

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.2354/Bang/2018
Assessment year : 2015-16

Vyoma Technologies Pvt. Ltd., No.247, Rajni Gandha Apartments, Vittal Mallya Road, UB City, Bangalore – 560 001. PAN: AACCV 4949A	Vs.	The Deputy Commissioner of Income Tax, Circle 7(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Sridhar, Advocate
Respondent by	:	Shri Vikas Suryavamshi, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.07.2019
Date of Pronouncement	:	19.07.2019

ORDER

Per N V Vasudevan, Vice President

This is an appeal by the Assessee against the order dated 13.6.2018 of CIT(Appeals)-7, Bengaluru, relating to assessment year 2015-16.

2. Though the Assessee has raised as many as 6 grounds of appeal, there are only two issues which need to be decided in this appeal. The first issue is whether expenditure incurred towards increase in share capital on account of working capital requirement can be considered as revenue expenditure or capital expenditure. The Assessee incurred expenditure of Rs.2,42,100/- towards fees paid to Registrar of Companies (ROC),

professional charges, stamp duty towards issue of share certificate in connection with increase of share capital of the company by issuing Rs.65,00,000 worth of preference share and Rs.15,00,000/- worth of equity shares. The same was disallowed by the revenue authorities for the reason that the expenditure was capital in nature as held by the Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Ltd. Vs. CIT 225 ITR 792(SC) and Brooke Bond India Ltd. Vs. CIT 225 ITR 798(SC).

3. It is an accepted fact, as evident from various judicial pronouncements, that fees paid to the Registrar of Companies for expansion of the capital base of a 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. The Hon'ble Supreme Court in the case of CIT v. KODAK INDIA LIMITED, 253 ITR 445 (SC) referred to the decision in the case of PUNJAB STATE INDL. DEVE. CORPN. LTD v. C.I.T. (SC) wherein it was held that the fees paid to the Registrar of Companies for expansion of the capital base of a 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 held that even if the object of the expenditure was to increase the share capital, pursuant to the direction of the Reserve Bank, irrespective of whether it did so or not, after the direction of the Reserve Bank or otherwise, the case would nevertheless be covered by the decision in the case of PUNJAB STATE INDL. DEVE. CORPN. LTD v. CIT (SC).

4. In view of the legal position on the issue as explained above, we do not find any merit in the relevant ground of appeal (Gr.No.2) raised by the Assessee in this appeal.

5. The other issue raised by the Assessee in Gr.No.3 to 5 is with regard to disallowance of a sum of Rs.22,69,050/- as capital expenditure by the revenue authorities. The facts and circumstances under which the aforesaid disallowance of expenditure was made by the revenue authorities are that the Assessee is carrying on the business of outdoor advertising agency. In the course of its business the Assessee erects electronic screens for display of advertisement in various railway stations. The cost of such electronic screens are capitalized in the books of accounts. After installation of the electronic screens it has to be maintained periodically. The expenses in maintaining the screen is claimed as revenue expenditure. During the previous year 278 new electronic screens were installed. The Assessee had already installed electronic screen in the past of 930 electronic screens, which is the opening balance as on the 1st day of the previous year. The new electronic screen had been installed in Mumbai railway stations. The expenditure incurred in installation and maintenance of electronic screen during the previous year was as follows:-

Division	Installation Revenue Expenses	Installation Capitalisation Expenses	No. of installation during the AY 2015-16	Cost per screen Revenue Exp	Cost per screen Capitalisation Exp
Installation Expenses – Mumbai	17,37,955	23,57,955	278	6,252	377
Installation Expenses – Bangalore	3,92,752	-	-	-	-
Installation Expenses – Delhi	1,38,343	-	-	-	-
	22,69,050	23,57,003	278	6,252	377

6. The AO held that the expenditure in question was capital expenditure and he therefore disallowed the claim of the Assessee for deduction. The CIT(A) upheld the order of the AO for the reasons given in para 5.2 of his order which reads thus:-

“5.2 Before the AO though it was submitted that screen management expenses are incurred for the old screens. No details or bifurcation has been furnished by the appellant either before AO or during appeal proceedings as regards this claim. In fact, the appellant has admitted in its written submission dated 12-06-2018 that the company does not maintain separate details for installation charges for new and old assets. There was no evidence to support the claim of old assets and new assets as made by the appellant. Installation charges are incurred for making the new asset ready for use. It has been held by the Hon'ble SC in the case of Dalmia Jain & Co 81 1TH 754 that if the expenditure was incurred to create any new asset then the same is capital in nature. It has also been held by the Apex court in the case of Arvind Mills Ltd 197 ITR 422 that capital expenditure would not become revenue expenditure simply by reason that it was incurred in connection with business activities which ultimately resulted in efficiently carrying on day-to-day business. The decisions relied upon by the appellant are found to be based on totally different facts and hence are not applicable in this case.”

7. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. We have heard the rival submissions and also looked into the details of the expenditure and the nature of business of the Assessee and its relevance to the issue before us. The Assessee capitalizes the cost of erecting electronic screens treating it as capital expenditure and claims depreciation on the same. This is clear from the chart of expenses reproduced in the earlier part of this order. After installation the electronic screens need upkeep repairs etc. In this appeal we are concerned with the sum of Rs.22,69,050. A perusal of the chart

given in the earlier part of this order shows that the break-up of the aforesaid expenditure was Rs.17,37,955 incurred in Mumbai railway stations, Rs.3,92,752 incurred in Bangalore railway station and Rs.1,38,343 incurred in Delhi railway station. The new installation of screens was only in Mumbai railway station and therefore the expenditure incurred in Bangalore and Delhi railway station cannot be considered as capital expenditure at all. Therefore, addition to this extent is held to be incorrect and is hereby deleted.

8. As far as the sum of Rs.17,37,955/- incurred in Mumbai railway station is concerned, the Assessee has itself considered expenditure of Rs.23,57,003 as capital expenditure and capitalized in the books of accounts. The Assessee has claimed Rs.17,37,955 as revenue expenditure. The details of these expenses are given at page-52 of Assessee's paper book and the same is as follows:-

Installation expenses Mumbai division		
Sl No.	Particulars	Amount
1	Advance	4,000
2	Car	98,000
3	Development	1,72,598
4	Expense	2,400
5	Food	2,17,123
6	Fuel	3,000
7	Medical	260
8	Misc	98,835
9	Mobile	37,012
10	Rahul	12,652
11	Sanjeet	12,888
12	Satish	2,538
13	Stationery	119
14	Stay	5,29,780
15	Transport	1,72,446
16	Travel	3,65,747
17	Vikas	5,450
18	Work	3,107
Total		17,37,955

9. The process of erecting electronic screens for advertisement is an ongoing process and the Assessee has a team to the work of identifying the places where these screens have to be erected and study feasibility etc. The process involves travelling and taking help of other employees of the organization. The expenses were in the nature of travelling, food, mobile bill etc., which cannot be regarded as capital expenditure. Going by the nature of expenditure, we are of the view that these were revenue expenditure. The fact that these expenses were grouped under the head installation charges, will not be a ground to treat them as capital expenditure. We therefore hold that the addition made by the AO and sustained by the CIT(A) deserves to be deleted and the same is hereby deleted.

10. In the result, appeal of the Assessee is partly allowed.

Pronounced in the open court on this 19th day of July, 2019.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 19th July, 2019.

/ Desai Smurthy /

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.