

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI R.C.SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5009/MUM/2013
Assessment Year: 2008-09**

Alpex International Pvt. Ltd. (Now known as Piramal Estates Pvt. Ltd.), Piramal Tower, Canpatrao Kadam Marg, Lower Parel, Mumbai- 400013. PAN :- AACCA7777K	Vs.	The ACIT, Range 6(1), Mumbai, Room No. 506, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400020.
(Appellant)		(Respondent)

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**ITA No. 4845/MUM/2013
Assessment Year: 2008-09**

The DCIT, Circle, Range 6(1), Room No. 506, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400020.	Vs.	Alpex International Pvt. Ltd. Piramal Tower, Annexe, 4 th Floor, Ganapatrai Kadam Marg, Lower Parel, Mumbai- 400013. PAN :- AACCA7777K
(Appellant)		(Respondent)

Appellant by : Shri. Ronak G. Doshi.
Respondent by : Shri. Morya Pratap

Date of Hearing: 30/05/2016
Date of Pronouncement: 31/05/2016

ORDER

PER RAM LAL NEGI, JM

These cross appeals have been filed by the assessee and the revenue against order dt. 30/03/2013 passed by the Ld. CIT(Appeals) Mumbai, for the Asst. year 2008-09.

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2. Brief facts of the case are that the appellant being engaged in the business of manufacturing and sale of Bulk Drugs and intermediates as well as service centre business, filed its return of income on 29.09.2008 declaring total loss of Rs. 1,37,94,310/-. The revised return was subsequently filed declaring total income of Rs. 2,64,37,058/-. After scrutiny the AO passed the assessment order u/s 143(3) determining the total income of Rs. 2,87,84,010/- making certain disallowances. Against the said assessment order the assessee filed first appeal before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee partly allowed appeal filed by the assessee. However, upheld the certain disallowances made by the AO including the miscellaneous expenditure amounting to Rs. 4,68,871/- an ad-hoc basis @ 10% of the total expenses.

3. Aggrieved by the impugned order passed by the Ld. CIT(A). The assessee is in appeal before the Tribunal. The assessee has raised the following grounds of appeal:-

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in disallowing the miscellaneous expenditure amounting to Rs. 4,68,871/- on ad-hoc basis at the rate of 10% of the total expense..

2. The appellant prays it be held that the aforesaid expenses are for the purpose of business and hence allowable in its entirety u/s 37(1) of the Act.

4. Before us the Ld. Authorized Representative for the assessee (AR) submitted that the Ld. CIT(A) has wrongly upheld the disallowance of Rs. 4,68,871/- made by the AO out of Rs. 46,88,715/- claimed by the assessee as business expenses under the head other expenses, @ 10% of the total expenses on ad-hoc. The Ld. AR invited our attention to details of miscellaneous expenditure reflected in the impugned order passed by the assessee has been incurred exclusively for purpose of business, the Ld. CIT(A) has wrongly confirmed the action of the AO.

5. On the other hand, the Ld. Departmental Representative (DR) submitted that since the assessee has failed to produce complete details of the expenditures of miscellaneous expenses during the assessment proceeding or even during the appellate proceedings, the Ld. CIT(A), has rightly confirmed the disallowance of miscellaneous expenditure @10% of the total expenses.

6. We notice that out of the total expenses claimed, the assessee has paid service tax of Rs. 30,76,923/-. Hence, it is incorrect to hold that the said amount was not incurred for the purpose of business. Therefore, we are of the considered view that assessee is entitled to claim Rs. 30,76,923/- as business expenditure. The Ld. CIT(A) has wrongly confirmed the ad-hoc disallowance @ 10% on the amount paid by the assessee towards service tax. Accordingly, we modify the order of the Ld. CIT(A) and direct the AO to exclude the service tax of Rs. 30,76,923/- from the total amount claimed by the assessee as miscellaneous expenditure under the head other expenses to recomputed the Ad-hoc disallowance @ 10% on the remaining amounts.

7. In the result appeal filed by the assessee for the A.Y. 2008-09 is partly allowed.

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2. The revenue has challenged the impugned order on following effective grounds:-

1. *“On the facts and circumstances of case and in law, the Ld. CIT(A) erred in deleting the disallowance of interest expenses of Rs. 18,78,077/- u/s 36(10)(iii) of the I.T.Act, 1961 holding that the entire interest free advances given from the available own funds i.e. share capital.”*

2. *“On the facts and circumstances of case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee is a loss making concern and its share capital was already fully invested which implies that own funds were not available with the assessee, therefore, the ratio of facts of M/s. Reliance Utilities & Power Ltd. is not applicable to the facts of the case.”*

3. *“On the facts and circumstances of case and in law, the Ld. CIT(A) erred in not appreciating that interest free own funds were not available for the purpose of giving advances.”*

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

3 At the outset, the Ld. Counsel for the assessee submitted that the tax effect in this case is below 10,00,000/- as the disallowance of interest u/s36(1)(iii) of the Act claimed by the assessee is Rs. 18,78,077/-. Hence, as per the CBDT

Circular No. 21 of 2015, dated 10/12/2015, the present appeal is not maintainable.

4. The Ld. DR fairly admitted that the tax effect in department's appeal is below 10 Lakhs, Further, the issue raised in appeal does not fall under any of the exceptions specified in para 8 of the Circular. Since, it has been specifically clarified in the Circular aforesaid that the instruction will apply retrospectively to all the pending appeals; the present appeal filed by the revenue is not maintainable. We, therefore, dismiss the same *in limine*.

Order pronounced in the open court 31st May, 2016.

Sd/- (R.C.SHARMA) ACCOUNTANT MEMBER	Sd/- (RAM LAL NEGI) JUDICIAL MEMBER
मुंबई Mumbai; दिनांक Dated: 31/05/2016	

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila

Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached	Yes		Sr.PS/PS
2	Draft dictated on	31.05.16		Sr.PS/PS
3	Draft Placed before author	31.05.16		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			