

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, एच.मुंबई।

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

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ramit Kochar, Accountant Member**

**ITA No.5678/Mum/2015
Assessment Year: 2012-13**

Hiranandani Akruiti JV, 6 th Floor, Akruiti Trade Centre, Road No.7, Marol, M.I.D.C. Andheri (East), Mumbai-400093	बनाम/ Vs.	DCIT, Central Circle-5(1), Mumbai
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No. AAAA1443H		

निर्धारिती की ओर से / Assessee by	Shri Viral Doshi
राजस्व की ओर से / Revenue by	Shri M.C. Omi Ningshen-DR

सुनवाई की तारीख / Date of Hearing :	28/09/2017
आदेश की तारीख /Date of Order:	03/10/2017

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is in appeal, challenging the impugned order dated 31/08/2015 of the First Appellate Authority, Mumbai.

2. During hearing, the only ground argued by the ld. counsel for the assessee, Shri Viral Doshi, is with respect to confirming the disallowance of expenses incurred amounting to ₹9,02,149/- on the ground that the assessee did not had any business activity. The ld. counsel for the assessee explained that the expenses involved are broadly legal expenses and the assessee was continuously doing business activities for which he took us to various pages of the paper book. On the other hand, the Ld. DR, M.C. Omi Ningshen, defended the impugned order by contending that no business activity was done by the assessee during this period, therefore, no question of allowing expenses. The impugned order was defended.

2.1 We have considered the rival submissions and perused the material available on record. The facts, in

brief, are that the assessee declared income of ₹1,05,99,100/- in its return filed on 31/07/2012, which was processed u/s 143(1) of the Act. Notice u/s 143(2) was served upon the assessee. The assessment was framed u/s 143(3) of the Act determining the total income at ₹1,16,79,830/- after making certain additions/disallowances by the Ld. Assessing Officer.

2.2. On appeal before the Ld. Commissioner of Income Tax (Appeal), the expenses amounting to ₹10,25,576/- were also affirmed on the plea that no business activity was carried out by the assessee during the relevant period. The assessee is in appeal before this Tribunal.

2.3. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, we find that the claimed expenses amounting to ₹10,25,576/- are broadly with respect to legal and professional fees relating

to legal proceedings/appeals and the same were incurred towards defending the legal rights with respect to the business activities carried out by the assessee. From page-64 of the paper book, we find that the assessee generated revenue from the business operation to the tune of ₹1,96,99,410/- and other income to the tune of ₹9,800/- as on 31/03/2011, which was not possible without doing any business activity. From page 74 of the paper book, there is opening inventory and the assessee was having stock and revenue was also generated during earlier year relevant to year under appeal and was offered for taxation. The disallowances made by the Ld. Assessing Officer is cannot be said to be inflated and are legal/professional expenses incurred to safeguard the interest of the business of the assessee, being legal and professional fees. Even otherwise, section 37(1) of the Act speaks

about 'any expenditure' (not being expenditure in the section 30 to 36) and not being in the nature of capital expenditure or personal expenses of the assessee but laid out or expended wholly and exclusively for the purpose of business of the assessee. It is our bounded duty to analyze the claim of deduction u/s 57 r.w.s 37(1) of the Act.

2.4. Now, question arises, whether the payment of legal fee is an allowable deduction? The obvious reply is "yes". Section 57 of the Act speaks about income chargeable under the head "Income from Other Sources", which shall be computed after making the deductions mentioned therein. The section is reproduced hereunder for ready reference:-

“57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—

- (i) in the case of dividends, other than dividends referred to in section 115-O, or interest on securities, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee ;
- (ia) in the case of income of the nature referred to in sub-clause (x) of clause (24) of section 2 which is chargeable to income-

tax under the head "Income from other sources", deductions, so far as may be, in accordance with the provisions of clause (va) of sub-section (1) of section 36 ;

(ii) in the case of income of the nature referred to in clauses (ii) and (iii) of sub-section (2) of section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of section 30, section 31 and sub-sections (1) and (2) of section 32 and subject to the provisions of section 38 ;

(iia) in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or fifteen thousand rupees, whichever is less.

Explanation.—For the purposes of this clause, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death ;

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;

(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section”.

2.5. If the provision of the Act, which is corresponding to the section 12(2) of 1922 Act, used in this context, the expression “incurred solely for the purposes of making or earning such income”, the use of expression “laid out or expanded wholly and exclusively” in section 57(iii) of the 1961 Act is to secure uniformity with the language of section 37(1) of the 1961 Act. At the same time, the expression, “for the purposes of business or profession” has a wider implication than the expression

“for the purposes of making or earning income” used in section 57(iii) of the Act. The purpose contemplated by section 57(iii) is more specific in character. So far as, reasonableness of the expenditure envisaged by section 57(iii) depends upon the facts of particular case. The Hon'ble Court in CIT vs New Savan Sugar and Good Refining Co. Ltd. (1990) 185 ITR 564, 571 (Cal.) held that it is for the Tribunal to decide whether the expenditure is wholly incurred for the purpose of keeping the assessee company in operation and earning income in as much as the concept “wholly” pertains to quantum of the money expended. The Hon'ble Court further observed even if a particular expenditure is un-remunerative, such expenditure is nonetheless a proper deduction, if such expenditure is made wholly and exclusively for the purposes of earning such income.

2.6. If the issue is analyzed in the light of section 37(1) of the Act, broadly speaking, where litigation expenses are incurred for purposes of creating, curing or completing the assessee's title to the capital, then the

such expenses are in the nature of capital expenditure. On the other hand, if the litigation expenses are incurred to protect the business of the assessee, it must be considered as revenue expenditure. This proposition is supported by Hon'ble Apex Court in *Dalmia Jain & Co. Ltd. vs CIT* (1971) 81 ITR 754 (SC) and *Meenakshi Mills Ltd. vs CIT* (1967) 63 ITR 207 (SC). To be more precise, the type of litigation, object or purpose of the litigation has to be ascertained from the facts of each case. If the object or purpose is to defend or maintain existing title to the capital asset of the business of the assessee, the expenditure would be of revenue in nature. The ratio laid down in following cases supports our view:-

- a) *CIT v. Bengal Assam Investors Ltd.*, (1969) 72 ITR 319, 325 (Cal);
- b) *CIT v. Life Insurance Corporation of India*, (1966) 62 ITR 827 (Cal);
- c) *Premier Construction Co. Ltd. v. CIT*, (1966) 62 ITR 176 (Bom);
- d) *Liberty Cinema v. CIT*, (1964) 52 ITR 153, 167 (Cal);
Transport Co. Pr. Ltd. v. CIT, (1962) 46 ITR
- e) 1009, 1016 (Mad); *Transport Co. Ltd. v. CIT*, (1957) 31 ITR 259, 266-7 (Mad);
- f) *G. Veerappa Pillai v. CIT*, (1955) 28 ITR 636 (Mad);

- g) CIT v. Raman & Raman Ltd.,(1951) 19 ITR 558, 569-70 (Mad). Also see, Lachminarayan Modi v. CIT, (1955) 28 ITR 322 (Orissa);
- h) J. B. Advani & Co. Ltd. v. CIT, (1950) 18 ITR 557 (Bom);
- i) Mahabir Prasad & Sons v. CIT, (1945) 13 ITR 340 (Lah);
- j) Central India Spinning, Weaving & Manufacturing Co. Ltd. v. CIT, (1943) 11 ITR 266 (Nag);
- k) CIT v. Maharajadhiraja Sir Kameshwar Singh (1942) 10 ITR 214 (PC)
- l) Southern V. Borax consolidated Ltd. (1942) 10 ITR (Sup) 1 (KB)
- m) Associated Portland Cement Manufacturers Ltd. v. Kerr, (1946) 27 Tax Cas 103, 118 (CA)
- n) Ebrahim Aboobaker v CIT (1971) 81 ITR 664 (Bom.)

2.7. In the cases of defending the criminal litigation, we find that Section 37(1) does not make any distinction between expenditure incurred in civil litigation and that incurred in criminal litigation. All that the court has to see is whether the legal expenses were incurred by the assessee in his character as a trader, in other words, whether the transaction in respect of which proceedings are taken arose out of and was incidental to assessee's business. Further, it is to be seen whether the expenditure was bonafidely incurred wholly and exclusively for the purpose of the business [see, CIT v. Birla Cotton Spng. & Wvg. Mills Ltd., (1971) 82 ITR 166

(SC); CIT v. Dhanrajgirji Raja Narsingirji, (1973) 91 ITR 544, 549 (SC)].

2.8. So far as, issue of quantum of the expenditure to be incurred is concerned, we are of the view, it is for the assessee to decide how best to protect his own interest. It is not open to the department to prescribe what expenditure an assessee should incur and in what circumstances he should incur that expenditure. The ratio laid down in CIT v. Dhanrajgirji Raja Narsingirji, (1973) 91 ITR 544 (SC) supports our view. In that case His Lordship observed:

"It is true that in some of the cases this court has held that an expenditure incurred by an accused assessee to defend himself against a criminal charge did not fall within the scope of section 10(2)(xv). Those decisions were rendered on the facts of those cases. That is not the position in this case."*

Criminal litigation may be prosecuted to put pressure on the accused to make good the loss caused to the assessee, and expenditure incurred therefore, if having nexus with the profits or business, are allowable deduction Saharanpur Electric Supply Co. Ltd. v. CIT,

(1971) 82 ITR 405 (All). Assessee defending himself- Expenses incurred by a person exercising a trade or profession in defending himself in a criminal prosecution, which arises out of his business or professional activities, cannot be deducted as business expenditure in the computation of his business income CIT v. H. Hirjee, (1953) 23 ITR 427, 431 (SC); CIT v. Gasper & Co., (1940) 8ITR 100 (Rang)]. In Hirjee's case [23 ITR 427], the assessee incurred expenditure in defending prosecution under the Hoarding and Profiteering Ordinance, 1943 (No. 35 of 1943), for selling goods at black market prices. Such expenditure was held not allowable. Similarly, expenditure incurred by a firm carrying on export and import business in defending one of its partners for having acquired foreign exchange and not fully utilising it for import were held not allowable although the partner was ultimately acquitted [CIT v. Chaman Lal & Bra .(1970) 77 ITR 383 (Delhi)]. This case was, however, distinguished in CIT v. Ahmedabad Controlled Iron & Steel Assn. Pr. Ltd., (1975) 99 ITR 567 (Guj), where expenses incurred by company in defending its managing director were held allowable. In order to so

claim such expenditure the assessee has not only to prove that the expenditure was incidental to the business but also to show that the expenditure was laid out or expended wholly and exclusively for the purpose of the business [Indermani Jatia v. CIT, (1951) 19 ITR 342 (All) on appeal, see, (1959) 35 ITR 298 (SC)].

2.9. Assessee defending an employee, etc.-When an employee is prosecuted in respect of transaction in the course of his employment, expenditure incurred in or about his defence is incurred for the protection of the good name of the business and is an allowable business expenditure [J.B. Advani & Co. Ltd. v. CIT & EPT, (1950) 18 ITR 557 (Bom) considered in CIT v. H. Hirjee, (1953) 23 ITR 427 (SC), where the correctness of its ultimate decision was not doubted; J.N. Singb & Co. Pr. Ltd. v. CIT. (1966) 60 ITR 732 (Punj)]. Legal expenses incurred by assessee-company, a sugar mill, in defending a criminal prosecution launched against its director-manager and some employees on charge of conspiracy between the assessee and the railway employees to give and accept

bribes in regard to transport of sugarcane from various stations to mill were held to be allowable deductions [Lakshmiji Sugar Mills Co. Ltd. v. CIT, (1967) ITR (Sh N) 21 (Delhi)]. Similarly, expenditure incurred in defending a criminal case against the directors and principal officers of the assessee-company on the allegation that the vegetable oil produced by the company did not contain 5% til oil as required by the Government rule was held to be an expenditure incurred with a view to proving the quality and standard of the manufactured goods produced by the assessee and, therefore, deductible [Rohtas Industries Ltd. v. CIT, (1968) 67 ITR 361 (Pat)].

2.10. In *Ananda Marga Pracharaka Sang ha v. CIT* [(1996) 218 ITR 254, 258, 2 (Cal)] , the legal expenses incurred by the assessee for defending Marga Guru, the president of the association and other members of the association against criminal charges have been held allowable as a permissible expenditure while computing the income of the assessee. However, on the question of allowability of legal expenses incurred by the assessee for

defending criminal charges arising out of the person civil rights and unconnected with the aims and objects of the assessee-organisation such, has been remanded to the Tribunal (p. 273) to determine that whether such expenses were related to the society's activity and then to decide such question about their allowability.

2.11. There are some other cases, where the expenditure incurred in criminal litigation was held allowable, are:-

(1) Hingir Rampur Coal Co. Ltd. v. CIT, (1971) 81 ITR 633 (Bom) [rioting by assessee's workmen resulting in injury and death of manager-sums spent by assessee in assisting State prosecution of accused].

(2) CIT v. Dhanrajgirji Raja Narasingirji, (1973) 91 ITR 544 (SC) [expense incurred by the assessee for prosecution of the transferee of the managing agency, which was instrumental in settlement between the assessee and the transferee].

(3) Iron Traders P. Ltd. v. CIT, (1974) 97 ITR 606 (Delhi) Criminal complaint against former managing

director for failure to account for amount belonging to the company-expenses for prosecution.

4) *Lakshmiji Sugar Mills Co. Pr. Ltd. v. CIT*, (1975) 98 ITR 568 (Delhi) [criminal case against director and employees for bribery-amount spent by company for defence of accused].

5) *Parshva Properties Ltd. v. CIT*, (1976) 104 ITR 631 (Cal) [expenses incurred in defending employees of the assessee-company in a criminal prosecution for violating Mines Regulations].

6) *CIT v. National Rayon Corporation Ltd.*, (1985) 155 ITR 413 (Bom) [expenditure incurred in defending a senior employee of the assessee was held deductible].

7) *CIT v. Indian Copper Corporation Ltd.*, (1986) 162 ITR 905 (Pat) [expenditure incurred in defending watchmen and other employees who guarded the premises of company].

8) *Atlas Cycle Industries Ltd. v. CIT*, (1990) 181 ITR 18 (Punj) [expenditure incurred in connection with criminal litigation pertaining to criminal conspiracy commission of offence under the Essential Commodities Act, 1955, was held deductible].

2.12. However, the amount spent in defending directors who were prosecuted under the Mines Act was held not deductible because there was no evidence to show that the amount was spent for preserving the reputation of the assessee [CIT v. Indian Copper Corporation Ltd., (1986) 162 ITR 905 (Pat)]. Similarly, expenses incurred by a Newspaper company in defending the editor and printer in proceedings for contempt of court were held, on facts, not to be expenditure incurred for the purpose of earning profits or gains and consequently not allowable [Amrita Bazar Patrika, In re, (1937) 5 ITR 648 (Cal)]. Also see, Swadeshi Cotton Mills Co. Ltd. v. CIT, (1975) 100ITR (All), for facts and decision.

3. Now, we shall deal with the cases and the ratio laid down therein, where the expenditure was incurred but was not held to be not allowable deduction.

(1) by a shareholder-assessee in suits filed against directors respecting matters of internal management of the company [Transport Co. P. Ltd. v. CIT, (1962) 46 ITR 1009 (Mad)];

(2) in an appeal with regard to the correctness of a ruling given by the president in the general meeting, with reference to the relative rights of the shareholders and the board of directors under the Companies Act, which had nothing to do with the company's business [Premier Construction Co. Ltd. v. CIT, (1966) 62 ITR 176 (Born), where the expenses of the original suit were held allowable as the plaintiff had claimed for reliefs which, if granted, would have affected the carrying on of the business of the company];

(3) in defending an application to the court by the shareholders under section 153C of the Indian Companies Act, 1913, questioning the appointment of some of the directors of the company [CIT v. Shiwalik Talkies Ltd., (1967) 63 ITR 83 (Punj)];

(4) in a suit for amending the articles of association of the company and thereby acquiring the voting rights in respect of each and every share [CIT v. Bengal Assam Investors Ltd., (1969) 72 ITR 319 (Cal)];

(5) in proceedings for compelling a company to register its shares in the name of the assessee, which were purchased earlier in an auction sale [CIT v.

Bengal Assam Investors Ltd., (1969) 72 ITR 319 (Cal)];

(6) in connection with the dispute between the partners of the old managing agency Firm and for obtaining sanction of the Central Government for appointment of thereconstituted firm as its managing agents [Rampooria Cotton Mills Ltd. v. CIT, (1974) Tax LR 395 (Cal)];

(7) in paying to Chartered Accountants giving advice regarding the scheme of amalgamation [New Commercial Co. Ltd. v. Addl. CIT, IT Ref. o. 40 of 1972 decided by the Gujarat High Court on 30-11-1973];

(8) in defending disciplinary proceedings against the auditor [CIT v. Deccan Sugar & Abkhari Co. Ltd., (1976) 104 ITR 458 (Mad)];

(9) by the assessee-lessor-company in conducting winding up proceedings started against the lessee-company [Associated Bombay Cinema P. Ltd. v. CIT, (1978) III ITR 942 (Bom)];

(10) in resisting transfer of shares without assigning or disclosing reasons [Harinagar Sugar Mills Ltd. v. CIT, (1979) 117 ITR 945 (Bom)];

(11) in attempting to prevent investigation into the affairs of the company [Harinagar Sugar Mills Ltd. v. CIT, (1979) 117 ITR 945 (Born)];

(12) by the assessee-amalgamated-company in reimbursing the amount of legal expenses incurred by the shareholders who attempted stayal of declaration of dividends [Raza Buland Sugar Co. Ltd. v. CIT, (1980) 122 ITR 817 (All)];

(13) for the purposes of the amalgamation of two companies [Raza Buland Sugar Co. Ltd. v. CIT, (1980) 122 ITR 817 (All); Raza Buland Sugar Co. Ltd. v. CIT, (1980) 123 ITR 24 (All)];

(14) in defending a suit instituted by certain shareholders seeking an injunction restraining the company from proceeding to distribute dividends in specie [Buland Sugar Co. Ltd. v. CIT, (1981) 130 ITR 434 (Del)];

(15) by the company in defending a suit instituted by a director against another director [Albert David Ltd. v. CIT, (1981) 131 ITR 192 (Cal)];

(16) in legal proceedings in connection with a scheme of amalgamation which did not materialise [Bengal & Assam Investors Ltd. v. CIT, (1983) 142ITR 156 (Cal)];

(17) by the assessee, a major shareholder, in connection with application under section 186 of the Companies Act for calling meeting of its subsidiary company for removal of existing directors and appointment of new directors, etc. [United Breweries Ltd. v. CIT, (1986) 162 ITR 527 (Karn)];

(18) by the assessee towards fees for conducting an appeal before the Company Law Board in connection with the refusal of registration of certain shares in a company [Jaya Hind Industries (P.) Ltd. v. CIT, (1986) 161 ITR 842 (Bom)];

(19) in connection with seeking legal advice in the matter of certain irregularities and fictitious transactions as revealed in the auditors' reports [CIT v. Mcleod & Co. Ltd., (1987) 164 ITR 681 (Cal)].

(20) in defending the appeal filed by B Co. in the Supreme Court challenging the order of the Company Law Board ordering the transfer of shares of B Co. to the assessee [CIT v. Jaya Hind Industries (P.) Ltd., (1993) 201 ITR 934,938 (Bom)].

(21) in connection with amalgamation of company M with the assessee-company which resulted in a radical alteration in the framework of the business of the as-sessee-company [Godfrey Phillips India Ltd. v.

CIT, (1994) 206 ITR 23,35 (Bom)]. Also see, Lalitmani Pvt. Ltd. v. CIT, (1997) Tax LR 543,544 (Born).

(22) for obtaining advice of solicitors in regard to dilution of shareholding in pursuance of the provisions of the Foreign Exchange Regulation Act, 1973, as the expenditure resulted in augmentation of the capital base of the assessee-company [CIT v. Hayward Waldia Refinery Ltd., (1994) 209 ITR 159, 161 (Cal)].

(23) in paying fees to the lawyers in connection with increase in authorised capital of the assessee-company [Cynamid India Ltd v. CIT, (1994) Tax LR 895, 897-98 (Bom)].

(24) in connection with amalgamation of one of the subsidiary companies of the assessee-company with the latter has been held of capital in nature because the purpose and object of incurring the expenditure was to alter the framework or the structure under which the assessee was carrying on its business and affected the profit-making apparatus [Jayashree Tea & Industries Ltd. v. CIT, (1995) 80 Taxman 169,175-76 (Cal)].

(25) on account of legal and professional charges in connection with the merger of the company was held

not deductible as revenue expenditure because there were no findings that the two companies were carrying on complementary business and the amalgamation was necessary for the smooth and efficient conduct of business [Triveni Engineering Works Ltd. v. CIT, (1998) 232 ITR 639, 645 (Del)].

(26) in connection with issuance of share certificates and bonds as a part of the amalgamation scheme [CIT v. Official Liquidator, Ahmedabad Manufacturing & Calico Printing Co. Ltd., (2000) 244 ITR 156, 160, 162-63 (Guj)].

3.1. To sum of the issue we find that Hon'ble Justice P.D. Desai, in Smt. Virmati Ramkrishna vs CIT (1981) 131 ITR 659, 672-73(Guj.), has analyzed the statutory language and laid down various principles, in various decided cases and made following propositions.

(i) in order to decide whether an expenditure is a permissible deduction under section 57(iii), the nature of the expenditure must be examined;

(ii) the expenditure must not be in the nature of capital expenditure or personal expenses of the assessee;

(iii) the expenditure must have been laid out or expended wholly and exclusively for the purpose of making or earning "Income from other sources";

(iv) the purpose of making or earning such income must be the sole purpose for which the expenditure must have been incurred, that is to say, the expenditure should not have been incurred for such purpose as also for another purpose or for a mixed purpose;

v) the distinction between purpose and motive must always be borne in mind in this connection, for, what is relevant is the manifest and immediate purpose and not the motive or personal considerations weighing in the mind of the assessee in incurring the expenditure;

(vi) if the assessee has no option except to incur the expenditure in order to make the earning of the income possible, such as when he has to incur legal expense for preserving and maintaining the source of income, then, undoubtedly, such expenditure would be an allowable deduction; however, where the assessee has an option and the option which he exercises has no connection with the making or earning of the income and the option depends upon personal considerations or motives of the assessee, the expenditure incurred in consequence of the exercise of such option cannot be treated as an allowable deduction;

(vii) it is not necessary, however, that the expenditure incurred must have been obligatory; it is enough to show that the money was expended not of necessity and with a view to an immediate benefit to the assessee but voluntarily and on the ground of commercial expediency and in order indirectly to facilitate the making or earning of the income;

(viii) if, therefore, it is found on application of the principles of ordinary commercial trading that there is some connection, direct or indirect, but not remote, between the expenditure incurred and the income earned, the expenditure must be treated as an allowable deduction;

(ix) it would not, however, suffice to establish merely that the expenditure was incurred in order indirectly to facilitate the carrying on of the activity which is the source of the income; the nexus must necessarily be between the expenditure incurred and the income earned;

(x) it is not necessary to show that the expenditure was a profitable one or that in fact income was earned;

(xi) the test is not whether the assessee benefited thereby or whether it was a prudent expenditure which resulted in ultimate gain to the assessee but whether it was incurred legitimately and bona fide for making or earning the income;

(xii) the question whether the expenditure was laid out or expended for making or earning the income must be decided on the facts of each case, the final conclusion being one of law'.

In the aforesaid propositions (vi) it has been clearly held/observed that incurring of legal expenses for preserving and maintaining of source of income would be allowable deduction.

3.2. Likewise, Hon'ble Apex Court in Sree Meenakshi Mills Ltd. v. CIT, (1967) 63 ITR 207 (SC), where expenses were incurred in filing a suit for obtaining an order restraining seizure of goods delivered in contravention of the control order were held allowable deduction. It follows from this decision that:

(i) litigation expenses to secure an order from the court for enabling an assessee to carry on its business without interference is an allowable deduction;

(ii) expenditure incurred to resist, in a civil proceeding, the enforcement of a measure, legislative or executive, which imposes restrictions on the carriage of a business or to obtain a declaration that the measure was invalid, would, if other conditions are satisfied, be admissible as deduction; and

(iii) the deductibility of expenditure incurred in prosecuting a civil proceeding depends upon the nature and purpose of the civil proceeding in relation to assessee's business and cannot be affected by the final outcome of that business.

3.3. In the case of CIT vs Gannon Dunkarlay and Co. Pvt. Ltd. (2000) 243 ITR 646 (Mad.), CIT vs Administrator General Of Madras (1998) 234 ITR 351 (Mad.), CIT vs Patiala Flour Mills Co. Ltd. (1989) 180 ITR 75 (P & H), Hindustan Milk Food Manufacturing Ltd. 179 ITR 302 (P & H), Palani Sir Murgun Textiles Ltd. vs ACIT (2002) 254 ITR 333 (Mad.) decided the issue in favour of the assessee. In the case of Gannon Dunkarlay and Co. Pvt. Ltd., the Hon'ble Madras High Court, where the expenditure was incurred by the official liquidator to maintain the infrastructure of the company held that the expenditure was deductible u/s 57(iii), as it would not have been possible to earn the interest income without incurring such expenditure. In the light of the foregoing discussion, ratio laid down by various Hon'ble High Courts/Hon'ble Apex Court and the facts available on record, we are of the considered opinion that in defending the litigation, the fee/legal expenses paid by the assessee is an allowable deduction, more specifically when the expenses were incurred to safeguard the business of the assessee. The payment of legal expenses even has not

been disputed by the Revenue and were merely disallowed that during the period, no business activity was carried out by the assessee. However, as mentioned earlier, we find that the assessee did business activity, therefore, in the absence of any contrary material, we allow this ground as the legal expenses/fees were incurred by the assessee wholly and exclusively to safeguard its business interest. However, as admitted by assessee that professional fee of ₹ 55,150/- stand disallowed u/s 40(a)(ia) as tax deducted at source was not deposited to the credit of Central Government before the due date of filing of return of income u/s 139(1) of the Act. This ground of the assessee is partly allowed.

Finally, the appeal of the assessee is partly allowed.

This order was pronounced in the open court in the presence of the ld. representative from both sides at the conclusion of the hearing on 28/09/2017

Sd/-

(Ramit Kochar)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03/10/2017

Shekhar. P.S. नि.स.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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**