

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.4887/Mum./2019
(Assessment Year : 2016-17)

Aybi Energy Pvt. Ltd.
220, Midas Sahar Plaza
Andheri Kurla Road
Andheri (East), Mumbai 400 059
PAN – AAICA8325P

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-9(1)(2), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Mehul Jain

Date of Hearing – 08.06.2022

Date of Order – 24/06/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The aforesaid appeal has been filed by the assessee challenging the impugned order dated 30/05/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-16, Mumbai [*learned CIT(A)*], for the assessment year 2016-17.

2. When this appeal was called for hearing, neither anyone appeared on behalf of the assessee nor filed any application seeking adjournment.

On a perusal of the record, we noticed that this appeal was listed on 8 previous occasions and no one appeared on behalf of the assessee despite fresh notice issued on each occasion through registered post or through office of learned Departmental Representative ("*learned DR*"). Therefore, we proceed to dispose off these appeals *ex-parte* qua the assessee, after hearing the learned DR and on the basis of material available on record.

3. In this appeal, assessee has raised following grounds:

"1. On facts and circumstances of the case and in law, the Commissioner (Appeals) erred in sustaining the disallowance made by learned Assessing Officer of share issue expenses of Rs.1,46,610.

According to the Appellant, its claim for the share issue expenses ought to have been allowed either u/s 37 or u/s 35D of the Income Tax Act, 1961.

2. On facts and circumstances of the case and in law, the Commissioner (Appeals) erred in sustaining the ad-hoc 50% disallowance of Rs. 23,29,812/- made by learned Assessing Officer of Sales Promotion Expenses claimed by the Appellant.

3. On facts and circumstances of the case and in law, the Commissioner (Appeals) erred in sustaining the disallowance of Rs 30,15,000/- made by learned Assessing Officer of Professional Fees claimed by the Appellant.

4. Both the lower authorities erred in passing their respective orders without verification of records and granting the Appellant an adequate opportunity of being heard. The orders passed by them are in contravention of the principles of natural justice and are hence bad in law.

5. The Appellant reserves the right to add, alter or delete any of the above grounds with permission of the Hon'ble Tribunal."

4. The brief facts of the case, as emanating from the record are: The assessee is engaged in the business of providing management, scientific and technical consultancy, project procurement and business support

services and various related services in the field of oil and gas industry. For the year under consideration, assessee filed its return of income on 08/10/2016 declaring total income at Rs. 2,09,53,580. Vide order dated 23/12/2018 passed under section 143(3) of the Act, Assessing Officer made following disallowances:

(a) Share of Issue Expenses of Rs.1,46,610. During the year under consideration, assessee had issued fresh equity at par, in regard to which company has incurred ROC filing fees expenses of Rs. 1,46,610 relating to increase and authorised capital. These charges were claimed as expenses by the assessee. As such expenses are in the nature of 'capital expenditure' and not covered under section 35D of the Act, Assessing Officer disallowed the said expenditure in view of section 35D (2) (c) of the Act.

(b) Sales promotion expenses of Rs.23,29,812. The assessee incurred "Sales Promotion Expenses" amounting to Rs. 46,69,624. In absence of any details in support of the assessee's claim, Assessing Officer disallowed 50% of the aforesaid expenditure under section 37 (1) of the Act.

(c) Professional fees of Rs.30,15,000. During the year under consideration, the assessee incurred expenses under the head 'professional fees' amounting to Rs. 37,24,233. As the bills submitted by the assessee were not having description of kind of services which were rendered and relevance of same for the purpose of business, Assessing Officer sought further information. However, in absence of further details, Assessing Officer disallowed expenditure of Rs. 30,15,000, as claimed by the assessee.

5. In appeal, learned CIT(A) vide impugned order dated 30/05/2019 after taking note of the submissions filed by the assessee and after considering various judicial precedents, dismissed the appeal filed by the assessee.

6. During the course of hearing, learned DR vehemently relied upon the order passed by the lower authorities and reiterated their findings.

7. We have considered the submissions and perused the material available on record. From the record, it is evident that even before the learned CIT(A), the assessee failed to justify its claim of various expenditures disallowed by the Assessing Officer. As, no contrary evidence/material is available on record and in view of detailed factual findings of lower authorities, we find no reason to interfere with the impugned order passed by the learned CIT(A). As a result, grounds raised by the assessee are dismissed.

8. In the result, appeal by the assessee is dismissed.

Order pronounced in the open court on 24/06/2022

Sd/-
S. RIFAUH RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 24/06/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai