

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA No.3130/Bang/2018
Assessment Year: 2013-14

M/s. BGSE Financials Ltd. Stock Exchange Towers 1 st Cross, JC Road Bengaluru-560 027 PAN NO : AABCB3792J	Vs.	Deputy Commissioner of Income-tax Circle-1(1)(2) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, A.R.
Respondent by	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	05.10.2020
Date of Pronouncement	:	06.10.2020

ORDER

PER GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of assessee is directed against CIT(A) Order dated 4.9.2018. The relevant assessment year is 2013-14.

2. The solitary issue raised is whether the CIT(A) is justified in confirming the assessment order, wherein a sum of Rs.11,34,836/- being admission fees paid to Stock Exchange was disallowed as capital expenditure (Although the CIT(A) allowed depreciation on the same).

3. Brief facts of the case are as follows:

Assessee is a Private Limited company. It is engaged in stock exchange operations. During the relevant assessment year, the assessee had made payment of Rs.11,34,836/- to MCX-SX Stock Exchange towards admission fees and processing charges. Assessee had claimed it as a deduction. In the assessment order completed u/s 143(3) of the Income-tax Act,1961 ['the Act' for short] (Order dated 29.1.2016), the admission fees was disallowed as a capital expenditure. The relevant observations of the A.O. are as follows:

*“4.3-----The amount paid in the nature of license fee/acquisition of any permit/other expenses etc, which are essential to commence a business are to be treated as capital expenditure.---
-----”*

4. Aggrieved by the assessment order, the assessee filed an appeal to the first appellate authority. Before the first appellate authority, it was submitted that Rs.11,34,836/- paid as admission fees in a stock exchange is only a permission to do trading in shares and no capital asset is acquired by the assessee. Therefore, it was submitted that the expenditure incurred as admission fees is to be allowed as a revenue expenditure. Alternatively, it was contended that if expenditure is to be treated as a capital expenditure, depreciation on the same is to be granted.

5. The CIT(A) after referring to the Precedence on the issue held that the expenditure of Rs.11,34,836/- being admission fees paid to a stock exchange is a capital expenditure. The CIT(A) however allowed the alternative claim of the assessee and granted depreciation on it.

Page 3 of 8

6. The assessee being aggrieved has filed this appeal before the Tribunal raising the following effective grounds:

“2.1 In any case, the learned Assessing Officer had erred in treating the stock exchange admission fee as capital in nature and accordingly disallowing the sum of Rs.11,34,836/- and the learned CIT(A) has erred in confirming the same albeit allowing the depreciation thereon. On the proper appreciation of facts and circumstances of the case and law applicable, it will be thereto, the payment was made to carry on the trading activities and hence revenue in nature and allowable as business expenditure as claimed by the appellant.

2.2 The Authorities below have erred in not appreciating the fact that the payment to stock exchange was one time non refundable payment in the nature of fees to enable trade activities and not a deposit to acquire any right. The disallowance as made being contrary to facts and law applicable is to be deleted.

2.3 In any case, without further prejudice, the learned Authorities below have erred in treating the fees paid as license/right/membership. On proper appreciation of facts and the law applicable, the conclusions drawn by the Authorities below are wholly erroneous and is to be disregarded.”

7. The Ld. A.R. reiterated the submissions made before the CIT(A). The Ld. A.R. also filed a compilation of case laws (i) & (ii). The Compilation of case laws (ii) are judicial pronouncements that are not cited before the first appellate authority. The Ld. D.R. on the other hand, relied on the judgement of the Hon’ble Apex court in the case of Techno Shares and Stock Ltd. reported in 327 ITR 323 (SC).

8. We have heard the rival submissions and perused the material on record. Section 37 of the Act provides that an expenditure (not being an expenditure of nature described in section 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of business or profession shall be allowed in computing the income chargeable under the head “Profit & gains of business or profession”. The solitary issue that arises for our consideration is

Page 4 of 8

whether the impugned expenditure where it is a capital expenditure or revenue expenditure. In order to decide whether expenditure incurred by the assessee to acquire membership/Admission of stock exchange is a capital expenditure, we have to necessarily examine the rules notified by the concerned stock exchange in this behalf. Rule 18(a) reads as under. *“Every trading member of exchange shall upon being admitted as a trading member of exchange is to be issued certified or entitlement slip as proof of having been admitted to the benefits and privileges of trading membership of exchange. Such a certificate or entitlement slip shall not be transferable or transmittable except as mentioned therein.”* As per rule 18(b) of the said rules a certificate or entitlement slip is transferable for nomination subject to requisite approvals. Rule 20 prohibits a trading member from assigning, mortgaging, pledging, hypothecating or charging his right of membership or any rights or privileges attached thereto. The said rule makes it quite clear that acquisition of membership in stock exchange by the assessee creates intangible right in its favour, which was also transferable by nomination. It is this membership of the stock exchange which enable the assessee the benefits and privileges of trading member of stock exchange, thereby enabling it to carry on its trade as a member of stock exchange.

8.1. In order to constitute a ‘capital asset’, the asset should generally have an element of permanency about it and should be capable of being a source of income. This distinction is well brought out by the definition of ‘capital asset’ given in section 2(14) of the Income-tax Act. Section 2(14) of the Income-tax Act defines ‘capital asset’ as ‘property of any kind held by an assessee, whether or not connected with his business or profession, but does not include (i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession; (ii) personal effects ...’.

Page 5 of 8

Assets, like stock-in-trade, consumable stores or raw materials held for the purposes of the business or profession have no element of permanency in the hands of a trader in them and, therefore, they are excluded from the ambit of 'capital asset'. Tested on the aforesaid parameters, the membership of a stock exchange confers a valuable right on its holder to enjoy the rights and privileges of a trading member and also to carry on the trade as a Member of the Stock Exchange. It has been held in *R.C. Cooper v. Union of India* AIR 1970 SC 564, 591 that the term 'property', in its ordinary connotation, means the *'highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy; it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copy-rights, patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured'*. It is, thus, clear that the term 'property' includes even rights in *personam* capable of being transferred or transmitted. Rights conferred by the Stock Exchange on its members are in the nature of rights in *personam* which are capable of being transferred and transmitted and, therefore, they constitute property and thereby a 'capital asset' within the meaning of section 2(14) of the Income-tax Act. Membership of a Stock Exchange is not in the nature of stock-in-trade, consumable stores or raw materials held for the purposes of the business or profession or in the nature of personal effects and, hence, it cannot be excluded from the purview of being called a 'capital asset' within the meaning of section 2(14). Membership of a stock exchange not only has an element of permanency but also has the element of being a source of income and, therefore, it must be held to be in the nature of a capital asset.

Page 6 of 8

8.2 'Capital expenditure' is closely akin to the concept of securing something, whether tangible or intangible property, or corporeal or incorporeal rights, which confer lasting or enduring benefit to the enterprise. An expense made by a business to derive a long-term benefit is, therefore, generally treated as capital expenditure. Revenue expenditure, on the other hand, is operational in its perspective and solely intended for the furtherance of the enterprise. 'Capital expenditure' generally leads to acquisition of an asset which is intended to be of lasting value; while 'revenue expenditure' represents either running expenses which are incurred in earning profit or incurred with the primary object of securing an immediate return or incurred in acquiring assets which are not of lasting value in that they get exhausted or consumed (like raw materials) in the process of securing the return or limited number of returns. Expenditure incurred on establishing, replacing and/or enlarging the profit/yield (income-earning asset) is generally of capital nature while expenditure incurred in the process of earning of the profits is of revenue nature.

8.3 The Hon'ble Apex Court in the case of Techno Shares and Stocks Limited Vs. CIT (supra) had held that membership of stock exchange was business or commercial right conferred by the rules of exchange. The membership right could be said to be owned by the member and used for the purpose of business. It was similar to a license or franchise and was to be treated as an intangible asset. Hon'ble Apex Court, held that assessee being the owner and as the said asset was used for the purpose of business was entitled to depreciation on the same. The Hon'ble Apex Court had examined the nature and character of membership card, which enabled the assessee to trade on the floor or as a broker of the stock exchange. It was held by the Hon'ble Apex Court that this membership was a

Page 7 of 8

business or a commercial right in the nature of license u/s 32(1)(ii) of the Act. The Hon'ble Supreme Court concluded that it was a right or a license owned by the assessee and was used by him as an asset, i.e. the capital asset.

8.4 The Hon'ble Apex Court in the case of Alembic Chemical Work Company Ltd. Vs. CIT reported in 177 ITR 377 had elucidated and affirmed that "once and for all payment" when it comes into existence, an asset or an advantage of enduring benefit in absence of special circumstances leading to an opposite conclusion is a capital expenditure and not attributable to revenue. This is the primary and basic test. Assessee has not been able to establish any special circumstances for an opposite conclusion in the present case. Further, the expenditure incurred was for acquiring and bringing into existence an asset or advantage of enduring benefit and not for running business to produce more profits.

8.5 The Hon'ble Delhi High Court in the case of Abhipra Capital Ltd. Vs. DCIT (Investigation) reported in 402 ITR 1 on identical facts had decided the issue in favour of the revenue. The judicial pronouncements relied on the learned A.R. are distinguishable on facts. In none of cases relied on the learned A.R., there was reference to Hon'ble Apex Court judgement in case of Techno Shares and Stocks Ltd. Vs. CIT (supra), wherein it clearly held membership of a stock exchange is a 'capital asset'. Moreover, the cases relied on by the learned A.R., had proceeded on the basis that assessee on incurring the expenditure for acquiring membership of a stock exchange has not become owner of any asset and therefore cannot be said that any enduring benefit had accrued to the assessee. Whereas in light of Hon'ble Supreme Court judgement in the case of Techno Shares and Stocks Limited (supra) membership

Page 8 of 8

of stock exchange is to be treated as a capital asset. Therefore, CIT(A) has rightly treated the admission fee as a membership of the stock exchange capital asset and allowed alternative plea of assessee that depreciation is to be granted on the same. Hence, we see no reason to interfere with the order of CIT(A) and we affirm the same. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 6th Oct, 2020

Sd/-
(A.K. Garodia)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bangalore,
Dated 6th Oct, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.