

आयकरअपीलीयअधिकरण  
मुंबईपीठ“सी”,मुंबईपीठ  
श्रीविकासअवस्थी, न्यायिकसदस्यएवं  
श्रीअमरजीतसिंह, लेखाकारसदस्यकेसमक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “C”, MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
आअसं. 1629/मुं/2022 (नि.व. 2015-16)  
ITA NO.1629/MUM/2022(A.Y.2015-16)

M/s. Podar Education Network Private Limited,  
85, Podar Centre, Parel Post Office Lane,  
Off.Ambedkar Road,  
Parel, Mumbai – 400 012.

PAN: AACCP-2130-K

..... अपीलार्थी/Appellant

बनाम Vs.

DCIT, Central Circle – 1(4),  
Room No.902, 9<sup>th</sup> Floor,  
Old CGO Annexe, MK Road,  
Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Rushabh Mehta  
प्रतिवादी द्वारा/Respondent by : Shri Soumendu Kumar Dash  
सुनवाई की तिथि/ Date of hearing : 28/10/2022  
घोषणा की तिथि/ Date of pronouncement : 23/01/2023

**आदेश/ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-47, Mumbai [in short ‘the CIT(A)’] dated 06/05/2022 for the Assessment Year 2015-16.

2. Shri Rushabh Mehta appearing on behalf of the assessee submitted at the outset that he would be pressing only ground No.2 of the appeal at this

stage. The Id. Authorized Representative for the assessee submits that the assessee is a company engaged in providing education. During the period relevant to the assessment year under appeal the assessee increased its authorized share capital, from Rs.1.00 lac to Rs.1.01 crores. For increasing authorized share capital the assessee paid Rs.2,01,750/- as fee to Ministry of Corporate Affairs (in short 'MCA'). The assessee claimed the same as expenditure allowable u/s 37(1) of the Income Tax Act, 1961 (in short "the Act"). During scrutiny assessment proceedings the Assessing Officer issued show cause notice to disallow aforesaid expenditure. Before the Assessing Officer the Authorized Representative for the assessee made alternate prayer to amortize the fees paid to MCA over a period of five years. The Assessing Officer agreed to the alternate contention of the assessee and allowed deduction of Rs.40,350/- ( $1/5^{\text{th}}$  of Rs.2,01,750/-) and the balance amount Rs.1,61,400/- was to be amortized over the next four years. Thereafter, the assessee filed appeal against the assessment order dated 28/12/2019 passed under section 143(3) r.w.s. 153A of the Act. In first appeal, the assessee inter-alia, assailed disallowance of ROC expenses (fees paid to MCA) Rs.1,61,400/-. The CIT(A) rejected contentions of the assessee for allowing fees paid to MCA as revenue expenditure u/s. 37(1) of the Act.

2.1 The Id. Authorized Representative for the assessee submits that the fees was paid for increasing authorized share capital to enable the assessee company to issue bonus shares to the existing shareholders. The Id. Authorized Representative for the assessee contended that the expenditure towards increasing authorized share capital for issue of bonus shares is not in the nature of capital expenditure. To support this contention he placed

reliance on the decision of Hon'ble Supreme Court of India in the case of CIT vs. General Insurance Corporation 286 ITR 232/156 Taxman 96 (SC). To substantiate that authorized share capital was increased for issue of bonus shares, the Id. Authorized Representative for the assessee of assessee furnished copy of resolution passed in the meeting of shareholders held on 10/11/2014, copy of Board Resolution dated 25/11/2014, list of shareholders eligible for allotment of bonus shares and copy of return of allotment filed under Companies Act, 2013.

3. Per contra, Shri Soumendu Kumar Dash representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submits that the assessee had conceded before the Assessing Officer that expenditure towards increase in authorized share capital has been inadvertently claimed u/s. 37(1) of the Act. The Id. Departmental Representative further submits that it is a well settled law that expenditure towards issuance of share capital is on capital account and hence, not allowable u/s. 37(1) of the Act.

4. We have heard the submissions made by rival sides and examined orders of authorities below. The solitary issue raised before us by the Id. Authorized Representative for the assessee is with respect to allowability of expenditure u/s 37(1) of the Act for increasing authorized share capital. The undisputed fact as emanating from the records is that the assessee had paid fee of Rs.2,01,750/- to MCA for increasing authorized share capital from Rs.1.00 lac to Rs.1.01 crores. The Assessing Officer has allowed the aforesaid expenditure to be amortized over a period of five years and thus, allowed 1/5<sup>th</sup>

of the amount i.e. Rs.40,350/- in the impugned assessment year and disallowed balance amount Rs.1,61,400/-for amortization over the next four years. The contention of the Revenue is that the expenditure towards increase in authorized share capital is not allowable as revenue expenditure, since expansion of capital base gives benefit of enduring nature.

5. The assessee has placed reliance on the decision rendered in the case of CIT vs. General Insurance Corporation (supra). The Hon'ble Apex Court in the aforesaid decisions has held as under:-

18. *"Issuance of bonus shares does not result in any inflow of fresh funds or increase in the capital employed, the capital employed remains the same. Issuance of bonus shares by capitalization of reserves is merely a reallocation of company's fund. This is illustrated by the following hypothetical tabulation which establishes that bonus shares leaves the, capital employed untouched, because in the hypothetical example, the capital employed remains the same (i.e. Rs.600) both pre and post issuance of bonus shares.*

Sr. No	Particulars	Pre-Bonus Issue	On Bonus Issue	Post Bonus Shares
1	Pre-paid share capital	100	100+100=200	200
2	Reserve	500	500-100=400	400
3	Total	600	600	600

19. As observed earlier, the issue of bonus shares by capitalization of reserves is merely a reallocation of company's funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. If that be so, then it cannot be held that the Company has acquired a benefit or advantage of enduring nature. The total funds available with the company will remain the same and the issue of bonus shares will not result in any change in the capital structure of the company. Issue of bonus shares does not result in the expansion of capital base of the company.

20. *The case Wood Craft Products Limited (supra) of the Calcutta High Court is similar to the case of the respondent. In that case as well there was increase of authorized share capital by the issue of fresh shares and a separate issue of bonus shares. The Calcutta High Court drew a distinction between the raising of fresh capital and the*

*issue of bonus shares and held that expenditure on the former was capital in nature as it changed the capital base. On the other hand, in the case of bonus shares, was held to be revenue expenditure following the decision of the Supreme Court in Dalmia Investment Co. Ltd., (supra) on the ground that there was no change in the capital structure at all.*

*21. In our considered opinion, the view taken by the Bombay and Calcutta High Courts is correct to the effect that the expenditure on issuance of bonus shares is revenue expenditure. The contrary judgments of Gujarat and Andhra Pradesh High Courts are erroneous and do not lay down the correct.*

(Emphasized by us)

6. During the course of submissions, a specific query was made to the Id. Authorized Representative for the assessee to substantiate that authorized share capital was increased for issue of bonus shares. In response to the same the assessee filed copy of resolution passed in the meeting of Members of the Company to capitalize Rs.1.00 crores standing to the credit of company's general reserve and to issue fully paid up 10,00,000/- new equity shares of face value of Rs.10/- each to the existing shareholders in proportion of there existing share holding. Thereafter, the Board resolution was passed in meeting held on 25/11/2014, specifying the name of the shareholders, their existing share holding and number of bonus shares issued and allotted. The assessee had also filed copy of Form No.PAS-3(return to allotment under Companies Act).

It is evident from documents on record that the assessee had issued fully paid up bonus shares to the existing shareholders after capitalization of the amount from general reserve. No fresh capital was infused in the company. Taking into consideration the facts of the case and the aforesaid decision of Hon'ble Apex Court, we are of considered view that MCA fees paid by the assessee has live nexus with increase in authorized share capital for issuance of

bonus shares. Hence, the same is allowable as revenue expenditure u/s. 37(1) of the Act.

7. In the result, ground No.2 of appeal is allowed.

8. Since, no submissions were made by the assessee in respect of ground No.1 at this stage, therefore, ground No.1 of the appeal is left open.

9. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Monday the 23<sup>rd</sup> day of January, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 23/01/2023

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्तCIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar),ITAT, Mumbai