

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

**BEFORE SHRI PRAMOD KUMAR, VP, &
Ms. KAVITHA RAJAGOPAL, JM**

(Virtual Court Hearing)

आयकरअपीलसं./ I.T.A. No. 3031/Mum/2019

(निर्धारणवर्ष / Assessment Year: 2010-11)

DCIT-8(2)(2) R. No. 625, 6 th floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	M/s Spirit Infrapower & Multiventures Pvt. Ltd. (Successor to M/s Premier Finance & Trading Co. Ltd.) 18 th floor, A-Wint, Marathon Futurex, N. M. Joshi Marg, Lower Parel, Mumbai-400 013
स्थायीलेखासं ./जीआइआरसं ./PAN No. AALCS5905J		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Jay Bhansali, Ld. AR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Hoshang B. Irani, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	31.01.2022
घोषणाकीतारीख / Date of Pronouncement	:	03/03/2022

आदेश / ORDER

Per Kavitha Rajagopal, Judicial Member:

The present Appeal filed by the revenue challenging the order dated 04.12.2018 passed by Ld. Commissioner of Income

Tax (Appeals) – 13, Mumbai in short referred as ‘Ld. CIT(A)’ in the matter of assessment u/s 143(3) of Income Tax Act, 1961 (in short ‘I.T. Act’) for the Assessment Year (in short AY) 2010-11. The grounds raised by the revenue for adjudication are as follows:-

I. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was correct in deleting 'the disallowance of Rs. 4,11,11,828/- made by the Assessing Officer u/s. 36(1)(iii) of the Income Tax Act without appreciating the fact that, where the funds utilized by the assessee, being mixed funds, the investment made in tax free funds, as held in the Hon'ble High Court of Punjab & Haryana in the case of M/s. Avon Cycle Ltd. Vs. CIT, Ludhiana (53 taxmann.com 297) which was subsequently confirmed by the Apex Court in Civil Appeal no. 1423 of 2015?'".

II. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.

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

2. The brief summary narrated in the order is as under:-

The assessee company is a NBFC registered under RBI and was engaged in the business of trading in shares, finances and investments. The assessee company filed its return of income on 30.09.2012 declaring total loss of Rs. 5,27,26,078/- and subsequently after completion of assessment u/s 143(3) determining total loss at Rs. 1,08,92,574/-. Aggrieved by the disallowance of interest of Rs. 4,11,11,828/- u/s 36(1)(iii) of the IT Act and consequential initiation of penalty u/s 271(1)(c), the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) allowed the assessee's appeal by deleting the

disallowance of Rs. 4,11,11,828/- on the basis that similar interest disallowance made by the AO in AY 2008-09 to 2010-11 in assessee's case has been deleted by the ITAT vide its decision in ITA No. 1655/Mum/2013 and ITA No. 4416/Mum/2014 dated 22.05.2016 and ITA No. 6454/Mum/2016 dated 19.09.2018.

3. The Ld. DR relied on the observation of the AO. On the other hand, the Ld. AR contended that the assessment proceedings itself should be quashed as it was carried out on erstwhile company and that the Ld. CIT(A) order should be upheld.

4. We have given our careful consideration to the rival contentions and the materials placed on record before us. Though in the similar issue of the assessee for the AY 2010-11, the revenue was on appeal on the issue whether assessment proceedings on erstwhile company was a curable error u/s 292B and 292BB of the IT Act. In this present appeal, the revenue had not expressly taken this ground for adjudication since the Ld. CIT(A) did not adjudicate this issue as the assessee did not press this ground which was taken up as additional ground of appeal, as the assessee's appeal was allowed on merits. Nevertheless, this issue was taken and was placed for arguments before us. The assessee company has been amalgamated with M/s Spirit Textile Pvt. Ltd. w.e.f. 01.04.2013 which was approved by the Hon'ble Bombay High Court vide its order dated 20.04.2013 and on filing of the High Court order with ROC on 27.11.2013, the Premier Finance & Trading Co. Ltd. ceased to exist. The facts of

amalgamation was well within the knowledge of the AO. Despite this, the AO issued jurisdictional notice only in the name of the non-existing company. We are of the considered view that the decision in ITA No. 3038/Mum/2019 in assessee's own case for AY 2010-11 placing reliance on the decision of the **Hon'ble Supreme Court in PCIT vs. Maruti Suzuki India Ltd [2019] 107 taxman.com 375 (SC)** will hold good for the present appeal also. The grounds of appeal with regard to the additions made in the assessee's order are of purely academic in nature, hence we find that there is no reason to adjudicate any further on the ground.

5. In the result, the appeal filed by the revenue is **dismissed** in terms indicated above.

Orders pronounced in the open court on 03.03.2022.

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Kavitha Rajagopal)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 03/03/2022
Sr.PS. Dhananjay

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**