

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'B', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No. 440/Hyd/2018  
Assessment Years: 2012-13

Dy. Commissioner of Income-tax, Circle – 16(2), Hyderabad.                      vs.      Mercury Projects Pvt. Ltd., Hyderabad.

PAN – AADCM 9019 R

Appellant

Respondent

ITA No. 705/Hyd/2018  
Assessment Years: 2012-13

Mercury Projects Pvt. Ltd., Hyderabad.                      vs.      Dy. Commissioner of Income-tax, Circle – 16(2), Hyderabad.

PAN – AADCM 9019 R

Appellant

Respondent

Revenue by: Shri Y.V.S.T. Sai  
Assessee by: Shri P. Murali Mohana Rao

Date of hearing: 10/01/2019  
Date of pronouncement: 30/01/2019

**ORDER**

**PER S. RIFAUR RAHMAN, AM:**

Both these appeals are cross appeals by the assessee and the revenue directed against the order of CIT(A) – 4, Hyderabad, dated, 20/12/2017 for AY 2012-13.

2. Brief facts of the case are that the Assessee company engaged in the business of supply and trading of construction material, construction machinery and other goods for infrastructure, real estate and power sector, filed its return of

income for the AY 2012-13 on 27/09//2012 admitting a total income of Rs. 2,06,11,350/-, which was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Subsequently, the case was selected for scrutiny and accordingly, notices were issued. In response to the notices, the AR of the assessee filed the information and after going through the information, the AO completed the assessment by adding Rs. 1,56,11,181/- towards disallowance of expenditure u/s 14A, Rs. 22,20,400/- towards disallowance of preliminary expenses written off u/s 35D and Rs. 2,49,253/- towards disallowance of interest paid towards late payment of TDS.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) deleted the disallowance of Rs. 1,56,11,181/- made u/s 14A and the disallowance of interest paid of Rs. 2,49,253/- towards late payment of TDS and confirmed the disallowance of Rs. 22,20,400/- made towards preliminary expenses written of u/s 35D of the Act.

4. Aggrieved by the order of CIT(A), both the assessee as well as revenue are in appeal before us raising the following grounds of appeal:

4.1 Grounds raised by the revenue:

*"1. The CIT (A) erred in deleting the disallowance u/s 14A of Rs. 1,56,11,181/-.*

*2. The CIT (A) erred in ignoring CBDT's Circular No.5 of 2014 dated: 11-02-2014.*

*3. The CIT (A) erred in ignoring the Supreme Court decision in the case of CIT Vs. Walfort Share of Stock Brokers P Ltd [326 ITR 1], wherein it was held that the mandate of section 14A was to curb the practice of claiming deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of exempt income*

*without making any apportionment of expenses incurred in relation to exempt income.*

*4. The CIT (A) erred in deleting the disallowance interest paid towards late payment of TDS of Rs. 2,49,253/-.*

*5. Any other ground that may be urged at the time of hearing.”*

4.2 Grounds raised by the assessee are as under:

*“1. The order of the Commissioner of Income Tax (Appeals) is erroneous both on facts and in law and it is prejudicial to the interest of the assessee. The Ld. CIT(A) ought to have allowed the appeal of the appellant in full.*

*2. The Ld. CIT (A) erred in disallowing an amount of Rs.22,20,400/\_ claimed by the appellant as deduction towards preliminary expenses u/s 35D of the Income tax act, 1961 without appreciating the facts of the case and legal provisions. merely stating that the reasons are explained by the AO and there is no provision in the Act to allow expenses in relation to fees paid to ROC for increase of authorised share capital of the company.*

*3. The Ld. CIT(A) erred in not adjudicating ground No.7 of the appellant and written submissions made by the appellant on this issue and the case laws relied on by the appellant.*

*4. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in holding the expenditure in question is not allowable u/s 35D since the Same is capital in nature.*

*5. The Ld. CIT(A) ought to have appreciated the fact that the facts of appellant's case are different from the facts of the case relied on by the AO. The Ld. CIT (A) ought to have appreciated the fact that the expenditure in question Was incurred for the purpose of increasing authorised share capital to meet working capital requirement of the appellant company and not for the purchase of acquiring any assets.”*

5. As regards ground Nos. 1 to 3 raised by the revenue with regard to the disallowance u/s 14A of Rs. 1,56,11,181/-, the AO noticed from the balance sheet filed by the assessee company during the course of scrutiny proceedings that an amount of Rs. 41,50,97,000/- was shown under the head investments as on 31/03/2012. He further noticed from the information furnished by the assessee company that it had debited interest charges on fixed loans, working capital loans and others of Rs. 12,63,82,000/- and also the assessee took unsecured loans of Rs. 209,88,69,000/-.

5.1 Referring to the provisions of section 14A, the AO calculated the expenditure of Rs. 1,56,11,181/- and the same was disallowed u/s 14A of the Act.

6. When the assessee preferred an appeal before the CIT(A), the CIT(A) relying on the decision of the coordinate bench of this Tribunal in the case of Prathista Industries Ltd. in ITA No. 1302/Hyd/2015 deleted the disallowance made by the AO u/s 14A of the Act.

7. Considered the rival submissions and perused the material on record. It is settled position of law that the provisions of section 14A can be applied to quantify the expenses in relation to exempt income. Since the exempt income is Nil, section 14A will not apply. The Rule 8D can be applied only when there is difficulty in finding the expenditure relating to exempt income. The provisions of section 14A and Rule 8D will not apply to the present case.

8. As regards ground No. 4 raised by the revenue regarding disallowance of interest paid towards late payment

of TDS of Rs. 2,49,253/-, it is observed that on verification of schedules to P&L A/c, the AO noticed that assessee debited an amount of Rs. 2,49,253/- towards interest paid on late payment of TDS under the head finance costs and sub-head interest. AO opined that the above expenditure debited to P&L Account was not allowable expenditure as per the provisions of the IT Act and assessee had not added back the same in the computation of total income. He, therefore, disallowed the said amount of Rs. 2,49,253/-.

9. Before the CIT(A), the assessee contended that the interest was paid on delayed payment of TDS beyond the due dates and the interest on delayed payment of TDS is levied for speedy and prompt collection of dues. It was further submitted that in case of delays in payments of TDS, the interest is chargeable at fixed rate automatically but only to compensate the department for the loss of revenue during the period of delay, thus, the interest so paid is compensatory in nature.

10. The CIT(A) after considering the submissions of the assessee as well as relying on the decision of the coordinate bench in the case of M/s Taksheel Solutions Ltd. Vs. ACIT in ITA No. 1768/Hyd/2012, deleted the addition made by the AO towards interest paid on late payment of TDS.

11. Considered the rival submissions and perused the material on record. We do not find any infirmity in the decision of the CIT(A) as his decision is in consonance with the order of ITAT wherein the ITAT held that interest on TDS is not interest paid on income tax per se. The same is in the nature of compensation and not as penal. Therefore, the ground raised by the revenue in this regard is dismissed.

12. As regards grounds raised by the assessee from 1 to 5 with regard disallowance of Rs. 22,20,400/- made u/s 35D of the Act, the AO observed that on verification of the submissions and expenditure debited to P&L A/c, the assessee claimed in the computation of income an amount of Rs. 22,20,400/- (1/5<sup>th</sup> of Rs. 1,11,02,000 incurred towards ROC fee expenditure) as deduction u/s 35D.

12.1 Referring to the provisions of Section 35D of the Act., the AO observed that ROC fee expenditure incurred towards increase in authorized share capital incurred is not allowable as deduction under section 35D. Further, he observed that the ROC fee expenditure paid to the Registrar for expansion of the capital base of the company is directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit-making, it still retains the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company and is, therefore, disallowed. He relied on the decision in the case of *Bharat Carbon & Ribbon Mfg.Co.Ltd Vs CIT [1981] 127 ITR 239 (Delhi)* [approved in *Pub jab State Industrial Development Corporation Ltd Vs CIT [1997J 93 Taxman 5 (SC)*). He accordingly, disallowed an amount of Rs.22,20,400 (1/5<sup>th</sup> of Rs.1,11,02,000) claimed as deduction u/s 35D.

13. The CIT(A) confirmed the addition made by the AO.

14. The Id. AR of the assessee relied on the following decisions:

1. CIT Vs. Multi Metals Ltd, [1991] 188 ITR 151 (Rajasthan)

2. DCIT Vs. M/s Mercury Projects Ltd., ITA No. 450/H/2017
3. CIT Vs. Nuchem Ltd., [2015] 59 Taxmann.com 455 (P&H)
4. Shasun Chemicals & Drugs Ltd., [2016] 243 Taxmnn.com 47 (SC).

15. Ld. DR, on the other hand relied on the orders of revenue authorities.

16. Considered the rival submissions and perused the material on record. Hon'ble High Court of Rajasthan in the case of CIT Vs. Multi Metals Ltd. (supra) has rejected the assessee's contention of allowability of ROC fees as revenue expenditure. However, it has accepted that it is allowable u/s 35D(2)(c)(iv) of the Act. The relevant ratio of the case is reproduced as under:

*7. Learned counsel for the assessee urged for making reference of the aforesaid question to a larger Bench. We do not, however, consider it necessary to do so. The Rajasthan High Court decision in the case of Aditya Mills [1990] 181 ITR 195 is clear and explicit on the point and we are bound by the same. We, consequently, answer the first question in the negative by saying that the fee paid to the Registrar of Companies for raising the authorised capital was not allowable as revenue expenditure,*

*8. Coming to the second question, arguments were addressed before us by the Revenue that Sub-section (2)(c)(iv) of [Section 35D](#) is not applicable to the present case. The said clause reads as under :*

*"35D(2)(c) where the assessee is a company, also expenditure:-.*

*(iv) in connection with the 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 prospectus ;"*

*Rebutting the submission of the Revenue, the assessee argued that the language of [Section 35D](#) is wide enough to cover a case of payment of fee to the Registrar for raising capital of the assessee-company and the provision should be so interpreted that the same be not against the assessee, particularly when its object was to*

benefit him. Learned counsel contended that the settled principle is that a provision of law capable of two interpretations should be interpreted in a manner so as to give benefit to the assessee. Sub-section (2)(c)(iii) of [Section 35D](#) is as under :

"35D(2)(c)...

(iii) by way of fees for registering the company under the provisions of the [Companies Act, 1956](#) (1 of 1956)."

The provision contained in Sub-section (2)(c)(iii) of [Section 35D](#) was resorted to by learned counsel for the assessee in the alternative in support of his submission that the expenditure incurred by way of enhancement of capital would be covered by the same.

9. To us, it appears that even if the provision of Sub-section (2)(c)(iii) of [Section 35D](#) is not applicable, the language of Sub-section (2)(c)(iv) of [Section 35D](#) is wide in nature and would include the deductibility of fee paid by the assessee to the Registrar for enhancement of capital. Therefore, the said provision was rightly applied to the present case by the Income-tax Appellate Tribunal.

10. Under these provisions, deduction of expenditure incurred for registration is to be spread over a period of ten years and is not allowable in the year in which the expenses are incurred. To uphold the submission of the Revenue that expenditure incurred for obtaining registration would not be allowable either under Sub-section (2)(c)(iii) or Sub-section (2)(c)(iv) of [Section 35D](#) would defeat the obvious intention of the Legislature and would produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result, we have to hold that under Sub-section (2)(c)(iv) of [Section 35D](#), the expenditure incurred for obtaining registration would be liable to be deductible.

11. We, consequently, hold that the fee paid to the Registrar of Companies for raising authorised capital of the assessee-company was covered by Sub-section (2)(c)(iv) of [Section 35D](#) of the Income-tax Act."

Respectfully following the ratio laid down by the Hon'ble Rajasthan High court in the case of Multi Metals Ltd., (supra), as above, we set aside the order of CIT(A) and delete the addition made u/s 35D of Rs. 22,20,400/-. Accordingly, the grounds raised by the assessee are allowed.

17. In the result, appeal of the revenue is dismissed and appeal of the assessee is allowed.

Pronounced in the open court on 30<sup>th</sup> January, 2019.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Hyderabad, dated 30<sup>th</sup> January, 2019.

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Copy forwarded to:

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3. *CIT(A) - 4, Hyderabad*
4. *Pr. CIT – 4, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*