

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4419/Del/2016 : Asstt. Year : 2011-12

Torrence Capital Advisors Pvt. Ltd., B-27, Soami Nagar, New Delhi-110017	Vs	Deputy Commissioner of Income Tax, Circle-16(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCT7972M		

**Assessee by : Sh. Piyush Kaushik, Adv.
Revenue by : Sh. Saras Kumar, Sr. DR**

Date of Hearing: 02.01.2020	Date of Pronouncement: 03.02.2020
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ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal have been filed by the assessee against the order of Id. CIT (A)-9, New Delhi dated 26.05.2016.

2. Following grounds have been raised by the assessee:

"1. That on the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred both in law and on facts in confirming the action of AO in completing the assessment at alleged loss of Rs.2,75,105/- as against the returned loss of Rs.55,16,277/-.

2. That the Id. CIT (A) has erred in law and on facts in:

2.1 disallowing expenses amounting to Rs.52,41,172/- by holding the same to be capital in nature.

2.2 alleging that the appellant has failed to offer any explanation in support of its claim that the expenditure is allowable under section 37(1).

2.3 in affirming the action of AO and not appreciating that the above expenditure, being revenue in nature, is allowable as a deduction under section 37 of the Act."

3. The assessee company filed the return of income for the AY 2011-12 on 20.09.2011 at declaring total loss of Rs.2,27,105/- and the return was revised on 28.09.2012 by claiming a loss at Rs.55,16,277/-. The assessee was asked by the Assessing Officer to claim the revised loss. The assessee has submitted before the Assessing Officer as under:

"it is submitted that the assessee has revised its return for the AY 2011-12 for claiming the expenditure booked under the head work in progress. It is further submitted that the said expenditure was in the nature of revenue expenditure incurred in the course of business and allowable deduction u/s 37 of the Act in accordance with the accepted principle of taxation. Accordingly, the said expenditure amounting to Rs.52,41,172/- incurred on the new projects in the relevant assessment year, was disallowed in the return for assessment year 2012-13 as prior period expenses and the assessee revised the return of income for relevant assessment year on September 28,2012 to claim thereof."

4. After considering the reply of the assessee, the AO has held as under:

"A perusal of the submissions and balance sheet reveals that the assessee has capitalized certain project related expenses in this case in the year under consideration and also in the years proceeding this assessment year.

The expenses were allocated to various projects under ways.

When an expense is made, a decision is taken as to whether it is capital in nature or revenue. Once the assessee has made a decision, the expenses are either capitalized or debited to the profit and loss account, the assessee while doing so was fully aware that the expenses being attributable, to profit which would lead to enduring benefit ought to be capitalized.

Thereafter, when the assessee decided to close down those projects, by some stroke of genius suddenly realized that they were revenue in nature and revised the return.

The assessee has taken the plea that they has done so under the advice of their chartered accountant but have not offered the any explanation to why the return was revised would be capital loss and not allowable as revenue expenditure."

5. Therefore, AO held them to be not revenue in nature and disallowed.

6. The Id. CIT (A) confirmed the addition holding that the expenditure was incurred for the proposed new projects. He held that the expenditure pertaining to the new projects have to be debited against the income of the new project only which was treated as work in progress earlier.

7. Before us, the Id. AR argued that the assessee is engaged in the business of investment banking that provides strategic advisory, financial advisory and capital raising services to corporations, partnerships, and Institutions. Cutting across all geographical barriers, assessee helps business enterprises, having scalable and sustainable business model, to realize their full potential by integrating assessee's advisory and fund raising capabilities. Assessee combines superior execution

capabilities, meticulous research, rich transaction experience and a network of global partnership to help clients close a variety of strategic and financial transactions. It is submitted that the assessee had capitalized the expenses (Salary, travelling, telephone etc) as 'project, in progress' while preparing the books of account for the assessment year 2010-11 and the same were also not claimed as deduction in the return of income for the respective year. Such accounting treatment was followed by the assessee in the relevant assessment year also i.e. A.Y. 2011-12.

8. He argued that at the time of finalizing the books for the assessment year 2012-13, the assessee was advised to claim the deduction of the above expenditure in the respective assessment year to which it pertains since the same is in the nature of revenue expenditure incurred in the course of business and allowable deduction u/s 37 of the Act in accordance with the accepted principles of taxation. Accordingly, the said expenditure amounting to Rs.52,41,172/- incurred in respect of existing/new/proposed projects in the relevant assessment year, was disallowed in the return for assessment year 2012-13 as prior period expenses and the assessee revised the return of income for relevant assessment year on September, 28,2012 to claim thereof. It was argued that the assessee was constantly engaged in meeting potential clients, undertaking negotiations for entering into the contracts with such clients. It is submitted that it is only on account of persistent efforts made by the assessee in the relevant assessment year, it was successful in obtaining new business vide various contracts entered into in the subsequent

years. The above expenditure has been duly recorded in the books of account and audited. The assessee has accordingly prepared original return of income on the above basis. The details of the revenue expenditure incurred by the assessee (categorized as project work in progress) in the relevant assessment year are as under:

<i>S. No.</i>	<i>Particulars</i>	<i>Amount Rs.</i>
1.	<i>Salary</i>	<i>44,00,000</i>
2.	<i>Telephone Expenses</i>	<i>81,295</i>
3.	<i>Travelling Expenses</i>	<i>1,75,325</i>
4.	<i>Travelling Expenses - Foreign</i>	<i>5,84,551</i>
	<i>Total</i>	<i>52.41,171</i>

9. The copy of Form 16 as well as other supporting documents in relation to the said expenditure was duly submitted before the assessing officer.

10. Heard the arguments of both the parties and perused the material available on record.

11. We find that the assessee is already in the running business. The expenditure claimed is in the nature of revenue. The assessee has obtained business engagements from various companies namely, Asian Healthcare Management Ltd., GBFA Ltd., Amplus Infrastructure Development, Bihan Network Ltd., the receipts of which have been offered to tax subsequently. During this year, the assessee has incurred the expenses on account of salary, telephone and travelling in order to obtain the business which has been procured in the further years down the lines. The business has to be looked into as a composite activity of the assessee and the receipts and the expenditure have to be taken compositely. The apportionment of

the expenditure in a consultancy firm like the assessee against each project is not in tune with the standard accounting practices. This is not a case of construction of buildings or townships wherein the expenditure incurred against each project is considered separately depending upon the method of accounting followed by the assessee. In the instance case, the assessee is in the business of providing consultancy and fund management, financial advisory wherein the expenditure and the revenue has to be taken into account in running accounting methods. We find that the revenue has primarily disallowed this expenditure because the assessee has filed a revised return of income which were hitherto claimed under work in progress. Once, the assessee has realized that the claim was wrongly not made, the assessee has every right to revise the return indicating correct taxable income. What is to be examined is whether the claim of the assessee is correct or not but not whether the correct claim is filed with the original return or revised return. Since, the claim of the assessee can be accepted with regard to the expenditure involved as allowable expenditure for the year, we hereby hold that no disallowance on this account is required and the addition made is hereby directed to be deleted.

12. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 03/02/2020.

Sd/-

(Sushma Chowla)
VICE PRESIDENT

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

Dated: 03/02/2020

Subodh