

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “D” BENCH

**(BEFORE SHRI P. K. KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 523/AHD/2017
(Assessment Year: 2013-014)**

Astron Paper & Board Mill Ltd. D-702, 7th Floor, Ganesh Meridian, OPP. Gujarat High Court, S.G. Highway, Ahmedabad- 380054	V/S	Income Tax Officer, Ward- 1(1) (4), Ahmedabad
(Appellant)		(Respondent)

PAN: AAJCA0517E

**Appellant by : Shri Firoj G. Bodla, , AR
Respondent by : Shri Mahesh G. Jiwade, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 31 -05-2018
Date of Pronouncement : 31 -05-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-1, Ahmedabad dated 21.12.2016 pertaining to A.Y. 2013-14 and following grounds have been taken:.

- 1) *The Ho'nable CIT-A-1 without considering the provisions of section 35D, nature of expenditure incurred, facts of the case and judicial pronouncement in this regard wrongly confirmed the disallowance of Rs. 3,88,500/- being 1/5th of Expenses incurred on increase of authorized share capital of the company and hence the same addition to total income be deleted now.*
- 2) *The appellant craves leave to add, amend, alter, delete, change or modify any or all grounds of appeal before or at the time of the hearing.*
2. The facts of the case are the appellant company initially commenced production and activities from 11.12.2012 from its factory at Village Sukhpar, Dist: Surendranagar on completion of required & machineries, construction of factory Building and other required facilities and legal and other formalities. So, the appellant had commenced business from the A.Y, 2013-14, Until, then the plant/project was under construction/acquisition.
3. The appellant company was incorporated with the capital of Rs. 5,00,000/-, At the time of incorporation, the appellant company had paid Rs. 39.500/- in connection with Registration of Company, MOA & AOA Drafting & Printing etc.
4. The appellant company had invested Rs, 67.55 Crores in of the project/plant upto 31st March, 2013.
5. In order to meet the requirement of funds for the completion of the project, the appellant had besides bank loans and other of finance, raised funds by way

of Equity Share Capital by increasing authorized up capital from Rs. 5.00 Lacs to Rs. 27.00 Crores.

6. For that purpose, appellant had had incurred expenses of Rs, 19,42,500/- by way of MCA(ROC) Filling Fees and Stamp Duty as per the applicable provisions of the in connection with the raising of Authorized Share Capital from Rs. 5.00 Lacs to Rs, 27.00 Crores before the commencement of the business.
7. The Form 5 is the Form prescribed by the Ministry of Corporate Affairs authorizing the company to increase the authorized capital of the company. The stamp duty is to be paid on Form 5 Filling as per the applicable Stamp Act. The company had to amend MOA altering the clause related to increase Authorized Capital with Form 5.
8. The company had claimed 1/5th of expenditure of Rs, 39,500/- paid on incorporation as specified in Point Number 3 above and Rs, 19,42,500/- at the time of raising of the authorized capita! U/s. 35D as specified in Point Number 6 above. And ld. A.O termed this above expenditure are of capital nature and same cannot be allowed under Income Tax Act and accordingly made addition of Rs. 3,88,500/-.
9. Against the said addition, appellant preferred first statutory appeal before the ld. CIT(A) who confirmed the addition made by the ld. A.O.
10. Now appellant is before us.

11. Today an application was moved for adjournment on behalf of the appellant stating that the director of the company has been outstation since last few days, adjournment may be granted. This application has moved on behalf of the Chartered Accountants, S. N. Shah & Associates and director of the company has nothing to do with regard to proceeding of this case in this Tribunal. Therefore, we are incline to give adjournment. Hence, application for adjournment is dismissed.

12. We have gone through the relevant record in the impugned order. The appellant had been engaged in the business of manufacturing of Kraft Paper. And appellant before the commencement of business had incurred expenses of Rs. 39,500/- in connection with Registration of Company, MO A & AOA Drafting & Printing etc. and Rs. 19,42,500/- in connection Registration and Stamp Duty Charges for Increase in the Authorised Capital of the Company for the commencement of the project of the company. And appellant had claimed Rs. 3,96,400/- being 1/5 of the above expenses under section 35D of the Income Tax Act. .

1. Expenses deductible u/s. 35D are any expenditure incurred in connection with
 1. Preparation of a feasibility report.
 2. Preparation of a project report.
 3. Conducting a market survey or any other survey necessary for the business of the assessee.
 4. Engineering services relating to the business of the assessee.
2. Legal charges for drafting any agreement between the assessee and any other person relating to the or conduct of the business of the assessee.
3. Where the assessee is a company, also, expenditure:

1. By way of legal charges for drafting the MOA / AOA or printing of MOA/AOA.
 2. Incorporation fee.
 3. For issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospe
 4. Other expenses as notified by the Government from time to time.
13. As we can see, above said expenditure are inconsonance of Section 35D nad are allowable as per Income Tax Act. Therefore, we direct the A.O. to delete the addition of Rs. 3,88,500/-.
14. In the result, the appeal filed by the Appellant is allowed.

Order pronounced in Open Court on	31 - 05- 2018
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Sd/-

(P. K. KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 31/05/2018

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad