

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM**

आयकर अपील सं/ I.T.A. No.3041/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT-3(3)(2) Room No. 609, 6 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. Watermark Financial Consultants Ltd. 1009 & 1010, Maker Chamber-V, Nariman Point, Mumbai-400021.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW3474H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri A. K. Tibrewal/Saurabh Gupta	
Revenue by:	Smt. Mahita Nair (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 21/02/2023

घोषणा की तारीख /Date of Pronouncement: 26/04/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the Revenue against the order of the Ld. CIT(A)-08, Mumbai dated 28.02.2017 for AY. 2012-13.

2. The first ground of appeal of the revenue is against the action of the Ld. CIT(A) deleting the disallowance of Rs.79,333/- made u/s 14A of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts as noted by the AO are that the assessee has earned dividend income of Rs.384/- and has not made any disallowance for earning the exempt income. Therefore, he applied Rule 8D(2)(iii) of the Income Tax Rules, 1962 (hereinafter "the Rules") and computed disallowance at Rs.79,333/- and disallowed it. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete it. Aggrieved, the revenue is before us.



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4. We note that assessee has earned Rs.384/- as dividend income, which is exempt income; and did not disallow any expenditure incurred for earning it. Before us, the computation of disallowance under Rule 8D(2)(iii) of the Rules has not been disputed. In such a scenario, the disallowance computed by AO to the tune of Rs 79,333/- should be restricted to the dividend income earned by the assessee i.e, Rs.384/-. Therefore, ground no 1 is partly allowed.

5. Ground no. 2 is against the action of the Ld. CIT(A) deleting the addition of Rs.3,92,29,560/- made u/s 68 of the Act.

6. Brief facts are that the AO noted that the assessee has shown loan transaction with M/s. Basant marketing Pvt. Ltd. (hereinafter "M/s. BMPL") to the tune of Rs.3,92,29,560/-. According to the AO, even though assessee was asked to file evidence to prove the creditworthiness of the lender, and genuineness of the transaction, it failed to comply. Therefore, he added the same u/s 68 of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved, the revenue is before us.

7. We have heard both the parties and perused the records. We note that M/s. BMPL is the sister concern of the assessee. And the assessee has shown this amount as unsecured loan from M/s. BMPL and has filed the following documents to prove the identity, creditworthiness and genuineness of the lenders/creditors.

(a) A copy of confirmation duly signed by the company.

(b) A copy of ledger account of the assessee company in the books of account of BMPL alongwith bank statement.



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- (c) A copy of ledger account of BMPL in the books of account of the assessee company along with bank statement.
- (d) A copy of ITR of BMPL for AY. 2012-13.
- (e) A copy of audited balance sheet of BMPL for FY 2011-12 along with grouping.
- (f) A copy of assessment order in the case of BMPL for AY 2012-13.

**8.** Moreover our attention was drawn to this Tribunal order in M/s. Watermark System India Pvt. Ltd. (ITA. No.3174/Mum/2017 for AY. 2012-13 order dated 10.04.2023) wherein finding has been rendered that M/s. BMPL/lender has creditworthiness and has already undergone scrutiny u/s 143(3) of the Act; and for ready reference, the relevant portion of Tribunal order (supra) is re-produced as under: -

“5. We have heard both the parties and perused the records. We note that the assessee company has received unsecured loan of Rs.5,18,21,000/- from M/s. Basant/BMPL as on 31.03.2012. The fact of the assessee receiving this amount as loan from M/s. Basant/M/s. BMPL has been substantiated by the assessee by filing the loan confirmation from M/s. Basant/BMPL which is found placed at page no. 55 of PB. The assessee has also filed the following documents to prove the genuineness of the loan transaction:

- (i) A copy of loan confirmation from M/s. BMPL
- (ii) A copy of account statement of the assessee company in the books of account of M/s. BMPL
- (iii) A copy of bank statement of M/s. BMPL showing the transactions entered with the assessee company
- (iv) A copy of loan confirmation by the assessee company to M/s. BMPL



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- (v) A copy of account statement of M/s. BMPL in the books of account of the assessee company
- (vi) A copy of bank statement of the assessee company showing the transactions with M/s. BMPL
- (vii) A copy of audited balance sheet of M/s. BMPL for FY 2011-12
- (viii) A copy of income tax return for AY. 2012-12
- (ix) A copy of share transfer form and supporting documents for transfer of shares of Avani Super Pvt. Ltd. by M/s. BMPL to the assessee company of Rs.4.30 crores.

6. In the light of the aforesaid documents and also the crucial facts that in the case of the lender/creditor i.e. M/s. BMPL (Basant), it is noted to have undergone scrutiny assessment for AY. 2012-13 vide order dated 27.03.2015 which order is found placed at page no. 16 to 19 of PB, wherein we find that returned income of M/s. Basant/M/s. BMPL has been accepted by the AO (ITO, Ward-8(1) Kolkata). And it has been brought to our notice that the letter written by AO of M/s. Basant Marketing Pvt. Ltd (M/s. BMPL) dated 23.02.2016 to the AO of assessee company informing about a fact that for AY. 2010-11 “no further appeal had been filed by the department against order of the Ld. CIT(A)- 20, Kolkata for the AY. 2010-11 on the merits as well as low tax implication. It may be mentioned here that the Ld. CIT(A)-20, Kolkata opined in his order that total income as declared by the assessee in its return to be assessed by not treating the assessee company as fake or bogus. The copy of the Ld. CIT(A)’s order is



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*enclosed herewith for your kind perusal and necessary information.”*

7. And we note that the aforesaid fact has been acknowledged by the Ld. CIT(A) (supra) in the impugned order. Consequently, the identity of M/s. BPIL (Basant) which was undergone scrutiny assessment in the hands of the department cannot be doubted. And the transaction in question having taken place through banking channel; and since confirmation of lender viz M/s. BPIL that it has given loan to assessee to the tune of Rs.5.18 cr as on 31.03.2012 is on record, the genuineness needn't be doubted. **Coming to the creditworthiness of M/s. BPML, it is noted that the M/s. Basant marketing Pvt. Ltd. has got share capital of Rs.13,64,68,230/- as well as Reserve and Surplus of Rs.2,96,66,11,752/- (refer page no. 104 PB Balance-sheet of M/s. BMPL as on 31.03.2012)** and since M/s. Basant has only given credit/loan of Rs.5,18,21,000/- to the assessee company, therefore, creditworthiness of M/s. Basant cannot be doubted. Therefore, the Ld. CIT(A) has rightly deleted the addition which action of Ld. CIT(A) is confirmed.”[emphasis given by us]

In the light of the decision of Tribunal (supra), we uphold the action of the Ld. CIT(A) on the same reasoning for M/s. W. System (supra) that since M/s BMPL has undergone scrutiny in the hands of department, its identity cannot be doubted; and the transaction of loan between assessee and M/s BMPL was through banking channel; and M/s



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BMPL's has creditworthiness for lending Rs 3,92,29,560/- as seen from the balance-sheet as on 31.03.2012 (supra). Therefore, Ground no 2 is dismissed

9. Ground no. 3 is against the action of the Ld. CIT(A) deleting/part-relief to the following dis-allowances made by AO on the expenditure claimed by assessee, especially guest expenses. The Ld CIT(A) has decided the action of AO regarding expenditure claimed by assessee, in the form of chart as given below: -

Nature of expenditure	Amount claimed in P & L A/c	Amount disallowed	Decision
Business guest expense	16,92,093	3,38,419	50% of expenses claimed allowed
Foreign travel expenses	1,85,747	1,85,747	50% of expenses claimed allowed
Gift and entertainment expenses	2,25,130	2,25,130	50% of expenses claimed allowed
Telephone	4,14,297	20%	Allowed fully
Vehicle expenses	18,26,533	20%	50% of expenses claimed allowed

10. Aggrieved by the aforesaid action of the Ld. CIT(A), the revenue is before us regarding guest expenses.

11. We note that the assessee has claimed expenditure of Rs.16,92,093/-on account of *guest expenses* and the AO has disallowed 20% because from the contents of the bills in support of expenses he noted that it pertains to payment of hotel/restaurants and for purchases of fruits and vegetable. Therefore, according to AO, assessee could not establish that expenses claimed have been exclusively incurred for the purpose of business. Therefore, the AO has disallowed 20% of the same to the tune of Rs.3,38,419/- which has



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been further allowed by the Ld. CIT(A) to 50%. Thus total disallowance was to the tune of Rs 1,69,210/-. Therefore, the revenue is before us. We do not countenance the action of Ld. CIT(A) to have allowed further 50% of expenses claimed without giving any reason what so ever and moreover, no evidence has been filed before us in this regard to justify the claim of expenditure. So, we reverse the action of Ld. CIT(A) and confirm the action of AO.

**12.** Ground no. 4 is against the action of the Ld. CIT(A) deleting Rs.92,874/- out of total Rs.1,85,747/- claimed by assessee for incurring Foreign Travel Expenses. The AO had disallowed the entire claim of Rs.1,85,747/- because other than submission made that the amount was paid to M/s. Cox & Kings, no other details/documentary evidences regarding the nature and purpose of such expenses were provided before him. And therefore according to the AO, the expenses claimed could not be verified as to whether the assessee has incurred expenditure wholly and exclusively for business purpose. Therefore, he disallowed 100% of the expenses claimed. On appeal of the Ld. CIT(A) has allowed 50% of the same by deleting Rs.92,874/-. This action of the Ld. CIT(A) cannot be accepted because assessee failed to produce any documentary evidences or bring any material on record before AO to prove that this expense was incurred for the purpose of business. Therefore, it has been rightly disallowed by the AO. We do not countenance the action of Ld. CIT(A) to have allowed 50% of expenses claimed without giving any reason what so ever and moreover, no evidence has been filed before us in this regard to justify



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the claim of expenditure. Therefore, we reverse the decision of the Ld. CIT(A) and uphold the action of the AO.

**13.** Coming to ground no. 5 which is against the action of the Ld. CIT(A) deleting the disallowance of Rs.1,12,565/- being expenses claimed by assessee as incurred for Gift & Entertainment Expenses. The AO noted that assessee had claimed Rs.2,25,130/- as expenditure on account of Gift & Entertainment and did not produce any documents to substantiate the same. Therefore, according to the AO he could not verify the claim as to whether it was incurred wholly and exclusively for business purposes. So he disallowed 100% claim of Rs.2,25,130/-. On appeal, the Ld. CIT(A) allowed 50% of claim. This action of the Ld. CIT(A) cannot be accepted because assessee was bound to prove the claim by producing relevant evidence/material to support that expenses has been incurred wholly and exclusively for the purpose of business. And the Ld. CIT(A) has restricted the disallowance to 50% without giving any reason and without referring to any supporting evidence. Before us also, the assessee failed to prove with supporting evidence to substantiate the claim of expenses. Therefore, AO has rightly disallowed 100% expenses claimed and since the Ld. CIT(A) has allowed 50% of the expenses claim without any material, the impugned order of the Ld. CIT(A) is perverse. And therefore, we reverse the order of the Ld. CIT(A) and uphold the action of the AO.



**14.** Ground no. 6 and Ground no. 7 are dealt together, since AO has dealt the disallowance together. The assessee had claimed expenses on account of (i) Telephone & Tele-communication Expenses to the tune of Rs.4,14,297/- (ii) Vehicle Expense to the tune of Rs.18,26,533/-. Thus, total expenses of Rs.22,40,830/-. According to AO, personal expenses on the aforesaid expenses cannot be ruled out. So he disallowed 20% of total amount and thus disallowed Rs.4,48,166/-. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who was pleased to allow fully Telephone expenses; and regarding; Vehicle expenses, Ld. CIT(A) has disallowed 50% of the claim. Aggrieved, the revenue is before us.

**15.** We note that AO has disallowed 20% of the Telephone expenses on the ground that there must be some element of personal expenses. According to us, this action of the AO is arbitrary because the assessee is a private limited company and its books are audited. And the reason given by the AO to disallow 20% of expenses claimed in respect of a Company cannot be accepted and the action of Ld. CIT(A) to allow 100% of expenses is upheld. And therefore, we confirm the action of the Ld. CIT(A) on this issue.

**16.** Coming to the action of the Ld. CIT(A) allowing 50% of expenses claimed i.e. Rs.9,13,266/- out of Rs.18,26,533/- being vehicle expenses, the AO noted that the assessee has claimed Vehicle Expenses of Rs.18,26,533/- and disallowed 20%, since there may be some personal expenses. And the Ld. CIT(A) has allowed 50% of the claim. So revenue is before us. We note that the AO disallowed 20%



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claim on ground that there may be personal element in such expenses claimed by assessee and Ld. CIT(A) gave further relief to assessee by allowing 50% of the claim. Since assessee is a company, personal element in such expenses cannot be as such a reason for disallowance as done by AO unless there is evidence to that effect in the hands of AO/Ld CIT(A). However, since assessee is not in appeal or preferred CO, the relief granted by Ld. CIT(A) is not disturbed. Therefore, action of Ld. CIT(A) is confirmed.

17. In the result, the appeal of the revenue is partly allowed.

Order pronounced in the open court on this 26/04/2023.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 26/04/2023.  
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
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