

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 2150/Mum/2018 (A.Y. 2011-12)
I.T.A. No. 2151/Mum/2018 (A.Y. 2014-15)

M/s. About U. Fashion Pvt. Ltd. 101-B, Abhishek Premises CHS Ltd., Plot No. C-56, 6, Dalia Industrial Estate, Off. Link Road, Andheri West Mumbai-400 058.	Vs.	DCIT-15(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020.
PAN : AAHCA2312H (Appellant)		(Respondent)

Assessee by	None
Department by	Shri Manoj Kumar Sinha
Date of Hearing	08.12.2022
Date of Pronouncement	15.12.2022

ORDER

Per B.R. Baskaran (AM) :-

Both the appeals filed by the assessee are directed against the order passed by the learned CIT(A)-24, Mumbai and they relate to A.Y. 2011-12 & 2014-15.

2. None appeared on behalf of the assessee even though notices of hearing were sent to the assessee on several occasion. On earlier occasions, the assessee has sought for adjournment and accordingly adjournments were granted. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. We shall first take up the appeal for A.Y. 2011-12, wherein the assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of Rs. 25 lakhs made by the Assessing Officer under section 68 of the I.T. Act.

4. We heard learned DR on this issue and perused the record. The return of income filed by the assessee for A.Y. 2011-12 was processed under section 143(1) of the Act. Subsequently, the assessment was reopened by the Assessing Officer by issuing notice under section 148 of the Act for the reason that the assessee has availed loan of Rs. 25 lakhs from a company named M/s. Ansh Merchandise Pvt. Ltd., which happened to be one of the group concerns of Mr. Praveen K. Jain. The said Mr. Praveen K. Jain was allegedly providing bogus accommodation entries in the form of loans. Relying upon the report given by the Investigation Wing, the Assessing Officer took the view that the loan of Rs. 25 lakhs taken by the assessee from the above said concern is bogus in nature and accordingly added the same as unexplained cash credit under section 68 of the Act. The learned CIT(A) also confirmed the same.

5. We noticed from the record that the assessee stated that it has furnished all the details in order to discharge its liability placed on its shoulder under section 68 of the Act. However, a perusal of the order passed by the learned CIT(A) shows that the learned CIT(A) has not dealt with the evidences claimed to have been furnished by the assessee. Under these set of case, we are of the view that the issue of addition of cash credit contested in this appeal requires fresh examination at the end of the learned CIT(A). Accordingly, we set aside the order passed by the learned CIT(A) in A.Y. 2011-12 and restore all the issues to his file for examining it afresh. After affording adequate opportunity of being heard, the learned CIT(A) may take appropriate decision in accordance with law.

6. We shall now take up the appeal filed by the assessee for A.Y. 2014-15, wherein the assessee is contesting following issues :-

- a) Disallowance made under section 14A
- b) Disallowance of prior expenses and preliminary expenses
- c) Adhoc disallowance of 10% from sales promotion and general expenses

7. The first issue relates to disallowance made under section 14A of the Act.
8. The Assessing Officer noticed that the assessee has held investment of Rs. 3.10 crores as on 31.3.2014 and the assessee did not make any disallowance under section 14A of the Act. When questioned, the assessee submitted that it did not earn any exempt income and therefore disallowance under section 14A is not required. The Assessing Officer did not agree with the contention of the assessee accordingly he worked out the disallowance as per Rule 8D of the I.T. Rules at Rs. 10,17,217/- and added the same to the total income of the assessee. The learned CIT(A) also confirmed the same.
9. We heard learned DR on this issue and perused the record. It is an admitted fact that the assessee did not earn any exempt income during the year under consideration. In the absence of exempt income, disallowance under section 14A cannot be made as per the decision rendered by Hon'ble Delhi High Court in the case of PCIT Vs. IL&FS Energy Development Co. Ltd. (250 Taxman 174). Accordingly we are of the view that the addition made by the Assessing Officer and confirmed by the learned CIT(A) under section 14A is not justified. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to delete the disallowance of Rs. 10,17,217/- made under section 14A of the Act.
10. Next issue relates to disallowance of Rs. 3,31,454/- and Rs. 2,100/- being prior period expenses and preliminary expenses respectively. We noticed from the order passed by the learned CIT(A) that the assessee has not pressed this ground before him. Accordingly the learned CIT(A) has dismissed this ground. Since the assessee has not pressed this ground before the learned CIT(A), we do not find it necessary to adjudicate this ground. Accordingly, we confirm the addition made by the Assessing Officer.

11. The last issue relates to adhoc disallowance of Rs. 7,42,667/- made out of sales promotion and rental expenses. The Assessing Officer made adhoc disallowance of 10% of sales promotion and general expenses on the reasoning that the assessee has not produced proper vouchers in support of the claim. The learned CIT(A) confirmed the same as the assessee did not file any detail before him. Before us also assessee has not furnished any material to controvert the finding given by the tax authorities. Accordingly, we do not find any reason to interfere with the decision rendered by the learned CIT(A) on this issue.

12. In the result, appeal filed by the assessee for A.Y. 2011-12 is treated as allowed for statistical purposes and appeal filed for A.Y. 2014-15 is partly allowed.

Order pronounced in the open court on 15.12.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 15/12/2022

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,

(Assistant Registrar)
ITAT, Mumbai

PS