

**आयकर अपीलिय अधिकरण, कोलकाता पीठ “बी”, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 2608/Kol/2019**

**Assessment Year: 2012-13**

M/s Bhuwania Associates Pvt. Ltd. (PAN: AABCB 3136 A)	Vs.	DCIT, Circle-3(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	14.11.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	20.12.2022
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, FCA
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT, Sr. D.R

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-11, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 21.08.2019 for the AY 2012-13.

2. In the first grounds of appeal, the assessee has assailed the order of Ld. CIT(A) whereby the Ld. CIT(A) has affirmed the order of AO upholding the disallowance of Rs. 17,00,000/- which was made by the AO on account of share capital and share premium.

3. Facts in brief are that during the course of scrutiny proceedings, the AO noted that the assessee has received share capital /share premium amounting to Rs. 17,00,000/- from the three companies namely:

- i) Marigold Barter Pvt. Ltd.                      Rs. 11,40,000/-
- ii) Mangalmurti Vincom Pvt. Ltd.              Rs. 2,37,500/-
- iii) Sampark Merchandise Pvt. Ltd.         Rs. 2,37,500/-

The assessee has issued equity shares at face value of Rs. 10/- each at a share premium of Rs. 190/- per share. According to AO, the assessee is a closely held company and has issued equity shares at a high premium which appears to be sham transactions. The AO observed that the assessee did not have any regular business transaction or regular acquaintance with the investors, the investor companies having no reasons to invest such huge amount in the assessee company and the assessee having no business transactions in the past or future. Finally he added the entire share capital to the income of the assessee u/s 68 of the Act.

4. In the appellate proceedings, the Ld. CIT(A) simply affirmed the order of AO on the ground that the assessee has issued shares at a high premium which were of face value of Rs. 10/- each that too when assessee has closed down its business and incurred heavy losses and coming to the conclusion that these transactions were not genuine thereby justifying the addition made by the AO.

5. We have heard the rival contentions and perused the material on record. We find that the assessee has received share capital/share premium from three companies by issuing equity shares of face value of Rs. 10/- each at a premium of Rs. 190/- per share. We note the assessee has filed all the details qua the said companies before the AO such as PANs, ITRs, Annual Accounts, bank statements, copies of balance sheets etc. We observe from the said evidences filed before us that in the case of first investor M/s Marigold Barter Pvt. Ltd., the investor has made investment of Rs. 11,40,000/-

whereas in the other two investors have invested Rs. 2,37,500/- each paying the amount invested. We observe that there is creditworthiness of the investor in the case M/s Marigold Barter Pvt. Ltd. who has invested through banking channel and furnished other details relating to the investment made while as regards the two investor companies, the cash investments were made and the creditworthiness could be proved even before us. We are, therefore, partly in concurrence with the conclusion of the Id CIT(A) and accordingly reverse the conclusion of the Id CIT(A) on the first investor i.e M/s Marigold Barter Pvt. Ltd. and directing the AO to delete the disallowance of Rs. 11,40,000/- while the addition to the tune of Rs. 4,75,000/- is sustained by agreeing with the first appellate authority. Accordingly ground no. 1 is partly allowed.

6. Issue raised in ground no. 2 is against the order of Ld. CIT(A) partly upholding the disallowance of loss amounting to Rs. 2,40,52,000/- and restricting the same to Rs. 22,06,403/- (Rs. 24052000 – 21845597).

7. Facts in brief are that the AO observed from the profit and loss account that the assessee has made profit of Rs. 1,50,06,000/- in AY 2011-12 on a turnover of Rs. 62,85,95,000/- but in the current year the assessee has shown a loss of Rs. 2,40,52,000/- on a turnover of Rs. 62,18,00,000/-. The AO rejected the claim made by the assessee on the ground that the assessee has failed to explain the loss during the year and the same was disallowed.

8. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by restricting the disallowance of Rs. 22,06,403/- by observing and holding as under:

*“21.As for expenses under other heads, I find the appellant’s explanations to be unjustifiable. In order to be brief, only those expenses are taken up for discussion where substantial increase in rupee terms have been noticed.*

*22. To begin with, it must be stated that the appellant is stated to have closed down its business on 23.11.2011. This also is the date on which power supply to the appellant was discontinued by the DVC. Therefore, whatever, business was done, was between 01.04.2011 to 23.11.2011. The business was not done for the entire year. It was done only for 7 months and,*

therefore, certain day to day expenses directly related to the functioning of the business, other than the financial charges, will have to be restricted to the period of seven months only.

23. *Wages & Allowances: There is an increase of 59.73% on this account, from Rs. 8,91,669 during the last AY to Rs. 14,24,268 in the present AY 2012-13. The appellant has explained that,*

*“The company commenced operations of its Concast Division during the year and had inducted new staff for the same. This resulted in increase in wage expenses during the year under consideration as compared to the previous year. Further, there was increment of wages in the Induction Furnace Division and Rolling Mill Division.”*

24. *The above explanation comes across as unsubstantiated one. It does not provide details of when and where was the Concast Division started, what was its capacity and how many staff was inducted for it. The appellant has also not provided the details and evidences of their wages. Moreover, when the business in general was on a downslide and it finally closed down on 23.11.2011, the appellant’s explanation regarding starting a new project appears to be devoid of factual credibility and, hence, is unacceptable.*

25. *Similarly, the following is also observed:*

(a) *Loading and Unloading Charges have increased from Rs. 5,060 to Rs. 13,861.*

(b) *Repairs & Maintenance has grown from Rs. 9,45,526 to Rs. 12,91,747.*

(c) *Bank charges, Interest on TL 8; CC have grown up along with Insurance charges’*

(d) *Discount allowed has gone up from Rs. 35,063 to Rs. 79,344 during the year. The explanation given is that the steel business had started showing a downward trend and in order to recover the money from parties various discounts have been allowed.*

26. *The appellant has merely stated something in the form of an explanation without adducing any evidence. During the appellate proceedings, it was asked to explain the reasons for growth in expenses along with sufficient evidences but the same has not been furnished. I find that the business ran only for 7 months from 01.04.2011 to 23.11.2011. In such a situation, I do not find any justification in accepting the claims of the appellant. Hence the claims of increased expenses is rejected.*

27. *A similar fact is noticed in respect of Depreciation claimed by the appellant. It is observed that Depreciation has increased from 2,82,71,447 during the last year to Rs. 4,31,73,833/- during the AY 2012-13. The appellant has explained this as under:*

*Depreciation has increased by over 50% due to charging of the same on assets acquired during the earlier years for Concast Mill but put to use in the financial year 2011-12.*

28. *The appellant has furnished certain copies of invoices to show that new assets were acquired. There is no explanation about what the Concast Mill is all about, who owns it, whether it is a part of the appellant’s business or is it a separate business started by the partners as a separate entity, etc. There is an invoice dated 30.07.2011 from Concast (India) Ltd., Mumbai, which pertains to small items of various descriptions totally amounting to Rs. 4,20,215. The invoice is drawn for Bhuwania Associates (the appellant) and the items are to be delivered at Ramgarh. Similarly, there are invoices from Ganapati Steel Pvt. Ltd. all of which*

have been issued on various dates in the month of November 2011. The appellant has also furnished invoices from S. R. Traders all of which pertain to various dates in the month of November 2011.

29. There is no evidence on record to establish the authenticity of these purchases. The invoices are not accompanied by any detail and evidence of payments, the details of where was the delivery taken, the evidence of receipt of the same at the go-down/ premises of the appellant, etc. There also is no evidence of these items being put to Use. All these invoices are issued in the name of Buvania Associates. There is no mention of Concast Unit.

30. For depreciation to be claimed, the appellant should furnish adequate evidence to show that the assets in question were actually put to use. Merely furnishing copies of invoices whose authenticity too is doubtful cannot establish the fact that the items were actually received physically and were actually put to use.

31. An important point to be noted here is that the appellant's business closed down on 23.11.2011. In view of this fact, it is clear that the items invoiced in the month of November 2011 could not have been put to use in any case as after receipt the assets would need to be installed. Moreover, the date of invoice is not the date of receipt. The delivery, if at all it happened, would be much later than the date on which the invoice was drawn. Hence, these items cannot be said to have been put to use with reference to the date of invoice. Further, the appellant has stated that the assets were acquired by the appellant during the earlier years but were put to use during the year. The invoices submitted during the appellate proceedings relate to the present year under consideration. The appellant has not submitted any evidence or any details of any asset that was acquired during the 'earlier years' and was put to use during the present year. Therefore, the appellant's explanation is held to unsubstantiated and devoid of any evidence. As such the explanation related to hike in depreciation is rejected and: is dismissed. Therefore, the increase in the value of depreciation by Rs. 1,49,02,386 (from 2,82,71,447 during the last year to Rs. 4,31,73,833 during the AY 2012-13) is directed to be disallowed. For the same reasons as discussed in the above paragraphs, the enhanced value of expenses except the DVC Electricity charges is directed to be disallowed.

32. The indirect expenses have grown by Rs. 3,12,19,449 (from Rs. 6,52,29,193 during the last AY to Rs. 9,64,48,642 in the present AY). The DVC Electricity Charges have grown by Rs. 93,73,832. Allowing this increase to the appellant, the balance increase in indirect expenses of (Rs. 3,12,19,449 - 93,73,852) Rs. 2,18,45,597 is directed to be disallowed. Thus, the claim of loss of loss of Rs. 2,40,52,000 is restricted to (Rs. 2,40,52,000 - Rs. 2,18,45,597) Rs. 22,06,403. This ground of appeal is partly allowed."

9. We have heard rival submissions and perused the material on record including the impugned appellate order. We find that the AO has passed the order by simply stating that the assessee could not explain the loss incurred during the year vis-à-vis the profit in the earlier assessment year by simply comparing two years and thereby rejecting and disallowed the loss incurred. We have also examined the profit and loss account of the assessee a copy of which is filed at page 60 of PB-I and find that the increase in expenses under the head financial cost and depreciation and amortization

has contributed considerably to the loss sustained during the year. We note that during the year, the finance cost has been increased to Rs. 5,06,38,000/- vis-à-vis Rs. 3,41,61,000/- in the immediate preceding financial year. Thus there is an increase of Rs. 1,64,77,000/- under this item of expenditure alone. Coming to the depreciation and amortization expenses, we find that during the year the assessee has charged depreciation of Rs. 4,31,74,000/- vis-à-vis Rs.2,82,71,000/- in the immediate preceding previous financial year Rs. 1,49,03,000/- . Thus the financial cost and depreciation have contributed an increase of Rs. 3,13,80,000/- alone. We have also examined the other cost incurred by the assessee under the other heads of expenses and compared them with the expenses in the corresponding preceding financial year. We also note that the assessee's business was closed down on 23.11.2011. One more fact we would like to highlight is that the increase in depreciation was due to fact that during the preceding financial year, the item of Concast Mill was charged depreciation @50% of the normal depreciation as the asset was put to use less than 180 days however whereas during the instant financial year full depreciation was charged. We also note that since the assessee has closed down its vis-à-vis 23.11.2011 and the additions were made in the month of November, 2011 itself which the assessee is not entitled to depreciation. Therefore, we are of the view that depreciation on the addition which have made to the fixed asset after the month of August and depreciation claimed should not be allowed. Accordingly we are of the view that only the depreciation part needs to be disallowed on the addition made to the fixed asset after the month of August. Accordingly, we set aside the order of Ld. CIT(A) on this issue and direct the AO to allow the loss as claimed by the assessee as reduced by the amount of depreciation attributable to the addition to fixed assets made after the month of August, 2011. Accordingly we restore the issue back to the file of AO with the above direction. Accordingly ground no.2 is partly allowed.

10. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 20<sup>th</sup> December, 2022

Sd/-  
(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

Sd/-  
(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 20<sup>th</sup> December, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Bhuwania Associates Pvt. Ltd, Flat 101, 1<sup>st</sup> Floor, 18, Prince Anwar Shah Road, Kolkata-700033
2. Respondent – DCIT, Circle-3(1), Kolkata
3. Ld. CIT(A)-11, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata