

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 110/Hyd/2015  
(निर्धारण वर्ष / Assessment Year: 2009-10)

Deputy Commissioner of Income Tax, Circle-2(1), Hyderabad अपीलार्थी / Appellant	Vs.	M/s.KSK Energy Ventures Limited, Hyderabad [PAN No. AACCK0220B] प्रत्यर्थी / Respondent
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निर्धारिती द्वारा/Assessee by: Shri S.Rama Rao, AR  
राजस्व द्वारा/Revenue by: Ms. M.Narmada, CIT-DR

सुनवाई की तारीख/Date of hearing: 07/07/2022  
घोषणा की तारीख/Pronouncement on: 14/07/2022

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Challenging the order dated 14/11/2014, passed by the Learned Commissioner of Income Tax (Appeals)-III, Hyderabad ("Ld. CIT(A)") in the case of M/s.KSK Energy Ventures Limited, ("the assessee") for the AY.2009-10, Revenue preferred this appeal.

2. Revenue is challenging in this appeal the action of the Ld. CIT(A) in allowing the deduction of Rs. 50,58,08,417/- as revenue expense under section 37(1) of the Income Tax Act, 1961 (for short "the Act") in the

assessment year 2009-10 as against the learned Assessing Officer allowing a sum of Rs. 10,11,61,683/- under section 35D of the Act. Brief facts relating to this issue are that the assessee is a company engaged in the business of development of power project. In the return of income filed on 26/09/2009 for the assessment year 2009-10, the assessee claimed a deduction of Rs. 10,11,61,683/- under section 35D of the Act representing 1/5<sup>th</sup> of the total issue expense of Rs. 50,58,08,417/- and the same was allowed by the learned Assessing Officer in the order dated 29/12/2011 passed under section 143(3) of the Act.

3. In the appeal filed challenging certain other additions made by the learned Assessing Officer, the assessee preferred an additional ground claiming for a deduction of the entire expense of Rs. 50,58,08,417/- under section 37(1) of the Act stating that during the scrutiny assessment proceedings for the subsequent assessment year 2010-11, the assessee realising that in fact it is entitled to claim the above issue expenses under section 37(1) of the Act instead of section 35D of the Act, taking the clue from the observations made by the Hon'ble Apex Court in the case of Brooke Bond India Ltd. Vs. CIT (1997) 91 taxman 26 (SC).

4. Ld. CIT(A) entertained the additional ground and holding that there is nexus between the expenditure and the purpose of the business, which business need not necessarily be the assessee's own business, the relevant expenditure would ordinarily be entitled to deduction, and applied the law laid down by the Hon'ble Apex Court in the case of SA Builders Limited Vs. CIT (2007) 288 ITR 1 (SC) to allow the entire IPO issue expenses of Rs. 50,58,08,417/-. Revenue is challenging the same before us by placing reliance on the decisions reported in M/s Brooke Bond India Ltd vs. CIT

(1997) 91 taxman 26 (SC), M/s. Punjab State Industrial Development Corporation Ltd Vs. CIT 225 ITR 792 (SC) and CIT Vs. Kodak India Limited 253 ITR 447 (SC).

5. Per contra, Ld. AR submitted that in the return of income filed on 26/09/2009 for the assessment year 2009-10, the assessee claimed deduction of Rs. 10,11,61,683/- under section 35D of the Act representing 1/5<sup>th</sup> of the total issue expenses of Rs. 50,58,08,417/- and the Ld. CIT(A), after having carefully studied the business model as explained by the assessee in its submission before him, held that the entire issue expenses of Rs. 50,58,08,417/- are allowable as deduction on revenue account under section 37(1) of the Act. Ld. AR made reference to so many decision in support of his argument that the courts are slowly leaving the beaten track of strict view of the concept of capital expenditure and started being benevolent in interpreting the concept of revenue expenditure, and what has traditionally been treated as capital expenditure is now being looked at as on revenue account.

6. We have gone through the record in the light of the submissions made on either side. P&L Account of the assessee reflects "administration and operating" expenses to the tune of Rs. 10,41,28,612/- and according to the assessee such an amount represents the 1/5<sup>th</sup> of the expense incurred for public issue during the year claimed under section 35D of the Act. Learned Assessing Officer allowed the same. During the course of 1<sup>st</sup> appellate proceedings, by way of additional grounds, assessee claimed that the learned Assessing Officer ought to have allowed the issue expenses of Rs. 50,58,08,417/- under section 37(1) of the Act instead of allowing 1/5<sup>th</sup> of the same under section 35D of the Act on the ground that

the assessee realising the fact that is entitled to claim the above issue expenses under section 37(1) instead of under section 35D of the Act taking cue from the observations made by the Hon'ble Apex Court in the case of Brooke Bond India Ltd (supra).

7. Ld. CIT(A) considered the claim of the assessee in the light of the decision of the Hon'ble Apex Court in the case of SA Builders Limited Vs. CIT (2007) 288 ITR 1 (SC) and allowed the entire expense under section 37(1) of the Act. According to the assessee, they had a cue from the decision of Hon'ble Apex Court in the case of Brooke Bond India Ltd (supra). In Brooke Bond India, the Hon'ble Apex Court clearly held that,-

*4. ...While holding that the amount of Rs. 1,50,000/- paid to the Registrar of Companies as filing fee for enhancement of the capital was not revenue expenditure, this Court has said:-*

*"We do not consider it necessary to examine all the decisions in extenso because we are of the opinion that fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital incidentally that would certainly help in the business of the company and may also help in profit making, it still retains the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company. we are, therefore, of the opinion that the view taken by the different High Courts in favour of the Revenue in this behalf is the preferable view as compared to the view based on the decision of the Madras High Court in Kisenchand Chellaram's case."*

*5. This decision thus covers the question that falls for consideration in this appeal.*

*6. Dr. pal has, however, submitted that this decision does not cover a case. like the present case, where the object of enhancement of the capital was to have more working funds for the assessee to carry on its business and to earn more profit and that in such a case the expenditure that is incurred in connection with issuing of shares to increase the capital has to be treated as revenue expenditure. In this*

*connection, Dr. pal has invited our attention to the submissions that were urged by the learned counsel for the assessee before the Appellate Assistant Commissioner as well as before the Tribunal it was submitted on behalf of the assessee that increase in the capital was to meet the need for working funds for us the assessee-company. But the statement of case sent by the Tribunal does not indicate that a finding was recorded to the effect that the expansion of the capital was undertaken by the assessee in order to meet the need for more working funds for the assessee. We, therefore, cannot proceed on the basis that the expansion of the capital was undertaken by the assessee for the purpose of meeting the need for working funds for the assessee to carry on its business, In any event, the above quoted observations of this Court in m/s Punjab State Industrial Development Corporation Ltd. Chandigarh (supra) clearly indicate that though the increase in the capital results in expansion of the capital base of the company and incidentally that would help in the business of the company and incidentally that would help in the business of the company and may also help in the profit making, the expenses incurred in that connection still retain the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company.*

8. It is, therefore, clear that while considering the contingency like where the object of enhancement of the capital was to have more working funds for the assessee to carry on its business and to earn more profit and that in such a case the expenditure that is incurred in connection with the issue of shares to increase the capital has to be treated as revenue expenditure, the Hon'ble Apex Court held that though the increase in the capital results in expansion of the capital base of the company and incidentally that would help in the business of the company and may also help in profit making, the expenses incurred in that connection still remain the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company.

9. The observations of the Hon'ble Apex Court in the case of Brooke Bond India Limited (supra) are applicable to the facts of the case on hand

on all fours. Irrespective of the fact of assessee increasing the capital base, whether it is for working capital or for creating the capital asset, the expenditure incurred in that connection still retains the character of capital expenditure to reach section 37(1) of the Act has no application and is governed only by 35D of the Act.

10. In view of this settled legal position by way of a binding precedent, we have no hesitation to hold that the Ld. CIT(A) committed error in allowing the entire expenditure as revenue expenditure under section 37(1) of the Act, and the learned Assessing Officer was right in accepting the contention of the assessee before him that the 1/5<sup>th</sup> of the public issue expenses are allowable as deduction under section 35D of the Act. We, accordingly, set aside the orders of the Ld. CIT(A) on the aspect of applicability of section 37(1) of the Act to the public issue expenses, and restore the order of the learned Assessing Officer allowing such expenses in accordance with section 35D of the Act.

11. In the result, appeal of the Revenue is accordingly allowed.

Order pronounced in the open court on this the 14<sup>th</sup> day of July, 2022

Sd/-  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

TNMM

Hyderabad,  
Dated: 14/07/2022

Copy forwarded to:

1. Deputy Commissioner of Income Tax, Circle-2(1), Hyderabad.
2. M/s.KSK Energy Ventures Limited, 8-2-293/82/A/431/A, Road No.22, Jubilee Hills, Hyderabad.
3. CIT(Appeals)-III, Hyderabad.
4. CIT-II, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD