

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.3306/Bang/2018
Assessment Year: 2015-16

M/s. Carbon Clean Solutions Pvt. Ltd. 102, Pinakin CHSL, Seven Bungalows Gorai Road Borivili West Mumbai  <b>PAN NO :AADCC8017F</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle-2(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	N O N E
<b>Respondent by</b>	:	Shri Kannan Narayanan, D.R.

Date of Hearing	:	03.08.2021
Date of Pronouncement	:	03.08.2021

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeal filed by the assessee is directed against the order dated 30.10.2018 passed by Ld. CIT(A), Bengaluru and it relates to the assessment year 2015-16. None appeared on behalf of the assessee. However, the authorized representative of the assessee M/s. BVS Rao & Co., Chartered Accountant have filed an application for adjournment of the matter. Considering the fact that the issue is a covered by the judicial decisions, we rejected the adjournment request and proceeded to dispose of the appeal.

2. The issue urged in this appeal relates to disallowance of Rs.7.36 lakhs treating the same as capital in nature.

3. We heard Ld. D.R. and perused the record. The assessee company is engaged in providing technological solutions to capture Carbondioxide from Industrial units. During the course of assessment proceedings, the A.O. noticed that the assessee has paid a sum of Rs.1.36 lakhs to Sri Chenna Ranganatha for obtaining digital signatures for the Director and also for drafting call option and share subscription agreement in pursuance of a proposal for business restructuring. Further, the assessee has also paid a sum of Rs.6,00,500/- to M/s. Investec Capital Services, Inc. for getting advisory services in connection with raising of equity capital from potential investors. The A.O. proposed to disallow both the payments aggregating to Rs.7,36,500/- treating them as capital in nature.

4. The assessee submitted that digital signature was obtained for Directors in order to enable them to sign digitally on behalf of the company and hence, the said expenditure has been incurred in the ordinary course of its business. With regard to the other payments, the assessee submitted that it did not raise any fresh capital, since their plan to raise funds did not succeed. Accordingly, it was submitted that the above expenses did not give rise to any capital asset. Since these expenses have been incurred in the ordinary course of business, it was submitted that they are allowable as deduction. The assessee placed its reliance on the decision rendered by Ahmadabad bench of Tribunal in the case of Vimal Oil Foods Ltd. Vs. JCIT (ITA No.2515/Ahd/2010 dated 5.7.2013), wherein expenses incurred on an aborted share issue

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was held to be allowable as deduction. The assessee also relied on other case laws and contended that the entire expenditure incurred in respect of aborted share issue is allowable as deduction. The A.O. did not agree with the contention of the assessee and accordingly disallowed Rs.7,36,500/- holding it as capital in nature. The Ld. CIT(A) also confirmed the same.

5. The undisputed fact is that the assessee did not raise any money by way of issuing share capital, as planned by it originally, when the impugned expenses were incurred. Hence, these expenditure pertain an aborted share issue. The question whether such kind of expenses can be allowed as deduction has been examined by Ahmedabad bench of ITAT in the case of Vimal Oil Ltd. (supra), wherein the Tribunal followed the decision rendered by Hon'ble Gujarat High Court in the case of Nimbus Communications Ltd. (Tax appeal No.4244 of 2010 dated 8.2.2011). The Hon'ble Gujarat High Court has held as under:

*"2. The finding of fact recorded by the Income Tax Appellate Tribunal is that there is dispute that the assessee has in fact incurred the expenditure and that on account of the aborted public issue offer, no new asset has come into existence and consequently there is no question of the assessee getting any enduring benefit. With the approval of SEBI, the assessee was to increase the share capital and thereby promote its business activity. However, the same got aborted due to reasons beyond its control. In these circumstances, in view of the decision of this Court in the case of Commissioner of Income Tax Vs. M/s. Essar Oil Limited, Income Tax Appeal (L) NO. 921 of 2006 decided on 16th October 2008, in our opinion, no fault can be found with the decision of the Income Tax Appellate Tribunal in allowing the aborted share issue expenditure under [Section 37](#) of the Income Tax Act, 1961."*

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6. In our view, the decision rendered by Hon'ble Gujarat High Court squarely applies to the facts of the present case. Accordingly, following the above said decision, we hold that the expenses incurred in respect of an aborted share issue is allowable as deduction u/s 37 of the Act. Accordingly, we set aside the order passed by Ld. CIT(A) and direct the A.O. to delete the impugned disallowance.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 3<sup>rd</sup> Aug, 2021.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 3<sup>rd</sup> Aug, 2021.  
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.