

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.719/Ahd/2017  
Assessment Year: 2012-13**

The Income Tax Officer,  
Ward-3(1)(4), Ahmedabad.

vs. M/s. Purvanil Trade & Com. P. Ltd.,  
2516, Nano Bhatwado,  
Nr. Halim Ni Khadki,  
Shahpur,  
Ahmedabad .  
[PAN – AAFCP 5108 C]  
(Respondent)

(Appellant)

Appellant by : Shri Vijay Kumar Jaiswal, CIT DR  
Revenue by : Shri S.N. Divatia, AR

Date of hearing : 29.08.2022  
Date of pronouncement : 21.09.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

This appeal is filed by the Revenue against the order dated 05.01.2017 passed by the CIT(A)-9, Ahmedabad for the Assessment Year 2012-13.

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

- “1. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.11,72,14,000/- made under section 68 of the Act by not considering the findings of the AO that out of the total unsecured loan of Rs.15,70,99,012/- shown under the head of trade payables, the genuineness, identity and creditworthiness of unsecured loan to the extent of Rs.11,72,14,000/- in the assessee's books of accounts could not be proved.*
2. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.40,00,849/- made under section 69 of the Act by not appreciating that the assessee has concealed particulars of income in respect of peak credit balance of Rs.40,00,849/- in bank account which was not disclosed in the return of income.*
3. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,81,409/- made under section 14A of the Act.*

4. *On the facts and circumstances of the case, the Ld. CITA ought to have upheld the order of the Assessing Officer.*
5. *It is, therefore, prayed that the order of the Ld. CIT(A) may be set-aside and that of the Assessing Officer be restored."*

3. The assessee company filed return of income for the Assessment Year 2012-13 on 18.09.2012 declaring income of Rs.1,37,250/-. The Assessing Officer observed that during the year under consideration the assessee company never conducted any business and the accounts reveal that the company was engaged in borrowing funds and making investments in various companies. After taking submissions and details filed by the assessee before the Assessing Officer, the Assessing Officer made addition under Section 68 of the Income Tax Act, 1961 amounting to Rs.11,72,14,000/- as unexplained credit. The Assessing Officer also made addition of Rs.40,00,849/- in respect of peak credit balance under Section 69 of the Act and made disallowance under Section 14A of the Act amounting to Rs.2,81,409/-. The Assessing Officer also made disallowance in respect of income from other sources as per 26AS.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR relied upon the assessment order. The Ld. DR in respect of ground no.1 stated that the activities related to credit entries by the assessee, no details were filed during the assessment proceedings. In fact, only 3 parties has given the confirmation and rest of the parties has not been produced before the Assessing Officer. Thus, the identity, creditworthiness and the genuineness of the activities were not established by the assessee. The CIT(A) should have taken on record that the Director of the assessee company has stated that the said is accommodation entry but the records reveal otherwise. Therefore, order of the CIT(A) be set aside.

6. As regards to ground no.2, the addition under Section 69 of the Act, the Ld. DR submitted that bank account did not disclose credit entries and the assessee has not established the nexus between the same.

7. As regards to ground no.3, the Ld. DR relied upon the Assessment Order.

8. The Ld. AR submitted that the assessee is a closely held company having Shri Hitesh Parikh as its Director. The assessee furnished evidence by way of confirmation in respect of trade payable as well as copy of income tax return and bank details at the time of assessment proceedings. The assessee also filed affidavit dated 03.03.2015 of its Director Hitesh Parikh who stated on oath that the company was engaged in providing accommodation entries in consideration of commission ranging from 0.25 Paise to 0.35 Paise per 100 Rupees and net income was Rs.0.30 paise. The assessee submitted before the Assessing Officer that the said income may be assessed accordingly. The Assessing Officer issued summons to Shri Hitesh Parikh and recorded his statement on 18.03.2015 wherein he retracted the said explanation. However, the Assessing Officer rejected the said explanation mainly for the reason that though the notice under Section 133(6) were issued to all the parties of unsecured loans, only 3 responded and rest came back from Postal Authority with remark "lefty or refused". The list of such parties appears at page no.4, para 3.11 of the Assessment Order. The Ld. AR submitted that the CIT(A) was justified in holding that the company was engaged in providing accommodation entries only in consideration of commission. The reasoning advanced by the CIT(A) as per para 4.2 of his order was that Shri Hitesh Parikh affirmed on oath in his statement on 03.03.2015 that the company was involved in providing accommodation entries and had earned commission only. He had earlier stated in his affidavit the same. The funds were immediately transferred to the respective persons i.e. entry receiver say for example the account with DCB bank shows such entries. There was hardly any balance in bank or cash on hand inspite of such huge transactions. The company had confirmed that no business was carried on by it i.e. in the sense of manufacturing or trading or otherwise. The Ld. AR further submitted that when the Director of the respondent company had confirmed on his cross-examination on oath by the Assessing Officer in this regard, such statement is the conclusive evidence and the Assessing Officer has not brought on record any contrary material to prove that such statement was invalid. The Assessing Officer could not reject the contents of the said statement and the onus to disprove it lies upon the Assessing Officer and not upon the assessee. The Ld. AR further submit that in respect of addition regarding credits in account with Bank of

India, the CIT(A) has deleted the addition for identical reasons as given in respect of earlier ground that the credits related to providing of accommodation entries. The assessee in letter dated 03.03.2015 accompanying the affidavit the entire account was offered for commission income on total credits. When the said bank account was one of the accounts in providing accommodation entries, no different view could be taken. As regards disallowance under Section 14A of the Act, the Ld. AR submitted that the CIT(A) has followed the legal position in respect of the decision of the Hon'ble Gujarat High Court in the case of Corrttech Energy Pvt. Ltd., 372 ITR 97 wherein it is held that in absence of any exempt income there could not be any disallowance under Section 14A of the Act.

9. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) while deleting the addition has observed that the Assessing Officer has accepted the fact that no business has been conducted by the assessee as well as observed in the assessment order that there were hardly any bank balance or cash on hand in assessee's account. The CIT(A) has also held that the assessee informed that the rate of commission had been calculated @ 1% on total bank credits in the case of entry providers. The Assessing Officer has only referred to the credit of Rs.11,72,14,000/- in respect of letters issued under Section 133(6), letters which were returned back and the parties whose addresses were not provided by the assessee. This direction by the CIT(A) clearly has not given the picture as to on what basis the assessee is dealing with entry providers or giving accommodation entry. The CIT(A) has also not taken cognisance of the evidences provided by the assessee and simplicitor directed the Assessing Officer to calculate the commission income of the assessee @ 1% on total bank credit. Though the objection that the assessee has not conducted any business and there is hardly any bank balance or cash on hand, the CIT(A) has ignored the main aspect of trade payables which was shown by the assessee in his balance sheet. If the analogy of the CIT(A) is accepted then Balance Sheet determined by the assessee company itself will become nullity. Therefore, the CIT(A) was not correct in taking the said trade payables as accommodation entry and directing the Assessing Officer to calculate the commission income @ of 1% on total bank balance. In fact, the assessee has not given any confirmation from other parties whom the letters

under Section 133(6) of the Act were issued. Thus ground no.1 of Revenue's appeal is allowed.

10. As regards ground no.2 in respect of peak credit balance in bank account, this is in consonance with ground no.1 of Revenue's appeal and accordingly ground no.2 is allowed.

11. As regards ground no.3 in respect of disallowance under Section 14A of the Act, it appears that there is no exempt income. The assessee has not derived any exempt income and, therefore, the Assessing Officer was not right in making disallowance under Section 14A of the Act. Ground no.3 is dismissed.

12. In the result, appeal of the Revenue is partly allowed.

Order pronounced in the open Court on this 21<sup>st</sup> day of September, 2022.

Sd/-  
**(WASEEM AHMED)**  
Accountant Member

Sd/-  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 21<sup>st</sup> day of September, 2022**

**PBN/\***

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad