

**IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM**

**ITA No. 604/MUM/2022  
(Assessment Year 2017-18)**

**Solvay Specialties India Pvt  
Ltd  
Equinox Business Park,  
Tower-4, 9<sup>th</sup> Floor, Unit No. Vs.  
903, LBS Marg, Kurla (West),  
Mumbai-400 070**

**(Appellant)**

**DCIT 16(2)  
Aayakar Bhavan,  
Mumbai-400 020**

**(Respondent)**

**PAN No. AAJCS0613F**

**Assessee by : Anuj Kisnadwala  
Revenue by : Richa Gulati - Sr AR**

**Date of hearing: 23.12.2022  
Date of pronouncement : 23.12.2022**

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the assessee against the assessment order passed by the National Faceless Appeal Centre, Delhi (the Id. AO) for A.Y. 2017-18 dated 15.03.2022. Wherein the return of income filed on 20.11.2017 declaring total income of ₹ 38,90,25,318/- by the assessee company which is engaged in the business of manufacturing and trading of synthetic, blended polymers, polyamide polymer, intermediates and other allied materials was assessed at total income of ₹ 54,93,19,094/- wherein the disallowance u/s. 37 of the Income Tax Act amounting to ₹ 16,02,93,776/- was made. This assessment order was passed based on directions of the Dispute Resolution Panel dated 28.02.2022.

02. The assessee has raised following grounds of appeal:

*“Being aggrieved by the order of the National Faceless Assessment Centre, Delhi (Assessing Order - A.O.) u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act, your appellant prefers an appeal against the same on the following grounds, which, it is prayed, may be considered without prejudice to one another:*

*1. On the facts and circumstances of the case and in law, the Transfer Pricing Officer passed by the Learned Assistance Commissioner of Income Tax, Transfer Pricing 4(1)(1), Mumbai(TPO) u/s. 92CA(3) of the Act, the draft assessment order passed by the Learned AO u/s. 144C(1) of the Act as also the assessment order passed by the AO u/s. 143(3) r.w.s. 144C(13) r.w.s 144B of the Act are all bad in law.*

*2. On the facts and circumstances of the case and in law, the learned AO erred in adding ₹ 16,02,93,776/- being expenses incurred by the Assessee on expansion of its existing manufacturing facility which was subsequently abandoned at the work in progress stage.”*

03. At the initiation of the hearing, the ld. AR submitted that Ground No.1 is not pressed, accordingly the same is dismissed.

04. Therefore, effectively Ground No. 2 challenging the disallowance of ₹16,02,93,776/- being expenses incurred by the assessee on expansion of its existing manufacturing facility which was subsequently abandoned at the work-in-progress stage is subject to adjudication in this appeal.

05. The Brief facts of the case shows that, assessee has the existing manufacturing facility at Gujarat, wherein it already

manufactures various products. In the year 2016, the assessee decided to increase the production volume of a product already being manufactured. The assessee titled the project as 'Sparkle project' for expansion of existing facility and incurred cost on some preliminary and basic engineering and certain other expenses of general nature. Subsequently, on the market analysis, assessee abandoned the project as other major players has also announced the setting up manufacturing facilities in the same line. As the cost incurred by the assessee were not expected to bring any future value, the assessee decided to write it off. Thus, assessee claimed the expenditure of ₹ 16,02,93,776/- as revenue expenditure.

06. TheLd. AO disallowed the same for the reason that assessee did not substantiate the above claim and the expenditure were capital expenditure.
07. The ld. DRP categorically held that on aborting the project neither an asset come into existence nor an enduring benefit was received hence, this expenditure cannot be capital in nature. The ld. DRP also accepted that the issue is covered in favor of the assessee by the decision of various High Courts including jurisdictional High Court also in CIT Vs. Idea Cellular Limited 76 taxmann.com 77 where it has been held that, where new cellular towers were constructed by cellular operator in addition to existing towers no new business was set up and if project was abandoned. The expenditure soincurred would be allowed as business expenditure.The ld. DRP further held that as the above decision has not been accepted by the revenue and Special Leave Petition has been admitted before the Hon'ble Supreme Court in 81 taxmann.com 112., This issue has not reached finality,

therefore, ld. DRP confirmed the action of The ld. AO. Accordingly, to keep the issue alive in order to protect the interest of the revenue the addition was upheld. Assessment order was passed u/s 143 (3) of the Act making above disallowance. Therefore, Aggrieved assessee has preferred this appeal.

08. The ld. AR referred to Para No. 6.3 of the order of DRP in support of Ground No. 2. He reiterated the facts stated at Para No. 6.3.3.
09. The ld. DR also submitted that to keep the issue alive and to protect the interest of the revenue. The addition has been made.
010. We have carefully considered the rival contentions and pursued the orders of the lower authorities. The fact shows that the assessee is already carrying on its manufacturing activity and proposed expansion in the existing product line and for increasing the volume of production of the product already manufactured by it. The project never started but due to market conditions, the assessee took a decision to abort its expansion project. It was felt that the market would have an over capacity of the product. Naturally, on aborting the project neither a new asset came into existence, nor any enduring benefit accrued to the assessee. Therefore, it is apparent that such expenses would classify only as revenue expenditure. It is not at all a capital expenditure. This fact has also been recorded by the ld. DRP. In view of this, we do not find any reason to state that this expenditure are capital expenditure in nature. The claim of assessee is also supported by the decision of the Hon'ble Bombay High Court in CIT Vs. Idea Cellular Limited 70 taxmann.com 77 wherein the Hon'ble High Court has been held that if an expenditure is incurred for doing the business in a more convenient and profitable manner and has



not resulted in bringing any new asset into existence, then, such expenditure is allowable as business expenditure. It is not the case that any new business was set up by the assessee, but only it was an expansion of existing business which was later on abandoned due to adverse market conditions. In the result, Ground No. 2 of the appeal of the assessee is allowed and ld. AO is directed to delete the disallowance of ₹16,02,93,776/-.

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

Order pronounced in the open court on 23/12/2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 23/12/2022

Uday Mugal, (Stenographer)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai