

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI R.L NEGI, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No. 143/CHD/2019

निर्धारणवर्ष / Assessment Year : 2013-14

The ITO, Ward, Parwanoo	बनाम	Blue Coast Infrastructure Development Ltd., 7, Shopping Complex, Sector 1, Parwanoo Distt. Solan
स्थायीलेखासं./PAN NO: AABCM4010E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

राजस्वकीओरसे/ Revenue by : Smt. C. Chandrakanta, CIT
निर्धारितकीओरसे/Assessee by : Sh. Sudhir Sehgal, Advocate

सुनवाईकीतारीख/Date of Hearing : 27.04.2021
उदघोषणाकीतारीख/Date of Pronouncement : 23.07.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The Revenue has filed the present appeal against the order dated 30.11.2018 passed by Commissioner of Income Tax (Appeals), Shimla [for short 'the CIT(A)'] for the assessment year 2013-14, whereby the Ld. CIT(A) has allowed the appeal filed by the assessee against the assessment order passed u/s 143(3) of the Income Tax Act, 1961 [for short 'the Act'].

2. Brief facts of the case are that the assessee company engaged in the business of real estate development and financing, filed its return of

income for the assessment year under consideration declaring loss of Rs. 2,38,22,599/- Later on return was revised declaring loss of Rs. 5,89,66,211/- Since the case was selected for scrutiny, AO issued notices to the assessee company u/s 143(2) and 142(1) of the Act. In response thereof, the authorized representative of the assessee appeared before the AO and produced the books of account and submitted various details as asked by the AO. It was noticed that the assessee had earned interest income of Rs. 4.46 Cr., against which it had debited finance cost of Rs. 4.66 lacs. It was further noticed that the assessee had debited Rs. 3.3 Cr under the head professional expenses. Accordingly, the AO asked the assessee to furnish the detail of professional expenses and justify the expenses against the interest income. It was contended on behalf of the assessee company that it had earned interest on inter deposit from companies and the companies have deducted the tax at source. So far as the professional expenses is concerned, it was contended that during the previous year lot of agreements were entered into with depositors for selling the area. It was further contended that it has planned to start a hotel chain in UK and the other expenses including professional expenses were connected with the same project.

3. The AO rejecting the contention of the assessee reduced the loss to 1,43,09,487/- and determined the business loss at Rs. 2,04,62,113/- including the business loss of Rs. 4,72,961/- for the AY2011-12 and

depreciation of Rs. 4,21,097/- for AY 2012-13. In the first appeal, the Ld. CIT(A) set aside the action of the AO and directed to delete the disallowance made by the AO. Aggrieved by the said findings of the Ld. CIT(A), the revenue has filed the present appeal.

4. The Revenue has challenged the impugned order passed by the Ld. CIT(A) on the following grounds: -

- (1) *On the facts and in the circumstances of the case, the Ld CIT(A) has erred in holding that the business of the assessee was in existence during the year under consideration though the assessee was having no business income and the income declared by the assessee was interest income and income from other sources.*
- (ii) *On the facts and in the circumstances of the case, the Ld CIT(A) has erred in holding that professional expenses of Rs.3,47,72,000/-incurred by the assessee are allowable as revenue expenditure, though the same were to be capitalized being incurred at preoperative stage.*
- (iii) *It is prayed that the order of the Ld. CIT(A) be set - aside and that of the AO be restored.*
- (iv) *That the appellant craves to delete, withdraw and amend or add any other ground of appeal which may arise at the time of hearing.*

5. Before us the Ld. departmental representative supporting the assessment order submitted that since the assessee had not started the business activities, the expenditure should have been capitalized. Therefore, the Ld. CIT(A) has wrongly, allowed the expenditure claimed by the assessee. The Ld. DR accordingly submitted that the impugned

order passed by the Ld. CIT(A) may be set aside and the assessment order dated 30.03.2016 may be restored.

6. On the other hand, the Ld. counsel for the assessee supporting the order passed by the Ld. CIT(A) submitted that the assessee revised its income and claimed loss of Rs. 5,58,66,211/- Since the assessee had claimed loss of Rs. 2,38,22,599/- in the original return, the AO determined the loss at Rs. 1,43,09,478/- treating the loss of Rs. 5,58,66,211/- as business loss. Further since business of the assessee was in existence and the expenses were incurred in connection with the expansion of business, the Ld. CIT(A) has rightly directed the AO to delete the disallowance made by the AO.

7. We have heard the rival submissions of the parties and perused the material on record. The only grievance of the revenue is that the Ld. CIT(A) has wrongly held that professional expenses amounting to Rs. 3,47,72,000/- incurred by the assessee are allowable as revenue expenditure ignoring that the same were to be capitalized being preoperative expenses. The Ld. CIT(A) has set aside the findings of the AO holding as under: -

“In this case, the business is in existence, the expansion of the same is under consideration and expenses for the same have been incurred. There is no change in management and there is common and interlacing of funds and the genuineness of the expenses is not in doubt. The appellant is in the business of real estate development and financing

of real estate and the expenses incurred are into the same line of business.”

8. The Ld. CIT(A) has based his findings on the ratio laid down by the Hon’ble Delhi High Court in the case of *CIT vs. SRF Ltd. [2015] 59 taxmann.com 180(Delhi)* in which the Hon’ble Court has held that where the assessee company expands its existing business and claims expenses as pre-capitalization cost, the same is to be treated as revenue expenditure. The Ld. CIT(A) has further relied on the decision of the Mumbai Bench of the Tribunal in the case of *Reliance Footprint Ltd. vs. ACIT [2014] 41 taxmann.com 553(Mumbai Tribunal)* in which it was held that where opening of stores at various places was composite business of the assessee the revenue expenditure claimed out of the capital work in progress shown in balance sheet is allowable revenue expenditure since it was for the purpose of expansion of existing business. The Ld. CIT(A) has also relied upon the decision of the coordinate Bench of the Tribunal in the case of *DSM Sinochem Pharmaceuticals India (P) Ltd. vs. DCIT, [2017] 82 taxmann.com 316 (Chandigarh-Trib.)* wherein the coordinate bench has decided the similar issue in favour of the assessee holding as under: -

“Keeping the above in mind, we find that in the present case the contention of the assessee is that it had undertaken expansion of its existing business during the year. Note No. (Xiii) in the Notes to the Accounts, which is part of the Balance Sheet of the assessee,

substantiates this fact. We find that this contention, of the assessee has not been rebutted by the AO / DRP. In the backdrop of this fact indirect expenditure incurred are to be treated for the purpose of carrying on business of the assessee and hence allowable. We find that the decision rendered by the Calcutta High Court in the case of Kesoram Industries & Cotton Mills Ltd. (supra) squarely applies to the assessee case where in it was held as follows: —

"The principles are well-settled. It cannot be disputed that if the expenses are incurred in connection with the setting up of a new business, such expenses will be on capital account. But where the setting up does not amount to starting of a new business but expansion or extension of the business already being carried on by the assessee, expenses in connection with such expansion or extension of the business must be held to be deductible as revenue expenses. One has to consider the purposes of the expenditure and its object and effect. The finding of the Tribunal in this case is that there was an expansion or extension of the existing business of the assessee. The assessee is a manufacturer of cement. In addition to its factory in Andhra Pradesh, it proposed to start another cement factory in Rajasthan. There is one business. Although the factory at Rajasthan was not set up in the previous year relevant to the assessment year, this fact, in our view, is not a relevant factor in determining whether the deduction is allowable or not. The expenses in this case are miscellaneous expenses and legal charges for the proposed cement factory project. This expenditure is not related to the setting up of a new factory, it pertains to exploring the feasibility of expanding or extending the existing business by setting up a new factory in the same line of business. The assessee, during the course of its business, may incur expenditure for obtaining a project report or legal opinion regarding the viability of such project. This cannot, in our view, be considered as capital expenditure as, in that case, any legal expenses incurred by an assessee for taking any opinion on the desirability or feasibility of expansion of the business will not be allowable as deduction. Such expenditure is unmistakably connected with the running of the business."

In view of the above it is held that indirect expenses would constitute Revenue expenditure only and would not become capital merely for the reason that such expansion was termed as new project. Therefore, we hold that the treatment given by AO to the sum of Rs. 8,18,69,666/- as capital is not in accordance with law and is hereby

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reversed. The calculation made by AO in this regard is inconsequential.”

9. As observed by the Ld. CIT(A), AO has assessed the interest income as business income. Therefore, the only issue in dispute before the Ld. CIT was regarding the allowability of expenses claimed by the assessee amounting to Rs. 3,47,72,000/- as revenue expenditure instead of capital expenditure treated by the AO. The Ld. CIT(A) has decided the said issue in favour of the assessee by following the ratio laid down by the Hon’ble Delhi High Court in the case of *CIT vs. SRF Ltd.*(supra) and the decision of the Mumbai Tribunal in the case of *Reliance Footprint Ltd. vs. ACIT* and the coordinate Bench in the case of *DSM Sinochem Pharmaceuticals India (P) Ltd. vs. DCIT*. Since, the Ld. CIT(A) has decided the issue in accordance with the law laid down by the Hon’ble High Court and the decisions of the Mumbai and Chandigarh Benches of the Tribunal, we do not find any infirmity in the order passed by the Ld. CIT(A). Accordingly, we uphold the findings of the Ld. CIT(A) and dismiss the present appeal.

In the result, appeal of the Revenue is dismissed.

Order pronounced on 23rd July,2021.

Sd/-
(N.K. SAINI)

उपाध्यक्ष /Vice President

Sd/-
(R.L.NEGI)

न्यायिकसदस्य/ Judicial Member

Dated : 23/7/2021

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar