

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.443/Chny/2017
निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Burgundy Restaurants Private Limited, New No. 150, Royapettah High Road,, Royapettah, Chennai 600 014. Vs. The Deputy Commissioner of Income Tax, Corporate Circle 1(2), Chennai – 600 034.

[PAN:AADCB3785D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri N. Arjunraj, CA for
Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 01.03.2022
घोषणा की तारीख /Date of Pronouncement : 09.03.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 1, Chennai dated 01.12.2016 relevant to the assessment year 2013-14. The only effective ground raised in the appeal of the assessee relates to confirmation of preliminary expenses.

2. Facts are, in brief, that the assessee filed its return of income for the assessment year 2013-14 on 29.09.2013 admitting a total current

year loss of ₹.3,71,95,650/-. After following due process and considering various details, the Assessing Officer completed the assessment under section 143(3) of the Income Tax Act, 1961 ["Act" in short]. In the assessment order, the Assessing Officer has denied the claim of the assessee on the ground that the deduction under section 35D of the Act can be allowed only if the expenditure was incurred towards preparation of feasibility report, preparation of project report and conducting market surveyor any other survey necessary for the business of the assessee. As the expenditure claimed by the assessee was not in the nature prescribed under section 35D of the Act, the Assessing Officer disallowed the claim of preliminary expenses of ₹.1,52,13,360/- and added to the income of the assessee. In appeal, the Id. CIT(A) confirmed the disallowance made by the Assessing Officer.

3. On being aggrieved, the assessee carried the matter in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the expenses incurred by the assessee were amortized for a period of five years and the same may be allowed. Alternatively, the Id. Counsel for the assessee has submitted that the expenses incurred by

the assessee were for the purpose of business of the assessee and it has to be allowed under section 37 of the Act.

4. On the other hand, the Id. DR supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee has claimed preliminary and pre-operative expenses incurred by the assessee. The Assessing Officer, by considering the provisions of section 35D of the Act, disallowed the claim of the assessee, which was confirmed by the Id. CIT(A).

6. So far as alternative plea raised by the Id. Counsel for the assessee is concerned, we find that it is a fact that the assessee has incurred the expenditure relating to the business of the assessee and due to certain circumstances, it has not able to start its business. However, the expenditure has been incurred to carry out the business. Therefore, the expenses incurred by the assessee are for the purpose of its business and it has to be allowed. However, the assessee has not filed any details in respect of the expenditure incurred neither

before the Assessing Officer nor before the Id. CIT(A) or before the Tribunal. Therefore, we direct the assessee to file the details before the Assessing Officer. We also direct the Assessing Officer to consider the same and pass order as per our above observations. Thus, the ground raised by the assessee is allowed for statistical purposes.

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

Order pronounced on 09th March, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 09.03.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.