

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 1051/Mum/2017
(निर्धारण वर्ष / Assessment Years: 2012-13)

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आयकर अपील सं/ I.T.A. No. 4852/Mum/2017
(निर्धारण वर्ष / Assessment Years: 2013-14)

Promise Securities Pvt. Ltd. 202 Hemlok Apartment 87 Kilachand Path, S.V. Road, Kandivali (West), Mumbai- 400067.	बनाम/ Vs.	ITO Ward-13(1)(4) Room No.216-B, Aayakar Bhawan, M.K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACP6634N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Mehul Jain (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 20/12/2021
घोषणा की तारीख /Date of Pronouncement: 25/02/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals) -21, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Ys. 2012-13 & 2013-14.

ITA. NO.1051/Mum/2017

2. The assessee has filed the present appeal against the order dated 23.01.2017 passed by the Commissioner of Income Tax (Appeals) -21,



Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

3. The assessee has raised the following grounds: -

“1 That the learned CIT(A) erred in confirming the action of the assessing officer is quite arbitrary, unwarranted, unjustified and bad in law.

2. That the addition u/s 68 Rs.66,00,000/- is quite illegal, arbitrary, unwarranted unjustified and bad in law.

3. That the disallowance of interest expenses Rs.2,46,408/- is quite illegal.

4. That the disallowance of expenses u/s 14A as per rule 8-D of the Act, Rs.2,35,004/- is quite illegal.

5. That thus the order so passed is quite illegal, arbitrary, unwarranted, unjustified and bad in law.

6. That the appellant further craves leave, to add to alter and/or to amend any of the aforesaid grounds of appeal as and when necessary.”

4. The brief facts of the case are that the assessee filed its return of income on 20.09.2012 declaring total income to the tune of Rs.13,35,700/- for the A.Y.2012-13. The return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued to the assessee. Notices were duly served. The assessee company was engaged in the business of Trading of Agri Commodities, Edible Oil, Shares Trading and Interest on deposits. During the year under



consideration, the assessee company invested an amount of Rs.5,06,29,274/- and earned tax-free income of Rs.14,949/-. No disallowance u/s 14A was offered, therefore, the AO assessed the expenses to earn the exempt income to the tune of Rs.2,35,004/- by assessing the 0.5% of the average investment. The assessee also took the unsecured loan of Rs.66,00,000/- from the different parties but the assessee failed to prove the identity, genuineness and creditworthiness of the creditors, therefore, the same was disallowed and added to the income of the assessee. The assessee also paid the interest to the tune of Rs.2,22,335/- which was also disallowed and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.84,17,112/-. Feeling aggrieved, the assessee has filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NOs.1 & 2

5. Under these issues the assessee has challenged the addition of Rs.66,00,000/- u/s 68 of the Act. The assessee has taken the loan from the following four parties: -

M/s. King Fisher Properties Pvt. Ltd.	Rs.2500000/-
M/s. Parmeshwar Merchandise Pvt. Ltd.	Rs.1500000/-
M/s. Pushpanjali Comtrade Pvt. Ltd.	Rs.500000/-
M/s. Shridhan Jewellers Pvt. Ltd.	Rs.2100000/-
Total	Rs.66,00,000/-

Till the completion of the assessment, the assessee failed to produce the evidence and the notice issued u/s 133(6) of the Act were not properly served to the creditors. Accordingly, the addition was raised. Primarily, it is required



to be seen whether the assessee has failed to prove the identity of the creditors and genuineness of the claim and creditworthiness. The assessee furnished the confirmation of account from M/s. King Fisher Properties Pvt. Ltd. lies at page no. 9 of the paper book which also speaks about the transaction of Rs.25,00,000/- through banking channel. It also speaks about the interest received and TDS receivable. The statement of account, ITR from the A.Y.2012-13, Directors Report, Auditors Report, Balance-sheet and Profit & Loss Account are on record. Secondly, M/s. Parmeshwar Merchandise Pvt. Ltd. also furnished the confirmation letter dated on 01.04.2012 in which it was conveyed that an amount of Rs.15,00,000/- has been paid through banking channel. He received the interest in sum of Rs.9,098.00 and TDS receivable to the tune of Rs.910.00. Bank statement, ITR, Auditors Report, Balance-sheet and Profit and Loss Account has also been filed. Thirdly, Pushpanjali Comotrade Pvt. Ltd. also submitted the confirmation letter lies at page no. 43 of the paper book which speaks about the payment of the loan to the tune of Rs.5,00,000/- through cheque. He received the interest of Rs.2951.00 and TDR receivable in sum of Rs.295. Bank statement, ITR, Directors Report, Auditor Report, Balance-sheet & Profit and Loss Account are on record which speaks about the transaction. Fourthly, Shirdhan Jewellery Pvt. Ltd. also confirmed the transaction of Rs.21,00,000/- through banking channel and received the interest in sum of Rs.46,820.00 and TDS receivable to the tune of Rs.4,682.00 in view of confirmation letter dated 01.04.2012 lies at page no. 65 of the paper book. Statement of account, ITR, Form 23AC, TDS statement, Form No.27A etc. also speaks about the transaction. These documents were not verified by AO as well as CIT(A). Merely saying this fact that the notice u/s 133(6) was not responded was not itself sufficient reason to decline the



claim of the assessee. Specifically, in the circumstances, when sufficient evidence is on record. These evidence clearly speaks about the identity, genuineness and creditworthiness of the claim of the assessee which is not liable to be declined in any manner. However, at the time of completion of assessment, the necessary documents were filed which were not verified by AO. The original documents were filed but the documents were not further examined. The remand report dated 19.05.2016 is on record which nowhere falsify the claim of the assessee. Documents on record would easily be verified from the concerned institutions, auditor accounts report etc. It seems that the claim of the assessee has wrongly been declined, therefore, we set aside the finding of the CIT(A) on these issues and allowed the claim of the assessee. Accordingly, both the issues are decided in favour of the assessee against the revenue.

ISSUE NO.3

6. Under this issue the assessee has challenged the disallowance of interest to the tune of Rs.2,46,408/-. Since the credit has duly accepted while deciding the issue nos. 1 & 2 above, therefore, the interest is not liable to be disallowed. Accordingly, we allowed the interest to the tune of Rs.2,46,408/-.

ISSUE NO.4

7. Under this issue the assessee has challenged the disallowance of expenses u/s 14A r.w. Rule 8D to the tune of Rs.2,35,004/-. We noticed that the assessee earned the dividend income to the tune of Rs.14,949/-. In view of the decision in the case of **ACIT Vs. Vireet Investments (P.) Ltd. (2017) 58 ITR 313 (Delhi) and others (Special Bench)** and without going to other



contention of the assessee, we restrict the addition to the extent of exempt income i.e to the tune of Rs.14,949/-. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE Nos. 5 & 6

8. Issue nos. 5 & 6 are formal in nature which nowhere required any adjudication.

ITA. NO.4852/MUM/2017

The assessee has filed the present appeal against the order dated 15.05.2017 passed by the Commissioner of Income Tax (Appeals) -21, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2013-14.

9. The assessee has raised the following grounds: -

"1 That the disallowances of interest Rs.396340/- is confirmed by CIT(A)-21 is quite illegal, arbitrary, unwarranted, unjustified and bad in law.

2. That the disallowances of expenses u/s 14A of the Act, is quite illegal.

3. That thus the order so passed is quite illegal, arbitrary, unwarranted, unjustified and bad in law.

4. That the appellant further craves leave to add to alter and/ or to amend any of the aforesaid grounds of appeal as and when necessary."



10. The facts of the present case are quite similar to the facts of the case deciding above bearing ITA. No.1051/Mum/2017. However, the figure is different, therefore, there is no need to repeat the same.

ISSUE NO.1

11. Under this issue the assessee has challenged the interest disallowance of Rs.3,96,340/-. The interest disallowance is in connection with the disallowance of loan of four creditors mentioned in deciding the appeal bearing ITA. No.1051/Mum/2017. Since we allowed the claim of the assessee while deciding the issue nos. 1 & 2 above in ITA. No.1051/Mum/2017, therefore, the claim of the interest is not liable to be declined. Accordingly, we allowed the claim of interest to the tune of Rs.3,96,340/-. Accordingly, this issue is decided in favour of the assessee.

ISSUE NO.2

12. Issue no. 2 is in connection with the disallowance of expenses u/s 14A r.w. Rule 8D to the tune of Rs.22,53,146/-. In this year, the assessee has earned the dividend income to the tune of Rs.17,622/-. In view of the decision in the case of **ACIT Vs. Vireet Investments (P.) Ltd. (2017) 58 ITR 313 (Delhi) and others (Special Bench)**, the expenses to earn the exempt income is liable to be restricted to the exempt income i.e. to the tune of Rs.17,622/-. Accordingly, we uphold the disallowance to the extent of exempt income i.e. 17,622/-. Accordingly, this issue is decided in favour of the assessee.

ISSUE Nos. 3 & 4



ITA Nos. 1051 & 4852/M/2017
A.Ys.2012-13 & 2013-14

13. Issue nos. 3 & 4 are formal in nature which nowhere required any adjudication.

14. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 25/02/2022

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 25/02/2022

Vijay Pal Singh (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai