

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
and
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 2178/H/2018 Assessment Year: 2007-08		
Ocimum Bio Solutions India Ltd., Hyderabad. PAN - AAACO 4095L (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle - 16(3), Hyderabad. (Respondent)
Assessee by:		Shri P. Murali Mohana Rao
Revenue by		Shri Rohit Mujumdar
Date of hearing:		05/04/2021
Date of pronouncement:		05/05/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the assessee is directed against CIT(A) - 4, Hyderabad's order dated 28/09/2018 involving proceedings u/s 143(3) of the Income- Tax Act, 1961 ; in short "the Act.

2. Briefly the facts of the case are that the assessee company, engaged in the business of R&D and software development in life sciences, filed its return of income for the AY 2007-08 declaring NIL income, which was processed

u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and accordingly, the AO issued statutory notices to the assessee, against which, the AR of the assessee filed required information. After going through the information, the AO completed the assessment determining the assessed income of the assessee at Rs. 2,45,50,920/- by making the following expenses:

1. ROC expenses of Rs. 13,00,000/-
2. Expenses towards acquisition of subsidiary companies of Rs. 66,17,681/-
3. Carry forward loss of Rs. 16,43,939/-

3. When the assessee preferred an appeal before the CIT(A) against the order of AO, the CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before the ITAT raising 16 grounds of appeal. Ground No. 1 & 16 are general in nature, hence, need no adjudication. Ground Nos. 2 to 6 are regarding addition of Rs. 13,00,000/- towards ROC expenses. Ground Nos. 7 to 14 are regarding addition of Rs. 66,17,681 towards expenses for acquisition of subsidiary companies. Ground No. 15 is relating to the addition of Rs. 16,43,939/- towards carry forward loss.

5. As regards ground Nos. 2 to 6 regarding the addition of Rs. 13,00,000/-, during the course of assessment

proceedings, the AO noticed that the assessee had paid ROC fees of Rs. 13,00,000/- and asked the assessee to furnish details in this regard. Assessee stated that the fees paid to ROC for increase in authorized share capital which is to be allowed as revenue expenditure. The contention of the assessee was rejected by the AO and added the said amount of Rs. 13,00,000/- to the income of the assessee relying on the decision of the Hon'ble Apex Court in the case of Punjab State Industrial Development Corporation Ltd. Vs. CIT, 220 ITR 792.

5.1 On appeal, the CIT(A) confirmed the addition made by the AO.

5.2 Before us, the Id. AR of the assessee has filed written synopsis in respect of ROC fees, which is as under:

"During the assessment year under reference, the assessee had paid a sum of Rs.27,50,000j - to the Ministry of Corporate Affairs, New Delhi towards "increase in Authorised share capital. Consequently, this amount was debited to the P & L account as allowable expenditure connected with the business activity by treating the same as revenue expenditure.

In this connection, we would like to submit that the expenditure incurred for the enhancement of authorised capital is only for the purpose of bettering or improving, an established business and cannot to be for the purpose of a new business. If the same is viewed in a business sense, the enhancement of the authorised

capital is only to have better conduct, efficiency and profitability of the business.

At this juncture it is to bring to your notice that

- The fee paid by the company to ROC is undoubtedly connected with and advantageous to the business activity of the assessee.*
- The fee paid is paid is towards working capital purpose of the assessee.*
- It was stated by the AO that the assessee is having an enduring advantage for the benefit of its business. However, it is to bring to your notice that the assessee did not secure any tangible or intangible asset and there was no addition to or expansion of the profit-making apparatus.*

It is further bring to your notice that it is very well settled principle that a provision of law capable of two interpretations should be interpreted in a manner so as to give benefit to the assessee.

In support of the above, reliance is placed on the following

- Commissioner of Income-tax V s. Buhler India Ltd in [2012] 20 taxmann.com*

191 (Karnataka) (Para 5, Page 3)

"4. In so far as the second substantial question of law is concerned, the claim of the assessee toas negatived by the assessing authority relying on the judgment of the Apex Court in the case of Punjab Industrial Development Corpn. Ltd. v. CIT [1997] 225 ITR 792/93 Taxman 5 where it was held that the payment made to the Registrar of Companies is to be treated as a capital expenditure.

5. *There is no quarrel with the said legal position. In the instant case deduction was not claimed on the ground that it is a revenue expenditure. The deduction was claimed on the ground that Section 350 provides for amortization of preliminary expenses in respect of fees paid to the Registrar of Companies and expenditure incurred towards public subscription of shares. Once the condition of Section 350 is fulfilled, the assessee is entitled to the deduction. That is precisely what, the Tribunal has held. We do not see any error in the finding of the Tribunal.*

6. *For the aforesaid reason, the second substantial question of law framed is also answered in favour of the assessee and against the revenue. Accordingly, the appeal is dismissed. "*

• *Commissioner of Income tax Vs. Nuchem Ltd in [2015] 59 taxmann.com 455 (Para 8, Page 8)*

"8 In Multi Metals Ltd. (supra) and Goa Carbon Ltd. I S cases (supra), it has

been held by the Rajasthan and the Bombay High Courts, respectively, that any expenditure incurred by way of fees paid to the Registrar of Companies for enhancement of the authorised capital is deductible over a period of ten years under section 35D(2)(c)(iv) of the Act. We are in agreement with the aforesaid view and do not find any infirmity in the order of the Commissioner of Income tax (Appeals) or the Tribunal in this behalf"

• *Commissioner of Income tax Vs. Multi Metals Ltd [1991] 188 ITR 151 (Rajasthan) (Page 15)*

"To us, it appears that even if the provision of subsection (2)(c)(iii) of section 350 is not applicable, the language of subsection (2)(c)(iv) of section 350 is wide

in nature and would include the deductibility of fee paid by the assessee to the Registrar for enhancement of capital. Therefore, the said provision was rightly applied to the present case by the Income tax Appellate Tribunal.

Under these provisions, deduction of expenditure incurred for registration is to be spread over a period of ten years and is not allowable in the year in which the expenses are incurred. To uphold the submission of the Revenue that expenditure incurred for obtaining registration would not be allowable either under subsection (2)(c)(iii) or sub-section (2)(c)(io) of section 350 "would defeat the obvious intention of the Legislature and would produce a wholly unreasonable result To achieve the obvious intention and produce a reasonable result, 'we have to hold that under subsection (2)(c)(iv) of section 350, the expenditure incurred for obtaining registration would be liable to be deductible. We, consequently, hold that the fee paid to the Registrar of Companies for raising authorised capital of the assessee company was covered by sub section (2)(c)(iv) of section 350 of the Income-tax Act."

- *DCIT Vs. Mercury Projects Pvt. Ltd in ITA No. 440/Hyd/2018 (Para 16, Page 23-24)*

"Respectfully following the ratio laid down by the Hon'ble Rajasthan High court in the case of Multi Metals lid., (supra), as above, 'We set aside the order of CIT(A) and delete the addition made u/« 350 of Rs. 22,20,400/-. Accordingly, the grounds raised by the assessee are allowed. "

In view of the above explanations and clarifications, it is humbly prayed before your good selves to delete the addition made by the AO."

5.3 The Id. DR, on the other hand, relied on the orders of authorities below. In support of Revenue, he relied on the judgment of Apex Court in the case of Brooke Bond India Ltd., [1997] 12 SCL 83 (SC, a copy of which is placed on record.

5.4 After hearing both the parties and perusing the material on record as well as the orders of revenue authorities, it is observed that the revenue authorities have disallowed the claim of the assessee in respect of ROC expenses towards increase of share capital by treating it as capital in nature by following the decision of the Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Ltd. Vs. CIT (supra) and the Id. DR has also relied on the decision of the Hon'ble Apex court in the case of Brooke Bond India Ltd., (supra). The authorities below has disallowed the assessee's claim of expenses u/s 37 of the Act. We approve the decision of the revenue authorities as the ROC expenses towards increasing the share capital is a capital in nature. However, section 35D has been inserted by the Finance Act, 1970, with effect from 01/04/1971, which reads as under:

*“(3) Where the aggregate amount of the expenditure referred to in sub-section (2) exceeds an amount calculated at two and one-half per cent-
(a) of the cost of the project, or
(b) where the assessee is an Indian company, at the option of the company, of the capital employed in the business of the company, the excess shall be ignored for the purpose of computing the deduction allowable under sub-section (1). Explanation.- In this sub-section,-
(a) " cost of the project" means-*

(i) in a case referred to in clause (i) of sub-section (1), the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences;

(ii) in a case referred to in clause (ii) of sub-section (1), the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the extension of the industrial undertaking is completed or, as the case may be, the new industrial unit commences production or operation, in so far as such fixed assets have been acquired or developed in connection with the extension of the industrial undertaking or the setting up of the new industrial unit of the assessee;

(b) " capital employed in the business of the company" means-

(i) in a case referred to in clause (i) of sub-section (1), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the business of the company commences;

(ii) in a case referred to in clause (ii) of sub-section (1), the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the extension of the industrial undertaking is completed or, as the case may be, the new industrial unit commences production or operation, in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the industrial undertaking or the setting up of the new industrial unit of the company;

(c) " long-term borrowings" means-

(i) any moneys borrowed by the company from Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution which is for the time being approved by the Central Government for the purposes of clause (viii) of subsection (1) of section 36 or any banking institution (not being a financial institution referred to above), or

(ii) any moneys borrowed or debt incurred by it in, a foreign country in respect of the purchase outside India of capital plant and machinery, where the terms under which such moneys are borrowed or the debt is incurred provide for the repayment thereof during a period of not less than seven years."

On perusal of the financial statements submitted by the assessee, we find that there is no doubt that the assessee

has increased share capital. On perusal of the provisions of section 35D, we find substance in the written synopsis submitted by the Id. AR of the assessee relying on the judgements quoted supra that section 35D provides amortization of certain expenses, which are in the nature of capital/intangibles/preliminary expenses, which have been incurred by the assessee in the preliminary stage of the company or in the normal course of business and the assessee is entitled to amortize of expenses over a period of time as per section 35D. Therefore, the AO is directed to allow the ROC expenditure incurred towards increase of share capital as per section 35D of the IT Act, 1961. Accordingly the grounds raised on this issue are allowed.

6. As regards grounds No. 7 to 14 regarding the addition of Rs. 66,17,681/- on account expenses towards acquisition of subsidiary companies, the assessee claimed it as revenue expenditure, but, the AO treated it as capital in nature and made addition when there is no compliance from the assessee against the AO's letter to explain why it shall not be disallowed.

6.1 On appeal, the CIT(A) directed the AO to verify the bills and evidences and allow the expenditure accordingly.

6.2 Before us, the Id. AR of the assessee has filed bills and vouchers in paper book at pages 63 to 80 and the same

were placed before the CIT(A) & AO. On considering the totality of the facts of the case also remit this back to the file of the AO for verification of bills and vouchers and the same are found in order, the AO is directed to allow these expenses as revenue expenditure for the impugned AY. Accordingly, this ground is allowed for statistical purposes.

7. As regards ground No. 15 relating to carry forward losses, we find that the assessee has not pressed this ground before the CIT(A), but, the same has been pressed before us. Therefore, we restore this ground back to the AO for his factual verification. Thus, this ground of appeal is treated as allowed for statistical purposes.

8. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 5th May, 2021.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 5th May, 2021.

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copy to :

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<i>2</i>	<i>DCIT, Circle – 16(3), 6th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad.</i>
<i>3</i>	<i>CIT(A) - 4, Hyderabad</i>
<i>4</i>	<i>Pr. CIT – 4. Hyderabad.</i>
<i>5</i>	<i>ITAT, DR, Hyderabad</i>
<i>6</i>	<i>Guard File.</i>