

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH: COCHIN****BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.11/Cochin/2021
Assessment Year: 2013-14

Vertex Securities Ltd. 2 nd Floor Thottathil Towers Market road Ernakulam PAN No.AAACV7979E	Vs.	ITO Corporate Ward 2(5) Kochi
APPELLANT		RESPONDENT

Appellant by	:	Shri Jameskutty Antony, A.R.
Respondent by	:	Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing	:	15.09.2022
Date of Pronouncement	:	15.09.2022

O R D E R**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of CIT(A) dated 3.8.2020 for the assessment year 2013-14. The first ground in this appeal is with regard to the addition on account of stamp duty payable to the Government.

2. The grievance of the assessee is with regard to addition of Rs.4,72,412/- on account of stamp duty payable to Government, which has not been paid. The assessee has collected a stamp duty, which form part of bill raised to the customer and it was not paid to

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the Government and claimed as an expenditure. Since the assessee collected and not paid to the Government, same has been treated as income of the assessee. Against this assessee is in appeal before us.

3. The Ld. A.O. in his order stated that as per the Annexure D of Form No. 3CD filed by the assessee, it could be seen that an amount of Rs.4,72,412/ - being the stamp duty payable is not paid. Assessee was requested to explain why this amount cannot be disallowed u/s.43B of the Act. Assessee vide letter dated 29/1/2016, stated that "as per the accounting policy consistently followed by the company, stamp duty collected from clients is accounted as liability in their books and when it is remitted to the Govt., assessee used to debit the liability account. It is an amount collected from clients towards statutory fee payable to the respective state Govts., and it is no way constitute an income in assessee's hands. Moreover, as assessee do not debit the amount to the Profit and loss account as expenditure nor did assessee claimed any deduction, the question of disallowing the deduction u/s. 43B of the Act does not arise."

4. The reply filed by the assessee was considered by the AO. He stated in his order that, as the Stamp duty is collected in the sale of service bill, it is a part of the sales of service turnover, therefore it should have been shown in P&L Account. The Hon'ble Supreme Court in its Judgment in the case of M/s. Chowringhee Sales Bureau (P) Ltd Vs CIT 87 1TR 542. (SC) stated that "it is the nature and quality of the receipt and not the head under which it is entered in the accounts books as would prove decisive, If a receipt is a trading receipt, the fact that it is not so shown in the account books of the assessee would not prevent the assessing authority from treating it as trading receipt." In this case Stamp

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duty collected forms part of the bill raised to the customer and hence form part of the sales turnover. Hence, the Stamp duty should be included in the Profit and loss account and the Stamp duty paid should have been shown as expenditure. As the assessee has collected and not paid Stamp duty, the AO opined that the same is to be considered as the income of the assessee. Hence amount of Stamp duty collected and not paid to the authorities during the FY 2012-13 amounting to Rs.4,72,412/-, is added to the total income of the assessee.

5. The Ld. A.R. for the assessee relied on the judgement in the case of CIT Vs. OEN India Ltd. reported in 294 ITR 289. He also relied on the judgement of Hon'ble Kerala High court, wherein held that "Excise duty is to be excluded from total turnover for the purpose of computation of deduction u/s 80HHC of the Income-tax Act,1961 [the Act' for short]". He also relied on the judgement in the case of Magadh Stock Exchange Vs. CIT reported in 429 ITR 75 and submitted that section 43B of the Act cannot be applied to the stamp duty payable.

6. On the other hand, Ld. D.R. relied on the order of Ld. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. In this case, assessee has collected an amount of Rs.4,72,412/- towards stamp duty and same has not been paid to the Government within the stipulated date of filing of return u/s 139(1) of the Act. The Ld. A.R. made a plea that this amount has been paid within the due date of filing return of income without furnishing any evidence to support the same. In our opinion, this amount has been collected by the assessee. It is the statutory liability in terms of section 43B(a) of the Act which reads as follows:-

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“43B(a) “Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of ---

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force”

7.1 Once the assessee has collected the said amount from the customers, it is incumbent upon the assessee to pay the same before due date of filing return of income. However, assessee shown it as a liability in its balance sheet and having enriched by said amount, the assessee is liable to be included in the income of the assessee. Accordingly, we are of the opinion that judgement of Hon’ble Supreme Court in the case of Chowringhee Sales Bureau P. Ltd. reported in 87 ITR 542 (SC) is directly applicable to the facts of the present case, wherein held as follows:-

“That the fact that the appellant credited the amount received as sales tax under the head “sales tax collection account” did not make any material difference.

It is the true nature and quality of the receipt and not the head under which it is entered in the account books as would prove decisive. If a receipt is a trading receipt, the fact that it is not so shown in the account books of the assessee would not prevent the assessing authority from treating it as trading receipt.”

7.2 Further, the judgements relied by the assessee’s counsel are having no application to the present issue before us as such cannot be applied to the assessee’s case. Accordingly, this issue raised by the assessee is dismissed.

8. Next ground in this appeal is with regard to disallowance u/s 14A of the Act. The assessee has made an investment in equity shares of Rs.5,84,10,100/-. The dividend from such investment is exempted from the tax. Accordingly, AO computed the disallowance u/s 14A of the Act at Rs.11,84,111/-. The same was confirmed by the Ld. CIT(A). Before us, Ld. A.R. submitted that assessee being not exempted income as such section 14A r.w. Rule 8D of the Income Tax

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Rules cannot be applied to the assessee's case. In our opinion, whether the assessee has earned exempt income or not to be seen from its financials. Hence, the issue remitted to the AO to examine whether assessee earned any exempted income in the assessment year under consideration. If the assessee has not earned any exempted income, there cannot be any disallowance u/s 14A r.w. Rule 8D of the Income Tax Rules. Further, if the assessee has earned exempted income, assessee has to demonstrate that the investment has been made out of the own funds and not from the interest-bearing borrowed funds. Accordingly, the A.O. is directed to reconsider this issue and decide it afresh. This issue remitted to AO for fresh consideration in accordance with law.

9. The last ground is with regard to adding back difference between Form 26AS and the corresponding figure shown in P&L account. At the time of hearing, this ground has not been pressed. Accordingly, this ground is dismissed as not pressed.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 15th Sept, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 15th Sept, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**