

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 1405/Mum/2017 (Assessment Year 2006-07)

Amit Capital & Securities Private Limited 47A, 3 rd Floor, Plot No. 308 Hanuman Building Perin Nariman Street Fort, Mumbai-400 001. PAN : AAACA4219Q	Vs.	ITO 2(1)(1) Mumbai
(Appellant)		(Respondent)

Assessee by	Shri Vijay Mehta
Department by	Shri S.K. Bepari
Date of Hearing	14.9.2017
Date of Pronouncement	14.9.2017

ORDER

The appeal filed by the assessee is directed against the order dated 16-12-2016 passed by Ld CIT(A)-3, Mumbai and it relates to the assessment year 2006-07. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of expenses of Rs.13.87 lakhs as expenses not relating to long term capital gain earned by the assessee. The assessee also seeks direction to assess the Long term capital gains at concessional rate of tax.

2. The assessee is a share trading and investment company. It filed its return of income declaring a total income of Rs.10,25,000/-. The assessing officer determined the total income at Rs.1,03,53,890/- by treating capital gains as business income; disallowing administrative expenses; adding deemed dividend and adding transactions not disclosed in the books. It appears that the assessee had claimed all administrative expenses as deduction against long term capital gain and the same was rejected by the AO. In the appeal filed before Ld CIT(A), the first appellate authority deleted all the additions/adjustments made

by the AO. The revenue preferred appeal challenging the order of Ld CIT(A) before the Tribunal. The Tribunal confirmed the order of Ld CIT(A) in respect of all items except that relating to administrative expenses. The Tribunal restored the issue relating to administrative expenses with the following observations:-

“Admittedly, the AO, in the scrutiny assessment order for AY 2005-06 has accepted the expenditure of Rs.9,466/- and allowed the same. However, during the year the total expenditure has gone upto Rs.13,99,521/- which includes salary and allowances of Rs.13,37,196/-. Further, the assessee during the impugned A.Y has purchased the Bombay Stock Exchange Card at a cost of Rs.65,10,000/-. Under these circumstances, the entire expenditure, in our opinion, cannot be allowed as expenditure for earning long term capital gain. However, to maintain corporate status of the assessee, it may require to spend some expenditure. We, therefore, find merit in the submission of Ld Counsel for the assessee that the matter may be set aside to the file of the A.O with a direction to allow reasonable expenditure which may be allowed as revenue expenditure. Accordingly, we restore this issue to the file of the A.O with a direction to determine such reasonable expenditure and allow the same as revenue in nature. The ground raised by the Revenue is accordingly partly allowed for statistical purposes.”

Thus, the assessing officer was directed to determine reasonable expenditure that is required to be incurred for maintaining corporate structure of the assessee and allow the same as revenue expenditure.

3. In the set aside proceedings, the assessee submitted before the AO that it was formed by Ex-president of BSE, who was a Chartered Accountant. It was submitted that salary was paid to the Managing director and a very senior Government officers. It was further submitted that expenses were incurred on Electricity, Telephone, office and depreciation. Accordingly it was submitted that all these expenses should be allowed as business expenditure. The AO, however, allowed expenses relating to filing fee, professional tax, audit fee and bank charges. Accordingly he disallowed following expenses:-

Salary and allowances	Rs. 13,37,196/-
Stock exchange expenses	Rs. 22,190/-
Demat charges	Rs. 804/-
Legal expenses	Rs. 4,556/-
Security transaction tax	Rs. 6,221/-
Office expenses	Rs. 3,121/-
Interest paid	Rs. 13,758/-

 Rs. 13,87,846/-
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The Ld CIT(A) confirmed the order of the AO by observing that the assessee has failed to furnish the details of expenses. Aggrieved, the assessee has filed this appeal.

4. The Ld A.R submitted that the assessing officer has failed to implement the directions of ITAT. He submitted that the salary was paid to directors and other staffs. He submitted that the Companies Act mandates that a company shall have minimum two directors and accordingly contended that the salary paid to directors amounting to Rs.7,32,505/- should be considered as expenditure incurred in maintaining corporate status. He submitted that the assessee has acquired stock exchange membership card during the year under consideration, which shows that it was in the process of fulfilling its objects by starting share trading activities. Hence the assessee was required to employ other staffs and hence the salary paid to them should also be considered as expenses incurred for maintaining corporate structure. He further submitted that other expenses like office expenses, stock exchange expenses etc. are expenses related to the corporate activities only.

5. On the contrary, the Ld D.R submitted that the assessee has earned only capital gain during the year under consideration and hence the AO was justified in disallowing other expenses.

6. I have heard rival contentions and perused the record. I notice that the assessee has generated only capital gains on sale of shares during the year under consideration. It has acquired stock exchange card during the year under consideration, i.e., the business activities of the assessee was not commenced during the year under consideration. Since the present assessee is a company, which is required to incur certain expenses to maintain its corporate status, the Tribunal held that such type of expenses should be treated as revenue expenditure and should be allowed.

7. The Ld A.R argued that the expenses have been incurred by the assessee on account of commercial expediency and also to maintain corporate structure of the assessee. I notice that the Tribunal has directed the AO to determine the expenses relating to maintaining corporate structure and hence, I am of the view, the question of commercial expediency cannot be examined at this stage.

8. The salary expenses of Rs.13.37 lakhs consists of salary paid to directors amounting to Rs.7.32 lakhs and salary paid to staff Rs.6.04 lakhs. I notice that the assessee has carried on mainly investment activities during the year under consideration. In the submissions made before the AO, the assessee has submitted that its Managing Director is a Chartered Accountant and further it has employed retired Government officers. Though the Ld A.R furnished break-up details of salary expenditure, yet he has furnished the names of the persons to whom it was paid. The Ld A.R submitted that the minimum two directors are required to be appointed as per the provisions of Companies Act. The directors administer a company through Board Meetings and it is only the working directors who are given salary. Hence, in my view, the purpose of mandating appointment of minimum two directors is different and the same cannot support the case of giving salary to directors.

9. I have earlier noticed that the assessee has generated income only by way of capital gains out of its investment activities. In that case, the natural corollary is that the services of the directors and employees have been mainly used in connection with the investment activities only. At the same, it is also true that the directors and employees would have contributed in connection with the corporate activities related to maintaining corporate structure. In this view of the matter, I am of the view that 25% of salary expenses incurred on directors as well as other staffs can be considered as having been incurred in connection with maintaining corporate structure. Accordingly I modify the order passed by Ld CIT(A) on this issue and direct the AO to treat 25% of the salary expenses as revenue expenses incurred in maintaining corporate structure.

10. The assessee has not given details of office expenses of Rs.3,121/-. Hence, in my view, 50% thereof may be considered as incurred in maintaining corporate structure and allowed. I order accordingly.

11. Interest expenditure, demat charges and security transaction charges cannot be considered as expenses relating to maintaining corporate structure. Accordingly I confirm the disallowance of the same.

12. The assessee has not explained the nature of Stock exchange expenses and legal expenses. Hence I have no other option but to confirm their disallowance.

13. In view of the foregoing discussions, I direct the AO to compute the expenses allowable as per the discussions made supra.

14. The next ground urged by the assessee relates to the tax computed by the assessee. The Ld A.R submitted that the assessing officer has computed tax on the capital gain arising in off-market transactions at regular rate, whereas

they have to be taxed at concessional rate. I set aside this issue to the file of the AO to examine the claim of the assessee.

15. In the result, the appeal of the assessee is partly allowed.

Order has been pronounced in the Court on 14.9.2017.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 14/9/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai