

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 5826/MUM/2018**  
**Assessment Year: 2007-08**

M/s Buniyad Chemicals Ltd.,  
Block H, Shri Sadashiv CHS  
Ltd., 6<sup>th</sup> Road, Santacruz (E),  
Mumbai-400055.

**PAN No. AABCB 6954 G**  
**Appellant**

**Vs.**

ACIT-10(1),  
The Commissioner of  
Income-tax Appeal-21,  
Mumbai-400020.

**Respondent**

**Assessee by** : Mr. Mukesh Choksi, AR  
**Revenue by** : Mr. Vaibhav Jain, DR

Date of Hearing : 30/03/2023  
Date of pronouncement : 31/03/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 19.07.2018 passed by the Ld. Commissioner of Income-tax-21, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2007-08, raising following grounds:

*"1. The Learned Commissioner of Income Tax Appeal - 21 & Income Tax Officer has erred in law and in facts in determining the income of the appellant at Rs.5,00,000/- as against returned income of Rs. NIL.*



*2. The Learned Commissioner of Income Tax Appeal - 21 & Income Tax Officer has erred in law and in facts in passing the order without complying with the principals of Natural Justice.*

*3. The Learned Commissioner of Income Tax appeal - 21 & Income Tax Officer has erred in law and in facts in treating the amount paid to M/s. Pradip Overseas Ltd.*

*As unexplained investments as the business of the assessee is of providing accommodation entries to entry seekers on which it is entitled to get only 0.15% Commission in case of entry provided.*

*4. The Learned Commissioner of Income Tax appeal - 21 & Income Tax Officer has erred in law and in facts in determining the amount paid to M/s. Pradip Overseas Ltd. as the assessed income but this amount is an entry and not the actual investment.*

*5. The Learned Commissioner of Income Tax appeal - 21 & Income Tax Officer has erred in law and in facts in not allowing business expenses against the income estimated.*

*6. The Learned Commissioner of Income Tax appeal - 21 & Income Tax Officer has erred in law and in facts in levying interest u/s. 234B and 234C of the Act.”*

2. Briefly stated, facts of the case are that the assessee filed return of income on 17.10.2007 declaring nil income. The case of the assessee was subsequently reopened u/s 147 of the Income-tax Act, 1961 (in short ‘the Act’) by way of issue of notice u/s 148 of the Act on 28.03.2013. According to the reassessment proceedings no information or documents etc. were filed by the assessee in support of its claim that assessee was engaged in providing accommodation



entries only and therefore, the Assessing Officer made the addition of Rs.5,00,000/- for subscribing 10,000 shares @ of Rs.50/- in the share capital of M/s Pradip Petrofiles Pvt. Ltd. as unexplained investment by the assessee vide impugned assessment order dated 30.03.2014 passed u/s 143(3) r.w.s. 147 of the Act. On further appeal, the Ld. CIT(A) also upheld the addition as no documentary evidence in support of its claim of carrying out accommodation entries filed by the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under:

**“6. Decision:**

*I have considered the facts of the case and submissions made by the appellant. It is seen from the facts available on record that the assessee is a Limited Company and engaged in the business of providing accommodation entries. The assessee filed return of income for A.Y. 2007-08 on 17.10.2007 declaring total income of Rs Nil. Subsequently, the case was re-opened after approval from higher authorities consequent on receipt of information from the DCIT CC-2(3), Ahmedabad that the assessee has subscribed to the shares of a fictitious shell company namely M/s Pradip Overseas Group at huge premium and the total amount of investment is Rs. 5,00,000/-. After verification of the submissions on record and analysing the facts and circumstances of the case, the A.O. completed the re-assessment proceedings u/s 143(3) r.W.s. 147 of Income-tax Act, 1961 on 30.03.2014 by treating Rs.5,00,000/- as unexplained investments and adding the amount to the total income of the assessee us 69 of Income-tax Act, 1961. Aggrieved by the said addition, the appellant preferred appeal against the addition.*

*6.2The Appellant contended that the amount of Rs 5,00,000/- paid to M/s Pradip overseas Ltd is an entry*



*only and not the actual investment and thus the addition should be restricted to 0.15% of the said amount on the basis of percentage commission earned by the assessee from other transactions. I have perused the assessment order and the documents submitted by the appellant in support of its claim during the course of appellate proceedings. It is observed that the A.O. has clearly brought on record that the assessee has failed to substantiate the genuineness of the transaction. During the course of appellate proceedings, the assessee has not produced any documentary evidence in support of its claim. The assessee has not submitted copy of its financial statements, proof of payment through banking channel or fundamentals of M/s Pradeep overseas Ltd. The assessee submitted a copy of its statements made before DDIT, Mumbai during the course of Search operation carried out on the group of Shri Mukesh Choksi on 25.11.2009 and 26.11.2009 wherein the Director of the assessee company Shri Mukesh Choksi accepted that the assessee company is engaged in the business of providing accommodation entry and the only income from these transactions is 0.15% of the transaction amount. However, the genuineness of the transaction could not be proved by the assessee. Merely claiming that the assessee has provided accommodation entries to the party will not support the case of the assessee, when incriminating material was found and seized by the department and when the assessee himself accepts that the transaction was not carried out through banking channel.*

*6.3 Further, the records available reflect that statutory notices on various dates fixing hearing of the appeal under section 250 of I.T. Act have been issued and served on the assessee. However, the assessee failed to comply with the statutory notices and produce necessary documentary evidences in support of its contention. It appears that the assessee does not want to appear and file written submissions. Thus, the appeal is decided on the facts of the case and material available on record.*

*6.4 The assessee submitted copies of Hon'ble ITAT, Mumbai's decision in respect of three of its sister*



*concerns where in the taxable income was restricted to 0.15% of the turnover of the assessee during the year and 50% of the expenses was allowed. However, in the instant case, the genuineness of the transaction has not been proved and thus, the facts and circumstances of the case are distinguishable. In view of the aforesaid discussion, and based on the material available on record, it is considered that the amount of Rs 5,00,000/- treated as unexplained investment is within the settled provisions of the Income-tax Act, 1961 and the assessee's contention of restricting the addition @ 0.15% of the transaction amount is not plausible in the light of factual position of the case. This ground of appeal is therefore dismissed.”*

3. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The Ld. Counsel of the assessee, who is director of the company as well, was asked to support contention of the assessee that no such investment was made by the assessee in the shares of the investee company. The Ld. Counsel was specifically asked to file balance sheet and financial statement of the assessee company relevant to the year under consideration. However, he submitted that said balance sheet are not readily available with him and therefore matter may be restored to the file of the Assessing Officer and relevant information shall be filed before him. Though, on behalf of assessee no information has been filed before the lower authorities but before us the counsel of the assessee and director of the company has expressed willingness for filing the information. In the facts and circumstances of the case and in the interest of substantial justice, we feel it appropriate to restore this issue back



to the file of the Ld. Assessing Officer with liberty to the assessee to file all the evidences in support of its claim that no such investment was made by the assessee. Accordingly, the relevant grounds of the appeal of the assessee are allowed for statistical purposes.

4. In the appeal, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 31/03/2023.**

**Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 31/03/2023  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
  
(Assistant Registrar)  
**ITAT, Mumbai**