

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.2969/Del/2018
Assessment Year: 2014-15

Tourism Finance Corporation of India Ltd., 4 th floor, Tower-1, NBCC Plaza, Sec-5, Pushp Vihar, Saket, New Delhi 110017 PAN AACT 0706 S	vs.	Addl. CIT, Special Range-9, New Delhi 110002
(Appellant)		(Respondent)

For Assessee:	Shri Sanjay Aggarwal, CA
For Revenue :	Shri N K Bansal, Sr. DR

Date of Hearing :	19.06.2023
Date of Pronouncement :	17.08.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Ld. CIT(A)-16, New Delhi dated 26.02.2018 for AY 2014-15.

2. The grounds have been raised by the assessee are as follows:-

1) That the order of the learned CIT (Appeals) is bad in law and wrong on facts.

2) That on the facts and in the circumstances of the case, the learned CIT (Appeals) has erred in not directing the Assessing Officer to allow credit for self assessment tax paid as per the revised statement filed on 04-07-2016 wherein the assessee made a wrong disallowance for increased provision for Gratuity liability towards an approved gratuity fund by the Commissioner of Income Tax and therefore covered u/s 40A(7)(b) of the Act.

3) That on the facts and in the circumstances of the case, the learned CIT (Appeals) has erred in confirming the addition of Rs. 1,97,84,688/- (including service tax of Rs. 21,13,560/-) in respect of advisory fee paid for application of banking licence.

3. The learned Assessee Representative (AR) submitted that except ground no. 3 the assessee does not want to press grounds of appeal hence the same are dismissed as withdrawn.

4. Apropos ground no. 3 the learned AR submitted that on the facts and in the circumstances of the case, the learned CIT (Appeals) has erred in confirming the addition of Rs. 1,97,84,688/- (including service tax of Rs. 21,13,560/-) in respect of advisory fee paid for application of banking licence. The Id. AR also submitted that the assessee has paid an amount of Rs. 1,97,84,688/- including service tax of Rs. 21,13,560/- to the exchequer of Govt. of India which cannot be disputed therefore assessee may kindly be allowed relief accordingly.

5. Replying to the above, the Id. Senior DR supported the assessment order and submitted that in para 3 the AO has dealt the issue in detail and thereafter rightly concluded that as per memorandum of articles of association it was clear that the assessee company was deliberately prohibited for carrying out banking business as defined in the Banking Regulation Act thus, being the Govt. company the assessee cannot by any stretch of imagination carry out the banking activities. The Id. Senior DR submitted that despite said situation surprisingly without change in the objects, the assessee has incurred huge expenditure by making consultation payment for preparing a report on transformation of the company from the financial institution to a banking company which cannot be held as for the purpose of business of company therefore the AO was right in making disallowance. However, the Id. Senior DR did not dispute that the impugned amount also included service tax amount of Rs. 21,13,560/- paid to the Govt. of India.

6. On careful consideration of above from the para 3 of assessment order and paras 5 to 5.3 of first appellate order we find that the authorities below mainly made disallowance by considering that the assessee company incurred huge expenditure on preparation of report on transformation of company from financial institution to banking company despite the fact that as per memorandum of articles the assessee was expressly prohibited from carrying out banking business as defined in the Banking Regulation Act. From assessment order para 3 we note that the AO made addition with following observations and findings:-

The assessee submissions have been considered and not found tenable because of the following reasons:

1. The assessee was asked to furnish the copy of the Memorandum and Articles of Association and it is seen that in the objects as mentioned in the memorandum, the banking does not figure in the list of objects which the assessee company can undertake. Not only this, in the clause 24 of the "objects incidental or ancillary to the

attainment of the main objects", it is seen that the assessee is prohibited to take up banking. As the clause 24 is very pertinent, the same is reproduced below:

"To receive monies of deposit, loans and otherwise, with or without interest and or with or without security and to secure the same in such manner and on such terms and conditions as may be deemed expedient in the interest of the company, subject to provisions of sec. 584 292 an 293 of the Act and rules made thereunder and directions of the Reserve Bank of India; However, the company shall not carry on Banking business as defined in the Banking Regulation Act, 1949."

From the perusal of the above clause, it is very clear that the assessee company was deliberately prohibited for carrying out banking business as defined in the Banking Regulation Act. Thus being the Government company, the assessee cannot by any stretch of imagination carry out the banking activities. However very surprisingly without change of objects, the assessee has stated that they have appointed a consultant for preparing a report on transformation of the company from the financial institution to a banking company. Thus as the banking activities are prohibited for the assessee company, the expenditure incurred on such activities cannot be allowed and the amount incurred on such activities cannot be allowed as business expenditure.

2. In the submission, the assessee company has stated that the expenditure incurred for banking licence be treated as revenue expenditure and not the capital expenditure. However when the expenditure itself was incurred for activities incurred which are not part of the object clause (in fact prohibited by object clause) then there is no question of the expenditure being treated as revenue or capital in nature as in principle the expenditure is to be disallowed.

3. It is very surprising that the assessee company being Government company has tried to venture into the business of banking without realizing that in the object clause they are being specifically prohibited from carrying banking business as defined in the Banking Regulation Act, 1945 and no waiver for carrying out such activities is taken from the Government.

Thus in view of the above, the payment made to Ms. KPMG Advisory Services Pvt. Ltd. of Rs. 1,97,84,688/- is disallowed and added back to the income of the assessee.

I am satisfied that the assessee has concealed/ furnished inaccurate particulars of the income and accordingly penalty proceedings us. 271 (1)(c) of the IT Act is initiated on this issue.

(Addition- Rs. 1,97,84,688/-)

7. The Id. CIT(A) uphold the addition by observing that the assessee despite express prohibition tried to venture into banking business without realizing that the object was specifically prohibited the assessee from carrying on banking business. Agreeing with the conclusion of AO the Id. CIT(A) uphold the addition. We are in agreement with the contention of the Id. AR that on receipt report the company tried to get permission for undertaking banking business but without result therefore this

expenditure may be treated as incurred for the purpose of business of assessee. Neither the Assessing Officer nor Id. CIT(A) has disputed the quantum of expenditure which was incurred inclusive of service tax to be paid thereon as per relevant provisions.

8. From the totality of facts and circumstances of the case as noted above, we further observed that the assessee being NBFC being financial company tried to enter in to banking business and for this purpose the assessee incurred expenditure on preparation of a report on transformation of company from financial institution to banking company, which was not beyond the scope of working of a prudent business entity to do endeavour to expand the scope of its business and the same was nothing but for the purpose of expansion of business only. Therefore, we conclude that the assessee has incurred expenditure for the purpose of expansion of its business from financial activities to banking activities and thus the same was for the purpose of business of assessee and thus allowable. Therefore conclusion drawn by the authorities below is not sustainable and thus we set aside the same and direct the Assessing Officer to allow the same to the assessee. Accordingly, ground no.3 is allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17.08.2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 17th August, 2023.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi