

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6136/Del/2015  
(Assessment Year: 2012-13)

PTC Energy Limited, 2 <sup>nd</sup> Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi PAN: AAACP7884J	Vs.	DCIT, Circle-14(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Sanat Kapur, Adv
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	10/12/2018
Date of pronouncement	11/12/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-7, New Delhi dated 11.09.2015 for the Assessment Year 2012-13. The solitary issue in this appeal is that whether Rs. 41 lakhs claimed by the assessee of expenditure for increase in authorised share capital of the company to the Registrar of Companies is allowable as deduction u/s 35D of the Act or not.
2. The Id AO examined the return of income filed by the assessee on 26.09.2012, wherein, income of Rs. 39202630/- was declared and he found that the assessee has incurred Rs. 22268000/- for ROC fees for increase of authorised capital during the Financial Year 2008-09 and for this year has claimed 1/5<sup>th</sup> of the same i.e. Rs. 41 lakhs as deduction u/s 35D of the Act. The Id AO noted that such expenditure is a capital expenditure, therefore, he disallowed the above claim and passed an assessment order u/s 143(3) of the Act on 02.03.2015 determining the total income of the assessee of Rs. 44472760/-.

3. The assessee aggrieved with the order has preferred an appeal before the Id CIT(A) who confirmed the disallowance holding that fees paid to Registrar of companies for increase in authorised capital is a capital expenditure. Therefore, assessee aggrieved with the order has preferred an appeal before us.
4. The Id AR submitted that the assessee has paid Rs. 22268000/- to Registrar of Company for fees and stamping charges for increase of authorised share capital during the Financial Year 2008-09 relevant to Assessment Year 2009-10. During the year the assessee has claimed 1/5<sup>th</sup> of the same u/s 35D of the Act. He submitted that though the above expenditure has been held to be an capital expenditure, however, same is allowable as deduction u/s 35D of the Act. He further relied upon the decision of the Jodhpur Bench in case of Neelu Textiles Ltd Vs. CIT 128 Taxmann 93 and submitted that issue is squarely covered in favour of the assessee.
5. The Id DR supported the orders of the lower authorities and stated that above is the capital expenditure based on two different decisions of the Supreme Court. The lower authorities correctly disallowed the same. He further stated that the decision of the Jodhpur Bench is not applicable to the facts of the present case.
6. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Admittedly during the FY 2008-09 the assessee has incurred expenditure of Rs. 22268000/- as fees to Registrar of Companies for increase in authorised share capital. In this year the assessee has claimed 1/5<sup>th</sup> of the above expenditure as deduction u/s 35D of the Act relying upon the decision of the Jodhpur Bench. Apparently on a query by the bench how above expenditure is covered u/s 35D of the Act or not, the Id AR submitted that same is covered u/s 35D(2)(c)(i) as legal charges in drafting the memorandum and articles of association of the companies. We are of the opinion that fees paid to Registrar of Companies is a capital expenditure not covered under any of the clause

u/s 35D(2)(c) of the Act unless it is in connection with the issue for public subscription as has been held by the coordinate bench following the decision of the Hon'ble Rajasthan High Court 188 ITR 151. Such is not the case before us, as the assessee has not incurred this expenditure in connection with the issue for the public subscription. Accordingly, we find no merit in the appeal of the assessee and all the grounds agitated are dismissed.

7. Accordingly, appeal of the assessee is dismissed.

Order pronounced in the open court on 11/12/2018.

-Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 11/12/2018  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi