

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.188/NAG/2013

निर्धारण वर्ष / Assessment Year : 2007-08

The Income Tax Officer,  
Ward – 1(3), Nagpur

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Purushottam Vijaykumar Karwa,  
B-6, Mountvert, Tranquille, Wakad,  
Pune – 411057

PAN : ABIPK3881E

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.C. Thakar  
Revenue by : Shri U.U. Kasar

सुनवाई की तारीख / Date of Hearing : 26-03-2019

घोषणा की तारीख / Date of Pronouncement : 28-03-2019

**आदेश / ORDER****PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-16, Mumbai, Camp: Nagpur dated 11-02-2013 for the assessment year 2007-08.

2. The brief facts of the case as emanating from records are : The assessee is engaged in manufacturing and trading of medicines and drugs and trading in shares, futures and options. During the course of scrutiny assessment proceedings, the Assessing Officer disallowed expenditure of Rs.66,37,980/- claimed under the head Administrative Expenses and held the same to be on capital account. The assessee assailed the addition in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after considering the documents on record and submissions of assessee allowed assessee's claim and deleted the addition. Now, the Revenue is in appeal before the Tribunal by raising following grounds :

- “1. On the facts and in the circumstances of the case and in law, CIT(A) was not justified in deleting the addition made by the A.O. amounting to Rs.66,37,980/- on account of Joint Venture Commitment charges.
2. On the facts and in the circumstances of the case and in law, CIT(A) was not justified in ignoring the fact that there was joint venture MOU between the assessee and M/s. Abries Healthcare and the profit should have been taxed in the hands of assessee first and then should have been distributed.”

3. Shri U.U. Kasar representing the Department vehemently defended the assessment order. The Id. DR submitted that the assessee has claimed expenditure of Rs.66,37,980/- towards Joint Venture Commitment charges. However, the assessee could not show genuineness and nature of transactions. On enquiries conducted by the Assessing Officer it transpired that the expenditure was incurred for restoring the tender earlier allotted to the assessee for supply of medicine kits. Since the said expenditure resulted in enduring benefit to the assessee, the same was held to be on capital account.

4. On the other hand Shri S.C. Thakar appearing on behalf of the assessee vehemently defended the impugned order and prayed for dismissing the appeal of Revenue.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee had claimed expenditure of Rs.66,37,980/- under the head administrative charges in respect of Joint Venture Commitment. The assessee was allotted tender for supply of medicines kits by the Government of Maharashtra. The said tender was cancelled. The assessee paid Rs.66,37,980/- to M/s. Abries Healthcare for restoration of cancelled tender. The tender was restored. The Assessing Officer held that since the payment of aforesaid amount has resulted in enduring benefit to the assessee, the said expenditure is capital

in nature. The assessee during First Appellate proceedings furnished detailed submissions. The same was sent to the Assessing Officer for comments and his report. The Commissioner of Income Tax (Appeals) after considering the remand report on the submissions of assessee, concluded as under :

*“2.5 The AO's order and report, the contentions of the appellant as well as materials on record have been considered. The AO has basically made disallowance on two counts, one that the expenditure is capital expenditures since it provides benefit of enduring nature, and second, that the expenditure is of illegal nature and genuineness of the transaction is not proved. In remand however, the AO has held that since the agreement with M/s Abaris Healthcare was of profit sharing, the appellant should have first shown the entire profit as his income and thereafter shared it. The disallowance made by the AO on the ground of it being of capital expenditure is not borne out, since the benefit was a one-time benefit i.e., for the specific tender only, as such the AO has not shown that there was some long term enduring benefit derived from the joint venture agreement with M/s Abaris Healthcare. Similarly, the AO's reference to the transaction being of illegal nature/penal nature has not been supported by adequate evidence and remains unsupported. The view of the present AO in remand proceedings is also tenable as it is not the profit from a new venture, but payment made for getting the tender to fructify / or otherwise disposing off the kits, and M/s Abaris Healthcare, as per agreement would also be rendering services in assembling and despatching the kits to various parts of the state. M/s Abaris Healthcare had also filed confirmation before the AO of having disclosed its share of income from this transaction with the appellant in their IT return for AY 2008-09. In view of this position, the addition made by the AO is deleted.*

*As regards the additional ground of appeal, the same is admitted in view of the fact that it requires no additional evidence to be led, the AO has not filed any objection to it being admitted, and also in the interest of natural justice. Since the AO has also confirmed the fact that revised return was filed in time, the AO is directed to verify whether the expenses relating to Orissa Drugs and Chemicals pertain to AY 2007-08, and if so to allow adjustment for the same in AY 2008-09.”*

6. The ld. DR has failed to controvert the well reasoned findings of Commissioner of Income Tax (Appeals) in allowing assessee's claim. We

concur with the findings of Commissioner of Income Tax (Appeals) and find no reason to interfere with the same. Resultantly, the impugned order is upheld and the appeal of Revenue is dismissed.

7. In the result, the appeal of Revenue is dismissed.

Order pronounced on Thursday, the 28<sup>th</sup> day of March, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

नागपुर / Nagpur; दिनांक / Dated : 28<sup>th</sup> March, 2019.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)
4. आयकर आयुक्त / The CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,  
नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur