

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.1642/Mum/2023
(Assessment Year: 2014-15)**

SabarmatiCapitalOneLtd, The IL & FS Financial Centre, Plot No. C-22, G Block, BKC, Bandra(E), Mumbai -400051.	बनाम/ Vs.	DCIT-14(3)(2), Aayakar Bhawan, M.K. Road, New Marine Lines, Mumbai -400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACCI8033N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी / Respondent)

Assessee by :	Shri Darshit Jain.AR
Revenue by :	Shri Dr. Kishor Dhule.CIT DR

सुनवाई की तारीख / Date of Hearing	24/07/2023
घोषणा की तारीख /Date of Pronouncement	25/07/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/s 250 of the Act. The assessee has raised the following grounds of appeal:

1. Disallowance of expense as it is treated as Capital Expenditure of Rs 97,750-6. 1. On the facts and circumstances of the case the Ld. CIT(A) has erred in confirming the disallowance of Rs. 97,750 incurred on account of purchase of water lamp considering it as capital expenditure without appreciating the fact that the appellant has purchased the same as a replacement for the existing pump.
- 6.2. The Appellant prays before Your Honour that disallowance of Rs. 93,633 be deleted.
- 6.3. Without prejudice to Ground No 6.1,

the appellant prays that if the expenditure of Rs. 97,750 is treated as capital expenditure, then depreciation may be granted as per the applicable rate while computing the total income AY 2014-15.

2. The Appellant also craves to leave or to add or to delete any grounds of appeal as may be considered necessary before or during the hearing.

3. Disposal of appeal without considering the facts and details. 1.1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax ('Ld. CIT(A)') has erred in summarily dismissing the appeal without considering the detailed facts as mentioned in the Statement of Facts filed by the Appellant. 1.2. The Ld. CIT(A) ought to have used its powers to consider proceedings on merits based on the detailed facts and should not dispose off the same on account of no response filed against the notice. 1.3. The Appellant prays before Your Honour to direct the LdCIT(A) to pass the order based on merits.

4. Disallowance of Share issue expense of Rs 1,07,123 by treating the same as Capital in - 2.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the disallowance of the expenditure of Rs. 1,07,123 the same as capital expenditure incurred for increase in share capital, without appreciating the fact that the appellant has itself disallowed Rs 1,00,010 in its return of income. Further, the balance amount of Rs. 7,123 is an allowable deduction. 2.2. The Appellant prays before Your Honour that the disallowance of share issue expense be deleted.

5. Addition on account of reconciliation of amount as per 26AS and as per books of Rs. 49,10,182 - 3.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition of Rs. 49,10,182 without considering the fact that the appellant had received the total sale consideration of Rs. 42,07,88,280 against immovable property instead of the amount erroneously considered by the Ld Assessing Officer of Rs 42,51,10,182. 3.2The Appellant prays before Your Honour that the addition of Rs. 49,10,182 be deleted.

6. Disallowance of Provision for Expenses of Rs 18,97,900-4.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the disallowance of Rs. 18,97,900 being provision for expenses without considering the fact that these are not unascertained liabilities and also tax has been deducted on such expense. 4.2. The Appellant prays before Your Honour that the disallowance of provision for expenses of Rs. 18,97,900 be deleted.

7. Disallowance of Prepaid Expenses of Rs 93,633-5.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the disallowance of Rs. 93,633 as prepaid expense and is not an allowable deduction on the matching concept5.2. The Appellant prays before Your Honour that disallowance of prepaid expense of Rs. 93,633 be deleted

2. The brief facts of the case are that the assessee company is engaged in the business of development of real-estate. The assessee has filed the return of income for the A.Y 2014-15 on 29.11.2014 disclosing a total loss of Rs.(-)37,54,52,196/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and furnished the details and the case was discussed. The AO on perusal of the audited financial statement found that certain expenses claimed by the assessee are not allowable. (i) The AO find that the assessee has increased the share capital from Rs.1,00,50,000/- to Rs.2,00,00,000/- and the assessee has filed reply on 03.12.2016 referred at 5.1 of the assessment order. The assessee has claimed expenditure incurred in relation to

increase in share capital as revenue expenditure and the A.O made disallowance of Rs. 1,07,123/-. (ii) the AO found that there is difference in reconciliation of receipts as disclosed in Form.No.26AS with books of accounts and made an addition of Rs.49,10,182/-. (iii) The third disputed issue, the AO found that the assessee has made provision for expenses in the profit and loss account and the information was called for with respect of expenses along with the name, address, PAN and nature of the transactions, in compliance the Assessee has filed the explanations on 24.11.2016. The AO dealt on the facts referred at page 4 of the assessment order and observed that the assessee has not deducted the TDS in respect of the expenses and made addition u/s 40(a)(ia) of the Act of Rs. 18,97,900/-. (iv) The AO find that the assessee has claimed the professional expenses of Rs. 93,633/- and as per the matching principles there is no revenue generated and made the addition of Rs. 93,633/-. (v) the AO found that the assessee has claimed capital expenditure in the profit and loss towards the purchase of Water lamp of Rs. 97,750/- and is not an allowable expenditure. Finally the AO has assessed the total loss of Rs.(-)39,90,49,904/- and passed the order u/s 143(3) of the Act dated 07.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no

compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 4 Para 3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore,

considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. And the grounds of appeal of the assessee are allowed for statistical purposes.

6. In the result, the appeal filed by assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.07.2023.

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25/07/2023

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपील अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumba