

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI C. N. PRASAD, JM &
SHRI S. RIFAUH RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 2566/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2010-11)

Jaipur Securities Pvt. Ltd. Express Zone, ‘A’ Wing, 8 th floor, Western Express Highway Goregaon East, Mumbai-400 063	बनाम/ Vs.	DCIT CC-5(1) 19 th floor, Air India Bldg, Nariman Point, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACJ1456E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Ritu Kamal Kishor, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri A. Mohan, DR
सुनवाईकीतारीख/ Date of Hearing	:	20.10.2020
घोषणाकीतारीख / Date of Pronouncement	:	04.11.2020

आदेश / ORDER

PER S. RIFAUH RAHMAN (ACCOUNTANTMEMBER):

The present appeal has been filed by the assessee against
the order of Ld. Commissioner of Income Tax (Appeals)-53,

Mumbai in short 'Ld. CIT(A)' dated 07.03.2018 for AY 2010-11.

2. The brief facts of the case are, the assessee is engaged in the business of brokers & traders in forex, shares/securities and commodities. A search and seizure action u/s 132(1) of the Act was conducted in the Anand Rathi Group alongwith the other group concerns on 24.09.13. Consequent to the search operation, the case of the assessee was centralized u/s 127 vide order dated 09.09.14 for coordinated investigation. Meanwhile, notice u/s 153(A) of the Act was issued on 02.02.15 and served upon the assessee. In response, assessee filed its return of income declaring total income of Rs. 10,70,828/- on 11.04.15. The return of income was accompanied with computation of income, balance sheet, profit & loss account alongwith the schedules. Thereafter, notices u/s.143(2) and 142(1) of the I.T. Act, 1961 were issued and served upon the assessee. In response, assessee filed relevant information as called for and after considering the detailed submission of assessee, AO rejected the contention of assessee and made assessment order u/s 143(3) r.w.s. 153A by observing that assessee has issued share capital with share

premium to the extent of Rs. 75,00,000/-. In order to verify the genuineness of the share allotment, he issued summons to M/s Nihal Mercantile Pvt. Ltd and M/s Brilliant Commonsales Pvt. Ltd. Not satisfied with the submission of the assessee and none of the parties appeared for confirmation, he made the addition u/s 68 of the Act. Since, AO treated the above transaction as bogus and accommodation entries, he made further addition of commission payment which was worked out @ 0.75%. Accordingly, he made the addition of Rs. 56,250/-. Further, he made disallowance u/s 14A to the extent of Rs. 2,44,573/-.

3. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and made the detailed submission before Ld. CIT(A) with respect to addition/disallowance made by the AO, and Ld. CIT(A) considering the submissions of assessee, dismissed the appeal of assessee.

4. Aggrieved with the above order, assessee is in appeal before us with the following grounds:-

1. The learned CIT (A) has erred in law and on facts in upholding the additions made by the Assessing

Officer u/s. 143(3) r.w.s. 153A of the Income-tax Act, 1961 which is invalid and bad in law.

2. *The learned CIT(A) has erred in upholding the addition of Rs.75,00,000/- made by the Assessing Officer u/s.68 of the Act.*

3. *The learned CIT(A) has erred in upholding the addition of Rs.56,250/- made by the Assessing Officer, being alleged unexplained expenditure @ 0.75% on aforesaid alleged capital introduced of Rs.75,00,000/-.*

4. *The learned CIT(A) has erred in law and on facts in upholding the disallowance made by the Assessing Officer u/s. 14A of the Act read with Rule 8D of IT. Rules, 1962.*

5. *The order passed by the learned CIT(A) is in violation of principles of natural Justice and bad in law.*

6. *The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

5. At the outset, Ld. AR appearing on behalf of the assessee submitted that all the grounds raised in this appeal are squarely covered by the consolidated order of Coordinate Bench of Hon'ble ITAT in ITA 2569 to 2573/Mum/2018 and 2563 &

2564/Mum/2018 for AY 2010-11 & 2011-12 in the case of Aqua Proof Wall Plast Pvt. Ltd. vers. DCIT and Others, wherein the Hon'ble ITAT has decided the issues in favour of assessee. The grounds and circumstances are exactly similar to the case of Aqua Proof Wall Plast Pvt. Ltd, therefore he submitted that Hon'ble ITAT may consider the similar facts in the present appeal.

6. On the other hand, Ld. DR relied on the orders passed by the revenue authorities, however he conceded that the similar grounds raised by the assessee are decided by the Coordinate Bench of ITAT.

7. Considered the rival submissions and material placed on record. We notice from the record that the identical grounds raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA ITA 2569 to 2573/Mum/2018 and 2563 & 2564/Mum/2018 for AY 2010-11 & 2011-12 in the case of Aqua Proof Wall Plast Pvt. Ltd. vers. DCIT and Others on merits. For the sake of clarity, it is reproduced below:-

18. *In this view of the matter and considering the facts and circumstances of this case and also taking into consideration various case laws as discussed hereinabove, we are of the considered view that the assessee has discharged its initial onus to prove identity, genuineness of transactions and creditworthiness of the parties by filing various documents. The AO, without carrying out further inquiries in order to ascertain the claim of the assessee, jumped into conclusion on the basis of financial statements of the subscribers that none of them had enough source of income to establish creditworthiness. Therefore, we are of the view that the AO was erred in making additions towards share capital u/s 68 of the Income Tax Act, 1961. The learned CIT(A) without appreciating relevant facts has confirmed additions made by the AO towards share capital u/s 68 of the Income Tax Act, 1961. Hence, we reverse findings of Ld. CIT(A) and direct the AO to delete the additions made towards share capital u/s. 68 of the Income Tax Act, 1961.*

19. *Insofar as, additions towards probable commission payment to entry provides, we find that since, we have deleted additions made by the AO towards share capital, consequent additions made towards probable commission @ 0.75%, on total*

transactions is also incorrect and accordingly, direct the AO to delete additions made towards commission estimation.

20. *The next issue that came up for our consideration from ground No.4 of assessee's appeal is additions towards disallowances of expenditure incurred in relation to exempt income.*

We find that the AO has made additions towards disallowances of expenditure in the assessment framed u/s 143(3) r.w.s. 153A of the I.T.Act, 1961, without reference to any incriminating material found as a result of search. It is settled position of law that in order to make any additions in the assessments, which are framed u/s 153A, the additions qua incriminating material is a must. Unless, the AO has incriminating material in his possession to prove that any item of addition is supported by incriminating material found, as a result of search, no additions could be made in the assessments framed u/s-153A, if such assessment has been completed /unabated as on the date of search. In this case, the facts with regard to no reference to incriminating material, in respect of additions towards disallowances of expenditure u/s 14A r.w.Rule 8D is not disputed by the revenue. When, the bench has specifically asked the Ld. DR about incriminating material, the Ld. DR failed

to prove that the additions made by the AO towards disallowances of expenditure is supported by any incriminating material. Therefore, we are of the considered view that in absence of any incriminating material found as a result of search, no additions could be made in the assessment framed u/s 153A of the I.T. Act, 1961. This legal proposition is supported by the decision of Hon'ble jurisdictional Bombay High Court in the case of CIT vs Continental warehousing corporation (Nhava Sheva Ltd. (2015) 374 ITR 645, where the Hon'ble High Court clearly held that in absence of incriminating material no additions could be made, in respect of assessment which become final and no proceedings is pending, as on the date of search. Therefore, we are of the considered view that the AO was erred in making additions towards disallowances of expenditure, in relation to exempt income u/s 14A r.w. Rule 8D(2), in absence of seized materials. The Ld. CIT(A) without appreciating the facts simply upheld the additions made by the AO. Therefore, we reverse the findings of Ld. CIT(A) and delete additions made by the AO towards disallowance of expenditure incurred in relation to exempt income u/s 14A of the I.T.Act, 1961.

21. *In the result, appeal filed by the assesee is allowed.*

8. Therefore, respectfully following the above decision of Coordinate Bench of ITAT which is applicable *mutatis mutandis* in the present case. Considering the similar facts on record, we are inclined to accept the submission of Ld. AR. Accordingly, the grounds raised by the assessee stands **allowed**.

9. In the net result, the appeal filed by the assessee stands **allowed**.

Order pronounced in the open court on 04.11.2020.

Sd/- (C. N. Prasad) न्यायिकसदस्य / Judicial Member मुंबई Mumbai;दिनांकDated : Sr.PS. Dhananjay	Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member 04.11.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
 2. प्रत्यर्थी/ The Respondent
 3. आयकरआयुक्त(अपील) / The CIT(A)
 4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**