



आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

श्री बी आर भास्करन, लेखा सदस्य एवं  
श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।

**BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER AND  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. : 2021/Mum/2012**

(Assessment year: 2003-04)

बीएनपी परिबास एसेट मैनेजमेंट प्राइवेट लिमिटेड BNP Paribas Asset Management Pvt Ltd, (Formerly known as Fortis Investment Management (India) Private Limited which was formerly Known as ABN AMRO Asset Management (India) Limited BNP Paribas House, 1 North Avenue, Maker Maxity, Bandra Kurla Complex Bandra (East), Mumbai -400 051 स्थयी लेखा सं.:PAN: <b>AAECA 5153 B</b>	<b>Vs</b>	DCIT-Circle 3(1), Mumbai
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री नीरज शेठ Shri Niraj Sheth
Respondent by	:	मिस राजेश्वरी मुतवानी Mrs Rajeshwari Mutwani

सुनवाई की तारीख /Date of Hearing : 04-05-2016

घोषणा की तारीख /Date of Pronouncement : 26-07-2016

**आदेश  
ORDER**

**अमित शुक्ला : न्या. स.:**

**PER AMIT SHUKLA, JM:**

The aforesaid appeal has been filed by the assessee against impugned order dated 12.12.2011, passed by Id. CIT(Appeals)-5, Mumbai for the quantum of assessment passed under section 143(3) for the assessment year 2005-

06. In the grounds of appeal, the assessee has challenged the disallowance of claim of expenditure of Rs.31,13,420/- which has been held as capital expenditure by the AO and confirmed by the CIT(A). The relevant grounds as raised by the assessee reads as under:-

*“1.2 The learned CIT(A) erred in holding that the AO was correct in disallowing the Appellant’s claim of expenditure incurred on registration charges, stamp duty and filing fees of Rs.31,13,420/- by holding the same to be capital in nature on the ground that the benefit extended to the Appellant is of enduring nature.*

*1.2 The learned CIT(A) failed to appreciate that the expenditure incurred is in the nature of revenue expenses and did not confer any advantage of an enduring nature.*

*1.3 Without prejudice to the above, the Appellant submits that on facts and in the circumstances of the case the learned CIT(A) erred in not allowing the depreciation on the same as it being in nature of capital asset, an intangible asset.*

*1.4 The Appellant prays that the learned CIT(A) be directed to grant all such relief arising from the preceding grounds as also all relief consequential thereto”.*

2. Brief facts are that, the assessee is an Asset Management Company, which is responsible for launching and floating schemes of mutual funds. The assessee during the year had incurred expenditure of Rs.31,13,420/- on

registration of ABN AMRO Mutual Fund ("AMF")., the break-up of which was as under:-

<b>Sub groupings</b>	<b>Amount in (Rs)</b>
Company registration fees	3,500
SEBI registration fees	2,906,600
Tax not depend on profit	3,540
Membership fees	197,780

In response to the show cause notice by the AO, the assessee has stated as under:-

*The company had paid Rs.25,00,000/- during the captioned assessment year as registration fees to SEBI for registration of ABN AMRO Mutual Fund ("AMF"). The Company is an asset management to AMF and hence responsible for launching and floating the scheme of the AMF. The registration is mandatory and is a statutory obligation under SEBI to undertake the operation of the Company.*

*Under section 37(1) of the Income Tax Act, 1961, any expenditure laid out or expended wholly and exclusively for the purpose of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". We submit that the said expenses incurred by the company are incurred wholly and exclusively for the purpose of the business.*

*We wish to also submit that the expenditure is incurred for seeking registration with the Govt. Authorities (i.e. SEBI) and does not bring into existence an asset or an advantage of enduring benefit.*

*Hence the said expenses have been claimed as revenue expenses while computing taxable income".*

However, the AO held that the same cannot be treated as 'revenue expenses' and disallowed the same as capital expenditure on the ground that, assessee has started the business operation during the year and the registration for Amro Mutual Fund for which it had paid the registration fee and Stamp Duty etc., the assessee will receive management fee from AMF over the period of time/years and hence the assessee will derive enduring benefit for years and hence the assessee will derive enduring benefit on account of such expenses.

3. Before the first appellate authority, the assessee reiterated that it is revenue expenditure and alternatively submitted that if it is to be treated as capital expense, then depreciation should be allowed. The Ld. CIT (A) rejected the assessee's contention on both the counts not only by holding that it is capital expenditure but also depreciation will not be allowed. For coming to this conclusion, he has passed a very detailed and reasoned order which has been discussed from pages 3 to 5 of the appellate order.

4. Before us, the Ld. Counsel submitted that, here in this case, *firstly*, there has been double disallowance by the AO, because assessee had already added up the expenditure which were incurred prior to the setting-up of the business and was part of its net profit and loss account shown in the computation of income; and *secondly*, there are certain items of expenditures which have been incorporated post incorporation, therefore, the same cannot be held to be capital expenditure, because the only ground taken by the Department for making the disallowance of these

expenditures was that it were incurred prior to incorporation. He drew our attention to computation of profit and loss account at page 173 of the Paper-book, which for the sake of ready reference is reproduced hereunder:-

<b>Particulars</b>	<b>Rs.</b>	<b>Rs.</b>
<b>Profit and gains of business</b>		
Loss after tax as per the Profit and Loss Account		(8,79,62,388)
<b>Add: Adjustments</b>		
Disallowance under section 40(a)(ia) of the Act	6,88,890	
Depreciation as per books	48,21,194	
Bonus not paid before the due date of Filing the return	23,73,871	
Tax (FY 04-05)	14,254	
Provision for gratuity	2,50,014	
<b>Business expenses incurred prior to set-up</b>	<b>70,06,960</b>	1,51,55,183
		(7,28,07,205)
<i>Less: Adjustments</i>		
Depreciation under the Act	64,75,737	
Profit on sale of Investments	80,10,043	
Preliminary Expenses allowable u/s 35D	6,92,142	
Profit on foreclosure of leased vehicle	2,25,713	1,54,03,635
<b>INCOME FROM BUSINESS AND PROFESSION</b>		(8,82,10,840)

The AO while computing the income has proceeded with profit and loss account shown by the assessee and had then further proceeded to disallow the expenditures. Thus, he submitted that this matter should be verified by the AO that no double disallowance should be made. He further drew our attention to details of registration fee, stamp duty and other expenditures incurred on various dates to show that some of the expenses have been incurred after incorporation given at page 77 of the paper book and submitted that same can also be verified by the AO.

5. Ld. DR after supporting the order of the CIT(A), submitted that the contention raised by the Ld. Counsel can be verified by the AO, as this issue was not pointed by the assessee before AO or CIT(A).

6. After considering the aforesaid submission of the Ld. Counsel, now the only dispute which has been raised before us is that, *firstly*, already the assessee has added most of the business expenses incurred prior to set-up of the business and AO while disallowing the same has made a double disallowance, because he has proceeded with the profit and loss accounts as shown by the assessee, which also included the said disallowance added by the assessee, as incorporated by us herein above. Accordingly, we direct the AO to verify the expenses disallowed and added by the assessee. *Secondly*, he has further pointed out that, certain expenditures have been incurred post incorporation/setup of business; therefore, same should not be disallowed as capital expenditure. We agree with the contention of the Ld. Counsel that, so far as the expenditure incurred post incorporation cannot be treated as capital expenditure, because the revenue's case is that, these expenditures have been incurred prior to setting-up of business. Once these expenditures are post incorporation, then on same logic the same needs to be allowed, however subject to verification of nature of expenses. As regards the contention of double disallowance, we direct the AO to examine this issue and decide accordingly. Thus, we remand this matter back to the file of the AO, *firstly* to verify the expenditure which has been incurred post incorporation and *secondly*, to verify double disallowance, as

contended by the ld. Counsel before us. With this direction the grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In the result, appeal of the assessee stands partly allowed for statistical purposes.

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

**Sd/-**

(बी आर भास्करन)  
 लेखा सदस्य  
**(B R BASKARAN)**  
**ACCOUNTANT MEMBER**

**Sd/-**

(अमित शुक्ला)  
 न्याईक सदस्य  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Mumbai, Date: 26<sup>th</sup> July, 2016**

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A) -5, Mumbai.
- 4) The CIT-3, Mumbai.
- 5) विभागीय प्रतिनिधि "बी ", आयकर अपीलीय अधिकरण, मुंबई/  
 The D.R. "B" Bench, Mumbai.
- 6) गार्ड फाईल \  
 Copy to Guard File.

आदेशानुसार/By Order

// True Copy //

प/सहायक पंजीकार  
 आयकर अपीलीय अधिकरण, मुंबई  
 Dy./Asstt. Registrar  
 I.T.A.T., Mumbai

\*चव्हान व.नि.स

\*Chavan, Sr.PS