

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ D ” BENCH, AHMEDABAD

सर्वश्री प्रदीप कुमार केडिया, लेखा सदस्य एवं मधुमिता रॉय, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
And SMT MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1882/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2011-12)

M/s. Atlanta Global Real Est. India Pvt. Ltd., B-9, 2 nd Floor, Vandematram Flat 42/1, Arunoday Society, Alkapuri, Baroda.	बनाम/ Vs.	DCIT, Circle – 1(1), Baroda.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCA 3046 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Sunil Talati, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri O. P. Pathak, Sr.D.R

सुनवाई की तारीख / Date of Hearing	02/05/2018
घोषणा की तारीख /Date of Pronouncement	09/05/2018

आदेश / O R D E R

PER PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax(Appeals)-1, Vadodara [CIT(A) in short] dated 28/04/2015 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 26/03/2014 relevant to Assessment Year (AY) 2011-12.

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2. The assessee in the captioned appeal has disputed the action of the Ld. CIT(A) in confirming the disallowance of Rs.2,02,017/- out of Rs.2,37,295/-, treating the same to be of capital nature allegedly in disregard of provisions of section 35D of the Act.

3. Briefly stated, the assessing officer in the course of the scrutiny assessment observed that the assessee has wrongly claimed deduction of Rs.2,02,017/- on account of preliminary expenses written off and another amount of Rs.35,278/- towards pre-incorporation expenses. The AO drew inference against the Assessee, on the ground that the auditor's report in form no 3CD does not permit amortization of such expenses. The aggregate amount of Rs.2,37,295/- was thus disallowed and added to the total income of the assessee.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) found merit in the claim of expenses to the extent of Rs.35,278/- towards pre-incorporation expenses and thus allowed the aforesaid amount. However, with regard to the pre-operative expenses of Rs.2,02,017/-, the CIT(A) did not find any good reason to reverse the action of the AO and to allow the claim of amortization of expenditure in terms of section 35D of the Act.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. The Ld. AR for the assessee Mr. Sunil Talati submitted at the outset that the disallowance in question of Rs.2,02,017/- mainly comprises of amount deposited with the registrar of companies towards incorporation and other incidental expenses such as printing of Memorandum of Association and Articles of Association and stamping charges etc. He thus submitted that merely on account of delinquency on the part of the tax auditor in not commenting on its allowability, the expenditure which is otherwise permissible in law, cannot be denied to the assessee.

7. The Ld. DR relied upon the order of the authorities below.

8. We have carefully considered the rival submission and perused the order of the authorities below. It is apparent that the expenses incurred towards filing fees, stamp duty, printing charges of Memorandum of Association etc., are clearly amortizable expenditure within the sphere of Section 35D of the Act. The revenue has not disputed any other aspect of Section 35D for alleged ineligibility. We thus find merit in the plea of the assessee for allowability of amortization of expenditure as claimed. Accordingly, the assessing officer is directed to delete the disallowance on this score.

9. In the result, appeal of the assessee is allowed.

This Order pronounced in Open Court on 09/05/2018

Sd/-
(मधुमिता रॉय)
न्यायिक सदस्य
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 09/05/2018

Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)- 1, Vadodara.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad