

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘B’

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.247/Ahd/2019
Asstt.Year : 2014-15

Sacmi Engineering India P.Ltd. Plot No.SM-50 Sananad Ind. Estate II Charal GIDC, Sanand Ahmedabad 382 110 PAN : AAKCS 8465 L	Vs	DCIT, Cir.4(1)(2) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Revenue by :	Shri Dhirubhai Shah, AR Ms.Urvashi Shodhan, AR
Assessee by :	Shri R.R. Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 14/09/2021

घोषणा की तारीख /Date of Pronouncement : 17/09/2021

ORDER

PER RAJPAL YADAV, VICE-PRESIDENT: Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-8, Ahmedabad dated 20.12.2018 passed for the Asstt.Year 2014-15.

2. In this appeal, the assessee has raised as many as seven grounds of appeal, which in fact involve only one issue i.e. the Id.CIT(A) has erred in confirming the action of the AO in disallowing the expenditure incurred in respect of “documents and stamp charges” of Rs.39,27,000/-

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on account of increase in authorized capital and treated the same as capital expenditure. Assessee alternatively pleaded that claim of deduction of impugned expenditure otherwise may be allowed under section 35D of the Income Tax Act, 1961.

3. We take note of brief facts as emanating from orders of the Revenue authorities. That the assessee is manufacturer of machines and complete plants for ceramics, packaging and food industries; that the assessee has filed its return of income on 29.9.2014 declaring total loss at Rs.(-)5,83,76,539/-. Thereafter, case of the assessee selected for scrutiny assessment and notice under section 143(2) of the Act was issued and served upon the assessee. During the assessment proceedings, the Id.AO noticed that the assessee debited a sum of Rs.39,76,324/- as "Document and Stamp Charges" in its accounts as revenue expenditure, which related to expenditure incurred for increasing authorized share capital. The assessee was show-caused as to why this expenditure be not treated as capital expenditure since expenditure related to capital formation. In reply dated 8.12.2016 the assessee explained that expenses were incurred to increase authorized capital by converting compulsory convertible debenture and for the purpose of meeting the need for working funds of the assessee-company; that there was no fresh in flow of funds, and the ROC fees and other related expenditure was admissible expenditure being revenue expenditure in nature. Before the Id.AO the assessee relied upon decisions in the case of CIT Vs. Kisenchand Chellaram (India) P.Ltd., 130 ITR 385 (Mad); and Hon'ble Supreme Court decision in the case of Brooke bond India Ltd. Vs. CIT, 225 ITR 798 and others. The assessee, alternatively pleaded that 1/5th of

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the said expenses should be allowed under section 35D of the Act. However, the Id.AO did not accept explanation of the assessee. He held that by converting the debentures into equity share capital, the capital base of the assessee-company has been increased, and therefore, incurrence of expenditure for conversion of the same was in the nature of capital. The claim of the assessee was accordingly disallowed. Appeal to the CIT(A) could not bring any relief to the assessee, hence, assessee is before the Tribunal.

4. Before us, the Id.counsel for the assessee reiterated submissions as were made before the Revenue authorities.

5. On the other hand, the Id.DR supported orders of the Revenue authorities. He submitted that by way of increase in share capital, the assessing company has got enduring benefit and the expenditure incurred by the conversion of equity shares has to be treated as capital expenditure. He relied decision of the ITAT, Ahmedabad Benches in the case of Gruh Finance Ltd. Vs. ACIT, 160 ITD 89, decision in the case of VXL INDIA LTD Vs. ACIT, Tax Appeal No.481 of 1999. Since assessee has incurred the expenditure on issue of convertible debenture, which is directly related to the expansion of capital base of the company, as held by the Hon'ble High Court such expenditure is to be treated as capital expenditure.

6. We have considered rival submissions and gone through the record carefully. We find that main issue for our consideration is that whether the expenditure on conversion of debenture bond into equity share capital is revenue or capital expenditure. The claim of the

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assessee is that since capital base has been increased due to conversion of debenture for meeting working capital of the assessee-company, the expenditure for such conversion ought to be allowed as revenue expenditure. As observed by the Id.CIT(A), facts of the case of the assessee clearly indicate that portion of convertible debenture was converted into equity shares and assessee company had got enduring benefits therefrom and therefore, the expenditure incurred by the assessee on conversion of convertible debentures into equity shares has to be treated as capital expenditure. For which, the Id.CIT(A) relied upon the judgment of Hon'ble Supreme Court in the case of Brooke Bond India Ltd., 225 ITR 798. Thus, we are of the view that the Id.Revenue authorities have taken a correct view of the matter while disallowing claim of the assessee.

7. So far as alternative pleadings of the assessee that the claim of the assessee otherwise be allowed under section 35D of the Act. In this regard, we find the Section 35D of the Act does not contemplates allowance of expenditure incurred after the commencement of business that too for the expenditure incurred for conversion of debenture into equity share capital. As per Section 35D, any capital expenditure incurred before the commencement of operation of specified business then such expenditure is allowable as a deduction under the income tax in 5 equal annual installments subject to the fulfilment of different conditions given under the Income Tax Act. That was not the case on our hand for the reasons narrated above. The Id.Revenue authorities is, therefore rightly rejected this alternative claim

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of the assessee. Therefore, no intervention at our end is required on this issue as well.

7. In the result, appeal of the assessee is dismissed.

Pronounced in the Open Court on 17th September, 2021

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**