

**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI**  
**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**  
**&**  
**SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.4412/Mum/2016**  
**(Assessment Year: 2010-11)**

DCIT-1(2)(2) Room No.535 5 <sup>th</sup> Floor Aaykar Bhavan M.K.Road Mumbai-400 020	Vs.	Managing Emission P.Ltd. 4 <sup>th</sup> Floor, Pharma Search House, 2173, Worli Hill Estate Dr.B.G.Road,Worli Mumbai-400 018
		<b>PAN/GIR No.AACCT7876N</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

&

**Cross Objection No.110/Mum/2018**  
**(Assessment Year: 2010-11)**

Managing Emission P.Ltd. 4 <sup>th</sup> Floor, Pharma Search House, 2173, Worli Hill Estate Dr.B.G.Road,Worli Mumbai-400 018	Vs.	DCIT-1(2)(2) Room No.535 5 <sup>th</sup> Floor Aaykar Bhavan M.K.Road Mumbai-400 020
		<b>PAN/GIR No.AACCT7876N</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Kiran Mehta, AR
Revenue by	Shri V.Vinod Kumar, DR
<b>Date of Hearing</b>	<b>03/03/2020</b>
<b>Date of Pronouncement</b>	<b>20/05/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA, Accountant Member:**

This appeal filed by the revenue and cross objections filed by the assessee are directed against order of the Ld. Commissioner of Income tax (Appeals)-2, Mumbai, dated 02/03/2016 for the

Asst.Year 2010-11. Since, facts are identical and issues are common for the sake of convenience, the appeal filed by the revenue and cross objection filed by the assessee are heard together and are disposed-off by this consolidated order.

2. The revenue has raised the following grounds of appeal:-

1. *"Whether on the facts and in the circumstances of the case and in Law, the CIT(A) erred in allowing the disallowance of Rs. 1,92,86,737/- debited to the profit and loss account for the year and claimed by the assessee as revenue expenditure, without appreciating the Assessing Officer's findings that the business of the assessee was not yet set-up in the year in reference, further, provisions of section 35D specify that any expenditure before the commencement of the business must be amortized and there is nothing shown by the assessee that the business has commenced, therefore, the Assessing Officer disallowed the expenditure accordingly."*

2. *"Whether on facts and in the circumstances of the case and in Law, the Ld.CIT(A) erred in deleting the addition of Rs. 1,30,21,000/- in respect of money received from Foram Dattani Kapoor, without appreciating the fact that assessee had not filed signed confirmation from the share applicant during the scrutiny proceedings and the assessee failed to discharge its onus to establish the genuineness of the identity of the parties and the creditworthiness of the parties from whom the assessee received money. "*

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of Emission technology applications and accessories. The company is also engaged in the business of using the technology to produce stable fuel emulsion using a system additive and offers tailor made Processing System in a wide range of sizes for emulsification of micro level water droplets in Furnace Oil and other Hydro Carbon fuels. The assessee has filed its return of income for AY 2010-11 on 28/09/2010, declaring total income at Rs. 'Nil' and current year loss at Rs.1,58,67,531/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 25/03/2013 determining

the total income at Rs.1,49,93,590/- by making additions towards disallowances of expenditure claimed under the head income from business amounting to Rs.1,92,86,737/- and additions towards lease rental income of Rs.2,18,588/- under the head income from other sources and also, additions towards unexplained cash credits being share application money amounting to Rs.1,47,75,000/-. The assessee carried the matter in appeal before the first appellate authority. The Ld.CIT(A), for the detailed reasons recorded in his appellate order, dated 02/03/2016, partly allowed appeal filed by the assessee, where he has deleted additions made by the Ld. AO towards disallowances of expenditure, but allowed partial relief, in respect of additions made towards unexplained cash credit being share application money and accordingly, out of total addition of Rs.1,47,75,000/-, a sum of Rs.1,30,21,000/- has been deleted and balance amount of Rs.17,54,000/- has been confirmed. Aggrieved by the Ld.CIT(A) order, the revenue is in appeal before us.

4. The first issue that came up for our consideration from ground No.1 of revenue appeal is disallowance of expenditure debited into profit and loss account amounting to Rs.1,92,86,737/-. The Ld. DR for the revenue submitted that the Ld.CIT(A) has erred in deleting additions made by the Ld. AO towards disallowances of expenses, without appreciating the fact that although, the business of the assessee has been set-up for the year under consideration, but the business has not been commenced, which is evident from the fact that there is no revenue from business operations and consequently, expenditure incurred under the head income from business cannot be allowed as deduction. The Ld. DR, further submitted that as per provisions of section 35D of the I.T.Act, 1961, any expenditure

incurred before the commencement of the business must be treated as pre-operative expenses and to be amortized after commencement of the business. Since, the business of the assessee has not yet commenced, the relevant expenditure debited into the profit and loss account needs to be treated as pre-operative or preliminary expenses and shall be amortized, as per the provisions of section 35D of the I.T.Act, 1961.

5. The Ld. AR for the assessee, on the other hand strongly supporting order of the Ld.CIT(A) submitted that the assessee has commenced its business activities, which is evident from the fact that it has set-up its plant and machinery for production of finished goods and has also, purchased raw material, which is evident from the fact that during the year under consideration, it has shown raw material consumption of Rs.14,09,071/- and also, incurred various manufacturing and other administrative expenses. The Ld. AR for the assessee, further submitted that the assessee has already commenced its business activities and has started manufacturing its specialized machinery, which is used in reduction of emission. The assessee has also, installed its machinery in clients place and earned revenue from its business, for which necessary evidences, including agreement between the parties and bills raised to the customers has been filed before the Ld. AO. The Ld.CIT(A) after considering relevant facts has rightly deleted additions made by the Ld. AO and his findings should be upheld.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The term business set-up and commencement of business are two

different situations. If the business has been set-up, even though the business has not commenced during the period, then necessary expenditure incurred in relation to said business needs to be allowed as deduction. In order to decide, whether a particular business has been set-up and has commenced needs to be examined, in light of facts of each case and nature of business undertaken by the enterprises. In this case, the assessee is in the business of manufacturing certain equipment, which are widely used as integral part of manufacturing process and also, would help in fuel savings. The equipment manufactured by the assessee namely Winfox was designed to ensure substantial savings of liquid fuels like, diesel, furnace oil, etc. The business model followed by the assessee is that it manufactures the equipments and installed said equipments in different customers places to reduce their fuels efficiency, for which the assessee has charges the customers on the basis of fuel consumption saved by the customers. In this business model, if you see the facts of present case, one has to see, whether the business of the assessee has been set-up and has been commenced during the year under consideration or not. The assessee claims that it has started production of finished goods and has also, installed said equipments at one of its clients Shri Vaishnavi Ispat Pvt. Ltd. and said equipment was operational in the year of appeal and based on fuel savings effected by the clients, the assessee had earned revenues of Rs.2,14,353/-. The assessee has also claimed that it has set-up its plant for manufacturing of finished goods and has also, purchased raw material for its production purpose. The assessee, further claimed that it has produced finished goods worth Rs.32.45 Lacs in the year under appeal. All these evidences has been placed before the Ld. AO and the Ld.CIT(A). From the above,

it is very clear that the business of the assessee has been setup and has commenced during the year under consideration and consequently, necessary expenditure incurred for the purpose of business needs to be allowed s deduction, whether or not any revenue is generated for the year under consideration. The Ld.CIT(A) after considering relevant facts has recorded categorical findings that the assessee business has been set-up and has commenced its activities and accordingly, all expenditure incurred for the purpose of business needs to be allowed. Facts remains unchanged. The revenue has fails to bring on record any evidences to prove that the findings of facts recorded by the Ld.CIT(A) is incorrect. On the other hand, the assessee has filed necessary evidences to prove that it has commenced its business activity and has generated income from business operations. Therefore, we are of the considered view that the Ld.CIT(A) was right in deleting additions made towards disallowances of expenditure and hence, we are inclined to uphold the findings of Ld.CIT(A) and reject ground taken by the revenue.

7. The next issue that came up for our consideration from ground No. 2 of revenue appeal and ground No.1 of cross objection filed by the assessee is addition of Rs.1,47,75,000/- towards share application money received from Shri Forum Dattani Kapoor and from Global Emission Management Pvt.Ltd. The facts with regard to the impugned disputes are that the assessee has received share application money of Rs.1,30,21,000/- from Shri Forum Dattani Kapoor and a further sum of Rs.17,54,000/- from Global Emission Management Pvt.Ltd. During the course of assessment proceedings, the Ld. AO called upon the assessee to file necessary evidences,

including name and address of the parties from whom, share application money has been received. In response, the assessee, vide letter dated 05/11/2012 has submitted that the name and address along with confirmation letters from the parties. In order to verify correctness of claim made by the assessee, the Ld. AO had issued notice u/s 133(6) of the I.T.Act, 1961 to both the parties. The notice issued to Global Emission Management Pvt.Ltd. has been returned unserved, however the other notice issued to Shri Forum Dattani Kapoor has been served to the party, for which the creditor has filed necessary evidences called for by the Ld. AO. The Ld. AO having taken note of evidences filed by the assessee, came to the conclusion that the assessee has failed to prove share application money received from two parties and accordingly, made addition of Rs. 1,47,75,000/- u/s 68 of the I.T.Act,1961. On appeal, the Ld.CIT(A) after considering relevant submissions of the assessee has deleted additions made by the Ld. AO towards share application money received from Shri Forum Dattani Kapoor, however confirmed additions made towards share application money received from Global Emission Management Pvt.Ltd.

8. The Ld. DR, submitted that the Ld.CIT(A) has erred in deleting the addition of Rs.1,30,21,000/-, in respect of share application money received from Shri Forum Dattani Kapoor, without appreciating the fact that the assessee had not filed signed confirmation letter from the share applicant during the assessment proceedings and has also, failed to discharge its onus to establish genuineness of the transactions and the identity of the parties.

9. The Ld. AR for the assessee, on the other hand submitted that the assessee has discharged its onus by filing enormous documents, including name and address of the creditors, their PAN number, bank statements and other relevant details to prove the identity and genuineness of transactions and creditworthiness of the parties. The Ld. AR, further submitted that although, the Ld.CIT(A) has accepted the transactions between the assessee and Shri Forum Dattani Kapoor is genuine, but failed to appreciate the other transactions with Global Emission Management Pvt.Ltd. even though, the assessee has filed various details, including signed confirmation from the creditor.

10. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. It is an admitted fact that the share application money has been received from closely held companies and related parties of the assessee. It is also, not in dispute that one of the creditor Shri Forum Dattani Kapoor has responded to notice issued u/s 133(6) of the I.T.Act, 1961 and filed all evidences called for by the Ld. AO, including confirmation letter for having paid share application money to the assessee along with bank statements, financial statements for the year and income tax return filed acknowledgment. Insofar as, Global Emission Management Pvt.Ltd, although notice issued u/s 133(6) was returned unserved, but fact remains that the assessee has subsequently filed signed confirmation letter from the party along with financial statements, bank statements and, ITR filed for the relevant year. These are undisputed facts. The Ld.CIT(A) has accepted the claim of the assessee, insofar as share application money received from Mr.Foram Dattani Kapoor, where he had

recorded categorical finding that the assessee has proved, the ingredients provided u/s 68 of the I.T.Act, 1961 and consequently, the additions towards amount received from said party is unjustified. The revenue fails to bring on record any evidences to prove that the findings of fact recorded by the Ld.CIT(A) is incorrect. Rather, the Ld. DR has relied upon plethora of judicial precedents, which are not at all applicable to the facts of present case. On the other hand, the assessee has filed complete set of documents, including confirmation letter obtained from the creditor, as per which the creditor has issued a signed confirmation letter along with name and address and PAN number. The assessee has also filed bank statements of the creditors to prove movement of funds through proper banking channels. The assessee has also filed financial statement of the creditors and income tax return acknowledgment which proves the capacity of the creditors to explain source of income for share application money paid to the assessee. Therefore, we are of the considered view that the Ld.CIT(A) was right in deleting additions made by the Ld. AO towards share application money received from Shri Foram Dattani Kapoor. Insofar as, share application money received from Global Emission Management Pvt.Ltd, the assessee has filed necessary evidences, including signed confirmation from the creditor, bank statements, and financial statements for the relevant period and income tax return acknowledgment copy. From the above records, it is very clear that the assessee has received share application money through proper banking channels. The creditor has filed its financial statements and ITR acknowledgment, which clearly suggest that the creditor has enough source of income to explain the capacity to advance share application money. The other facts brought out by the Ld. AO, as well as the Ld.CIT(A)

regarding change of name and subsequent closer of the company is not material to decide the issue, because what is relevant to see is whether, three ingredients provided u/s 68 of the I.T.Act,1961, has been satisfactorily explained or not. In this case, on perusal of details filed by the assessee, we find that the assessee has discharged its onus and prove the credit being share application money received from Global Emission Management Pvt.Ltd with all possible evidences. Therefore, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in confirmed additions made towards share application money received from Global Emission Management Pvt.Ltd. Hence, we direct the Ld. AO to delete additions made towards share application money received from Global Emission Management Pvt.Ltd.

11. In the result, appeal filed by the revenue is dismissed and cross objection filed by the assessee is allowed.

Order pronounced in the open court on this 20/05/2020

**Sd/-**

**(RAVISH SOOD)**  
JUDICIAL MEMBER

**Sd/-**

**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated: 20/05/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai