

आयकर अपीलीय अधिकरण " ए " न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.6683/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Ask Property Investment Advisors P. Ltd. Birla Aurora, 16 Level Office 9 th Floor, Dr. Annie Besant Road Worli, Mumbai – 400 030	बनाम/ Vs.	DCIT-2(1)(1) 561, 5 th Floor Aaykar Bhawa, M.K.Road Mumbai – 400 020
PAN No. : AAHCA-5652-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri J.D.Mistri- Ld. Sr. Counsel
Revenue by	:	Shri Brajendra Kumar – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	04/05/2021
घोषणा की तारीख / Date of Pronouncement	:	04/05/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4, Mumbai [in short referred to as 'CIT(A)'], *Appeal No.CIT(A)-4/e-file-176/DCIT 2(1)(1)/2016-17 dated 29/08/2019* on following grounds of appeal: -

Disallowance of Client Referral fees of Rs.3,45,61,071/- (Para 7.2 of the order)

- (a) On the facts and circumstances of the case and in law the Honorable Commissioner of Income Tax (Appeals)-4 erred in confirming the disallowance of client referral fees of Rs.3,45,61,071/- made by the Assessing Officer in the order u/s 143(3) of the Income Tax Act, 1961 ignoring the submissions of the Appellant.
- (b) In view of the above, the CIT(A) be directed to delete the disallowance of client referral fees of Rs.3,45,61,071/-.

As evident, the sole issue under the appeal is disallowance of Client Referral Fees of Rs.345.61 Lacs.

2. The Ld. Sr. Counsel, at the outset, submitted that identical issue arose in AYs 2010-11 & 2012-13 which has been adjudicated by the Tribunal vide ITA Nos.1810/Mum/2017 & 1635/Mum/2016 common order dated 04/10/2019. The copy of the order has been placed on record. The Ld. DR could not controvert the said position. No change in factual matrix could be brought out before the bench. In fact the impugned order relies upon first appellate orders for AYs 2010-11 & 2012-13. In the above background, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. During assessment proceedings, it transpired that the assessee paid Client Referral Fees (CRF) of Rs.403.21 Lacs. In AY 2010-11, similar expenditure as claimed by the assessee was allowed to be amortized for 7 years. In AY 2013-14, the said expenditure was treated as capital expenditure. Though the assessee defended its stand of claiming full expenditure during the year, however, following assessment order for AY 2010-11, Ld. AO allowed 1/7th of the expenditure and disallowed the balance amount of Rs.345.61 Lacs.

4. The Ld. CIT(A), following first appellate orders for AYs 2010-11 & 2012-13, dismissed the grounds urged by the assessee. Aggrieved the assessee is in further appeal before us.

5. As rightly pointed out by Ld. Sr. Counsel, this issue stood squarely in assessee's favor by the cited decision of the Tribunal wherein it has been held as under: -

6.2. From the aforesaid judgment, what we are able to decipher is the assessee is given a choice to claim the expenditure as revenue in nature in one go i.e in the year of incurrance or alternatively, claim the same as amortization duly giving credence to the matching principle. Both the choices have been permitted by the Hon'ble Apex Court in the aforesaid judgment. The assessee in the instant case had chosen to claim the entire revenue expenditure in one go in the year of incurrance. We also find that the Hon'ble Supreme Court in its findings that the amortization method cannot be forced on the assessee unless otherwise specifically provided such as section 35D, etc. and it is only permitted if the assessee chooses to do so in the return. We find that the ratio laid down in the aforesaid judgment squarely covers the case of the instant assessee in its favour.

6.3. In a nutshell, we hold that the accrual of Client Referral Fee cannot be disputed as both the Id AO and Id CIT(A) had allowed part (i.e 1/7th) of the expenditure as deduction. We find that the assessee had offered a sum of Rs 4.42 crores as fees during the year as business income which had admittedly been earned pursuant to incurrance of the aforesaid Client Referral Fee expenditure. Hence the business nexus of incurrance of the expenditure vis a vis the fees received by the assessee is also established beyond doubt. Moreover, we find that though the assessee had incurred loss during the year under consideration, admittedly due to claiming the entire Client Referral Fee of Rs 10.11 crores as deduction, it had earned more profits in the subsequent years as admittedly the benefit of incurrance of expenditure had accrued to the assessee in subsequent 6 years also. The following chart would prove the bonafide of the assessee beyond doubt which is enclosed in page 108 of the paper book :-

.....

6.4 The Id DR relied on the decision of Hon'ble Karnataka High Court in the case of Fidelity Business Services India Pvt Ltd vs ACIT in ITA No. 512/2017 dated 23.7.2018 to support his arguments that this tribunal should set right the error committed by the Id CIT(A) in the facts of the instant case in as much as, the Id CIT(A) on one hand had disputed the incurrance of expenditure for the purpose of assessee's business during the year under consideration , but on the other hand had allowed the said expenditure at 1/7th as was done by the Id AO. This goes to prove that the Id CIT(A) had partially accepted the said expenditure (i.e 1/7th portion) to have incurred for business purposes. According to Id DR, this contrary finding given by the Id CIT(A) should be rectified by this tribunal by remanding the entire issue to the file of Id CIT(A) in the light of decision of Hon'ble Karnataka High Court relied upon supra. In this regard, we find that the allowability of 1/7th as a business expenditure was not in dispute before us in the appeal of the assessee, as the said deduction has been granted by both the Id AO as well as the Id CIT(A). The

assessee is in appeal before us only for the allowability of remaining 6/7th of the expenditure portion. Moreover, the issue in dispute before us squarely stands covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of Taparia Tools referred to supra. Hence there is no need to place reliance on various judgments that were relied upon by the Id DR in his legal paper book and also the decision of Hon'ble Karnataka High Court referred to supra.

6.5. In view of our aforesaid findings and respectfully following the decision of the Hon'ble Supreme Court in the case of Taparia Tools supra, we hold that the remaining 6/7th portion of Client Referral Fee in the sum of Rs 8,67,18,139/- is to be allowed as deduction in the Asst Year 2010-11 and we direct the Id AO accordingly. Hence the Grounds raised by the assessee for the Asst Year 2010-11 are allowed.

Facts being identical, we direct Ld.AO to allow full deduction of expenditure as claimed by the assessee.

6. The appeal stands allowed.

Order pronounced on 04th May, 2021.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04/05/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**