IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2668/Del/2016
Assessment Year: 2011-12

Caparo Maruti Ltd. 101-104, 1st Floor, Naurang House, 21 KG Marg, New Delhi -110001 PAN No. AAACC6423G	Vs	DCIT LTU New Delhi
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. Ved Jain, CA Sh. Nischay, CA Sh. Umang, CA Ms. Surbhi Goyal, CA
Respondent by	Sh. Surender Pal, Sr. DR

Date of hearing:	13/02/2019
Date of Pronouncement:	25/02/2019

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the assessee is directed against the order dated 21.03.2016 of the CIT(A)-22, New Delhi relating to A. Y. 2011-12.

2. The Ground of appeal No. 1 and 7 being general in nature, are dismissed.

3. The Grounds of appeal No. 2 and 3 raised by the assesee read as under :-

2. "*(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of Rs.56,45,833/- made by the AO on account of legal and professional fees paid to Accenture Service Pvt. Ltd.*

(ii) That the learned CIT(A) has erred in sustaining the above addition by holding that the said expenditure is capital in nature, despite the fact that the said expenditure incurred by the assessee is of revenue nature.

3. Without prejudice to the above, the learned CIT(A) has erred in not allowing the assessee the benefit of depreciation on the legal and professional fees, despite holding the said expenditure to be capital in nature."

4. The facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturer and supplier of sheet metal stampings and weldments of specific designs to Maruti Suzuki Ltd. It filed its return of income on 29.11.2011 declaring total income of Rs.43,18,180/-. During the course of assessment proceedings the assessing officer observed that the assessee had paid legal and professional charges of Rs.56,43,833/-to M/s. Accenture Services Private Limited for taking advise on cost reduction and increasing the profitability / efficiency of the existing business. The Assessing officer asked the assessee to justify this claim of expenditure. Rejecting the various explanation given by the assessee and observing that the payments are enduring in nature and has to be capitalized, therefore, the Assessing officer relying on various decisions added the entire amount of Rs.56,43,833/- to the total income of the assessee.

5. In appeal the Ld. CIT(A) upheld the action of the Assessing Officer by observing as under :-

4.1 The appellant submitted that it is 75/25 joint venture between Caparo Maruti Ltd. Caparo Group Ltd. U.K. Mauti Udyog Ltd and Mr. M. D.

Jindal consequent to which the share holding of the appellant company was expected to be as under :-

Copara Group Ltd	-	60%
M. D. Jindal	-	20%
Maruti Udyog Ltd	-	20%

4.2 However, the allotment of shares to Mr. M. D. Jindal was challenged in Company Law Board and since the said allotment was held to be not permissible, the cheques were returned to Shri M. D. Jindal. However, he returned it back to the appellant. Therefore, the corresponding amount is kept in shares suspense account and the share holding of Caparo Group Ltd. UK and Maruti Suzuki India Ltd in the appellant company becomes 75% and 25%. As per the agreement with M/s. Accenture Services Pvt Ltd. the bills have been raised on the appellant, i.e. Caparo Maruti Ltd. and also another concern of the Caparo Group i.e. Caparo Engineering India Pvt. Ltd. The break up of the same is as under :-

Name of Company	FY 2010-11	FY 2011-12	FY 2012-13	Total
Caparo Maruti Ltd	57,90,750	52,39,254	0	1,10,30,004
Caparo Engineering India Pvt. Ltd.	0	4,30,34,433	3,66,94,077	7,97,28,510
Total				9,07,58,815

5. As per appellant, it owns three units out of the total 22 units in respect of which the consultancy services were rendered and, therefore, the expenditure is of revenue nature as per the appellant and should have been allowed by the AO. The appellant also relied on several case laws in this matter.

6. The appellant has filed one letter dated 30.08.2010 addressed to Mr. Rajesh Prasad, Managing Director Caparo Corporate Services, signed by Accenture Services Pvt. Ltd. and accepted and agreed by Caparo Corporate Services (which is claimed to be a unit of Caparo Engineering India Ltd.). The background of the consultancy project was with respect of the future growth and diversification plans and funding of the same, through internal accruals focusing at cost reduction and capacity enhancement. The title of the proposal is 'Transform Business

Operations for all Caparo Engineering". The objectives are to deliver efficiencies across raw material procurement and designing of robust best in class processes across supply chain, planning and pricing management. The scope included 22 plants of Caparo Engineering (including three plants owned by the appellant).

6.1 From a perusal of the above, it is apparent that the consultancy project is in respect of restructuring of the entire business organization to increase its potential for earnings in future and, therefore, it is a project which would lead to an advantage to the Caparo Group of enduring nature. The expenditure is not related to the earning/ income of the year under appeal, even as per the matching principle of income and expenditure. Moreover, as held it is an expenditure is in the nature of capital expenditure. The appellant company is not even a signatory to the above agreement which has been signed by the Caparo Corporation Services, a unit of Caparo Engineering India Ltd.

6.2 In view of reasons given in para 6.1, group no.1 of the appeal and all is sub grounds (1.1, 1.2, 1.3 and 1.4) are dismissed."

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6.1 The Ld. Counsel for the assessee at the outset submitted that the assessee has incurred these charges in interest of its existing business. It is not the case of the revenue that the payment has been made for creating a new line of business or distinct business. The payment has been made for creating expansion of the existing business which is not denied by the Assessing Officer or the CIT (A). The grievance of the revenue is that the payment is of enduring nature and therefore, has to be capitalized. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Priya Village Road Shows Ltd. reported in 332 ITR 594, he submitted that under identical circumstances the Hon'ble Delhi High Court has held that if expenditure is incurred for preparation of feasibility report of a

new project, is in respect of same business which is already carried on by assesee, even if it is for expansion of business, namely, to start a new unit which is same as earlier business and there is unity of control and a common fund, then such expenditure is to be treated as revenue expenditure.

7. Referring to the decision of Hon'ble Delhi High Court in the case of Indo Rama Synthetics (I) Ltd. Vs. CIT reported in 185 Taxman 277, he submitted that here also similar view has been taken. He accordingly submitted that in view of the binding decision of the Hon'ble Delhi High Court, the addition made by the Assessing officer of Rs.56,45,833/- on account of legal and professional fees paid to M/s. Accenture Services Private Limited, which is upheld by the CIT(A) should be deleted.

8. The Ld. DR on the other hand heavily relied on the order of the Ld. CIT(A). He submitted that the expenditure has been incurred for restructuring of the entire business and the assessee is not a signatory to the same. Therefore, the Assessing Officer has rightly treated the same as capital expenditure and the Ld. CIT(A) is right in upholding the action of the Assessing Officer.

9. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer in the instant case disallowed an amount of Rs.56,45,833/- being professional fees paid to M/s. Accenture Services Private Limited on the ground that the same is capital in nature. The arrangement letter dated 31.08.2010 by M/s. Accenture Services Private Limited addressed to Caparo

Corporate Services on the subject "Business Operations Transformations at Caparo India' was produced which is in the form of agreement between 'Accenture Services Private Limited and 'Caparo Corporate Services' as it is signed by both the parties. It is his observation that the contracting party is not 'Caparo Maruti Ltd' but 'Caparo Corporate Services' which includes other business concerns of Caparo Group. Further the exercise for transformations of business is such that it would give an enduring benefit to the beneficiary and therefore, the expenditure is capital in nature. We find the Ld. CIT(A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that if expenditure incurred for preparation of feasibility report of a new project, is in respect of same business which is already carried on by assessee, even if it is for expansion of business namely to start a new unit which is same as earlier business and there is unity of control and a common fund, then such expenditure is to be treated as revenue expenditure. We find merit in the above arguments of the ld. Counsel for the assessee. In the instant case the payment has not been made for creating a new line of business or distinct business and the payment has been made for expansion or restructuring of the existing business. We find somewhat similar issue had come up before the Hon'ble Delhi High Court in the case of Priya Village Roadshows (supra). In that case the Hon'ble Delhi High Court has observing as under :-

"The assessee-company, which was already involved in the business of running

cinemas, was pursuing owners of a cinema hall for taking over the cinema for conversion into a multiplex and operation and management thereof. In order to carry out technical and financial feasibility, the assessee availed services of an architect and paid him certain amount as fee in the preceding year. However, the project was not bund to be financially and technically viable. The assessee, therefore, decided to drop the project and amount spent was claimed as revenue expenditure. Similarly, there was another proposal before the assessee to take over one single screen cinema for the purpose of conversion into a four-screen cinema complex. Detailed technical feasibility was carried out and building plans were prepared with the help of engineers and architects, who were paid remuneration. On subsequent market research, the assessee referred to retain single-screen cinema and proposal of conversion of the said cinema into a multiplex vas shelved. That expenditure was also claimed as revenue expenditure by the assessee.

The revenue authorities held such expenditure to be capital expenditure on the ground that expenses were incurred for creating new assets. On appeal, the Tribunal held that the expenses on new project development were allowable as business expenditure under section 37.

On the revenue's appeal to the High Court:"

10. A harmonious reading of the aforesaid two judgments of this Court, namely, Triveni Engg. Works Ltd. a (supra) on the one hand and *Modi Industries (supra)* on the other, would *clearly demonstrate that one has to keep in mind the essential purpose for which such an expenditure is incurred. If the expenditure is incurred for starting new business which was not earned out by the assessee earlier, then such expenditure is held to be of capital nature. In that event it would be irrelevant as to whether project really materialised or not. However, if the expenditure incurred is in respect of the same business which is already carried on by the assessee, even if it is for the expansion of the business, namely, to start new unit which is same as earlier business and there is unity of control and a common fund, then such an expense is to be treated as business expendi- ture. In such a case whether new business/asset comes into existence or not would become a relevant factor. If there is no creation of new asset, then the expenditure incurred would be of revenue nature. However, if the new asset comes into*

existence which is of enduring benefit, then such expenditure would be of capital nature.

11. *When we keep in mind the aforesaid fine distinction, the conclusion on the facts of this case becomes obvious. The expenditure was incurred in respect of same business which is already carried on by the assessee. Two projects which were undertaken were for the expansion of same business, namely, one for taking over Savitri Cinema for conversion into multiplex and operation and management thereof and other for conversion of Priya Cinema into four-screen multiplex. Payments were made to the consultants for preparing feasibility reports in respect of both the projects. However, ultimately projects were not found to be financially and technically viable and were shelved. Thus, we find that no new asset came into existence, which was the basis adopted by the Assessing Officer for treating the expenditure as capital expenditure but wrongly.*

12. *In the present case both the ingredients are satisfied, namely,—*

(,i) the feasibility study conducted by the assessee was for the same and existing business with a common administration and common fund, and

(ii) the study was abandoned, without creating any new asset.

13. *We note two judgments of other High Courts taking this view in identical circumstances. One case is decided by Gauhati High Court which is reported as Dy. CIT v. Assam Asbestos Ltd.[2003] 263 ITR 357 . In that case the assessee was in the business of manufacturing asbestos sheets. Contemplating to set up a mini cement plant, which was the same line of business activity of the assessee, a feasibility report was prepared. However, the project would not be undertaken as Government refused to grant required permission. The Court opined that no new capital asset came into existence and the expenses incurred on preparation of the feasibility report, same line of business, were in the nature of revenue expenditure. Rajasthan High Court had also occasion to deal with this issue in the case of Maharaja Shri Umaid Mills Ltd. V. CIT [1989] 175 ITR 73. There also the expenditure incurred in obtaining survey and feasibility report for setting up polyethylene plant for manufacturing packing material was treated as revenue expenditure as the new venture was inter-connected and formed part of existing business.*

14. *In these circumstances, we answer the question in the affirmative i.e. against the revenue. As a consequence, this appeal is dismissed.*

10. Respectfully following the decision cited supra we hold that the Ld. CIT(A) is not justified in upholding the disallowance of Rs.56,45,833/- being the professional fees paid to M/s. Accenture Services Private Limited as capital in nature. The above ground raised by the assessee is accordingly allowed.

11. The Ground of appeal No.4 by assesse reads as under :-

(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the addition of Rs.34,36,000/- made by the AO on account of disallowance of government fee.

(ii) That the learned CIT(A) has erred in sustaining the above addition by holding that the said expenditure is capital in nature being preoperative expenses of a project, despite the fact that the said expenditure incurred by the assessee is of revenue nature.

12. The Ld. Counsel for the assesee at the time hearing fairly conceded that this ground is decided against the asessee. In absence any objection from side of Ld. DR the above ground raised by the assessee is dismissed.

13. The Ground of appeal No.5 by the assessee reads as under :-

5. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the addition of Rs.10,25,304/- made by the AO on account of disallowance of government fees paid towards sub-leasing.

(ii) That the learned CIT(A) has erred in sustaining the above addition by holding that he said expenditure is capital in nature as the land allotted by HSIDC to the assessee was for a

particular purpose, without considering the fact that the said expenditure incurred by the assesee is of revenue in nature.

14. The facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the miscellaneous expenditure includes an amount of Rs.10,25,304/- paid to HSIDC as subleasing fees for sub letting out the land to its group concerns. On being questioned by the Assessing Officer, the assessee filed a letter of HSIDC on the subject of Regularization of unauthorized leasing which reads as under : :

5.3 "This is in reference to our letter HSIDC / GCB/08/410 dated 04.01.2008 vide which the corporation had provisionally allowed leasing permission to you for leasing out 2000 sq mtr. area of plot no.88 to 96 sector, 7, GC, Bawanl in favour of M/s. Caparo MI Steel Processing Pvt. Ltd. For a period of one year w.e.f. 01.07.2007 for manufacturing of tailored welded blanks subject to payment of leasing fee and compliance of other condition as contained in the said letter."

15. The assessee further submitted that it has already shown the rental income from CMI as income from House Property. Since the assessee needs to pay subleasing fee to HSIDC, therefore, such fee has to be allowed as deduction.

16. However, the Assessing officer was not satisfied with the arguments advanced by the assessee and held that the same is penal in nature. He accordingly added the amount of Rs.10,25,304/- paid to HSIDC.

17. In appeal the Ld. CIT(A) upheld the action of the Assessing officer by observing that although this amount is not penal in nature but is capital in nature, therefore, is not allowable as a deduction.

18. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

19. The Ld. Counsel for the assessee submitted that assessee had obtained land from HSIDC on lease which was further leased out by the assessee in favour of its group concern. HSIDC held that the act of the assessee in leasing the property was not in accordance with the terms under which the property was leased to it and accordingly levied leasing charges of Rs.10,25,304/- which were informed to the assessee vide letter dated 18.11.2010. He submitted that the Assessing Officer held charges as penal in nature and the CIT(A) held that such charges were not in nature of penal charges. However, CIT(A) disallowed the said expenses holding the same to be in the nature of capital expenses. He submitted that the assesee has offered to tax income arising to it on account of leasing of the said property to its group concern which is verifiable from the computation of income. The said fact was submitted before the AO which has not been doubted by him or the Ld. CIT(A). Accordingly the impugned expenses incurred by the assessee pertains to the earning of the income that has been offered to tax on account of leasing charges and therefore allowable under section 57 of the Act. He submitted that even the Ld. CIT(A) in his order at Para 11 page 10 has held that income from said property should be taxed as "income from other sources" and the lease rent paid should be allowed as deduction against the same. In view of the above facts, addition made by the Ld. AO and sustained by the Ld. CIT(A) is liable to be deleted as the said expenses incurred by the assessee are for the purpose of earning leasing income and accordingly allowable as deduction u/s 57 of the Act.

20. The Ld. DR on the other hand relied on the order of the CIT(A).

21. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer disallowed the amount of Rs.10,25,304/- being subleasing charges paid to HSIDC on the ground that the same is penal in nature. We find although the Ld. CIT(A) held that the amount so paid towards subleasing fees is not penal in nature, however, he held that the same is capital in nature. It is the submission of the Ld. Counsel for the assessee that since the assessee has already offered to tax the income arising on account of subleasing of the said property to the group concerns, therefore, the corresponding expenditure incurred by the assessee for earning such income should also be allowed as deduction. We find merit in the above arguments of the Ld. Counsel for the assessee. Since there is no dispute to the fact that the assessee has offered to tax the income arising to it on account of subleasing of the said property, therefore, by simple logic corresponding expenditure i.e. the Government fees paid towards sub leasing of the property should be allowed as expenditure. We, therefore, hold that the ld. CIT (A) is not justified in sustaining the addition of Rs. 10,25,304/- treating the same as capital in nature. The ground raised by the assessee is accordingly allowed.

22. The ground no.6 raised by the assessee reads as under :-

(i) On the facts and circumstances of the case, the learned CIT(A) has grossly erred, both on facts and in law in upholding the addition of Rs.63,818/- made by the AO by allowing the depreciation on UPS at

the rate of 15%, as against the rate of 60% claimed by the assessee company.

(ii) That the learned CIT(A) has erred in holding that the rate of depreciation applicable to UPS is the rate applicable to plant and machinery and not the rate applicable to computers.

23. After hearing both the sides. We find the Assessing Officer restricted the depreciation on UPS at 15% as against 60% claimed by the assessee treating the same as at par with machinery. In the process the Assessing Officer disallowed depreciation of Rs.63,818/- which was confirmed by the CIT(A). We find the issue stands decided in favour of the assesee by the decision of the Tribunal in the case of the sister concern of the assessee namely M/s. Caparo Engineering India Pvt. Ltd. We find the Tribunal in ITA No.6838/Del/2014 order dated 22.02.2018 has decided the issue by observing as under :-

15. Lastly, with regard to the disallowance of claim of depreciation @ 60% on UPS, the Assessing Officer has allowed 15% instead of 60% claimed by the assessee on the ground that UPS is not part of computer and thereby made the addition of Rs.2,21,895/-. The assessee had purchased UPS for Rs.4,93,110/- and had claimed depreciation thereon @ 60% for Rs.2,95,860/-. The Assessing Officer observed that depreciation mentioned in Appendix-I Rule 5 of IT Rules applies only to computer and computers software, which alone are entitled for depreciation @ 60% and same rate cannot be applied for UPS.

16. *The Id. CIT(A) has deleted the addition, following the judgment of Hon'ble Delhi High Court in the case of* ***CIT vs. BSES Rajdhani Powers Ltd. in ITA 1266/2010,*** *wherein computer accessories/peripherals like printers, scanners, server, UPS, etc., have been held to be integral part of computer system, and therefore, entitled to depreciation @60%. Accordingly, the Id. CIT (A) following*

the judgment of Hon'ble Delhi High Court and other decisions of the Tribunal allowed the assessee's claim @60%.

17. *We do not find any infirmity in the order of the Id. CIT(A) as the issue, whether computer accessories/ peripherals like printers, scanners, server, UPS etc, the rate of depreciation allowable is @ 60% as held by the Hon'ble Jurisdictional High Court and catena of other judgments.*
Thus, ground no.3 raised by the Revenue is dismissed.

24. Respectfully following the decision of the Tribunal in the case of sister concern of the assessee and in view of the various other decisions relied on by the Ld. Counsel for the assessee in the synopsis, the above ground is decided in favour of the assessee.

25. The Ld. Counsel for the assesee has also taken an additional ground which reads as under :-

"8. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming disallowance of an amount of Rs.3,08,449/- made by the AO by invoking the provisions of Section 14A of the Act.;

9. Without prejudice to the above and in the alternative, the disallowance under section 14A cannot exceed the tax free income."

26. The Ld. Counsel for the assesee referring to various decisions including the decision of Hon'ble Supreme Court in the case of NTPC and Jute Corporation of India submitted that since all facts are available on record and no new facts are required to be investigated, therefore, the additional ground raised by the assessee should be admitted.

27. After hearing both the sides and observing that the above additional ground raised by the assesee is purely legal in nature and no fresh facts are required to be investigated, the additional ground raised by the assessee is admitted for adjudication.

28. The facts of the case, in brief, are that the assesee has earned dividend income of Rs.1,45,616/-. The Assessing Officer applying the provisions of section 14A r/w Rule 8 D worked out the disallowance at Rs.5,45,996/-. Since the assessee has suo-moto disallowed an amount of Rs.2,37,547/-, the Assessing Officer made addition of the balance amount of Rs.3,08,449/-. In appeal the Ld. CIT(A) upheld the action of the Assessing Officer.

29. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

30. The Ld. Counsel for the assessee at the outset submitted that since the dividend income received during the year is Rs.1,45,616/- only and the assessee has already disallowed suo-moto an amount of Rs.2,37,547/-, therefore, no further disallowance is called for. The Ld. DR on the other hand supported the order of the Ld. CIT(A).

31. After hearing both the sides, we find merit in the arguments advanced by the ld. Counsel for the assessee. The coordinate benches of the Tribunal are taking the consistent view that disallowance u/s 14A r.w. Rule 8 D cannot exceed the actual exempt

dividend income received. Since the assessee in the instant case has received dividend income of Rs.1,45,616/- only and has disallowed suo-moto an amount of Rs. Rs.2,37,547/- which is in excess of the actual dividend income received, therefore, we are of the considered opinion that no further disallowance u/s 14A r/w Rule 8D is called for. The additional ground raised by the assessee is accordingly allowed.

32. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 25.02.2019.

Sd/-	**Sd/-**
(SUCHITRA KAMBLE)	**(R.K PANDA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Neha
Date:- .02.2019
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.02.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	25.02.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	