

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA 1788/Mum/2020
(Assessment year 2010-11)

Proma Industries Limited 1803, Lodha Supremus, Saki Vihar Road, Opp. MTNL Exchange, Powai, Mumbai- 400 072 PAN : AAACP6230G	vs	Income-tax Officer-8(2)(4) Room No.213, 2 nd Floor, Aayakar Bhavan, M.K. Road Mumbai
---	----	--

Assessee represented by	None
Department represented by	Shri Nihar Ranjan Samal, Sr.AR

Date of hearing	22/06/2022
Date of pronouncement	16/09/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the assessee as against the order of the Ld. Commissioner of Income-tax (Appeals) under section 250 of the Income-tax Act, 1961 pertaining to assessment year 2010-11.

2. The assessee is not present before us nor has it been represented by any counsel inspite of several opportunities. Therefore, we proceed to decide this appeal exparte qua the assessee after hearing the Ld.DR and upon perusal of the available records.

3. The grounds raised in this appeal are as below:-

"1. The learned assessing officer has erred in adding Rs.8,00,000/- u/s 68 on the ground of preference shares is a dubious transaction for which no proper explanation was given. However the appellant provided all the necessary information and explanation along with documentary evidence during the assessment proceedings. The learned assessing officer has acted on the basis of suspicion.

2. The learned assessing officer has erred in disallowing legal and professional charges of Rs.4,11,935/- considering the same as capital expenditure. This disallowance is very unreasonable and unrealistic.

3. The learned assessing officer has erred in disallowing ROC Filing Fees & Registration expenses to the extent of Rs.48,805/-."

4. The background facts leading to this appeal are that the assessee is engaged in the business of textile goods and filed its return of income on 14/10/2010 declaring total income of Rs.6,85,720/- computed under normal provisions of the Act and book profit of Rs.26,44,068/- computed under section 115JB of the I.T. Act. Subsequently, the assessee's case was selected for scrutiny and assessment order under section 143(3) of the I.T. Act dated 28/03/2013 determining total income of Rs.19,46,460/- by making the following additions:-

i)	Disallowance u/s 68 of the Act	Rs.8,00,000/-
ii)	Legal & Professional expenses	Rs.4,11,935/-
iii)	ROC filing & Registration expenses	Rs. 48,805/-

The assessee preferred appeal before the Ld.CIT(A), who dismissed the appeal of the assessee vide order dated 21/08/2014 on the ground that the assessee has failed to submit any details pertaining to its claim and that the assessee has also not attended the appellate proceedings. It is seen that there was non compliance on the part of the assessee even before the lower authorities. The Ld.CIT(A) arrived at the decision that the transaction with M/s Sonal Sil Chem

Ltd and M/s Sonal Cosmetics Exports Ltd are not genuine transactions and are only colourable devices for evasion of tax and laundering of assessee's unaccounted income by showing the said amounts received from these two companies as share capital and premium. The Ld.CIT(A) made addition of Rs.8 lakhs being unexplained cash credit under section 68 of the I.T. Act on account of alleged share subscription money of Rs.5 lakhs received from M/s Sonal Sil Chem Ltd and Rs.3 lakhs received from M/s Sonal Cosmetics Exports Ltd. The Ld.CIT(A) also confirmed the other additions made by the Assessing Officer on the ground that the assessee has failed to rebut the same. Penalty proceedings were also initiated. The assessee also preferred appeal against the penalty levied under section 271(1)(c) which was dismissed by the Ld.CIT(A) on the ground that it was not filed electronically. The assessee was in appeal against the order of the Ld.CIT(A) before the Tribunal on quantum addition wherein the Tribunal set aside the matter to the Ld.CIT(A) for de novo adjudication. It is observed that the Ld.CIT(A) had called for the remand report and had concluded from the same that the assessee company is a beneficiary of bogus share application money of Rs.8 lakhs from the two companies of Shri Mukesh M Chokshi, who was accommodation entry provider. On this finding, the Ld.CIT(A) had confirmed the addition made by the Assessing Officer. Aggrieved by the said order, the assessee is in appeal before us.

5. It is observed that there was no representation from the assessee's side constantly in spite of several opportunities given to the assessee.

6. The Ld.DR contended that the assessee has been habitual in not appearing either before the lower authorities or before the Tribunal. The Ld.DR relied on the order of the lower authorities.

7. Having heard the learned DR and perused the materials on record, we have no doubt that the assessee was provided with ample opportunities to

furnish details pertaining to his claim. From the submissions made by the assessee, notice under section 133(6) was issued by the Assessing Officer to the concerned parties which was found to be returned as 'unserved'. The assessee has not proved the identity, creditworthiness of the investors and genuineness of the transaction. The Ld.CIT(A) has rightly relied on the decision of the Hon'ble Supreme Court in the case of PCIT vs NRA Iron & Steel Pvt Ltd (2019) 103 taxmann.com 48 (SC) wherein it was held that in the present case, the assessee has failed to discharge initial onus cast upon him to prove the identity and creditworthiness of the investors and the genuineness of the said transaction. The Ld.CIT(A) has relied on the said decision alongwith other judicial precedents such as the Hon'ble Calcutta High Court in the case of CIT vs Precision Finance Pvt Ltd (1994) 208 ITR 465 (Kol) and the Apex Court judgement in the case of Kale Khan Mohammad Hanif vs CIT 3 and Roshan Di Hatti vs CIT 4.

8. From the above observation, we are of the considered opinion that ground 1 raised by the assessee deserves to fail as we do not find any infirmity in the order of the Ld.CIT(A) on this ground. In the result, ground 1 is dismissed.

9. Ground 2 pertains to disallowance of legal and professional charges of Rs.4,11,935/- which was considered as capital expenditure. The assessing officer has stated that the assessee had incurred legal and professional charges which is ancillary to the purchase of factory premises by the assessee at Pithampur, Indore, Madhya Pradesh. It was further stated that the assessee has submitted that the said expense has been incurred for business purpose and was not related to purchase of factory. The lower authorities has disallowed the said expenses on the ground that the assessee has failed to submit documentary evidence to substantiate the assessee's claim that these

were business expenses and not payment made for legal and professional expenses for the purchase of factory premises. The Ld.CIT(A) has relied on the decision in the case of C IT vs Calcutta Agency Ltd 19 ITR 191 (SC) wherein the burden of proving the necessary facts pertaining to the claim of expenses is on the assessee. The assessee has failed to furnish evidence to prove that these were expenses for the purpose of business and we are of the opinion that the burden of proving the profits / loss of the assessee, is on the assessee. In the present case, assessee has not produced any such evidence before the lower authorities nor before us to substantiate its claim. In view of our above observation, we deem it fit to dismiss this ground of appeal raised by the assessee.

10. Ground 3 pertains to the disallowance of Rs.48,805/- pertaining to Registrar of Companies filing fees, registration and stamp duty on the grounds that the same is a capital expenditure. The assessee has stated that the said expenses were incurred for issue of preference shares. The assessee has claimed the same to be for the purpose of business as it was revenue in nature. It is observed that the Ld.CIT(A) has reiterated the view of the Assessing Officer that the same is in the nature of capital expenditure as against the assessee's claim of revenue expenditure. The Ld.CIT(A) has relied on the decision of Hon'ble Supreme Court in the case of Punjab State Industrial vs CIT 225 ITR 792 (SC) wherein it was held that the fees paid to the Registrar of Companies is of capital base of the company and was directly related to capital expenditure incurred by the company and although incidentally that would help in the business of the company and may also help in profit making, it still remains the character of the capital expenditure since the expenditure was directly related to the expansion of the capital base of the company. The relevant portion of the judgement is as under:-

"We do not consider it necessary to examine all the decisions in extenso because we are of the opinion that the fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit-making, it still retains the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company\We are, therefore, of the opinion that the view taken by the different High Courts in favour of the Revenue in this behalf is the preferable view as compared to the view based on the decision of the Madras High Court in Kisenchand Chellaram's case . We, therefore, answer the question raised for our determination in the affirmative, i.e., in favour of the Revenue and against the assessee."

10. The Ld.CIT(A) has also relied on the decision of the Hon'ble Calcutta High Court in the case of Brooke Bond India Ltd vs CIT (1983) 140 ITR 272 (Cal) and in the case of Hon'ble Himachal Pradesh High Court in the case of Mohan Meakins Breweries Ltd vs CIT (No.2) (1979) 117 ITR 505 (HP). We do not differ with the view taken by the Ld.CIT(A) or by the lower authorities in holding that the expenses pertaining to fees paid to Registrar of Companies and other ancillary expenses are for the expansion of the capital base of the assessee company which are directly related to the capital expenditure incurred by the assessee inspite of the fact that the same is incidental, still, it would be held in the business and profit making of the assessee, we hold that it is in the nature of capital expenditure and also on the fact that the assessee is not before us to controvert this view taken by the lower authority, we hereby dismiss this ground of appeal raised by the assessee.

11. The fourth ground raised by the assessee is premature and is liable to be dismissed and the fifth ground pertaining to the payment of interest under section 234A, 234B, 234C and 234D are consequential in nature and is hereby dismissed.

12. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 16th day September, 2022.

Sd/-

sd/-

(PRASHANT MAHARSHI)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 16/09/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai