

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI G D PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 37/RPR/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Bagadiya Brothers Pvt. Ltd.
Bagadiya Mansion,
Jawahar Nagar,
Raipur (C.G.)
PAN : AABCB8934G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Dy. Commissioner of Income Tax-2(1),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri G.S.Agrawal, CA
Revenue by : Shri Debashish Lahiri, CIT-DR

सुनवाई की तारीख / Date of Hearing : 09.11.2022

घोषणा की तारीख / Date of Pronouncement : 24.01.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-I, Raipur, dated 02.02.2017, which in turn arises from the order passed by the A.O u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 30.03.2015 for A.Y. 2011-12. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1. That under the facts & the law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of expenses of Rs.38,80,007/- comprising of Rs.17,79,834/- paid to M/s Ernst & Young Company Pvt. Ltd., Mumbai for due diligent and Rs.21,00,173/- paid to M/s.Amarchand Mangaldas Suresh S. Sarraf, Mumbai for legal & title due diligence for acquiring interest in Hotel Golden Palm of M/s. Worli Resorts Ltd.

Prayed that, it is business expenditure and be allowed.

2. Without Prejudice to ground no.1, in alternate, the Learned Commissioner of Income Tax (Appeals) further erred in not considering that the aforesaid sum i.e. Rs.38,80,007/- comprising of Rs.17,79,834/- paid to M/s Ernst & Young Company Pvt. Ltd., Mumbai for due diligence and Rs.21,00,173/- paid to M/s Amarchand Mangaldas Suresh S. Sarraf, Mumbai, for legal & title due diligence, is eligible for deduction U/s. 35D @ one fifth.

Prayed that, one fifth of above expenditure be allowed, as per section 35D of Income Tax Act."

2. Succinctly stated, the assessee company which is engaged in trading of Iron Ore Fines (IOF), Cotton Bales, Steam Coal & Merchant Exporter a/w. real estate business had filed its return of income for A.Y.2011-12 on

30.11.2011, declaring an income of Rs.73,59,89,150/-. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act. Assessment was, thereafter, framed by the A.O vide his order passed u/s.143(3) dated 30.03.2015, wherein after, inter alia, disallowing the legal & professional charges of Rs.38,80,007/- that the assessee company had claimed to have incurred for carrying out due diligence while diversifying into hospitality business sector i.e. in course of an unfructified transaction of purchase of a hotel, viz. Hotel Golden Palm, Bangalore, the income of the assessee was determined at Rs.75,19,20,700/-.

3. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without any success as regards the aforesaid disallowance of legal and professional charges.

4. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

5. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

6. Ostensibly, the assessee company, a running concern which was engaged in various streams of business, viz. trading of Iron Ore Fines (IOF), Cotton Bales, Steam Coal & Merchant Exporter a/w. real estate business, had during the year under consideration decided to venture into hospitality business. The diversification of the business of the assessee company was authorized by Clause 40 of its Memorandum of Association. The assessee company backed by its aforesaid decision had intended to purchase a hotel, viz. Hotel Golden Palm, Bangalore that was owned by M/s. World Resorts Limited and had executed with the latter an agreement dated 08.09.2010, Page 3-4 of APB. Advance of Rs.21 lac in lieu of the aforesaid agreement was paid by the assessee company to M/s. World Resorts Limited. The assessee company in order to safeguard its business interest had incurred legal and professional charges of Rs.38,80,006/- towards carrying out due diligence, viz. (i) fees for due diligence services paid to M/s. Ernst & Young Pvt. Ltd. : Rs.17,79,833/-; and (ii) professional charges paid for carrying out due diligence of the title of the transferee company, viz. M/s. World Resorts Limited with respect to Hotel Golden Palm, Bangalore : Rs.21,00,173/-. As the aforesaid take over of the hotel did not materialize and diversification of the business of the assessee company into hospitality sector did not see the light of the day, therefore, it claimed the aforesaid legal and professional expenses of Rs.38.80 lac (approx.) as a deduction u/s.37(1) of the Act. However, the A.O holding a

conviction that as the new line of business of the assessee company i.e. business of hospitality sector by taking over the aforesaid hotel had not come into existence, therefore, its claim for deduction of legal and professional charges being in the nature of a capital expenditure was not to be allowed as a deduction either u/s.37 or under any other provisions of the Act. Accordingly, the A.O on the basis of his aforesaid observations disallowed the assessee's claim for deduction of legal and professional charges of Rs.38.80 lac.

7. On appeal, the CIT(Appeals) upheld the view taken by the A.O and sustained the disallowance of legal and professional charges of Rs.38.80 lac.

8. Controversy involved in the present appeal lies in a narrow compass, i.e., sustainability of the disallowance of the assessee's claim for deduction of legal and professional charges of Rs.38.80 lac by the lower authorities. Admittedly, the fact that the assessee company had incurred the aforesaid expenditure is not in dispute. Our indulgence has been sought by the assessee appellant for adjudicating as to whether or not its claim for deduction of legal and professional charges of Rs.38.80 lac (supra) u/s.37(1) of the Act as claimed by it was in order; or the same was liable to be disallowed as a capital expenditure as observed by the A.O/CIT(Appeals).

9. Having given a thoughtful consideration, we find substance in the claim for deduction of legal and professional charges incurred by the assessee company for carrying out due diligence for its project, which, though, due to commercial expediency did not fructify and had to be abandoned. We are of the considered view that now when the hotel project of the assessee company due to commercial expediency could not proceed any further and had to be abandoned, therefore, in absence of any enduring benefit arising to the assessee company qua the expenditure incurred towards due diligence was rightly claimed by it as a deduction u/s.37(1) in the year in which the same was abandoned. Also, considering the very fact that the abandoned project was managed from common funds and there was unity of control over all business units with the assessee company, therefore, the expenditure incurred towards due diligence to safeguard the business interest of the assessee company could not have been disallowed on the ground that the same was incurred in respect of a new line of business. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Calcutta in the case of M/s. Binani Cement Ltd. Vs. Commissioner of Income Tax, 380 ITR 116 (Cal.). In the case before the Hon'ble High Court the assessee company had claimed deduction of expenditure as regards a project which was abandoned on being found to be unviable. Considering the fact that the expenditure incurred by the assessee company was towards capital work-in-progress that would be

entitled for depreciation after its completion and commencement of its use for business purpose, the AO was of the view that since that stage was yet not reached and no asset had come into existence, therefore, the claim for deduction of such capital work-in-progress that was written-off by the assessee during the year did not merit acceptance. On appeal the CIT(Appeals) concluded that now when the construction/acquisition of the new project was abandoned at the work-in-progress stage itself, thus, the expenditure would not result into any enduring advantage to the assessee, and thus, having been written-off by the assessee was allowable as a deduction during the year under Sec. 37(1) of the Act. On further appeal the Tribunal observed that as the expenditure was incurred in the earlier years, therefore, the same could not be allowed as a deduction during the year under consideration. Challenging the order of the Tribunal the assessee carried the matter before the Hon'ble High Court raising the following substantial question of law:

“Whether the Tribunal substantially erred in law in disallowing the expenditure allegedly incurred by the assessee for preparation of the feasibility study report and capital-work-in-progress in the earlier years, but written off during the previous year corresponding to the assessment year 2002-03 since the proposed project was abandoned?”

The Hon'ble High Court after, inter alia, relying on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Gajapathy Naidu (1964) 53 ITR 114(SC) held, that as there would be no occasion to claim deduction of

the work-in-progress because the project was abandoned and the capital work-in-progress would not proceed any further, therefore, the expenditure therein incurred was to be allowed as a deduction in the year in which the decision of abandonment of the project was taken. Accordingly, the assessee's claim for deduction of the expenditure incurred towards capital work-in-progress was allowed by the Hon'ble High Court. Also, a similar view had earlier been taken by the Hon'ble High Court of Calcutta in the case of Commissioner of Income-Tax Vs. Graphite India Ltd., (1996) 221 ITR 420 (Cal). Our aforesaid view is further fortified by the order of the Hon'ble High Court of Madras in the case of Chemplast Sanmar Ltd. v. ACIT (2019) 412 ITR 323 (Mad.). In the said case, the Hon'ble High Court had observed that as the new project set up by the assessee company was in light of business prudence and commercial expediency subsequently abandoned, therefore, considering the fact that the new project was managed from common funds and there was unity of control over all business units with the assessee company, therefore, it could not be said that the pre-operative expenditure incurred by the assessee was on a new line of business.

10. Considering the facts involved in the case of the assessee before us read with the aforesaid settled position of law, we are of a strong conviction that now when the expenditure claimed as a deduction by the assessee

company was incurred wholly and exclusively in order to safeguard its business interests, i.e, towards carrying out due diligence for a project which though could not fructify, therefore, drawing support from the aforesaid judgments of the Hon'ble High Court of Calcutta in the case of Binani Cement Ltd. (supra) and Graphite India Ltd. (supra), and that of the Hon'ble High Court of Madras in the case of Chemplast Sanmar Ltd. v. ACIT(supra), the aforesaid claim for deduction of expenditure raised by the assessee company was duly allowable during the year under consideration, i.e., in the year in which the hotel project was abandoned. We, thus, finding substance in the claim of the assessee allow it's claim for deduction of legal and professional charges of Rs.38.80 lac.

11. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

G D PADMAHSHALI
(ACCOUNTANT MEMBER)

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 24th January, 2023
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-I, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.