

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member**

*AND*

**Shri K.Narasimha Chary, Judicial Member**

ITA No.1321/Hyd/2019		
Assessment Year: 2016-17		
DCIT,Circle-2(1) Room No.514 5 <sup>th</sup> Floor Signature Towers Kondapur-500 084	Vs.	Jath Wind Energy Private Limited 8-2-684/A, NSL Icon, 4 <sup>th</sup> Floor, Road No.12, Banjara Hills Hyderabad-500 034  PAN : AADCJ1913D
(Appellant)		(Respondent)
Assessee by:		Shri Aliasager Rampurawala, CA and Shri Pratik Shah,CA
Revenue by:		Shri Kumar Aditya, Sr.AR
Date of hearing:		13.10.2022
Date of pronouncement:		18.10.2022

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the Revenue is directed against the order dated 04.04.2019 passed by the Learned Commissioner of Income Tax (Appeals)-2, Hyderabad relating to AY 2016-17.

2. There is a delay of '47' days in filing of this appeal by the Revenue for which the revenue has filed a condonation application explaining the reasons for such delay. After considering the contents of the condonation application and after hearing the ld. Counsel for the assessee, the delay in filing of this appeal by the revenue is condoned and the appeal is admitted for adjudication.

3. The grounds raised by the revenue are as under:-

1. *Whether on the facts and circumstances of the case, the CIT(A) is correct in law in allowing upfront fee and other charges as revenue expenditure when the same was paid towards loan for acquisition of plant and machinery which is providing enduring benefit to the assessee?*

2. *Whether on the facts and circumstances of the case, the CIT(A) is correct in law in placing reliance on the decision of the Apex court in civil no.4072-73 dated 06.04.2017 which is factually distinguishable from the instant case?*

4. Facts of the case, in brief, are that the assessee is a company engaged in the business of developing and setting up of power projects. It filed its return of income on 26.09.2014 declaring total loss of Rs.33,69,62,382/-. The case was selected for scrutiny under CASS and statutory notices u/s. 143(2) and 142(1) were issued to which the AR of the assessee appeared before the AO from time to time and filed the requisite details.

5. During the course of assessment proceedings, the AO noted that assessee has debited Rs.22,60,370/- in the P&L account on account of amortization of ancillary borrowing costs, which he has added in the computation but again he reduced Rs.2,20,30,806/- under the head "Borrowing costs incurred during the year( 100% allowed as deduction.). On being asked by the AO to explain as to why the amount of Rs.1,97,90,436/- (i.e. Rs.2,20,30,806-22,60,370/-) should not be disallowed being capital expenditure, the assessee reply as under:-

*"The assessee is following the policy to amortize processing fee incurred for obtaining term loans over the period of term loans repayment and the unamortized processing fee has been reflected in the Balance sheet as unamortized Expenses (Loan Processing Fee, Upfront fee) under the head other non-current assets (Schedule-II) and Other current Assets(Schedule-16). The details of the same are already furnished.*

*During the year, the assessee has incurred Rs.2,20,30,806/- towards processing fee and amortized Rs.22,60,370/- and debited to Profit & Loss Account. In the computation of Total income, the Upfront Fee/Processing charges of Rs.2,20,30,803/- incurred during the year has bene claimed as revenue expenditure which is on part with interest.*

The assessee also relied on various decisions

6. However, the AO was not satisfied with the arguments advanced by the assessee and made addition of Rs.1,97,70,436/- by recording the following reasons:-

*“5. The submission made by the assessee is not found to be acceptable for the following reasons:*

*1.The assessee has paid the upfront fees on the loan taken by it. The loan has been taken for acquisition of plant and machinery which is providing enduring benefit to assessee. Therefore the expenses incurred on account of upfront fee needs to be capitalized.*

*2. Assessee has placed reliance on Hon’ble Supreme court Judgment in case of M/s. India Cements Ltd vs. Commissioner of Income Tax, Madras [060 ITR 0052]. In this regard it is submitted that in the quoted case law, expenditure involved was in nature of legal fee, registration fees and stamps etc., on obtaining loan. Further issue decided in quoted case was that whether same has been incurred for business purpose or not. Whereas in the present case assessee has paid upfront fee towards the loan taken for the purpose of acquisition of asset and has already taken it to balance sheet. Hence quoted case law is not applicable to the instant case.*

*3. Further assessee has placed reliance on Hon’ble Supreme Court Judgment in case of Kedarnath Jute Mf.Co Ltd. vs. CIT(Central) Calcutta [082 ITR 0363]. In this regard it is submitted that in the quoted case the issue was whether deduction claimed by assessee on account of sales tax was deductible as business expenses or not. Therefore facts of the quoted case are different from the instant case.*

*4. Assessee has also relied on Hon’ble Supreme court Judgment in case of DCIT vs Gujarat Alkalies and Chemicals Ltd. In this regard it is submitted that in the quoted case the issue was allowability of interest expenses when business was not commenced. Therefore facts of the quoted case are different from the instant case.*

*5. Further assessee has placed reliance on Delhi Tribunal judgment in case of ACIT vs. Goetze TP(India) Ltd. wherein it was held that upfront fee paid by assessee for processing of loan was revenue expenditure. However merely because part of upfront fee was treated as deferred revenue expenditure in the books of accounts would not be a ground for disallowing the same. While considering the allowability of expenditure, the nature of expenditure was to be considered and not the entries made in books of accounts. In this regard it is submitted that in the quoted case, loan was obtained for general corporate purposes as per copy of agreement whereas in the instant case loan was taken for acquisition of plant and machinery. In fact tribunal itself has mentioned that interest is allowable as long as it was paid in respect of business or profession and not paid for acquisition of capital asset.*

7. Before the ld.CIT(A), the assessee made elaborate arguments. Based on the arguments made by the assessee, the ld.CIT(A), following the order for AY 2014-15 in assessee's own case vide order dated 29.11.2019 allowed the claim of the assessee and deleted the addition made by the AO.

8. Aggrieved with such order of the ld.CIT(A), the revenue is in appeal before the Tribunal.

9. The ld. DR strongly challenged the order of the ld.CIT(A) in deleting the disallowance made by the AO. The ld. DR referring to the order of the ld.CIT(A) submitted that ld.CIT(A) while allowing the claim of the assessee has followed the decision of Hon'ble Supreme Court in the case of DCIT vs. Core HealthCare Ltd reported in 298 ITR 194. However, the facts of that case are different from the facts of the present case. Therefore, the order of the ld.CIT(A) is not correct. He accordingly submitted that the order of the ld.CIT(A) be reversed and that of the order of the AO be restored. He also relied on the following decisions :-

*i. Vardhaman Polytex Ltd. reported in [2008] 167 taxman 93 (Punjab & Haryana) dated 21.01.2008*

*ii. Vardhma Polytex Ltd. reported in [2012] 25 taxmann.com 281 (SC) dated 12.09.2012*

*iii. Core Health Care Ltd. reported in [2008] 167 taxman 206 (SC), dated 08.02.2008*

*iv. Shri Rama Multi Tech Ltd. reported in [2017] 80 taxmann.com 375 (SC) dated 06.04.2017.*

10. The ld. Counsel for the assessee, on the other hand, while supporting the order of the ld.CIT(A) submitted that the issue stands squarely covered in favour of the assessee by the decision of the Hon'ble Supreme court in the case of CIT vs. Shri Rama Multi Tech Ltd. (supra). Referring to the order of the Ahmedabad Bench of the Tribunal in the case of Shri Rama Multi Tech Ltd. vs

ACIT reported in (2005) 92 TTJ Ahd 568, he drew the attention of the Bench to para 8.4 of the order, where the Tribunal has allowed the financial charges, legal and professional charges and upfront fees by observing as under:-

*“8.4.....As far as financial charges, legal and professional charges and upfront fees are concerned, assessee has mainly relied on the decision in India Cement (supra). In determining the nature of expenditure (revenue or capital) incurred for obtaining loan, it is irrelevant to consider the purpose of loan. The amount spent - stamp duty, lawyer fee, etc., for obtaining loan secured by charge on its fixed assets is as revenue expenditure, because the transaction was entered into directly to facilitate the business of the company and was made on ground of commercial expediency. Upfront fee is also related to loan for expansion of the business. In the facts and circumstances of the case, financial charges, legal and professional charges and upfront fees are allowable expenditure. AO is directed accordingly.”*

11. Referring to the decision of Hon’ble Gujarat High Court in the case of CIT vs. Shri Rama Multi Tech Ltd. vide Tax appeal No.982/2015 order dated 01.02.2006, he submitted that the revenue has proposed ‘11’ questions out of which question no.6 by the revenue reads as under:-

*“Whether the Appellate Tribunal is right in law and on facts in allowing the expenses claimed by the assessee towards financial charges aggregating to Rs.45,38,678/-, professional charges of Rs.64,75,000/- and upfront fees charges of Rs.80,34,352/-, as revenue expenses, when the said charges were ancillary expenses for obtaining loan utilized for acquiring capital assets and therefore, ought to have been capitalized.”*

12. Referring to the order of the Hon’ble High Court at para 4 of the order, he submitted that the High Court has upheld the order of the Tribunal by observing as under:-

*4. Insofar as the merits of the issue are concerned, as can be seen from impugned order of Tribunal, insofar as proposed question No.6 is concerned, it has applied the ratio of the Apex court decision in the case of India Cements Ltd. vs. CIT, Madras [1966] 60 ITR 52, and there is nothing on record to show as to how the same is incorrect in any manner whatsoever. Therefore, no infirmity can be found in relation to the same.*

13. Referring to the decision of the Hon'ble Supreme Court, he submitted that Hon'ble Supreme Court upheld the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Shri Rama Multi Tech Ltd. reported in 393 ITR 371. He accordingly submitted that the order of the ld.CIT(A) being in accordance with law should be upheld and the grounds raised by the revenue should be dismissed.

14. We have heard the rival arguments made by both the sides, perused the orders of the AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions relied on by both sides. We find the AO in the instant case made disallowance of amount of Rs.1,97,90,436/- on the ground that the upfront fee and other charges claimed by the assessee as revenue expenditure are capital in nature being paid towards loan for acquisition for plant and machinery, which is providing enduring benefit to the assessee. We find the ld.CIT(A) deleted the addition by following his order for AY 2014-15 as well as the decision of Hon'ble Supreme Court in the case of Shri Rama Multi Tech Ltd. (supra). We do not find any infirmity in the order of the ld.CIT(A) on this issue. We find the Hon'ble Apex Court in the case of Rama Multi Tech Ltd.(supra) while dismissing the appeal filed by the revenue has observed as under:-

*3. The respondent is a public limited company. For the assessment year 2000. It had incurred an expenditure of Rs.3,37,84,348/- towards payment of Interest on loans taken and other Items for setting up the industry. Even though it had capitalized the said amount and claimed depreciation before the Assessing Authority, however, in appeal, the respondent raised additional ground claiming deduction of the aforesaid amount on interest paid with some other expenditure on other items connected therewith as revenue expenditure.*

*4. The Commissioner of Income Tax (Appeals) vide order dated 5.3.2004 allowed the claim of the respondent-assessee only to the extent of interest amount of Rs.2,92,45,670/- paid on loans taken by it for establishing the industry. He, however, disallowed the other expenditures, namely, financial charges, professional expenses, upfront fee etc.*

5. The Revenue, feeling aggrieved by the said allowance, preferred an appeal before the Income Tax Appellate Tribunal which vide order dated 02.12.2004 upheld the order of the Commissioner of Income Tax (Appeals) insofar as it related to the allowance of the expenditure claimed towards payment of interest and also allowed expenditure on other items connected therewith. The High Court did not interfere in the appeal preferred by the Revenue on the ground that the Tribunal has followed the decision of the Gujarat High Court in the case of Dy. CIT v. Core Health Care [2001] 251 ITR 61.

6. Feeling aggrieved, the Commissioner of Income Tax has preferred the present appeal.

7. We have heard learned counsel for the parties.

8. We find that this Court in the case of Dy. CIT v. Core Health Care Ltd. [2008] 298 ITR 1941/167 Taxman 206 has affirmed the view taken by the Gujarat High Court.

9. In this view of the matter, we are of the considered opinion that the Income Tax Appellate Tribunal was justified in allowing the expenditure of Rs.3,37,84,348/- towards the interest paid on the loans taken and expenditure on other items connected herewith for establishment of the unit, while affirming the order of the Commissioner of Income Tax (Appeals).

10. Learned counsel for the Revenue-appellant submitted that the respondent cannot claim depreciation on the amount of interest which has been allowed as revenue expenditure and therefore, the depreciation referable to such interest expenditure be reversed. Learned counsel for the respondent however submitted that there is nothing on record that depreciation on this amount has been taken by the respondent.

11. Be that as it may, if as a fact the respondent has taken any depreciation on the amount of interest and other items which has been allowed as revenue expenditure that much depreciation should be reversed by the assessing authority.

12. Subject to the aforesaid observations, the appeals fail and the same are dismissed.

15. In view of the binding decision of the Hon'ble Supreme Court holding that expenditure towards payment of interest and loans taken for setting up industries by the assessee and financial charges, upfront fee, professional expenses etc. are allowable as revenue expenditure, we do not find any infirmity in the order of the Id.CIT(A) on this issue. Accordingly, the grounds raised by the revenue are dismissed.

16. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the Open Court on 18<sup>th</sup> October, 2022.

<b>(K.NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated        October, 2022.

*Thirumalesh/sps*

Copy to:

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3	CIT(A)-2, Hyderabad
4	PrI.CIT-2, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*