



ITA No.3755/Mum/2018
M/s. Sam Fine O Chem Limited
Assessment Year :2013-14

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य
एवं माननीय श्री रवीशसूद, न्यायिक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON’BLE SHRI RAVISH SOOD, JM

आयकरअपील सं./ I.T.A. No.3755/Mum/2018
(निर्धारण वर्ष / Assessment Year:2013-14)

M/s. Sam Fine O Chem Ltd. B-601, Paras Apartment, Rokadia Lane, Borivali West Mumbai-400 092.	बनाम/ Vs.	ACIT-11(1)(2) 3 rd Floor, B-Wing Mittal Court, Nariman Point Mumbai- 400 021.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AAJCS-2469-P		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Written Submissions
Revenue by	:	Shri N. Padmanabhan-Sr.AR

सुनवाई की तारीख/ Date of Hearing	:	09/01/2020
घोषणा की तारीख / Date of Pronouncement	:	09/01/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-18, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-18/IT-114/ACIT-11(1)(2)/2016-17* dated 13/04/2018 on following grounds of appeal :-

1. Whether registration & e-filing fees paid can be disallowed even when the fund flow has not increased but only authorized share capital has increased.



2. If the expenses were treated as Capital Expenditure, then why it should not be allowed u/s 35D of the Income tax Act, 1961?
- 3.. When the expense is purely business-related expenditure, can it be disallowed under one pretext or another?"

2. The assessee has chosen to file written submissions on 12/08/2019 which we have considered. We have also considered the arguments advanced by the Ld. DR. As evident from grounds of appeal, the sole issue that falls for our consideration is to determine the deductibility of expenditure of Rs.6.65 Lacs incurred by the assessee as registration fees / stamp duty to increase the Authorized Share Capital. Our adjudication to the issue would be as given in succeeding paragraphs.

3. Facts on record would reveal that the assessee being a resident corporate assessee stated to be engaged in the business of manufacturing of chemicals and pharmaceuticals, was assessed for the year under consideration u/s. 143(3) on 23/03/2016 wherein it was saddled with a stated addition of Rs.6.65 Lacs, treating the expenditure to be capital in nature. The Ld. AO opined that the said expenditure could not be allowed as revenue expenses since it was incurred to increase the share capital of the assessee company and therefore, expenditure on capital account.

4. The Ld. CIT(A), relying upon the decision of Hon'ble Supreme Court in the case of **Brooke Bond India Limited vs. CIT (225 ITR 798)** and **Punjab State Industrial Corporation Ltd. Vs. CIT (225 ITR 792)** confirmed the stand of Ld. AO. In the stated decisions, it was held that an increase in capital results in expansion of capital base and therefore, the



expenditure would retain the character of capital expenditure. Regarding alternative submissions that 1/5th of expenditure should be allowed u/s 35D, was also dismissed in view of the fact that expenses were not in the nature of preliminary expenses and business had already commenced. Aggrieved, the assessee is in further appeal before us.

5. We find that the assessee, in the written submissions, seek to rely upon the decision of this Tribunal in **ACIT vs. West Gujarat Expressway Ltd. (2015 57 taxman.com 384)**. However, in the said decision it was admitted position that the expenditure was in the nature of preliminary expenses incurred towards extension of the business. No such facts emanate in the instant case. The assessee has also sought to rely upon the decision of Delhi Tribunal in **DCIT V/s Raj Laxmi Stone Crusher (21 Taxmann.com 475)**. However, this decision does not consider the ratio laid down by Hon'ble Apex Court in the aforesaid decisions as relied upon by Ld. CIT(A).

6. The relevant observation of Hon'ble Supreme Court in **Punjab State Industrial Corporation Ltd. Vs. CIT (225 ITR 792)** was as follows: -

7. We do not consider it necessary to examine all the decisions in extenso because we are of the opinion that the fee paid to the Registrar for expansion of the capital base of the company was 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 was directly related to the expansion of the capital base of the company. We are, therefore, of the opinion that the view taken by the different High Courts in favour of the revenue in this behalf is the preferable view as compared to the view based on the decision of the Madras High Court in **Kisenchand Chellaram (India) (P.) Ltd.'s case (supra)**. We, therefore, answer the question raised for our determination in the affirmative, i.e., in favour of the revenue and against the assessee.



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Similar view was taken by Hon'ble Apex Court in its subsequent decision titled as **Brooke Bond India Limited vs. CIT (225 ITR 798)**. Subsequently, the Hon'ble Bombay High Court in **CIT V/s Zenith Steel Pipes & Industries Ltd. (315 ITR 95 14/01/2009)**, after considering both the decisions of Hon'ble Apex Court, has taken similar view. Therefore, respectfully following the same, we hold that the expenditure was capital in nature. Regarding alternative submissions that 1/5th of expenditure should be allowed u/s 35D, the same also would stand dismissed in view of the fact that expenses were not in the nature of preliminary expenses and business had already commenced. Therefore, no fault could be found in the reasoning of learned first appellate authority.

7. The appeal stands dismissed.

Order pronounced in the open court on 09th January, 2020.

Sd/-

(Ravish Sood)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09/01/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.