

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**(DELHI BENCH 'B' : NEW DELHI)****BEFORE SH. R.K.PANDA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**ITA No. 2484/Del/2019
(Assessment Year : 2013-14)

M/s. Esteem Finventures Limited (Now Kapedome Enterprises Limited) 510, Fifth Floor, Deep Shikha Building, 8 Rajendra Place, New Delhi-110008 PAN : AAACE9112E	Vs.	ACIT, Circle-8(2), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Ved Jain, Adv. And Sh. Aman Garg, CA
Revenue by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	26.04.2022
Date of Pronouncement:	29.04.2022

ORDER**PER ANUBHAV SHARMA, JM:**

The appeal has been preferred by the appeal against order dated 28.01.2019 in appeal no. 83/2016-17 for the assessment year 2013-14 passed by Commissioner of Income Tax (Appeal)-34, New Delhi (hereinafter referred as 'the Ld. First Appellate Authority or in short Ld. F.A.A.') in appeal pending before it against order dated 31.03.2016 passed u/s 143(3) of the Income Tax

Act, 1961 (hereinafter referred to as 'the Act') by ACIT, Circle -8(2), New Delhi (hereinafter referred to as the Ld. Assessing Officer or in short 'ld. AO').

2. The facts in brief are that appellant company is a non banking financial company NBFC and is engaged in the business of investments and financing activities. Return declaring an income of Rs. 2,36,44,670/- was filed on 29.09.2013. The case was selected for scrutiny. The AO completed the assessment u/s 143(3) vide order dated 31.03.2016 after making disallowance on account merger expenses at Rs. 7,67,790/- and on account of legal and professional expenses at Rs. 35,45,352/-.

3. In appeal the ld. F.A.A. while partly allowing the appeal had confirmed the addition to the extent of Rs.22,45,508 which related to legal and professional charges paid to M/s. Khaitan Sud & Partners of Rs. 15 lacs and M/s. Sapphaire Professional Services Rs. 7,45,508/-.

4. Now before the Tribunal, assessee has raised following grounds of appeal -:

1. *"The Hon'ble CIT(A) has erred in confirming the disallowance of Rs. 22,45,508/- out of legal and professional charges made by the Ld. AO on the grounds that no services have been rendered by the professionals. The Hon'ble CIT(A) has failed to appreciate that the appellant company had made payment to reputed professionals to assist it in entering into negotiations with M/s Garnett Specialty Papers Ltd. for firstly commencing of purchase of paper from the supplier of paper thereafter takeover of the supplier company.*

2. *The Ld. CIT(A) has erred in confirming the disallowance out of legal & professional charges without appreciating the fact that purchase of paper was duly carried out with M/s Garnett Specialty Ltd. in succeeding year and as the legal and professional charges were paid to bring into existence a new business opportunity in existing line of business with a view to*

earn more profit and therefore it represents a bonafide business expenses allowable as per provisions of the Income Tax Act.

The appellant craves leave to add, alter, amend, modify or forego any of the grounds of appeal before or at the time of hearing.”

5. It was submitted on behalf of the assessee by Ld. Counsel that Ld. AO has failed to appreciate that it was with the professional assistance of these firms M/s. Khaitan Sud & partners and M/s. Sapphaire Professional Services Pvt. Ltd. and CS Jariwala & Company, assessee had initiated process to purchase paper from M/s. Garnett Specialty Papers Ltd. and latter for considering to take over the company itself, However, due to certain business restrictions the take-over could not be completed and in the next financial year. Paper worth 3,20,99,547/- were purchased from the said company. It was submitted that the Tax Authorities have substituted their opinion with regard to prudence involved in engaging professional services of legal nature. It was submitted that it is not the case of ld. Tax Authorities that the services were not availed at all nor any inquiry in that regard was conducted but on the basis of adverse inference of failing to make a purchase of paper during the current year. The professional and legal services were considered to have been actually not availed. It was submitted that Ld. Tax Authorities Below have proceeded on a false notion that being expert in its business the assessee did not require any external agency to help. Ld. Counsel relied the following judgment to contend that expenses of similar nature have been allowed and only because any project could not be undertaken that does not become a ground for disallowing the expenditure made on professional services.:-

1. Commissioner of Income Tax vs. Priya Village Roadshows Ltd. 2009 (8) TMI 765-Delhi High Court

2. Krishak Bharati Cooperative ltd. vs. Jt. Commissioner of Income Tax, Special Range 12, New Delhi 2014 (9) TMI 99- ITAT Delhi

- 3. *Shree Digvijay Cement Co. Ltd. Vs. A.C.I.T. Circle-2, Jamnagar. 2019 (10) TMI 1229-ITAT Rajkot***
- 4. *M/s. NYK Line (India) Ltd. vs. Addl. Commissioner of Income Tax, Mumbai 2015 (10) TMI 2375-ITAT Mumbai***
- 5. *Kee Pharma Ltd., New Delhi vs. ITO, ITA No. 6092/Del/2015, ITAT Delhi***

5.1 On the other hand, ld. DR supported the orders of Ld. Tax Authorities below submitting that the same are well reasoned.

6. The bench has given thoughtful consideration to the matter on record and is of considered opinion that the ld. CIT(A) has confirmed the addition by stretching too far the rules of prudence. The Ld. AO himself observed in the order that the services engaged were from top most legal professionals. If that was the view of Ld. Tax Authorities then it was not justified to discredit the bills raised by them for services holding that assessee failed to provide substantive evidence and it could not succeed in getting supply of paper during the year or even failed to take over the company. The business uncertainties are infinite and to discredit any professional service on basis that concerned business activity having failed inspite of professional service, is not prudent approach. The very purpose of availin such services of professionals is to ensure that the entrepreneur understands well the SWOT analysis of prospective business activity. Entrepreneur's own experience is not a ground for tax authorities to question the wisdom of assessee to have engaged the expert. While factually otherwise also, in the next year, assessee had purchased paper worth Rs. 3,20,99,547/- from **M/s. Garnett Specialty papers Ltd.** as is evident from the details of invoices given on page no. 51-52 of the paper book. So there is evidence which shows that having failed to take over the said company in relevant year, material was still purchased from it in next year.

6.1 Next, Ld. CIT(A) has also fallen in error in observing that as expenses were incurred for acquiring or taking over of the company they could not be

revenue in nature and not allowable as claimed by the appellant. Backward or forward integration of the activities of a manufacturing business cannot be considered to be establishment of a new enterprises to consider such legal and professional expenses to be for acquiring new assets and to not treat them revenue expenditure. Hon'ble Delhi High Court in **Commissioner of Income Tax vs. Priya Village Roadshows Ltd. (supra)** has held that expenses incurred in preparation of feasibility report in the same line of business has to be treated as revenue expenditure. In this judgment itself Hon'ble High Court has also taken into consideration that if the project is shelved that does not make the expenditure made upon feasibility study to be disallowed as business expenditure u/s 37 of the Act. Relying this judgment a Co-ordinate Bench in the **Krishak Bharati Cooperative ltd. vs. Jt. Commissioner of Income Tax (supra)** had held that the expenditure which were made by the said assessee to obtain consulting report/ feasibility study on connected business activity, which was ultimately abandoned can be debit under the head "legal and professional charges" as a revenue expenditure.

7. In the light of aforesaid the grounds raised are sustained as Ld. CIT(A) has erred in confirming the disallowance of Rs. 22,45,508/- out of legal and professional charges made by the Ld. AO. **The appeal of assessee is allowed.**

Order pronounced in open court on this 29th day of April, 2022.

Sd/-

**(R.K.PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 29th.04.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI