

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 6482/Del/2016
(Assessment Year: 2013-14)

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| India Infrastructure Finance Co. Ltd, 8 th Floor, Hindustan Times Building, 18 and 20, Kasturba Gandhi Marg, New Delhi PAN: AABCI4645K (Appellant) | Vs. | DCIT, Circle-12(1), New Delhi (Respondent) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------|

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|-----------------------|----------------------------|
| Assessee by : | None |
| Revenue by: | Shri Sanjog Kapoor, Sr. DR |
| Date of Hearing | 17/10/2019 |
| Date of pronouncement | 13/01/2020 |

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-12, New Delhi dated 14.10.2016 for the Assessment Year 2013-14.
2. The assessee has raised the following grounds of appeal:-
 - “1. The learned CIT(A) has erred in fact and in law in disallowing the ground of addition a sum of Rs. 96,45,039/- being expenses on Corporate Social Responsibilities without any proper basis and appreciating of the facts of the case.
 2. The learned CIT(A) has erred in facts in law in disallowing the ground of addition a sum of Rs. 24,20,910/- being amortization of premium on non current investment without considering the submission of assessee company and disregarding the directive of CBDT Instruction No. 17/2008.”
3. The brief facts of the case shows that the assessee is a company carrying on the business of providing long term financial assistance of commercially viable infrastructure projects. It filed its return of income on 30.09.2013 declaring income of Rs. 11,39,76,30,080/-. The Id AO made an assessment u/s 143(3) on 04.02.2016 determining total income of Rs. 11,41,17,54,410/- making four different additions/ disallowances. The assessee preferred an

appeal before the Id CIT(A) who partly allowed the appeal of the assessee. Therefore, assessee is in appeal before us.

4. Despite notice none appeared on behalf of the assessee and therefore, issue is decided on the merits of the case.
5. The first ground of appeal is against confirmation of disallowance of Rs. 96,45,039/- on corporate social responsibility.
6. The brief facts shows that the assessee has incurred above expenditure. The assessee submits that all the CSR expenditure is for the purpose of business. The Id AO dismissed the claim of the assessee stating that during the year there is no specific provision for allowing such expenditure. Hence, the above disallowance was made. The assessee preferred an appeal before the Id CIT(A).
7. The assessee submitted that above sum has been paid to Sulabh International for construction of sanitation facilities in 47 schools of West Bengal. The Id CIT(A) noted that there is no nexus between the expenditure incurred by the assessee and the business of the assessee. He therefore, held that it is not clear as the above expenditure has increased the goodwill of the assessee. Therefore, such expenditure is not incurred for the purpose of business. He confirmed the disallowance.
8. The Id DR vehemently supported the order of the lower authorities.
9. We have carefully considered the contentions. Undoubtedly, the corporate social responsibility expenditure incurred by the assessee is disallowable under explanation 2 to section 37 of the Act w.e.f. 01.04.2015. Therefore, merely expenses are on “Corporate Social Responsibility Expenditure” same cannot be disallowed by applying the above explanation prior to 01.04.2015. However, the expenditure incurred on corporate social responsibility for its allowance requires to specify the test of provision of section 37(1) of the Act. Such expenditure should be revenue expenditure, not allowable u/s 32 to 36 or personal expenditure of the assessee. These expenses should have been spent “wholly and exclusively” for the purpose of the business. Therefore, it is mandatory for the assessee to establish that the expenditure is wholly and exclusively incurred for the purpose of the business and is not carved out by the exceptions u/s 37(1) of the Act. In the present case, the assessee has not shown that how the above expenditure has been wholly

and exclusively incurred for the purpose of the business. There is no correlation shown by the assessee of expenditure with the business of the assessee. Assessee also did not show any nexus with the above expenditure incurred. Assessee has merely relied upon the several judicial precedents before the lower authorities without specifying the necessary qualification of allowance of such expenditure. In view of this ground No. 1 of the appeal of the assessee is dismissed.

10. Ground No. 2 of the appeal is with respect to disallowance of Rs. 24,20,910/- being amortization of premium on non current investments. The assessee itself has shown the above expenditure as capital expenditure in form No. 3CD. The above amount was amortised premium and such premium is amortised over the period of investment. Thus, it was stated that such expenditure is a revenue expenditure allowable to the assessee. The ld AO noted that in form No. 3CD the assessee has shown it to be capital expenditure, however, in the computation of income it has been claimed as revenue expenditure. He held that it is a capital expenditure. Therefore, the ld AO disallowed the above sum.
11. The assessee preferred an appeal before the ld CIT(A). The ld CIT(A) confirmed the same.
12. The ld DR relied upon the orders of the lower authorities and submitted that the above expenditure is capital in nature and therefore, is not allowable as deduction.
13. We have carefully considered the rival contentions. The assessee is a company set up to provide long term finance in infrastructure projects. It also makes investment in various securities as such it is banking institute. When assessee purchased securities at more than its face value at a premium, thus, such premium is required to be amortised over the remaining term of investment till maturity. Only issue is whether such amortization is allowable to the assessee as deduction or not. The above issue is squarely covered in favour of the assessee by the decision of the Hon'ble Gujarat High Court in 222 Taxmann 240 in CIT Vs. Rajkot District Cooperative Bank Ltd wherein in para No. 7 the Hon'ble High Court held that in view of the circular of CBDT it would bind the revenue. Therefore, respectfully following the decision of Hon'ble Gujarat High Court we hold

that premium paid by assessee for purchase of investments held maturity is allowable to the assessee as deduction from its regular income as revenue expenditure u/s 28(1) of the Act itself in terms of circular NO. 17 dated 26.11.2008 wherein para No. (vii) of circular provides for amortization of such premium. In view of this ground No. 2 is allowed in favour of the assessee.

14. Accordingly, appeal of the assessee is partly allowed.
Order pronounced in the open court on 13/01/2019.

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 13/01/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi