

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.660/Mum./2024**  
(Assessment Year : 2015-16)

**ITA no.750/Mum./2024**  
(Assessment Year : 2015-16)

**DCIT, Circle-14(1)(2)**

Room No.455, 4<sup>th</sup> Floor,  
Aayakar Bhavan, M. K. Road,  
Mumbai-400020

..... Appellant

v/s

**Vedhas Realtors Pvt. Ltd**

Glamcent Plot No.350,  
Beside Punjab National,  
BK Central Avenue Road,  
Chembur, Mumbai-400071  
PAN – AACCT2256L

..... Respondent

Assessee by :Shri Satyaprakash Singh

Revenue by :Shri Surendra Meena, Sr DR

Date of Hearing – 12/06/2024

Date of Order – 22/08/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeals have been filed by the Revenue challenging the separate impugned orders of even date 20/12/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2015-16, which in turn arose from the order dated 28/12/2017 passed under section 143(3) as modified by order dated

25/01/2018 passed under section 154, and order dated 07/01/2019 passed under section 154 of the Act.

2. Since both the appeals pertain to the same assessee involving similar issues arising out of a similar factual matrix, these appeals were heard together and are being decided by way of this consolidated order.

3. In its appeal, being ITA No. 660/Mum./2024 arising from the order dated 28/12/2017 passed under section 143(3) as modified by order dated 25/01/2018 passed under section 154 of the Act, the Revenue has raised the following grounds:-

*"1. Whether on the facts and in the circumstances of the instant case and in law, the Ld. CIT(A) was justified in allowing the appeal of the assessee on the issue of unsecured loan and interest paid thereon, without clearly establishing the source of lenders as per proviso to section 68 of Act and subsequent application of section 69C of the Act.*

*2. Whether on the facts and in the circumstances of the instant case and in law, the Ld. CIT(A) was justified in allowing the appeal of the assessee on the issue of I14A disallowance, by holding that if no exempt income is included in the total income, then no disallowance can be made ignoring the fact that an Explanation is added to section 14A with retrospective effect stating that disallowance u/s. 14A has to be made even if there is no exempt income.*

*3. Whether on the facts and in the circumstances of the instant case and in law, the Ld. CIT(A) was justified in allowing the appeal of the assessee on the issue of 14A disallowance by holding that section 14A is applicable only when the expenditure relating to exempt income is claimed by assessee ignoring the fact that the disallowance u/s. 14A of Act was computed by AO as per the formula prescribed in Rule 8D of Income Tax Rules.*

*4. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

4. While in ITA No. 750/Mum./2024 arising from the order dated 07/01/2019 passed under section 154 of the Act, the Revenue has raised the following grounds: –

*"1. Whether on the facts and in the circumstances of the instant case and in law, the Ld. CIT(A) was justified in allowing the appeal of the assessee on the issue of unsecured loan and interest paid thereon, without clearly establishing the source of lenders as per proviso to section 68 of Act and subsequent application of section 69C of the Act.*

*2. Whether on the facts and in the circumstances of the instant case and in law, the Ld. CIT(A) was justified in allowing the appeal of the assessee on the issue of unsecured loan and interest paid thereon, ignoring the fact that the addition on this issue was made in view of Revenue Audit Objection.*

*3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

*4. The appellant craves leave to amend, or alter any grounds or add a new grounds, which may be necessary."*

5. The first issue that arises for consideration, in Revenue's appeals, pertains to the deletion of addition on account of the unsecured loans under section 68 and interest paid thereon under section 69C of the Act.

6. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is in the business of builders and developers. For the year under consideration, the assessee filed its return of income on 20/09/2015 declaring a total income of Rs.9,22,450. The return filed by the assessee was selected for scrutiny under CASS and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to provide the requisite details of the persons who have provided unsecured loans to the assessee, but have not filed their return of income. In response thereto, the assessee only filed the list of persons who had provided the unsecured loans to the assessee without any supporting documents/details. After multiple opportunities, the assessee on 20/12/2017 filed a part-submission providing copies of loan

confirmation along with copies of return of income for the assessment year 2015-16 in respect of 15 persons, who had provided unsecured loans to the assessee during the year. Subsequently, on 27/12/2017 the assessee furnished copies of loan confirmation along with copies of return of income for the assessment year 2015-16 in respect of the 11 persons who had provided the unsecured loans to the assessee during the year, via Inward Tapal Register (Dak).

7. The Assessing Officer ("AO") vide order dated 28/12/2017 passed under section 143(3) of the Act held that since the details were filed by the assessee at the fag end of the limitation period for completion of scrutiny assessment, no time is left to carry out an independent enquiry by way of issuing notices under section 133(6)/131 of the Act, to the persons who provided unsecured loans, to cross verify the genuineness and creditworthiness of those persons. The AO held that no other option is left but to rely upon the documents/details submitted by the assessee in respect of the unsecured loans. However, the AO noticed discrepancies in respect of nine (9) creditors, viz. Rakesh Chaumal, Clearship Forwarders Pvt. Ltd., Shiv Sabari Developers, Estinta Advisory Pvt. Ltd., Pazel International Ltd., Manmade Fibers Pvt. Ltd., Miraj Commercial & Trading Pvt. Ltd., Syncom Formulations India Ltd., and Allied Digital Ltd., due to the unavailability of their return of income and bank statements in the details filed by the assessee. Accordingly, the AO held that in respect of aforesaid lenders, the creditworthiness and genuineness of the unsecured loans of Rs.6,15,52,696 taken during the year is not conclusively proved by the assessee. Further, the interest payment liability of Rs.24,08,659 debited to

the profit and loss account on the unsecured loans taken during the year was also doubted by the AO. Consequently, the unsecured loans amounting to Rs.6,15,52,696 were added to the total income of the assessee under section 68 of the Act and the interest liability amounting to Rs.24,08,659 was disallowed as unexplained expenditure under section 69C of the Act.

8. Subsequently, vide order dated 25/01/2018 passed under section 154 of the Act, the AO while deciding the assessee's rectification application dated 09/01/2018, granted partial relief to the assessee in respect of Clearship Forwarders Pvt. Ltd., Shiv Sabari Developers, and Allied Digital Ltd. by noting that either the loan was not taken by the assessee and rather the same was given by the assessee, or no fresh loan was taken by the assessee in the year under consideration, from these entities. Accordingly, the AO reduced the addition made under section 68 of the Act by an amount of Rs.3,30,00,000 and further, reduced the disallowance of interest payment under section 69C of the Act by an amount of Rs.2,75,950. Further, vide suo moto rectification order dated 07/01/2019 passed under section 154 of the Act, the AO enhanced the disallowance in respect of Pazel International Ltd. by an amount of Rs.82,47,643.

9. Being aggrieved, the assessee filed an appeal before the learned CIT(A) challenging the assessment order passed under section 143(3) as modified by the rectification order dated 25/01/2018 passed under section 154 of the Act. The assessee filed another appeal challenging the rectification order dated 07/01/2019 passed under section 154 of the Act. Thus, resulting in separate impugned orders and two appeals before us.

10. During the appellate proceedings before the learned CIT(A), the assessee made the following submissions and filed the documentary evidence of each loan lender separately: –

*"In case of Appellant Company, the Appellant has fulfilled onus by submitting explanations and documentary evidence including PAN and address details of the parties to prove the genuineness of each loan party separately, as under:*

*a) Loan taken from Mr. Rakesh Chaumal amounting to Rs. 74,00,000/-:*

*In relation to the loan taken from Mr. Rakesh Chaumal, we would like to state that Mr. Rakesh Chaumal is one of the promoters of the Appellant Company. He is a director as well as shareholder of the Appellant Company and there is a running account of Mr. Chaumal in the books of the Appellant Company, whereby many transactions are affected as per the need of the Company. During the course of assessment, we have furnished information about the status of Mr. Chaumal as promoter, director and shareholder of the Company and we have also submitted his Ledger confirmation with address and PAN. In view of the above, we have fulfilled onus to prove genuineness of the loan. The Ld. DCIT did not consider the above facts. The Ld. DCIT has not given the sufficient time to the Appellant to submit the documents and give the explanations at the time of framing the assessment order. The Ld. DCIT has not conducted any further independent enquiry to cross examine the party and also not called for information u/s. 133(6) of the Act from the party to verify the genuineness of the loan transaction during the course of assessment proceedings inspite of the fact that all the necessary details required to conduct independent enquiry u/s 133(6) of the Act were readily available on record with the Ld. DCIT from the Form ITR-6 filed by the Appellant Company for the year under consideration.*

*b) Loan taken from Etsinta Advisory Private Limited amounting to Rs. 23,50,000/-:*

*The Ld. DCIT had erred in making an addition of loan taken from Etsinta Advisory Private Limited amounting Rs. 23,50,000/- considering the same as unauthenticated loan. The Appellant Company has submitted the Ledger confirmation with address and PAN. In view of the above, we have fulfilled onus to prove genuineness of the loan. The Ld. DCIT did not consider the above facts. The Ld. DCIT has not given the sufficient time to the Appellant to submit the documents and give the explanations at the time of framing the assessment order. The Ld. DCIT has not conducted any further independent enquiry to cross examine the party and also not called for information u/s. 133(6) of the Act from the party to verify the genuineness of the loan transaction during the course of assessment proceedings.*

*c) Loan taken from Pazel International Ltd. (Rutron International Ltd.) amounting to Rs. 80,00,000/- (as rectified by the order passed u/s 154 of the Act dated 07.01.2019):*

*The Ld. DCIT had erred in making an addition on account of loan taken from Pazel International Ltd. (Name changed to Rutron International Ltd.) amounting Rs.80,00,000/- as rectified by the order passed u/s 154 of the Act dated 07.01.2019. During the course of assessment proceedings, we have submitted Ledger confirmation with PAN and address of Pazel International Ltd. In view of the above, we have fulfilled onus to prove genuineness of the loan. The Ld. DCIT did not consider the above facts. The Ld. DCIT has not given the sufficient time to the Appellant to submit the documents and give the explanations at the time of framing the assessment order. The Ld. DCIT has not conducted any further independent enquiry to cross examine the party and also not called for information u/s. 133(6) of the Act from the party to verify the genuineness of the loan transaction during the proceedings. However, Ld. course of assessment made short disallowance of Rs. 76,97,304/- (Rs. 80,00,000/- Less Rs. 3,02,696/-) in unsecured loan u/s 68 of the Act and Interest Rs. 5,50,339/- (Rs. 5,73,041/- Less Rs. 22,702/-) for which Rectification application has been filed and Order also passed.*

*The Appellant Company being aggrieved by Rectification order passed u/s. 154 by the Ld. DCIT on 07.01.2019 preferred an appeal separately on this ground.*

*d) Loan taken from Syncom Formulations India Limited amounting to Rs.55,00,000/-:*

*The Ld. DCIT had erred in making an addition on account of loan taken from Syncom Formulations India Limited amounting Rs. 55,00,000/- considering the same as unauthenticated loan. During the course of assessment proceedings, we have submitted PAN and address details of Syncom Formulations India Ltd. In view of the above, we have fulfilled onus to prove genuineness of the loan. The Ld. DCIT has not given the sufficient time to the Appellant to submit the documents and give the explanations at the time of framing the assessment order. The Ld. DCIT did not conducted any further independent enquiry to cross examine the party and also not called for information u/s 133(6) of the Act from the party to verify the genuineness of loan transaction during the course of assessment proceedings.*

*e) Loan taken from Manmade Fibers Pvt. Ltd. amounting to Rs.50,00,000/-:*

*The Ld. DCIT had erred in making an addition on account of loan taken from Manmade Fibers Pvt. Ltd. amounting Rs. 50,00,000/- considering the same as unauthenticated loan. During the course of assessment proceedings, we have submitted PAN and address details of Manmade Fibers Pvt. Ltd. In view of the above, we have fulfilled onus to prove genuineness of the loan. The Ld. DCIT did not conduct any further independent enquiry to cross examine the party and also not called for information u/s 133(6) of the Act from the party to verify the genuineness of loan transaction during the course of assessment proceedings.*

*f) Loan taken from Miraj Commercial & Trading Pvt. Ltd. amounting to Rs. 80,00,000/:*

*The Ld. DCIT had erred in making an addition on account of loan taken from Miraj Commercial & Trading Pvt. Ltd. amounting Rs. 80,00,000/- considering*

*the same as unauthenticated loan. During the course of assessment proceedings, we have submitted PAN and address details of Miraj Commercial & Trading Pvt. Ltd. In view of the above, we have fulfilled onus to prove genuineness of the loan. The Ld. DCIT did not conducted any further independent enquiry to cross examine the party and also not called for information u/s 133(6) of the Act from the party to verify the genuineness of loan transaction during the course of assessment proceedings.*

*We will submit the following documents along with the paper book at the time of hearing of the case to prove the genuineness of the loan taken by the Appellant Company where the Ld. AO made addition in assessment order passed were as follow:*

| Name of Party                                       | Amount of Loan taken during the years (Rs.) | Interest    | Copy Acknowledgement of ITR and Financial Statement of Loan party | Loan Confirmation | Copy of Party's Bank Statement |
|---|---|-------------|---|-------------------|--------------------------------|
| Rakesh Chaumal                                      | 74,00,000/-                                 | 5,41,088/-  | Attached  | Attached          | Attached                       |
| Etsinta Advisory Private Limited                    | 23,50,000/-                                 | 2,46,750/-  | Attached  | Attached          | Attached                       |
| Pazel International Ltd. (Rutron International Ltd) | 80,00,000/-                                 | 5,73,041/-  | Attached  | Attached*         | Attached*                      |
| Syncom Formulations India Limited                   | 55,00,000/-                                 | 3,93,534/-  | Attached  | Attached          | Attached                       |
| Manmade Fibers Pvt Ltd.                             | 50,00,000/-                                 | 2,52,756/-  | Attached  | Attached          | Attached                       |
| Miraj Commercial & Trading Pvt Ltd                  | 80,00,000/-                                 | 6,75,879/-  | Attached  | Attached          | Attached                       |
| Total   | 2,85,52,696/-                               | 21,32,708/- |   |                   |                                |

*For Pazel International Ltd., The Ld. DCIT has made short disallowance of Rs. 76,97,304/- (Rs. 80,00,000/- Less Rs. 3,02,696/-) in unsecured loan u/s 68 of the Act and Interest Rs. 5,50,339/- (Rs. 5,73,041/- Less Rs. 22,702/-). The same was again rectified by the Ld. DCIT in the Order passed u/s 154 of the Act dated 07.01.2019 for which separate appeal has been preferred by the Appellant Company."*

11. Since the assessee produced additional evidence in support of its contention which was not filed before the AO during the assessment proceedings, the learned CIT(A) sought the remand report from the jurisdictional AO in respect of such additional evidence. It is evident from the record that despite repeated reminders the AO failed to submit the remand report within the stipulated time. Therefore, the learned CIT(A) decided the

appeal based on the material available on record and held that the assessee has fulfilled its onus to prove the identity, genuineness and creditworthiness of the lenders of unsecured loan by submitting the documentary evidence.

12. In the present case, it is discernible from the record that the assessee filed documentary evidence including PAN, address and other details of the lenders like extract of bank statement, ledger confirmation, ITR V, and financial statements to prove the identity, genuineness and creditworthiness of each loan lender separately. We find that these documents also form part of the assessee's paper book from pages 72-484. It is further pertinent to note that even though during the assessment proceedings, these documents do not form part of the record, however, during the appellate proceedings before the learned CIT(A) no remand report was filed by the jurisdictional AO despite multiple opportunities, as noted by the learned CIT(A) in para-5.9 of the impugned order. Even during the hearing before us, the Revenue could not bring any material on record to doubt the identity and creditworthiness of the loan lenders and the genuineness of the transaction. Therefore, in view of the facts and documents placed on record, we find no infirmity in the impugned order deleting the addition made under section 68 of the Act on account of unsecured loans taken by the assessee. Consequently, the disallowance of interest payment under section 69C of the Act also does not have any basis, and therefore the same is also rightly deleted by the learned CIT(A). Hence, grounds raised by the Revenue pertaining to this issue in both appeals are dismissed.

