue is dismissed.**

Order pronounced on 16th day of October, 2019.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 16th October, 2019.

Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-3, Pune.
4. Pr.CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune