

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member
and Shri Ravish Sood, Judicial Member**

ITA No. 355/Mum/2016
(Assessment Year: 2010-11)

M/s. Degustibus Hospitality P. Ltd. 8th Floor, Baktawar Bldg. Nariman Point, Mumbai 400021	Vs.	D C I T - 5(1) Aayakar Bhavan, M.K. Road Mumbai 400020
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PAN – AABCD3674P

Appellant

Respondent

Appellant by: Shri Sunil A. Desai
Respondent by: Shri D.G. Pansari

Date of Hearing: 26.06.2019
Date of Pronouncement: 12.09.2019

ORDER

Per Shamim Yahya, AM

This appeal filed by the assessee is directed against the order of the CIT(A)-10, Mumbai dated 16.10.2015 and it relates to A.Y. 2010-11.

2. Assessee has raised the following grounds of appeal: -

1. *On the basis of facts and in the circumstances of the case, the learned CIT(A) erred in making presumption that the additions are agreed by the appellant and further erred in not appreciating that the appellant has disputed the very additions for which the appeal is filed before him.*
2. *On the basis of facts and in the circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs. 839,564/- on account of deferred revenue expenditure, the concept which is absent in Income Tax Act, 1956, without considering facts and nature of expenditure.*
3. *On the basis of facts and in the circumstances of the case, the learned CIT(A) erred in confirming the addition of Rs. 5,00,000/- in respect of professional fees u/s 37(1).*

4. *On the basis of facts and in the circumstances of the case, the learned CIT(A) erred in not deciding the issue of carry forward of business loss of Rs. 193,51,731/-.*

3. At the outset the learned counsel for the assessee contended that he shall not be pressing Ground No. 4. Accordingly Ground No. 4 raised above is dismissed as not pressed.

4. Brief facts of the case are that the assessee is a company engaged in the business of running of continental restaurant. It furnished its return of income for A.Y.2010-11 on 06.10.2010 declaring total loss at ₹5,59,82,258/-. Notice under Section 143(2) of the Income Tax Act, 1961 (hereinafter "the Act") dated 27.08.2011 was issued and served on the assessee. The AO completed the assessment under Section 143(3) of the Act determining the total loss by a reduced figure of ₹5,46,34,690/- on 28.03.2013 by making the adjustments. During the course of assessment proceedings the AO has noticed that the assessee has debited an amount of ₹98,23,302/~ under the head Legal & Professional Fees. On verification of the details of the expenses submitted, the AO has seen that the assessee has claimed legal service charges amounting to ₹12,59,346/- paid to AZB& Partners. The assessee was asked why the above expenses should not be treated as deferred revenue expenditure for three years as the claim is very high and the benefit of the expenses likely to be availed by the assessee for more than one year. The assessee has agreed to treat the expenses for three equal proportions from A.Y.2010-11 onwards. Accordingly, $\frac{2}{3}$ of ₹12,59,346/- i.e. ₹8,39,564/- was disallowed and added to the total income of the assessee. Further the AO noticed that the assessee has debited an amount of ₹98,23,302/- under the head Legal & Professional Fees. On verification of the details of the expenses submitted, the AO has seen that the assessee has claimed Services for Equity Share Transaction amounting to ₹5,00,000/- paid to Kanga & Co. During the course of assessment proceedings, the assessee was asked as to why the above expenses should not be capitalized/disallowed in view of the fact that the expenses have you been incurred on account of transfer of shares

and related litigation matter which is in respect of capital asset. The AO relied upon the decision of Supreme Court in the case of Brook Bond India Ltd. wherein the court has ruled that if benefits of expenditure are of enduring nature, it should be treated as capital expenditure. As such assessee has agreed for the above disallowance. The AO disallowed an amount of ₹5,00,000/- under Section 37(1) of the Act and added to the total income of the assessee.

5. Upon assessee's appeal the learned CIT(A) confirmed the addition. He upheld the action of the Assessing Officer as well as noted the fact that the assessee has accepted the disallowance before the Assessing Officer.

6. Against the above the assessee is in appeal before us. We have heard both the counsels and perused the records. We find that the assessee has incurred legal and professional expenses. These expenses are in the nature of revenue expenditure. Just because the quantum of expenditure is high it cannot change the nature of expenditure from revenue to capital. Moreover, in tax laws there is no concept of deferred revenue expenditure. Furthermore concession as to law cannot be treated as estoppel, barring the assessee from challenging the same. Accordingly we set aside the orders of the authorities below treating part of the legal expenditure a deferred revenue expenditure.

7. As regards the disallowance of expenditure as capital expenditure on account of litigation and related expenses regard to transfer of shares, we find that litigation in this regard cannot add to the value of the shares. Hence by no stretch of imagination it can be said that the litigation has increased the value of the shares and hence the litigation expenditure in this regard is not required to be capitalised.

8. In this view of the matter, in our considered opinion, the treatment of legal expenditure as capital expenditure is not sustainable. Accordingly we set aside the order of the authorities below.

9. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 12th September, 2019.

Sd/-
(Ravish Sood)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai, Dated: 12th September, 2019

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -10, Mumbai*
4. *The Pr.CIT - 5, Mumbai*
5. *The DR, "D" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

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