13. The next issue that arises for our consideration pertains to the deletion of disallowance under section 14A of the Act.

14. We have considered the submissions of both sides and perused the material available on record. During the assessment proceedings, it was observed from the computation of income that the assessee has received Rs.25,60,370 exempt income on investments held in shares/mutual funds against which the assessee has not suo moto disallowed any expenditure under section 14A read with Rule 8D of the Income Tax Rules, 1962. The AO further observed that the assessee has made a huge investment of Rs.11.91 crores at the end of the year including a fresh investment of HDFC mutual funds of Rs.2 crores. Accordingly, the assessee was asked to show cause as to why the disallowance under section 14A read with Rule 8D should not be made. In response thereto, the assessee submitted that it has not received any income which is exempt under section 10 of the Act. However, the AO did not agree with the submissions of the assessee and computed the disallowance of Rs.69,26,663 and added the same to the total income of the assessee.

15. In its application dated 09/01/2018 filed under section 154 of the Act, the assessee submitted that it has earned capital gain/profit from the sale of mutual funds/investments (non-STT) of Rs.25,60,370, which has wrongly been treated as exempt income and disallowance under section 14A read with Rule 8D has been computed. However, the AO vide order dated 25/01/2018 passed under section 154 of the Act did not agree with the submission of the assessee on the basis that the assessee had not submitted these details at the time of assessment. Further, the AO held that the disallowance under section 14A of

the Act shall not exceed the exempt income is a debatable issue and hence the same does not fall within the purview of the mistake apparent from the record. Accordingly, the assessee's request for rectification of disallowance under section 14A of the Act was rejected by the AO.

16. The learned CIT(A), vide impugned order, held that in the absence of any tax-free income, the corresponding expenditure could not be worked out for disallowance.

17. From the perusal of the financial statement of the assessee, forming part of the paper book on page 41, we find that during the year the assessee earned a net gain on the sale of investments of Rs.25,60,370 and there is no receipt of exempt income under section 10 of the Act. Further from the ledger of the short-term capital gain, forming part of the paper book on page 485, we find that the total gain on the sale of investments is Rs.25,60,369.58. Therefore, we find merit in the submission of the assessee that the amount considered as exempt income by the AO is in fact the gains earned by the assessee from the investments. The Revenue could not bring any material to controvert the aforesaid factual position.

18. We find that the Hon'ble Delhi High Court in Cheminvest Ltd. v. CIT: [2015] 378 ITR 33 (Delhi) held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year. We further find that the Hon'ble jurisdictional High Court in Pr.CIT v/s Kohinoor Project (P) Ltd., [2020] 121 taxmann.com 177 (Bom.), rendered similar findings and dismissed the Revenue's appeal on a similar issue. Since, in the present case,

the assessee has not earned any dividend income, therefore, respectfully following the aforesaid judicial pronouncements, disallowance of expenditure under section 14A read with Rule 8D is not sustainable.

19. We further find that vide amendment by the Finance Act, 2022, the non-obstante clause and explanation were inserted in section 14A of the Act to the effect that the section shall apply even if no exempt income has accrued or arisen or has been received during the year. We find that while dealing with the issue of whether the aforesaid amendment by the Finance Act, 2022 is prospective or retrospective in operation, Hon'ble Delhi High Court in PCIT vs M/s Era infrastructure (India) Ltd, [2022] 288 Taxman 384 (Delhi) held that the amendment by Finance Act, 2022 in section 14A is prospective and will apply in relation to the assessment year 2022-23 and subsequent assessment years. Thus, even in view of the aforesaid amendment also, the disallowance under section 14A read with Rule 8D is not permissible in the present case.

20. Thus, we are of the considered view that the disallowance computed under section 14A read with Rule 8D has rightly been deleted by the learned CIT(A). Accordingly, the impugned order on this issue is upheld and grounds raised by the Revenue are dismissed.

21. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 22/08/2024

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 22/08/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Shubham P. Lohar

By Order

Assistant Registrar  
ITAT, Mumbai