

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No.4750/Del/2017
(Assessment Year: 2013-14)

New City of Bombay Mfg. Ltd., 63, T B Kadam Marg, Mumbai - 400 033. PAN : AACCN7056J	Vs.	DCIT, Circle : 18 (1), New Delhi.
(Appellant)		(Respondent)

Assessee by :	N o n e;
Revenue by:	Ms. Aman Preet, Sr. DR
Date of Hearing	24/12/2020
Date of pronouncement	24/12/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee company against the order of the Id. CIT (Appeals)-38, New Delhi, dated 06th March, 2017, for the Assessment Year 2013-14, raising a solitary ground of appeal against the confirmation of the disallowance of Rs. 12,08,891/- incurred towards Lease Deed Registration Charges.
2. Brief facts of the case shows that assessee is a company engaged in the business of trading and manufacturing of garments and designing activity. It is a joint venture company wherein 51% share-holding is owned by National Textile Corporation and 49% of right by Alok Industries Ltd.
3. It filed its return of income on 24.09.2013 declaring total income of Rs. 5,37,36,880/-. The assessment under Section 143(3) of the Income Tax Act, 1961 (the Act) was passed on 27th January, 2016 by the Id. Assessing

Officer determining total taxable income of the assessee at Rs. 5,49,45,741/-. The only addition is the disallowance of registration charges to Rs. 12,08,861/- for a leased property.

4. The assessee preferred an appeal before the Id. CIT (Appeals) who also confirmed the above disallowance as per para No. 3 of his order as under:-

“ 3.0 Grounds of appeal 1 and 2 are adjudicated together. These grounds of appeal pertain to assessing officer disallowing depreciation of Rs. 12,08,861/- on the registration charges pertaining to AY 2011-12.

3.1 Observation of assessing officer in assessment order is as under:-

“4.1 It was observed from the computation of income for the year under consideration that the assessee company had claimed depreciation at Rs. 47,72,435/- (Rs. 35,63,574/- + Rs. 12,08,861/-), however, as per Auditor’s report, the allowable Deprecation as per Income Tax Act was shown at Rs. 35,63,574/-. Further, it was observed from Note No. 4 of the Balance Sheet that addition during the year in capital reserve represented the amount received from Strategic Partner (“SP”) M/s Alok Industries Ltd on account of stamp duty paid by the company. As per Share subscription & Shareholders’ agreement between National Textile Corp. Ltd. (“NTC”) and Alok Industries Ltd (“SP”) and New City of Bombay Manufacturing Mills Ltd., all the Government duties including Stamp duties or any other liabilities payable by the company will be borne by the Strategic Partner and the Strategic Partner will bring in additional amount into company for making such payment. During the course of assessment proceedings, the AR of the assessee was asked to justify the claim of excess depreciation of Rs. 12,08,861/- on account of amortization of lease deed registration / stamp duties expenses in view of the above stated Note No. 4.

4.2 In response to query raised the AR of the assessee filed reply on 27.01.2016 which is summarized as under:-

“That as per share holders agreement made in financial year 2007-08 between National Textile Corp. and Alok Industries Ltd. the share capital was subscribed 50% & 49% respectively and NTC offered its factory premises at a yearly rent of Rs. 100/- only and Alok Industries was to bring additional amount into the company for making such payments as that the registration of Lease Agreement and the amount so brought by Alok Industries as additional capital shall be considered as share premium. The relevant page to the Agreement is enclosed. Since these expenses were unascertained at the time of Agreement such, clause was necessary.

Since the stamp duty of Rs. 3.62 Cr. paid by the assessee company was recoverable from the Alok Industries Ltd a note on the accounts to this effect was necessitated in the Balance Sheet of Financial year 2010-11 and since the amount of additional capital was received during the financial year 2011-12 and credited to capital Reserve note to this effect was accordingly given.

Note no 9 in Balance Sheet of 2010-11 by the Previous Auditors and Note No. 4 in Balance Sheet by the Present Auditors stating the amount of Stamp Duty

paid in recoverable & borne by Alok Industries as per shareholder's Agreement does not mean the expenditure on stamp duty has become Nil ”

4.3 The reply if the assessee company has been duly considered but it is not found acceptable it is pertinent to mentioned that in the F.Y. 2010-11, the Auditors has reported in Schedule 21 regarding Notes on accounts which is reproduced as under:-

*“8. Contingent Liability
Current year Nil*

Previous year (The company contingent liability on 31.03.2010 is Rs. 3,62,57,800/- towards payment of stamp duty payable on the registration of the lease deed pertains to land and structure there on taken on lease subscription and shareholders agreement executed between the NTC Ltd and Alok Industries Limited the amount of the Stamp duty will bring in by Strategic partner as additional share premium).

9. Statutory dues of Rs. 3,62,65,825/- as per schedule 9 current liabilities) includes the amount of stamp duty payable of Rs. 3,62,65,825/- is recoverable from the strategic partner M/s Alok Industries Ltd as per share subscription and shareholders agreement the same sill be shown as capital reserve.”

4.4 As already discussed in para 4.1 above, as per Note No. 4 of the Balance Sheet, addition during the year in capital reserve represented the amount received from Strategic Partner M/s Alok Industries Ltd. on account of account of stamp duty paid by the company and as per share subscription & shareholders' agreement between NTC SP and the assessee company all the Government duties including Stamp duties or any other liabilities payable by the company were to be borne by the Strategic Partner.

4.5 It is clear from the above facts that the stamp duty on lease deed, which was paid by the company on 21.04.2011 has been recovered from the strategic partner as per agreement as stated above. Further, as per Tax Audit Report in form no. 3CA the Auditor has reported depreciation at Rs. 35,63,574/- as per Income Tax Act, however, the assessee has claimed additional depreciation of Rs. 12,08,861/- in the computation of income for the year under consideration, which is not allowable in view of above discussion. Thus, an amount of Rs. 12,08,861/- is being disallowed and added back to the assessee's total income.

(Addition: Rs. 12,08,861/-)”

3.2 The submissions of appellant are as under:-

“During the assessment proceedings for the AY 201 1-12the expenditure of Rs. 12.08861/- towards Lease Deed Registration charges claimed in Schedule 19 of P&L A/c were disallowed on the basis of Note No. 8 & 9 of Schedule 21 of Auditor's Report where it has been mentioned by the Auditors that the amount of stamp duty will be brought in and recoverable form the strategic partner i.e. M/s Alok Industries Ltd. The auditors have clearly mentioned in the Report that the amount of stamp

Duty to be bought in will be Additional Share Premium & will be credited to capital reserve in 8 & 9 of Schedule 21. Under any circumstances the Expenditure on Stamp Duty cannot be the Expenditure of Alok Industries or anybody else.

Since in our view the word 'recoverable in note no. 9 of Schedule 21 and the word 'borne' by strategic partner in Shareholders Agreement have been misinterpreted the appellant company has filed an appeal before ITAT new Delhi which is still pending for Disposal."*

AR of appellant submitted copy of order CIT (A)-XVI, New Delhi in its own case passed on 29.08.2014 in appeal no. 273/13-14 for AY 2011-12. In this order Ld. CIT(A) has held as under:-

4.2.2...

8. Contingent liability

9. Statutory dues

Further', the tripartite Shares Subscription and shareholders Agreement between National Textile Corporation Ltd., Alok Industries Ltd. (Strategic Partner) and the appellant company executed on 20.11.2007 at clause 4.6(H) in page 13 contains the following articles:-

"(ii) The Strategic Partner shall subscribe to the Strategic Partner Shares, which shall constitute 49% of the issued, subscribed and paid up equality share capital of the company, on a fully diluted basis, against cash by paying the Strategic Partner's Shares subscription Amount, at a premium of Rs. 112.40 (Rs. One Hundred and Twelve and Paise Forty only) per share aggregating to Rs. 55 Crores. The balance Equity Shares of the Company, constituting 51% of the issued, subscribed and paid up equity share capital of the Company shall be paid by the strategic partner to the Company by way of demand draft or banker cheque issued by a nationalized bank and shall be payable at par at New Delhi. It is clarified that all Government and/ or statutory duties, stamp duties, cesses liabilities payable by the company in regard to the completion of the transaction contemplated under the Undertaking Transfer Agreement and the Lease deed shall be solely borne by the strategic partner and the Strategic Partner will bring in additional amount into the company for making such payments which shall be considered as share premium for subscribing to the strategic partner's shares in accordance with the terms and conditions of this agreement. To this effect the company shall prior to the closing date submit copies of the Undertaking Transfer Agreement and the lease deed to the appropriate governmental authorities for adjudicating the amount of statutory/ stamp duty, cess, statutory/ registration fees, if any which shall be payable by the company in this regard. "

From the above article in the agreement it is clear that all government and/or statutory duties stamp duties, cess liability payable by the appellant company in regard to the completion of transaction and lease deed shall be solely borne by the strategic partner M/s Alok Industry Ltd. which shall be considered as share premium for subscribing to strategic partner shares. In view of the above it is clear that the liability of stamp duties shall not accrue in the hands of the appellant company but the same shall accrue in the hands of the strategic partner M/s Alok Industries Ltd., because the terms of agreement clearly says that all such

Government and statutory duties payable by the appellant company shall be solely borne by the strategic partner. Therefore no liability arises in the hands of the appellant company on account of the stamp duty paid/payable. In view of the above, the amortized amount of Rs. 12,08,861/- debited in the P&L account of the assessee, is not allowable as revenue expenditure in the hands of the assessee. As such, the disallowance made by the AO is sustained. The appeal fails in this ground.

3.4 I have carefully perused the assessment order, submissions of appellant on grounds of appeal 1 and 2 and order of Ld. CIT(A)-XVI, New Delhi in appellant's own case passed on 29.08.2014 in appeal no. 273/13-14 for AY 2011-12. On perusal of the tripartite Shares Subscription and shareholders Agreement between National Textile Corporation Ltd., Alok Industries Ltd. (Strategic Partner) and the appellant company executed on 20.11.2007 at clause 4.6(ii) in page 13, it is seen that clause 4.6(ii) clearly states that all government and/or statutory duties stamp duties, cess liability payable by the appellant company in regard to the completion of transaction and lease deed shall be solely borne by the strategic partner M/s Alok Industry Ltd. Which shall be considered as share premium for subscribing to strategic partner shares. In view of the above it is clear that the liability of stamp duties shall not accrue in the hands of the appellant company but the same shall accrue in the hands of the strategic partner M/s Alok Industries Ltd. Which is the strategic partner. I uphold the decision of Assessing Officer. Thus ground of appeal 1 and 2 are dismissed. "

3. Despite notice, none appeared on behalf of the assessee. Therefore, the issue is decided on the merits of the case as per information available on record.
4. The Id. Departmental Representative vehemently supported the order of the Id. Lower authorities.
5. We have carefully considered the rival contentions. The fact shows that as per the share holders' agreement entered into between National Textile Corporation and M/s. Alok Industries Ltd., National Textile Corporation offered its factory premises to the assessee company at an yearly rent of Rs. 100/- and Alok Industries was to bring additional amount into the company for making payment of registration on lease agreement etc. The amount to be paid by Alok Industries towards the above expenditure was to be treated as share premium and share capital. On construction of the above agreement, the lower authorities held that the payment of registration charges and stamp duty is the liability of Alok Industries and, therefore, above sum was disallowed. On looking at the facts stated in the order of the CIT (Appeals) it is apparent that the National Textile

Corporation is providing its building on lease to the assessee and lease deed charges etc. are to be paid though incurred by the assessee, but to defray these expenditure the necessary amount was brought in by Alok Industries Ltd. That means for the purpose of the payment of lease deed registration charges and stamp duty, Alok Industries will bring in the money into the joint venture. However, that does not mean that liability of the assessee does not exist for payment of stamp duty. In fact the source of the fund for payment of the stamp duty is by way of share capital and share premium from M/s. Alok Industries Ltd. However, the liability to pay the above sum remains with the assessee. Therefore, the above expenditure has to be incurred by the assessee and not by Alok Industries. Only the source of the funds in the joint venture company is to be provided by Alok Industries. When the leased premises are to be used for the purposes of business of the assessee, necessary lease registration charges are also liability of the assessee. Merely because Joint venture partners decide about who puts in money in J V for what purposes, it is merely that they are deciding about the sources of the funds, expenditure of J V may be financed out of that, but that does not make it the liabilities of J V partners, Instead of J V itself. Therefore, in view of this we hold that the expenditure is incurred by the assessee for registration of lease deed. Therefore, such expenditure is allowable in the hands of the assessee under Section 37(1) of the Act. Hence the orders of the lower authorities are reversed and the Assessing Officer is directed to allow and delete the disallowance of Rs. 12,08,861/-. Accordingly, Ground Nos. 1, 2 and 3 of the appeal are allowed.

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

Order pronounced in the open court at the conclusion of hearing on :
24th December, 2020.

Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 24/12/2020

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	24.12.2020
Date on which the typed draft is placed before the dictating member	24.12.2020
Date on which the typed draft is placed before the other member	24.12.2020
Date on which the approved draft comes to the Sr. PS/ PS	24.12.2020
Date on which the fair order is placed before the dictating member for pronouncement	24.12.2020
Date on which the fair order comes back to the Sr. PS/ PS	24.12.2020
Date on which the final order is uploaded on the website of ITAT	24.12.2020
date on which the file goes to the Bench Clerk	24.12.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	

