

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ई" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**  
**BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपीलसं./I.T.A. No.4691/Mum/2013  
(निर्धारणवर्ष / Assessment Year: 2008-09)

Elbee Express Private Limited Jawaharbad, 501, B Wing, 9 <sup>th</sup> Road, Almedia Park, Bandra West, Mumbai - 400050	<b>बनाम/</b> Vs.	Deputy Commissioner of Income Tax 8(1) (OSD) Mumbai.
स्थायी लेखासं. / जीआइआरसं. / PAN/GIR No. AABCE2765J		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Sanjay Parikh
Department by:	Shri Sambit Mishra

सुनवाई की तारीख / Date of Hearing: 17.02.2017  
घोषणा की तारीख / Date of Pronouncement: 28.02.2017  
आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 18.03.2013 passed by the Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2008-09.

2. The assessee has raised the following grounds:-

- “1. *On the facts, and in circumstances of the case, and in law, learned Commissioner of Income Tax (Appeal) erred in not admitting additional evidence with respect to investment in share capital by Cavere Trading Private Limited of Rs.65,479,290/- despite the same being submitted immediately after first remand report, and there by upholding action of the Assessing Officer in making addition under section 68 alleging unexplained cash credit of the amount received towards share capital and share premium.*
2. *On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in making addition under section 68 of Rs.6,00,000/- received from Shamshad Ahmed alleging unexplained cash credit of the amount received towards share capital and share premium.*
3. *On the facts, and in circumstances of the case, and in law, learned Commissioner of Income Tax (Appeals) erred in upholding action of the Assessing Officer in making disallowance of Rs.18,44,802/- incurred as professional fees for obtaining FIPB approval for inviting foreign direct investment by treating the same as expenditure of capital in nature.*
4. *On the facts, and in circumstances of the case, and in law, learned Commissioner of Income Tax (Appeal) erred in holding action of the Assessing Officer in making disallowance of Office Renovation expenses Rs.2,366,226 treating the same as expenditure of capital in nature.*
5. *On the facts and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in making disallowance of Residential Renovation expenses Rs.1,049,879 treating the same as expenditure not for the purpose of business.*
6. *On the facts and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in*

*not granting depreciation on residential Renovation expenses of Rs.1,049,879.*

7. *On the facts and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in making addition of Rs.994,324 alleging difference in books of account of the Company and AIR information without appreciating that your appellant had not dealt with Sundaram BNP Paribas Asset to such a huge extent; and the amount of Rs.769,000 recorded by the said party was an error on their part.*

3. The brief facts of the case are that the assessee filed its return of income on 22.09.2008 declaring total loss to the tune of Rs.61,157,544/-. The return was accompanied by the Balance Sheet, Profit and Loss Account, Tax Audit Report u/s.44AB of the Income Tax Act, 1961 ( in short “the Act”). The return was processed u/s.143(1) of the Act. Thereafter notice u/s.143(2) of the Act was issued on 05.08.2009 which was duly served upon the assessee. Notice u/s.142(1) of the Act was issued on 13.07.2010. The assessee company was engaged in the business of courier service. During the year under assessment, the increase in the share capital to the tune of Rs.20,80,73,480/- was not proved, therefore, the said money received was treated as unexplained and added to the income u/s.68/69 of the Act. The Assessing Officer treated the renovation expenses of Rs.23,66,226/- of the office as expenditure of capital in nature and also treated the renovation expenses of the director’s residence of Rs.10,49,879/ as not for the purpose of business and no depreciation was allowed and also made addition of Rs.9,94,324/- alleging difference in books of account of the Company and AIR information, therefore, the said difference was added to the income of

the assessee. On appeal before the (CIT)A, the said addition was confirmed, therefore, the present appeal has been filed before us.

**ISSUE NO.1:-**

4. Under this issue the assessee did not argue the case on merit, however, requested to consider the additional evidence which was not considered by the CIT(A) in connection with the investment in share capital by Cavere Trading Private Limited of Rs.6,54,79,290/-. Before going further it is necessary to advert the finding of the CIT(A) in this regard:-

“3.4 In view of the AO’s finding in remand proceedings, receipts as follows remain unconfirmed:

1. Kotak Mahindra Rs.10,00,000/-
2. Vivek Talwar Rs.30,00,000/-
3. Neil Shah Rs.8000/-
4. Cavere Trading Private Limited – Confirmation already submitted on 12.03.2013
5. Shamshad Ahmed Rs.6,00,000/-

As regards the first three names, the appellant claims these to be transferred shares from an existing shareholder. The AO is directed to verify the transfer from the transfer documents, and if found correct, no addition can be sustained. As regards filing of confirmation in respect of Cavere Trading

P Ltd., the appellant has not filed it before the AO in assessment proceedings or even in remand proceedings, and I now seeking to have the same admitted, albeit without furnishing any justification whatsoever as to why the same were not furnished / produced before the A.O. Since the exceptions mentioned in rule 46A remain unmet the same is not admitted and the addition is confirmed. In case of Shamshad Ahmed, as the receipt remains unconfirmed, the addition is confirmed.”

5. In view of the above said finding, it is quite clear that the CIT(A) did not consider the confirmation in respect of the Cavere Trading Pvt. Ltd. on the ground that why the same was not filed before the Assessing Officer but we are of the view that by not considering the said documents, the prejudice would be caused to the assessee if an opportunity of being heard was not granted. Moreover, these documents are relevant and are necessary for the adjudication of the matter of controversy in the interest of justice, therefore, we set aside the finding of the CIT(A) in this regard and direct the Assessing Officer to decide the matter afresh by giving an opportunity of being heard to the assessee by considering the relevant documents produced by the assessee in connection with the Cavere Trading Pvt. Ltd. in accordance with law. Accordingly this issue is being decided in favour of assessee.

**ISSUE NO. 2&3:-**

6. These issues have not pressed by the assessee, therefore these issues are hereby dismissed being not pressed.

**ISSUE NO. 4:-**

7. Under this issue the assessee has challenged the order of the CIT(A) in connection with upholding the order of the Assessing Officer in making the disallowance of office renovation expenses to the tune of Rs.23,66,226/-, treating the same as expenditure of capital in nature. The learned representative of the assessee has argued that the assessee was in the business of courier services and had opened branches all over India and the branches were taken on leave and license basis and appellant incurred renovation expenditure as to make it workable. Therefore, the appellant claimed renovation expenses of Rs.23,66,226/- which was treated by the Assessing Officer as capital in nature whereas the same should be treated as revenue in nature in view of the law settled in *Thiru Arooran Sugars Ltd. Vs. DCIT (2013) 350 ITR 324 (Mad.)* and *CIT Vs. Coromandel Fertilizers Ltd. (2014) 367 ITR 132 (T & AP)* and *ACIT Vs. Sarkar Jewellers P. Ltd. (2014) 33 ITR (Trib) 16 (Ahd.)*. However, on the other hand, the learned departmental representative has strongly relied upon the order passed by the CIT(A) in question.

8. With due regard to the argument advanced by the Ld representative of the parties and perusing the record carefully, it came into the notice that the assessee was having 49 branches across the India. The company has incurred one time renovation expenses like civil work, electrification etc for setting up the network of the branches which has been included in repair and maintenance expenses shown under the group `Office and other expenses . It is not in dispute that the said expenditure was incurred in respect of running of office premises. Anyhow, it is to be seen whether such type of expenditure is required to be treated as capital expenditure or revenue

expenditure. In this regard the law relied by the representative of the assessee speaks that the repair and renovation of leased business premises is liable to be considered as revenue expenditure. In view of the above mentioned law i.e. *Thiru Arooran Sugars Ltd. Vs. DCIT (2013) 350 ITR 324 (Mad.) and CIT Vs. Coromandel Fertilizers Ltd. (2014) 367 ITR 132 (T & AP) and ACIT Vs. Sarkar Jewellers P. Ltd. (2014) 33 ITR (Trib) 16 (Ahd.)*, we are of the view that the expenditure to the tune of Rs.23,66,226/- is revenue in nature which is allowable in accordance with law. In view of the said circumstances the finding of the CIT(A) is wrong against law and facts, therefore, the same is hereby ordered to be set aside. Accordingly, this issue is decided in favour of the assessee against the revenue.

**ISSUE NO.5 &6:-**

9. Under this issue the assessee has challenged the confirmation of the disallowance of residential renovation expenses of Rs.10,49,879/- treating the same as expenditure not for the purpose of business. The assessee claimed that the said premises was belonging to the one of the Director and was renovated during the relevant assessment year, therefore, the renovation expenses of Rs.10,49,879/- is liable to be allowed and alternatively the assessee claimed the 10% of depreciation on this amount. The Assessing Officer declined the same on the ground that no business connection was established in connection with Directors. No evidence of any kind was found, however, nothing new was produced before CIT(A). After filing the appeal before us no new material has been produced before us. Any how alternative ground is quite reasonable, therefore, depreciation in accordance

with law is liable to be allowed on the amount expended for the renovation of residential to the tune of Rs.10,49,879/-. Accordingly, these issues are decided in favour of the assessee against the revenue.

**ISSUE NO. 7:-**

10. This issue has not pressed by the assessee, therefore this issue is hereby dismissed being not pressed.

11. In the result the appeal filed by the assessee is hereby **Partly Allowed.**

Order pronounced in the open court on 28<sup>th</sup> February, 2017.

Sd/-

(D.KARUNAKARA RAO)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28<sup>th</sup> February, 2017  
*MP*

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (□ पील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**

(Dy./Asstt.Registrar)

**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**