

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'B', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.915/Bang/2016  
(Assessment Year : 2012-13)

M/s. Zenbrain Systems P. Ltd,  
No.1671, 31<sup>st</sup> Cross, 16<sup>th</sup> Main, BSK II Stage,  
Bengaluru 560 070 .. Appellant  
PAN : AAACZ3247K

v.

Deputy Commissioner of Income-tax,  
Circle – 7(1)(2), Bengaluru .. Respondent

Assessee by : Shri. Prashanth K. L, CA  
Revenue by : Shri. Bipin C. N, JCIT

Heard on : 14.07.2016  
Pronounced on : 26.08.2016

**ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :**

In this appeal filed by assessee directed against an order dt.19.02.2016 of CIT (A) – 7, Bengaluru, it has altogether raised ten

grounds. Only grievance raised through these ten grounds is regarding disallowance of Rs.88,41,715/- confirmed by CIT (A).

02. Facts apropos are that assessee providing outsourced product development services had filed its return for impugned assessment year declaring loss of Rs.1,04,63,404/-. During the course of assessment proceedings assessee was required to explain the claim of consultation fee of Rs.88,41,715/-. Explanation of the assessee was that such fees was paid to consultants for arranging suitable tenants for its industrial sheds. AO also pointed out that there was no revenue receipts credited in its P & L account and queried how the claim of consultancy expenditure could be allowed. As per the AO in the succeeding years assessee had shown income only under the head income from house property and there was no business or professional income. In reply it was stated by the assessee that it had purchased a building at Jigani Industrial area and the expenditure was incurred in the said premises for making it fit to be sold to prospective buyers. As per the assessee since suitable buyer was not found it had decided to let out the building as factory shed. This was the reason as per the assessee, for returning income under the head house property in the succeeding years. However as per the assessee consultancy expenditure of

Rs.88,41,715/- incurred during the impugned assessment year was an allowable expenditure under the head of income from business or profession and the loss arising there from was required to be carried forward. However the AO was not impressed by the above explanation. As per the AO consultancy fees was paid by assessee in September 2011. Assessee had decided to rent out the property much earlier to that. As per the AO only thing the assessee did was to build the industrial shed and rent it out. He was of the opinion that the expenditure incurred by assessee was not for the purpose of any business. AO also noted that such expenditure could not be allowed under the head house property also. He made a disallowance of Rs.88,41,715/-.

03. Aggrieved assessee moved in appeal before the CIT (A). Argument of the assessee before the CIT (A) was that it was incorporated on 14.03.2008 with the object of carrying on a business in real estate sector. As per the assessee with this object it purchased a building at Jigani Industrial area. Intention of the assessee was to do a business in real estate and therefore expenditure incurred in Jigani Industrial area for making it fit for sale was a business out go. CIT (A) after considering the submission of the assessee was of the opinion that the assessee's ground in this regard

could not be accepted. According to CIT (A), intention of the assessee was to let out the building to Leeboy India Construction Equipment P. Ltd [LICEPL in short). As per the CIT (A), agreement with said LICEPL was entered on 12.08.2011 and assessee was to deliver the premises to the said company by March 2012. As per the CIT (A) income from letting out can only be considered under the head house property. Expenditure incurred by assessee for structuring of the lease transaction, finding a tenant for lease were all directed towards the purpose of letting out the property. As per the CIT (A) the claim of business out go was rightly disallowed by the AO.

04. Now before us strongly assailing the orders of lower authorities, Ld. AR submitted that assessee had no intention of letting out the premises. Its main intention was to do the real estate business. Expenditure in the nature of business consultancy was allowable u/s.37(1) of the Act. As per the Ld. AR in the subsequent years, assessee had shown income under the head house property to avoid disputes. For the impugned assessment year, as per the Ld. AR assessee was in a dilemma as to the head under which it had to return the income / loss. In any case as per the Ld. AR expenditure was clearly in the nature of business out go and ought have been allowed.

05. Per contra, Ld. DR supported the orders of authorities below.

06. I have perused the orders and heard the rival contentions. Details of expenditure claimed by assessee as revenue out go is as under :

Sl. No.	Party Name	Amount	Nature of Expenses and Explanation
1	Acore Consultants	79,75,000	Structuring of the Lease transaction for the Industrial shed between Zenbrain Systems and Leeboy India
2	Meritor Properties	7,25,000	Towards finding the Tenant to the Industrial shed
3	L S Consultants	75,000	Professional fees for working Drawings & BOQ with Estimation and to carry out electrical works
4	Novel Engineering Consultancy Services	66,715	Engineering Consultancy services for the works at the Industrial shed
	<b>Total</b>	<b>88,41,715</b>	

Bulk of the payment coming to Rs.79,75,000/- is for consultancy for structuring the lease transaction for the industrial shed for the company, LICEPL. Copy of the lease deed has been placed at paper book page nos.56 to 87. Except for preparing the lease agreement, what services were rendered by M/s. Acore Consultants is not at all clear. Bills issued by M/s. Acore Consultants are available at page 155 and 156 of paper book. As per these bills, the professional fee has been calculated based on monthly rent due from the tenant to the assessee. Thus the expenditure incurred by assessee was directly in connection with the leasing of the industrial shed to LICEPL. The business expediency of the expenditure has also not been demonstrated. Admittedly assessee was not carrying on any business

during the relevant previous year nor had any business receipts. In the succeeding years, assessee had shown its income only under the head house property. We are unable to fathom as to how the expenditure of consultancy can be considered as a business expenditure, when there was no business done carried out by the assessee during the year. Claim of the assessee was rightly disallowed by the CIT (A). I have no reason to interfere with the order of CIT (A).

07. In the result, appeal of the assessee stands dismissed.

Order pronounced in the open court on 26<sup>th</sup> day of August, 2016.

Sd/-

(ABRAHAM P GEORGE)  
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar