



ITA No.6933/Mum/2012
Supreme Capital Management Limited
Assessment Year 2002-03

आयकर अपीलीय अधिकरण “ ई ” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SHRI MAHAVIR SINGH, JM AND SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No. 6933/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2002-03)

Supreme Capital Management Ltd. 612, Raheja Chambers 231, Nariman Point Mumbai – 400 021	बनाम/ Vs.	Income Tax Officer 3(3)(4) Aaykar Bhavan M.K.Road Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACS-7243-J		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Nitesh Joshi & Nishith Khatri, Ld.AR's
Revenue by	:	V.Justein, Sr.AR

सुनवाई की तारीख / Date of Hearing	:	31/08/2017
घोषणा की तारीख / Date of Pronouncement	:	04/10/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2002-03 assails the order of the Ld. Commissioner of Income-Tax (Appeals)- 7 [CIT(A)], Mumbai *Appeal No. CIT(A)-7/IT-203/08-09 dated 16/08/2012 qua* confirmation of certain disallowances. The assessee has also contested the reassessment proceedings on legal grounds. The assessment was framed by *Income Tax Officer-3(3)(4), Mumbai* on 17/12/2007 u/s 143(3) *read with Section 147* of the Income Tax Act, 1961.

2.1 Facts leading to the same are that the assessee being *resident corporate assessee* was subjected to an assessment u/s 143(3) *read with section 147* of the Income Tax Act on 17/12/2007 where the loss of the assessee was re-determined at Rs.17,529/-. The original return of income was filed on 31/10/2002 at loss of Rs.12,48,340/- which was accepted in scrutiny assessment u/s 143(3) on 10/11/2004.

2.2 The reassessment proceedings were initiated on the premises that the assessee earned exempt dividend income of Rs.98,720/- during the year and claimed expenses of Rs.4,38,685/- against the same. Further, the assessee did not actually carry out any business activity during the year but claimed depreciation of Rs.11,66,816/- and preliminary expenses of Rs.63,998/- besides other expenses and the same has resulted into *underassessment* of income to the tune of Rs.12,48,340/- within the meaning of Explanation 2(c)(iv) to Section 147. Consequently,



notice u/s 148 dated 30/03/2007 was issued and served on the assessee which was followed by statutory notices u/s 143(2) & 142(1).

2.3 The assessee contested the reassessment proceedings on the premises that all details were submitted during scrutiny assessment proceedings and Ld. AO, with due application of mind, accepted the claim of the assessee. However, not convinced, Ld. AO, while upholding reassessment proceedings re-computed loss at Rs.17,529/-.

3. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 16/08/2012 where the assessee contested the reassessment proceedings on legal grounds as well as on merits. Aggrieved, the assessee is in further appeal before us.

4.1 The Ld. Representative for Assessee [AR], contested the reassessment proceedings, firstly, by contending that all details were made available during original scrutiny assessment proceedings and the Ld. AO duly considered the same and allowed the assessee's claim. Our attention was drawn to the fact that no new tangible material came to the possession of Ld. AO so as to justify reassessment proceedings.

4.2 The Ld. AR further contested the quantum addition by drawing our attention to the fact that the expenditure mainly consist of preliminary expenses and depreciation which were statutory deductions and arising from earlier years and therefore, allowable to the assessee.

4.3 Per *Contra*, Ld. DR placed reliance on the stand of lower authorities and contended that reassessment proceedings were rightly invoked since there was excessive claim of depreciation.

5. Since the legal grounds goes to the root of the matter, we take up the same first. It is noted that Assessment Year involved is 2002-03 and



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reassessment notice has been issued on 30/03/2007 and hence, the same is within four years from end of relevant AY. In this situation, the only requirement to be fulfilled in order to resort to reassessment proceedings, as per Section 147, was that the Ld. AO had some reasons to believe that income chargeable to tax had escaped assessment. Further, we note that explanation 2(c)(iv) to Section 147 has been invoked by Ld. AO since excessive loss or depreciation had been granted to the assessee. We further find that Explanation-2 creates a deeming fiction and has to be construed strictly. This explanation provides for situation, where income is deemed to have escaped assessment. Therefore, applying the statutory provisions to the issue in hand, we are inclined to hold that reassessment proceedings were rightly invoked by Ld. AO. Therefore, the legal ground raised by the assessee stands dismissed.

6. Proceeding further on merits, we find that the expenditure claimed by the assessee mainly consist of depreciation, preliminary expenses and certain other expenses. We agree with the contention of the Ld. AR that the depreciation allowance is an statutory allowance and the same has to be allowed mandatorily in terms of Explanation-5 to Section 32. Further, documents on record reveal that preliminary expenses were incurred in earlier years and a portion of the same is being claimed by the assessee every year in terms of Section 35D. Therefore, the same has no linkage with the continuity of business by the assessee and hence allowable to the assessee. The other expenses consist of items like *Auditor's Remuneration, Rates & Taxes, and miscellaneous expenses etc.* and these constitute insignificant portion of total



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expenditure claimed by the assessee. We find the same to be necessary so as to maintain the corporate entity and hence, allowable to the assessee. Resultantly, we uphold the assessee' claim of these expenditure under *Business Head* and hence, delete the disallowances on merits.

7. In nutshell, the assessee's appeal stands partly allowed.

Order pronounced in the open court on 04th October, 2017.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 04. 10.2017

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि □ ग्रेषित/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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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